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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 May 2023, the Art Restitution Advisory Board unanimously adopted the following

### DECISION

It is recommended to the Federal Minister of Art, Culture, Civil Service and Sport that the works listed in the Commission for Provenance Research collection dossier "Giulietta Mendelssohn" (16/2022) from the aforementioned museums

#### I Albertina:

- Adolf Friedrich Erdmann Menzel  
*Lady slightly bent forward*, 1898  
Pencil, smudged  
inv. no. 30163
- Adolf Friedrich Erdmann Menzel  
*In front of St. Michael's Church in Munich*, 1853  
Watercolour, in places with covering colour, brush in black, highlighted in white with brush, over pencil, on brown paper  
inv. no. 30164
- Adolf Friedrich Erdmann Menzel  
*Head of an old woman with bonnet*, 1886  
Pencil, smudged  
inv. no. 30165
- Albert Suchy  
*Viennese aristocrat in blue frock coat, with order half covered*, c. 1825  
Miniature, watercolour/ivory  
inv. no. 30141
- N.N.  
*Lady with blue hairband and collar*, c. 1798  
Miniature, watercolour/ivory  
inv. no. 30144
- N.N.  
*Lady in grey dress with blue shoulder scarf*, c. 1740  
Miniature, watercolour/ivory  
inv. no. 30145
- N.N.  
*Lady in white Empire dress with red belt and red scarf*, c. 1810  
Miniature, watercolour/ivory  
inv. no. 30146
- Georg Emanuel Opiz  
*Young officer in red frock coat with blue cuffs*, 1870  
Miniature, watercolour/ivory

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inv. no. 30148

- Johann Adamek  
*Lady in white dress with pink belt*, c. 1815  
Miniature, watercolour/ivory  
inv. no. 30150
- N.N.  
*Gentleman in green frock coat, standing beside the window, in front of a bookshelf*, c. 1810  
Miniature, watercolour/ivory  
inv. no. 30152
- Lucas van Valckenborch the Elder  
*Gentleman with white frill and violet sash of an order*, 1581  
Miniature, oil/copper  
inv. no. 30153/1
- Lucas van Valckenborch the Elder  
*Blonde lady in black dress*  
Miniature, oil/copper  
inv. no. 30153/2
- N.N.  
*Young lady with long blonde curls in red dress*, c. 1640  
Miniature, oil/copper  
inv. no. 30157
- N.N.  
*Portrait of a German princess in red dress and lace bonnet*, c. 1770  
Miniature, oil/copper  
inv. no. 30158
- N.N.  
*Lady with dark-haired big hairstyle and white lace collar*, c. 1617  
Miniature, oil/copper  
inv. no. 30159

## II Kunsthistorisches Museum:

- Rembrandt Harmenszoon van Rijn Workshop (?)  
*Self-portrait in fur, with necklace and earring*, 1655  
Oak wood  
inv. no. GG\_9040

## III Österreichische Galerie Belvedere:

- Camille Corot  
*Treescape (evening)*  
Oil on canvas  
inv. no. 3887

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- Camille Corot  
*Treescape (morning)*  
Oil on canvas  
inv. no. 3888
- Edgar Degas  
*Harlekin and Colombine*  
Pastel on paper  
inv. no. 3846
- Édouard Manet  
*Lady in a fur (Young woman in front of green foliage)*  
Pastel on canvas  
inv. no. 3867
- Claude Monet  
*Pathway in Monet's Garden at Giverny*  
Oil on canvas  
inv. no. 3889

should **not** be transferred to the legal successors *causa mortis* of Giulietta von Mendelssohn.

#### FOUNDATIONS

The Board considered the above-mentioned dossier. Based on research by descendants of the Gordigiani family, enquiries were made to Austrian federal museums in 2019, and the above-mentioned works were (re)researched by the Commission for Provenance Research. This resulted in the following facts relevant to the decision:

Georg Alexander Robert von Mendelssohn was born in Berlin on 13 December 1857 as the son of the banker Franz von Mendelssohn and his wife Enole, née Biarnez. He was a great-grandson of the philosopher Moses Mendelssohn and a great-nephew of the composer Felix Mendelssohn-Bartholdy. In 1898 he married the Italian pianist Julia Sofia Maria Gordigiani, called Giulietta, born on 17 May 1871 as daughter of the portraitist Michele Gordigiani, official portrait painter of the Kingdom of Italy since 1861, and his wife Gabriella, née Couyere. Robert and Giulietta had three children: Eleonora (1900–1951), Franz, called Francesco, (1901–1972), and Angelika (1902–1920). While Giulietta was baptised Roman Catholic, the children, like their father Robert, were baptised Protestant in the New Church in Berlin.

Robert von Mendelssohn, since 1884 co-owner and later senior director of the banking house Mendelssohn & Co in Berlin as well as member of several supervisory boards and art promotion associations, was a collector of old and modern art. Along with Eduard Arnhold, Felicie Bernstein, Ernst von Mendelssohn-Bartholdy, Hugo Oppenheim and others, he belonged to the circle of so-called

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Tschudi patrons, named after the Second Director (1896–1908) of the Berlin National Gallery Hugo von Tschudi. Thanks to their active and financial support and open-mindedness, he was able to establish the world's earliest museum collection of French Impressionists. Robert von Mendelssohn himself acquired works by Edgar Degas, Édouard Manet, Claude Monet, Auguste Renoir and Vincent Van Gogh, mainly from Paul Cassirer's Kunstsalon in Berlin. His private collection also included paintings by Honoré Daumier, Charles-François Daubigny, Camille Pissarro, Rembrandt Harmenszoon van Rijn and his friend Max Liebermann. The top-class collection was housed in the villa at Königsallee 16 in Berlin-Grünwald, where the family lived.

After Robert von Mendelssohn's death on 20 August 1917, his estate, including the art collection, passed to his wife Giulietta von Mendelssohn as his legal predecessor: In the will signed jointly by the couple Giulietta and Robert von Mendelssohn on 5 May 1901, they had appointed each other as heiress and heir and designated their only daughter at the time, Eleonora, and "the children yet to be born to us" as subsequent heirs. Accordingly, in the certificate of inheritance issued by the Berlin-Mitte district court in 1918, the three minor children Eleonora, Franz and Angelika (who died in 1920) were listed as the testator's heirs. The works of art remained in the villa in Berlin-Grünwald with Giulietta. Although Eleonora and Francesco von Mendelssohn occasionally acquired paintings themselves, their "main interest was not in the visual arts, but in theatre and music", according to the author Thomas Blubacher. Francesco was a cellist and performed as a soloist and chamber musician throughout Europe, but also worked as a theatre director and actor; Eleonora also became an actress. On 21 September 1927, she married in second marriage the former Imperial Royal Hussar ride master Emmerich (Imre) Jeszenszky - the church wedding took place in the Protestant church of Vöcklabruck in Upper Austria; Eleonora also became an Austrian citizen through the marriage. In August 1925, even before their wedding, she and Emmerich had acquired the Kammer castle and estate in Schörfling am Attersee, where Eleonora spent the summer months in each of the following years until 1937. In September 1935, she emigrated to New York together with her brother Francesco, who until then had lived mainly in Paris and Venice. She divorced Emmerich Jeszenszky the following year. While Eleonora and Francesco von Mendelssohn became US citizens, their mother Giulietta von Mendelssohn, who had largely stayed in her native city Florence since the death of her husband, took up Italian citizenship again in 1941.

After the annexation of Austria to the Nazi German Reich, the Vöcklabruck lawyer Werner Kaltenbrunner, a brother of the later head of the Reich Security Main Office and head of the Security Police and Security Service Ernst Kaltenbrunner, was appointed provisional administrator of Kammer Castle and Estate on 4 May 1938. By order of the Gestapo, State Police Office Linz, of 30 May 1938, the

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confiscation of the castle and estate was ordered, but lifted again four months later. In accordance with the application for the lifting of the provisional administration, which lawyer J. Steegman had submitted to the Reich Governor's Office in Vienna on behalf of Giulietta von Mendelssohn (authorised by her daughter Eleonora) - "Mrs. Giulietta von Mendelssohn comes from a well-known Italian family. She is [...] Aryan." - Werner Kaltenbrunner was informed of his dismissal in a letter dated 26 September 1938:

*In view of the fact that the seizure of the Kammer a/Attersee estate by the Secret State Police has been lifted and the owner of this estate has been able to provide proof that she is not Jewish, you are dismissed from the position of provisional administrator.*

While Giulietta von Mendelssohn was deemed in Nazi terminology to be an Aryan, her children would have been considered "Jewish Mischlinge" or "2nd degree Mischlinge" according to the Nuremberg Laws because they had a Jewish grandparent. However, there is no source evidence that the Nazi authorities made such a classification for the two siblings, who had been living in the USA since 1935. As explained, Robert von Mendelssohn's art collection continued to be located in the villa in Berlin-Grunewald after his death in 1917, according to his will in the ownership of Giulietta von Mendelssohn. However, the statements contradict each other with regard to the question of who the owner was from 1933 onwards: In her application to the Restitution Commission at the Provincial Court for Civil Law Matters in Vienna from 29 November 1952, Giulietta von Mendelssohn claimed that she had renounced her right to inherit in favour of her children as of 1 January 1933 and had left the art collection to them in order

*to withdraw the pictures from the grasp of the Nazi authorities, since [...] Francesco von Mendelssohn left Germany and Eleonora von Mendelssohn had her residence in Austria, both of whom were thus at this point in time withdrawn from personal coercive measures by the National Socialists.*

According to this, after the Nazi came to power in Germany, a total of eight paintings were brought by Eleonora von Mendelssohn to Kammer castle at the Attersee. However, neither Giulietta's renunciation of her right to inherit nor the transfer of artworks to Upper Austria can be proven by sources. Although various witness statements in post-war court proceedings confirm the alleged transfer of assets, Eleonora von Mendelssohn referred to her mother as the "owner" in a letter to the Basel art dealer and close friend Christoph Bernoulli in February 1948 in connection with an intended application for restitution:

*The deadline for the restitution application is 31 March, that's why there is such urgency. [...] The most important thing now is that Mama, as the owner, makes this application. I am sending her such a pre-printed application today, which she must sign and send to Trautmannsdorf [sic]. [...] Will Mama now sign this application? [...] The application must be submitted to the Austrian government by 31 March, otherwise we will never get the pictures back. How we negotiate then, whether we buy ourselves out with the Rembrandts or whether*

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*we have to find other means to get the French pictures back, that is a second question. [...] But the first step must come from Mama. Please explain to her clearly that after all she has already messed up in this matter, it really is the least she can do now. Please remind her that I had taken all these pictures abroad before the Nazis seized them; that she, she alone, dragged them back again. I had taken the French pictures to Austria as removal goods, i.e., with the permission of the Nazis, had them in Kammer, wanted to send them from there to America, whereupon she sent Herr Lange to take them away from there.*

In a letter to her cousin Luisa Gordigiani dated 25 September 1948, found in the Eleonora von Mendelssohn Papers in the New York Public Library, Eleonora also described her attempt to have Rembrandt's main work *Hendrickje Stoffel* restituted. Her mother had sold it to the "Sonderauftrag Linz" in March 1942, which is why it was at the Central Collecting Point in Munich at the end of the war. Eleonora saw the better possibility of restitution in making it credible that it had "also belonged to me [i.e., Eleonora] and Francesco (as Americans and anti-Nazis)":

*Con Christoph Bernoulli abbiamo parlato, subito quando sono tornata a Basilea, con un avvocato che sa tutto delle legge internazionale. Lui dice che non ho nessuna chance di riavere la 'Hendrikje' di Rembrandt (a Monaco) senza dichiarare che questo quadro sia anche mio e di Francesco (come residenti americani e antinazisti). Questo te lo dico per la tua informazione. Non c'è bisogno che ne parli colla Mamma, ma cosa bisogna assolutamente è purtroppo che la Mamma firmi le due autorizzazioni che ti mando per questo avvocato. Capisci, finora lei ha dato soltanto un'autorizzazione all'avvocato di Vienna (Trauttmansdorff), il quale si può occupare soltanto dei quadri che sono a Vienna, e non della 'Hendrikje' che è a Monaco. Ma questa 'Hendrikje' è il più prezioso di tutti i nostri quadri. [...], e poi c'è la grandissima chance che giustamente questo quadro è stato comprato da Hitler personalmente. Naturalmente gli Americani consideranno tutto quello che Hitler ha comprato come rubato.<sup>1</sup>*

The application for restitution by the non-persecuted-owner Giulietta von Mendelssohn would therefore be futile if Eleonora and Francesco, as "American citizens and anti-Nazis", had not declared that the painting in question had belonged to them. Subsequently, on 9 November 1948, Giulietta von Mendelssohn-Gordigiani declared under oath in Florence before the Restitution Authority of Upper Bavaria that she would never have sold the portrait of Hendrickje Stoffels,

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<sup>1</sup> "With Christoph Bernoulli, as soon as I returned to Basel, we spoke to a lawyer who knows international law. He says that I have no chance of getting Rembrandt's 'Hendrikje' (in Munich) back without explaining that this painting also belongs to me and Francesco (as Americans and anti-Nazis). I tell you this for your information. It is not necessary to talk to Mama about this, but unfortunately it is absolutely necessary for Mama to sign the two powers of attorney I am sending you for this lawyer. She has so far only given power of attorney to the lawyer in Vienna (Trauttmansdorff), who can only deal with the paintings that are in Vienna, but not with 'Hendrikje', which is in Munich. But this 'Hendrikje' is the most valuable of all our paintings [...] and then there is the great chance that this very painting was bought by Hitler himself. Of course, the Americans will consider everything that Hitler bought as stolen."

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*which was particularly dear to my children, and which had already become their property, in any case not without consulting the rightful owners, if I had not been under the constraint of the political circumstances and the pressure exerted.*

The application for restitution was rejected in 1953. The appeal that was subsequently filed was finally dismissed by order of the Munich Higher Regional Court of 10 March 1954:

*The Aryan wife G. v. M. and her children cannot, according to the established case law of the higher courts and CORA [United States Court of Restitution Appeals of the Allied High Commission of Germany], claim the presumption of deprivation under Article 3.1(b). [...] The Chamber found, without apparent violation of the law, that G. v. M. and the applicants were not persecuted by individual persecution measures at the time of the alienation; it was also unable to establish that they were impaired in their domestic property in accordance with Art. 1 at that time. [...] The Chamber further found that Dr. Cima was also not under any duress in accordance with Art. 1, that rather he had urged the purchase of the Rembrandt painting because of the danger of bombing and that a reasonable purchase price was paid at the disposal of the vendor. The fact that the applicants did not receive anything from the purchase price was not based on discriminatory treatment, but rather on the fact that in the external relationship, the seller G. v. M. was considered the owner.*

Apart from considerations of litigation strategy, it is certain that Giulietta von Mendelssohn, as the previous heir to the estate of her husband Robert von Mendelssohn, who died in 1917, was continuously the owner of the works of art. Subsequently, the Viennese museums also acquired the representational artworks from her.

After the Nazis came to power in Germany, the Mendelssohn Collection, which from 1935 was partly in the safe of the banking house Mendelssohn & Co in Berlin, was not explicitly targeted by the National Socialists. However, the Nazi bureaucracy was particularly interested in "securing two major works by Rembrandt from the possession of the Mendelssohn family against emigration abroad". In addition to the *Self-Portrait in Fur, with Necklace and Earring*, which is now in the Kunsthistorisches Museum, this also concerned the aforementioned *Portrait of Hendrickje Stoffel*, both of which were subject to export restrictions as nationally valuable cultural assets. In June 1937, the family was informed by the Reich Minister of the Interior, Wilhelm Frick, that "even a temporary shipment of the paintings abroad will not be permitted". In connection with the possible inclusion in the list of nationally valuable cultural property, the director of the Berlin National Gallery, Paul Ortwin Rave, examined other works stored in the bank's vault in 1939 (among others Monet, *Garden Path in Giverny*). Subsequently, the two Rembrandt paintings were deposited in the Prussian State Bank, which, according to a "letter from the authorised representative of Mrs Giulietta von Mendelssohn", would "ensure sufficient security". Whether, apart from Monet's *Garden Path in Giverny*, other works acquired by today's Austrian Federal Museums were deposited in bank safes in Berlin in the early 1940s cannot be proven from

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sources. It is certain that by 18 December 1941 at the latest, at least six paintings from the Mendelssohn Collection were in Vienna "for viewing at any time" - in the safe of the Vienna Länderbank in Hohenstaufengasse.

The transfer of the works of art from Berlin to Vienna had been arranged by Aldo Cima as trustee of Giulietta von Mendelssohn, who at about the same time had sold the villa in Berlin-Grunewald to the "Reichsfiskus (Heer)" for RM 1,600,000, according to the purchase contract. For his part, Cima, Secretary General of the Italian Chamber of Commerce in Vienna, in turn entrusted the art dealer Otto Schatzker with the execution of the sale of the collection. Since Hans Posse, special representative for the Linz special commission, had been trying since November 1941 to acquire the portrait of Hendrickje Stoffels or the self-portrait by Rembrandt "for the Führer's purposes", he approached Giulietta von Mendelssohn directly at the beginning of 1942. The sales negotiations were conducted through Cima and Schatzker, as she had requested in a telegram of 10 January 1942 - "Non desidero trattare personalmente pregovi rivolgermi dottore Cima direttore camera commercio italiana Vienna"<sup>2</sup>. However, not only the special commission Linz showed an interest in purchasing the two Rembrandt portraits, but also the Picture Gallery of the Kunsthistorisches Museum. Finally, on 3 January 1942, Walter Thomas, General Cultural Advisor under Reich Governor Baldur von Schirach, telegraphed Posse that Schirach would forego Hendrickje Stoffels in favour of the "Führer Museum" and limit himself to acquiring the self-portrait. Consequently, Hendrickje Stoffels was acquired in March 1942 at a purchase price of RM 900,000 for the Sonderauftrag Linz (Linz no. 2226). The self-portrait, on the other hand, was intended for the Vienna Picture Gallery. This is a note from Thomas dated 6 February 1942:

*After the assurance of Director Posse that he was only interested in the portrait of Hendrickje Stoffels for the acquisition of the Führer (whereby I once again had the personal impression during this conversation that the Führer was hardly personally aware of the possibility of acquiring this painting), negotiations were now resumed concerning Rembrandt's self-portrait [...].*

The painting was initially taken provisionally to the Kunsthistorisches Museum, where it was to remain until Schirach's final decision. The museum advisor in the General Office for the Advancement of Art of the Reich governor's office in Vienna, Ludwig Berg, recorded on 9 February 1942:

*Dr. Cima, on the basis of the consent obtained by telephone from Mrs. Mendelssohn, has today, 5 February 1942, informed the undersigned by telephone that Mrs. Mendelssohn would sell the self-portrait for the amount of 750,000 RM. The purchase is thus concluded and is by mutual exchange of letters between the Reich Governor and Dr. Cima.*

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<sup>2</sup> "I do not wish to negotiate with you personally, please contact Dr. Cima, Director of the Italian Chamber of Commerce in Vienna".

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After the purchase price was transferred in two instalments of RM 400,000 and RM 350,000 to Cima's account, the painting was assigned to the Picture Gallery of the Kunsthistorisches Museum in February 1942 and inventoried there under GG\_9040.

In addition to the two Rembrandts, the safe of the Vienna Länderbank also contained two of the works which the Österreichische Galerie acquired from the Mendelssohn Collection: Edgar Degas' *Harlequin and Colombine* and Édouard Manet's *Lady in a Fur* (also: *Young woman in front of green foliage*). For the purchase of the Degas, Director Bruno Grimschitz requested a loan from the Reich governor's office in Vienna on 20 January 1942:

*The art dealer Otto Schatzker has offered the pastel 'Harlequin and Colombine' by Edgar Degas from the collection of Mrs. Mendelssohn - Berlin for the amount of RM 35,000 [...] The acquisition of the pastel would fill a large gap in the representation of 19th century French painting. Since the offer represents an unusually favourable opportunity and the price for the offered pastel can be described as particularly low under the present circumstances, I request that the loan for the purchase of this important work of art be granted.*

In a memo dated 23 January 1942, general cultural officer Thomas stated that the funds for a purchase were available: "The price of RM 35,000, is not a special price for a Degas according to today's auction conditions in Berlin". Schirach added in handwriting, "Too high a price, but magnificent picture. Act!" Just four days later, on 27 January 1942, the Österreichische Galerie was informed of the purchase of the Degas by the Reich governor's office and its allocation to the museum: "The pastel is to be taken over by the art dealer Otto SCHATZKER and will be paid for with special funds from here". On 13 February, the Österreichische Galerie Schatzker also confirmed the acquisition of Édouard Manet's pastel *Young woman in front of green foliage*, which was also on offer. The purchase by the Reich governor's office took place in March 1942. At the beginning of April 1942, Cima addressed an offer to purchase further paintings from the Mendelssohn Collection to the Reich governor's office, which led to the acquisition of Corot's *Treescape (Evening)* and *Treescape (Morning)* as well as Monet's *Pathway in Monet's Garden at Giverny*:

*The Reichsleiter has approved the purchase of the painting 'Garden Path' by Claude Monet and the 2 large landscape paintings by Corot [...] for a total price of RM 225,000 from the 1 million fund. [...] The paintings are already in the Oe. Galerie and are to be inventoried there.*

At the end of 1942, the five paintings acquired from Giulietta von Mendelssohn by the Reich governor's office Vienna via Otto Schatzker were presented to the public as part of the exhibition "New Acquisitions of the Österreichische Galerie at the Upper Belvedere". In the catalogue preface, Bruno Grimschitz referred to the "particularly generous support from the Reich governor in Vienna, Reichsleiter Baldur von Schirach, his personal interest in the arrangement of the Viennese art collections and his extraordinary financial contributions".

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The purchases of the Albertina's works from the Mendelssohn Collection were also handled by the Reich governor's office. The three drawings by Adolf Menzel - *Lady slightly bent forward, In front of St. Michael's Church in Munich* and *Head of an old woman with bonnet* - were acquired on 29 March 1944 for a total of RM 80,000, resp. inventoried "from the Mendelssohn Collection" (Inv. nos. 30163–36565). For the miniatures, which also came from the Mendelssohn Collection, no reference to their provenance could be found either in the inventory book or in the Albertina archives. All that was known was that they came from a private collection. It was only after the Mendelssohn acquisitions had been re-examined that the miniatures could be identified as coming from this collection. The assignment of the 23 miniatures (Inv. nos. 30140-30161) recorded immediately before the Menzel sheets in the inventory book was initially derived from Otto Schatzker's file from the Volksgericht. In the list of art objects from the "property of Baroness Gordigiani-Mendelssohn" seized from Schatzker in 1945, which was sent to the Office for Securing Property at the State Office for the Interior, there was, among other things, an item with miniatures by various masters that had been crossed out in pencil. In the subsequent report of the Office for Securing Property from 10 October 1945, it was noted that Schatzker had given the miniatures to the Albertina. It is therefore obvious that these are the 23 miniatures that were purchased for RM 35,000 shortly before the acquisition of the Menzel drawings by the Reich governor's office on 24 March 1944 and inventoried in the Albertina. Twelve of them are currently still in the museum; the others were sold in 1949 to finance other acquisitions through the Galerie Fischer in Lucerne.

After the end of the war, museums were obliged to declare (potentially) seized works of art in accordance with the Asset Expropriation Registration Regulation (VEAV) of 15 September 1946. As in other cases, the museums and actors concerned reacted differently in the case at hand: While the Kunsthistorisches Museum did not register Rembrandt's self-portrait, Fritz Novotny, in his function as interim director of the Österreichische Galerie, registered a total of 26 works of art acquired during the Nazi era under the Grimschitz directorate, "which certainly or probably originate from Jewish ownership":

*From the collection MENDELSSOHN, formerly Berlin, were acquired by the art dealer Otto Schatzker in Vienna in 1942 from the former office of the Reich governor's office for the Österreichische Galerie:*

- a) C. Corot, 'Treescape (noon)' [sic!] [...]
- b) C. Corot, 'Treescape (evening)' [...]
- c) E. Manet, 'Portrait of a lady' [...] (Purchase price: 40.000 RM)
- d) E. Degas, 'Harlekin and Colombine' [...] (Purchase price: 35.000 RM)
- e) C. Monet, 'Garden path' [...]

*With regard to these five works, no application for restitution has yet been made by the former owner.*

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In November 1946, the Albertina also sent a letter to the district municipal department of the 1st district containing a list of those works of art "which, in its opinion, could be considered for the registration of seized property". This list included the Menzel drawings, but not the miniatures. The fact that the owner was not a persecuted person was probably not the subject of a more detailed examination in 1946, or according to § 1 para. 3 of the regulation, the registration was to be made "even if there were doubts about the obligation to register". Irrespective of this, there is no evidence of any initiatives on the part of the museums or the Austrian authorities to contact the Mendelssohn family as a result of the VEAV notifications.

The family itself, in turn, became active in order to get back the works of art from the former Robert von Mendelssohn Collection. At the beginning of 1948, on Clarice Rothschild's advice, Eleonora turned to the Viennese lawyer Karl Trauttmansdorff to have her mother Giulietta file an application under the Third Restitution Act. In her letter to Trauttmansdorff from 1 March 1948, Eleonora addressed individual questions:

*I know it's going to be an 'uphill battle' and I'm doubly grateful to you for wanting to take it on.  
[...]*

*And now for your questions:*

- 1.) Mum is Italian now. Whether she was already when the pictures were sold, I don't know exactly.*
- 2.) Dad died in 1917. Mum is the previous heiress; my brother and I are the subsequent heirs.*
- 3.) The sale was only completed in Germany. The paintings were later brought to Austria, at least most of them. Some were in Vienna at the Kux Bloch banking house.*
- 4.) How and when Mum received the equivalent of the pictures for free disposal, I do not know.*
- 5.) No action has been taken on this matter yet. If you still need more information, feel free to ask Mum. But I would strongly advise you not to tell her that there is a possibility that the deadline for the restitution applications might be extended. She always has a hard time making up her mind anyway, and she should be made to believe that you need her signature as soon as possible.*

Immediately thereafter, however, no application for restitution was filed with the competent Financial Tax Office in Austria. On the other hand, an application for restitution of the Rembrandt portrait of Hendrickje Stoffels was submitted to the Central Registration Office in Bad Nauheim in Germany on 17 December 1948, which, as explained, was rejected; today, the painting is on permanent loan from the BRD to the Städel Museum in Frankfurt am Main. In November 1952, during the ongoing restitution proceedings in Munich, an application was also submitted to the Restitution Commission at the provincial court for civil law matters in Vienna, Austria. Attorney Trauttmansdorff represented the applicants Francesco von Mendelssohn and Lillian D. Rock as executors of the will of Eleonora von Mendelssohn, who had died in New York on 24 January 1951. The restitution claim involved eight paintings in the Kunsthistorisches Museum and the Österreichische Galerie, with an amount in dispute of ATS 1,050,000; it was argued that their "sale came about only under duress":

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*After the war began, the persecution to which the Mendelssohn family was subjected intensified and there was a threat of confiscation of their assets. Mrs. Giulietta von Mendelssohn, who was Italian by birth, also left Germany and went to Florence, but she had to leave her property behind in Germany. After the war began, it was no longer possible to contact Francesco and Eleonora von Mendelssohn. Giulietta von Mendelssohn was informed several times that the paintings were about to be confiscated and that only a sale of the paintings to the National Socialist rulers could prevent their confiscation. [...]*

*Mrs. Giulietta therefore had to decide in 1940 [sic!] to agree to a voluntary sale in order to save at least the equivalent value of the pictures for her children. She did so, although she had no longer been the owner of the pictures since 1931 [sic!] Mrs Giulietta von Mendelssohn gave power of attorney to Dr Aldo Cima, an Italian citizen living in Vienna, to conduct the negotiations with the National Socialist authorities. The latter had to sell the painting of Hendrickje Stoffels to Hitler under strong pressure. [...] Mrs. Giulietta von Mendelssohn instructed Dr. Cima to sell the remaining paintings to the Kunsthistorisches Museum in Vienna or other Viennese museums if such a sale should be unavoidable. After long negotiations, during which the National Socialist authorities repeatedly threatened confiscation, Dr. Cima had to agree to a sale at prices far below the true value of the paintings.*

*The following were sold:*

<i>The self-portrait by Rembrandt to the Kunsthistorisches Museum in Vienna</i>	<i>RM 750,000</i>
<i>The picture by Monet: Blumengarten</i>	<i>RM 80,000</i>
<i>The picture by Degas: Harlekin and Colombine</i>	<i>RM 35,000</i>
<i>Das Bild by Manet: Frauenportrait</i>	<i>RM 40,000</i>
<i>And the four pictures by Corot together</i>	<i><u>RM 145,000</u></i>

*in total therefore* *RM 1,050,000*

*[...]*

*These prices do not correspond in any way to the prices that could have been achieved by free sale even within the German Reich during the war. The prices were dictated by the National Socialist buyers and were far below the market values at the time, not to mention the values that could have been achieved for a sale abroad. This circumstance alone proves that the sale came about only under duress.*

The fact that at the time of the proceedings there were also works of art from the Mendelssohn Collection in the Albertina was probably unknown to the family, as these objects were not listed in the restitution applications; also, as shown, the Österreichische Galerie actually acquired only two Corot landscapes. On the basis of the restitution application, the Federal Ministry of Education asked the Directorate of the Österreichische Galerie for a statement in a letter dated 20 December 1952. The director Karl Garzarolli-Thurnlackh, who had been in office since 1947, replied as follows:

*It is officially known that Mrs. Giuletta von Mendelsohn [sic] was not Jewish but Aryan. The purchase of the painting was not made officially in 1940 but in 1942 by the Otto Schatzker Gallery, Vienna I. Kölnhofgasse 2, so that the purchase was made directly from an authorised dealer. Whether Mrs. Giulette [sic] von Mendelsohn [sic] has not been the owner of the paintings to be mentioned since 1931 is beyond the scope of our knowledge, but the assertion appears to be quite implausible, and it would be suitable to scrutinise the restitution claimant very closely. No negotiations whatsoever were conducted with Dr. Cima on the part of the Österreichische Galerie; only the Galerie Otto Schatzker appears to be authoritative in this regard. [...] With regard to the prices, it is known that these were made or prepared by the Gallery Schatzker and paid by the Österreichische Galerie or the Reich governor's office. There*

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*is no evidence of price gouging. If Mr. Schatzker's prices for Manet and Degas were relatively cheap, those for Monet were by no means modest.*

The Kunsthistorisches Museum was also asked to comment accordingly. In a letter from 27 December 1952, Ernst Buschbeck, the former curator of the Gemäldegalerie, who had returned from emigration in England, described the acquisition of the Rembrandt painting as follows:

*It should be noted that no coercion of any kind was ever exerted on the owner, Mrs. Giulietta von Mendelsohn [sic], who is Italian and was already living in Italy at the time, and that she sold her paintings entirely voluntarily. She was also not in a situation of coercion, as she was not endangered for racial or political reasons. There are therefore no underlying facts that would justify the application of the restitution laws. (If any pressure at all can be spoken of it was at most exerted by Hitler's plenipotentiary, Posse, on the Reichsleiter Baldur von Schirach in the sense that he renounced the purchase of the portrait of Hendrickje Stoffels for the Kunsthistorisches Museum and contented himself with the Rembrandt self-portrait.) The price of RM 750,000, which was still its full gold value on the art market at the time, seems quite adequate. It must be emphasised as particularly important that Frau von Mendelsohn [sic] received the purchase shilling transferred to Italy through the Italian Chamber of Commerce.*

In the reply of 7 January 1953 to the Restitution Commission at the Provincial Court for Civil Law Matters, the Financial Procurator's Office stated that the asserted application was completely unfounded and was therefore to be dismissed:

*In the purchase of these paintings (conclusion of the contract), no pressure or coercion was exerted either on the art dealer mentioned (who acted as seller) or on his client, Mrs. Giulietta von Mendelsohn. Mrs. Giulietta von Mendelsohn, who was or is an Italian citizen and already lived in Italy at the time of the conclusion of the contract, did not belong to the group of politically persecuted persons. She was also not in a situation of coercion, as she was not endangered for racial or political reasons. It was therefore a completely voluntary sale of these pictures. The purchase price was set by the seller; it corresponded in every respect to the price conditions at the time and must be described as reasonable. Mrs. Giulietta v. Mendelsohn received the purchase price at her free disposal, in that it was transferred to her in Italy by way of the Italian Chamber. (§ 6 of the 3rd Restitution Act) Therefore, a seizure in the sense of the 3rd Restitution Act cannot be spoken of in the present case.*

Ultimately, the application for restitution was rejected by the decision of the Restitution Commission at the provincial court for civil law matters in Vienna on 25 February 1964, however, for formal reasons. After the termination of the power of attorney by the lawyer Karl Trauttmansdorff had already taken place in May 1954, the naming of a new representative for service of process failed to take place despite the request of the provincial court for civil law matters. Attempts to "find the address of Francesco v. Mendelsohn [sic]" also failed. After the death of his sister Eleonora in 1951, he was probably not in a position to continue the restitution proceedings.

In the meantime - as a consequence of the transformation of the Österreichische Galerie into a museum of purely Austrian art - the collection of French and German works of the 19th and 20th centuries had been transferred to the Kunsthistorisches Museum. Thus, from December 1956, a

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selection of the international holdings ceded to the KHM could be seen as the Modern Gallery in a special exhibition at the Academy of Fine Arts. The three figurative works by Degas, Manet and Monet were exhibited, among others. In the exhibition catalogue, there is no reference to the provenance from the former Mendelssohn Collection; the only note is "1942 by O. Schatzker, Vienna". From 1967, the so-called New Gallery of the KHM found a temporary location in the Vienna Stallburg for almost 20 years. This prompted Georg Weis, managing director of the collecting agencies, to submit a memorandum to Federal Chancellor Josef Klaus in July 1968. The background may also have been the preparations or the government bill for the Determination of Ownership of Works of Art and Cultural Assets Act. Weis complained that "only those art and cultural assets that are in the custody of the Federal Monuments Authority should be included in the legal regulation"; this would not apply to the objects exhibited in the Stallburg at the time, which had been acquired between 1938 and 1945, including the Degas painting "from the Mendelsohn [sic] Collection, Berlin".

*These 24 objects are most likely seized objects. Nevertheless, with few exceptions, these objects were not declared in accordance with the Regulation of 10 May 1945, StGBI. No. 10.*

Consequently, on 10 September 1968, the Federal Ministry of Education requested the Directorate of the Österreichische Galerie to disclose the circumstances of acquisition of the works acquired during the National Socialist era. The director at the time, Fritz Novotny, immediately submitted a "list of works by non-Austrian artists acquired for the Österreichische Galerie 1938-1945" and referred in the Mendelssohn case to the restitution proceedings - which had in the meantime been concluded.

Francesco von Mendelssohn died in the USA on 22 September 1972; his mother Giulietta had already died in Florence on 27 February 1957. She had named her son Francesco as her universal heir.

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 that had been previously the object of a legal transaction or legal act under Section 1 of the 1946 Annulment Act, or comparable legislation, may be transferred to their original owners or legal successors *causa mortis*. Section 1, Paragraph 1, Line 2a of the Art Restitution Act extends this definition to objects which, although legally transferred to the ownership of the Federation, were the subject of (or comparable to) a legal transaction or act pursuant to Section 1 of the Nullity Act 1946 between 30 January 1933 and 8 May 1945 in the territory of the German Reich outside the territory of the present-day Republic of Austria.

The present dossier shows that the objects listed were acquired by the Reich Governorate of Vienna or the three museums mentioned from their owner Giulietta von Mendelssohn between 1942 and 1944. The alleged transfer of property from Giulietta to her children Eleonora and Francesco von

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Mendelssohn in 1933 is, as explained, a post-war construction in order to increase the probability of a positive restitution decision after 1945 or in order to file restitution applications in Germany and Austria that were not hopeless. Even if one assumes that Giulietta von Mendelssohn did transfer parts of the art collection to her children (by waiving her right to inherit in favour of her children) so that the works could be taken "abroad before the Nazis seized them", a transfer of ownership under the Art Restitution Act would not be recommended: The Council does not overlook the appointment of the temporary administrator for Schloss Kammer am Attersee in May 1938, but he was relieved of his duties again in September 1938 and the ordered confiscation was lifted; moreover, the sale of the works in question here did not take place until years later. In the sense of the restitution commissions' jurisdiction, neither Eleonora nor Francesco von Mendelssohn is considered to have been politically persecuted: "2nd degree Mischlinge (quarter-Jews) [...] do not belong to the politically persecuted persons; they were not further restricted economically." ((Heller/Rauscher, Die Rechtsprechung der Obersten Rückstellungskommission beim Obersten Gerichtshof IV, 11i of Section 2, Paragraph 1 of the Third Restitution Act [= Die österreichischen Wiedergutmachungsgesetze 5a], Vienna 1954 (see also the Advisory Board's recommendation of 18 March 2011 on the Czernin Collection and of 29 November 2022 on the Engländer Collection)).

The application for restitution submitted by the Mendelssohn family in Austria after 1945 was ultimately rejected for formal reasons, the Council does not regard the alleged compulsion to sell - irrespective of the question of the appropriateness of the purchase prices - as given. Giulietta von Mendelssohn is undoubtedly considered not to have been persecuted under National Socialism. The Advisory Board therefore concludes that the acquisitions in question made by the Albertina, the Kunsthistorisches Museum and the Österreichische Galerie Belvedere between 1942 and 1944 were not based on politically motivated persecution or hardship. Therefore, it is not to be recommended that the Federal Minister should transfer ownership to the legal successors *causa mortis* of Giulietta von Mendelssohn in accordance to the Art Restitution Act.

Vienna, 15 May 2023

Univ. Prof. Dr. Clemens JABLONER (chairman)

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