

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 28 November 2023, the Art Restitution Advisory Board adopted the following

DECISION

The Federal Minister for Arts, Culture, Public Service and Sports is recommended to transfer the works listed in the dossier of the Commission for Provenance Research 07/2023, "Lili and Leopold Oppenheimer", namely the following painting from the Austrian Gallery Belvedere:

I. Emil Jakob Schindler
Spring in Hacking, 1883
IN 4011

as well as the following printed work from the Austrian National Library to the legal successors *causa mortis* of Lili Oppenheimer:

II. Maxim Gorki, Ausgewählte Erzählungen (Selected Stories)
Authorised translation by Michael Feotanoff, vols. 1-6
Leipzig 1902–1904
Sign. 665746

to the legal successors *causa mortis* of Leopold and Lili Oppenheimer.

GROUNDS

The Art Restitution Advisory Board considered the above-mentioned dossier of the Commission for Provenance Research. This resulted in the following facts relevant to the decision:

Lili Oppenheimer was born in Vienna as the daughter of banker Wilhelm Zierer and his wife Emilie on 13 May 1883. The family lived in Zierer Palace, built in 1880/81, located in Alleegasse in the fourth district of Vienna. In January 1909, Lili Zierer married Leopold (Leo) Oppenheimer, born in Hamburg on 2 September 1880, at the City Temple in the first district in Vienna. A year later, both of them left the Israelite Religious Community and Leopold joined the Evangelical Church. The couple had two children - Peter, born on 17 December 1909, and Elisabeth, born on 7 May 1912. They too were baptized in the Evangelical Church.

From March 1915 onwards, the Oppenheimer family, along with Lili's widowed father Wilhelm, resided at Hasenauerstraße 42 in Vienna-Döbling. The owner of the prestigious villa was Lili Oppenheimer. When the "Wohnungsanforderung" (housing request) initiated by the Wohnungsamt (Housing Office) of the Magistrat (Magistrate's Office) of the City of Vienna was withdrawn in October 1919, a description of the art collection located there was also provided by the Staatsdenkmalamt (State Monument Office):

"Your single-family house is equipped with an art historically very valuable painting collection, including works by masters such as John Ried, John Constable, Daumier, Canon, Danhauser, Fendi, Kaulbach, Schindler, Menzel, Schrotzberg, Kriehuber, Ranftl, Einsle, Lenbach, Rudolf Alt,

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Knopf [sic!], Schmutzer and others. It also includes miniatures, numerous old Viennese and English porcelain, valuable tapestries, outstanding inlaid furniture, sculptures, chinoiserie and objets d'art. The artistically excellent interiors of the ground floor, including the adjoining staircase hall, additionally feature fixed wall coverings, built-ins, panelling, ornate fireplaces, supraportes, portieres, chandeliers, as well as rich wall and ceiling decorations. The protection and unaltered preservation of these aforementioned outstanding art objects are in the interest of monument preservation. Therefore, the State Monument Office declares that the rooms of the ground floor, along with the adjoining grand staircase hall in your house, appear unsuitable for residential purposes."

With a notarial deed dated 18 May 1922, Lili Oppenheimer made the art collection available for public inspection to what is now called the Bundesdenkmalamt (BDA = Federal Monuments Office):

"My residence houses the art objects listed in the attached inventories, which are an integral part of this declaration and owned by me [...]."

In the mentioned attachment "List of Art Objects in the house located in Vienna XIX. Hasenauerstrasse 42", the "Frühlingslandschaft" (Spring Landscape) by Emil Jakob Schindler, which is the subject of this decision is also mentioned. The BDA accepted the dedication of the "Painting and Antiques Collection for public inspection as being in the public interest".

In the fall of 1934, Lili and Leopold Oppenheimer—Wilhelm Zierer had passed away in November 1929—moved to Widerhoferplatz 3/2 in the ninth district of Vienna, where they remained registered until their escape in August 1938.

After the annexation of Austria to the Nazi German Reich, Lili and Leopold Oppenheimer, despite their withdrawal from the Israelite Religious Community in January 1910, were considered Jewish. While there is no record of a property declaration from Leopold Oppenheimer, in Lili Oppenheimer's property declaration—alongside a stake in the business "M. Burian. Einkaufshaus amerik. Häuser"—under Section IV g), items made of noble metal, jewellery and luxury items, art objects and collections were listed with a reference to the "estimation by the sworn expert Mr. Carl Brunner i.F. M. Hübner, Vienna I", specifying an amount of RM 2,685. A valuation list itself is not preserved, and individual artworks are not listed. The wealth declaration is dated 11 July 1938—at that time, the Oppenheimer couple were likely making preparations for their escape.

In late July 1938, the Brasch & Rothenstein forwarding company (Vienna I, Fleischmarkt 17) submitted, on behalf of Leopold Oppenheimer, an application for an export permit to the Central Office for Monument Protection. "Leopold Oppenheimer, Montreal", was indicated as the final recipient. The requested export items included "1 Chinese enamel vessel, 1 leather picture, 2 watercolours, 2 prints, 9 oil paintings, various carpets, 11 etchings, 3 drawings, 1 pastel, 1 chalk drawing, various porcelain, glass, trinkets." With the exception of two oil paintings by Josef Danhauser, the export on 28 July 1938 was approved as "duty-free, normal household effects". Shortly thereafter, Lili and Leopold Oppenheimer, along with their daughter Elisabeth, successfully fled to Canada, where their son Peter had been living since 1930. They arrived in Quebec on 26 August 1938, after crossing the Atlantic on the "SS Duchess of Bedford". The released items were exported in October 1938.

Lili and Leopold Oppenheimer did not return to Vienna after 1945. Leopold Oppenheimer died in Montreal on 29 November 1953. While no evidence of restitution claims for confiscated assets after 1945 is available, Lili and Elisabeth Oppenheimer submitted applications from 1957 through Viennese

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attorney Josef Berkovits to the "Fonds zur Hilfeleistung an politisch Verfolgte, die ihren Wohnsitz und ständigen Aufenthalt im Ausland haben" (Aid Fund for Political Persecutees Who Have Their Domicile and Permanent Residence Abroad) (Aid Fund). According to the fund's communication in July 1958, Lili Oppenheimer, who stated that, due to health problems, she could "no longer pursue a proper profession" in her 74th year and therefore earned "pocket money" with occasional tutoring, was granted a payment of 30,000 schillings. Her daughter Elisabeth, who worked as a photographer in Vienna until 1938 and was now employed by the railway, was awarded 9,000 schillings in 1964 as "compensation for professional damages". Two years later, on 23 May 1966, her mother Lili Oppenheimer passed away in Montreal.

Emil Jakob Schindler's painting "Obstallee im Frühling" (Fruit Avenue in Spring), oil on a small wooden panel, was first published in 1901 in Friedrich von Boetticher's "Malerwerke des 19. Jahrhunderts" (Paintings of the 19th Century). The listed owner was Lili Oppenheimer's father, Wilhelm Zierer. Around 1912, Wilhelm Zierer also appeared as a lender of two other paintings for the Schindler retrospective at the Vienna Gallery Miethke. At that time, the gallery was managed by Carl Moll, who was, in turn, a student of Emil Jakob Schindler—a clear indication that Moll was personally acquainted with Wilhelm Zierer and likely with his daughter Lili Oppenheimer, as well as familiar with their art collection.

The exact timing of the transfer of ownership of the small painting from Wilhelm Zierer to his daughter Lili Oppenheimer is not documented. However, as mentioned, when she made the art objects in her villa available for public inspection to the BDA, she was confirmed as the owner with a notarial deed dated 18 May 1922. Therefore, the transfer of ownership took place before Wilhelm Zierer's death in 1929. In the monograph "Emil Jakob Schindler 1842-1892. Eine Bildnisstudie" (A Portrait Study) published by Carl Moll in 1930, the painting in question, identified as "Obstgarten in Hütteldorf" (Orchard in Hütteldorf) under number 23, attributes ownership to "Lilli [sic] Oppenheimer, Vienna". Evidently, she also lent the small-format landscape to the Austrian Gallery for the 1931 exhibition "Landschaften von Jakob Emil Schindler. Bildnisse von Hans Canon" (Landscapes by Jakob Emil Schindler. Portraits by Hans Canon).

As explained above, individual works of art are not listed in Lili Oppenheimer's property declaration, nor is there any further information on the "9 oil paintings" in the aforementioned export application. Nevertheless, provenance research has now established that the painting in question was owned by Lili Oppenheimer at the time of the "Anschluss". In Carl Moll's documentary estate, which is now part of the Wien Museum's holdings, a previously unpublished handwritten list of works entitled "Several works of art whose export would mean a loss of our cultural heritage" was found. It is a list of works from of a total of eight art collectors – almost all of whom are known to the Commission for Provenance Research and the Advisory Board to have been persecuted by the Nazis – for example Oskar Bondy or Gertrude Felsövényi, and each including individual works of art from their collections that Moll had classified as particularly important. Under the name Leo Oppenheimer and the address "IX Wiederhoferplatz [sic] 3", the Schindler painting in question, "Orchard in Hütteldorf", is listed. Although this is not dated, due to the fact that the "Sammlung Gen. Dir. Julius Priester" "left Germany in March of this year", Moll could have written the undated list in April 1938 at the earliest. Julius Priester, the former president of the petroleum company Galizin GmbH and art collector had fled from Vienna to Paris on 31 March 1938 and continued on to Mexico from there.

This is the last documented association of the painting in question with the Oppenheimer collection. Presumably, in preparation for the Schindler memorial exhibition held in the Upper Belvedere in 1942,

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Carl Moll compiled a three-page list of works by Emil Jakob Schindler, now part of the estate of art historian Hans Ankwicz-Kleehoven in the Belvedere Archive. In this list, he names his own daughter, Maria Eberstaller, as the owner of the work "Obstgarten in Hacking, 1883" (Orchard in Hacking). It was Maria Eberstaller who provided the painting for the above-mentioned exhibition at the Austrian Gallery. No evidence has been found to explain how and why the painting came into her possession. Maria Eberstaller is known to have been married to the lawyer Richard Eberstaller since 1929. An illegal member of the NSDAP since 1931, he served as Vice President at the Regional Criminal Court in Vienna during the Nazi era. On the night of 12-13 April 1945, shortly before the Red Army captured Vienna, the Eberstaller couple, along with Carl Moll, committed suicide in the villa on the Hohe Warte known as "Moll II", which had been designed by Josef Hoffmann.

In their testament, written on 11 April 1945, Maria and Richard Eberstaller detailed the distribution of the existing works of art. Among the ten above-mentioned Schindler paintings which were to be dedicated to the Austrian Gallery, the work "Frühling in Hasting [sic]" (Springtime in Hasting) is included, indicating that the painting in question here became the property of the Austrian Gallery in 1945.

Provenance research by the Österreichische Nationalbibliothek (ÖNB = Austrian National Library) also identified the ex-libris "Leo und Lili Oppenheimer" in Maxim Gorki's "Ausgewählten Erzählungen" (Selected Stories). However, other annotations, the handwritten notes "Einsch.[?]: 15./7. 37" and "704.590", could not be deciphered. The six volumes were acquired by the library in 1939 and were recorded with the signature 665.746, along with the note "P 38", in the accession book of the signature group 660,000 – 670,000, which was reserved exclusively for confiscated holdings.

The Advisory Board considered the following:

According to Section 1.(1).2 of the Art Restitution Act, objects that legally became the property of the State but had previously been the 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*.

Lili and Leopold Oppenheimer were persecuted as Jews by the NS regime; in August 1938, they fled from Vienna together with their daughter Elisabeth, and subsequently lived in Westmount/Montreal in Canada.

- I. According to a notarial deed, the painting in question, "Frühling in Hacking", was owned by Lili Oppenheimer no later than 18 May 1922. Carl Moll's handwritten list from his documentary estate, entitled "[Some artworks whose departure would mean a loss to our cultural heritage]", confirms that the painting still belonged to Oppenheimer in April 1938, therefore after the annexation of Austria to Nazi Germany. The reference to Lili's husband Leopold Oppenheimer by name can be attributed to the prevailing conditions at the time, according to which the male spouse was usually considered the owner—a mindset that Carl Moll also seemed to adhere to. Nonetheless, everything points to ownership by Lili Oppenheimer; furthermore, the painting comes from her family. Although it remains unclear how the painting came into the possession of Maria Eberstaller, Carl Moll's daughter, after the "Anschluss", the Advisory Board assumes that the transfer of ownership took place between April 1938, the earliest possible date of the creation of

Moll's list, and 10 August 1938, the date the Oppenheimers' fled from Vienna. If Moll named his daughter Maria Eberstaller as the owner of the painting in another handwritten list, she was also the one who loaned it to the Austrian Gallery in 1942. As the Advisory Board has repeatedly stated in reference to the jurisprudence of the Restitution Commissions, relevant legal transactions by persons attributable to the group of persecuted persons are generally considered void under Section 1 of the 1946 Annulment Act. Even if the exact circumstances of the transfer of assets from Oppenheimer to Eberstaller cannot be reconstructed, the Advisory Board sees no reason to deviate from this principle in the present case.

Therefore, the Advisory Board considers the conditions of Section 1.(1).2 of the Art Restitution Act as fulfilled. The Federal Minister of Art, Culture, Civil Service and Sport is therefore recommended to transfer ownership of the painting to the legal successors *causa mortis* of Lili Oppenheimer.

Ad II. In the six-volume edition of Maxim Gorki's "Ausgewählten Erzählungen" (Selected Stories), the ex-libris of Leopold and Lili Oppenheimer was found; hence, this edition was part of their library, the extent and nature of which are otherwise unknown. The volumes in the holdings of the Austrian National Library were all labelled with the note "P 38". As the Advisory Board has already determined in numerous decisions, most recently in the case regarding "anonymous prior ownership" from today, this indicates that they had previously been confiscated and assigned to the National Library by the Gestapo Vienna. Although it remains unclear what the handwritten notes with the date July 1937 refer to, the Advisory Board assumes that Leopold and Lili Oppenheimer did not part with the volumes before the annexation of Austria to Nazi Germany, and that the Gestapo subsequently confiscated them from another person who was persecuted by the Nazis and delivered them to the National Library with the Oppenheimers' ex-libris. It is more likely that the Oppenheimer couple acquired the volumes in July 1937. Therefore, the Advisory Board considers the conditions of Section 1.(1).2 of the Art Restitution Act as being fulfilled and recommends the transfer of ownership of the six volumes to the legal successors *causa mortis* of Leopold and Lili Oppenheimer.

Vienna, 28 November 2023

Univ.-Prof. Dr. Clemens JABLONER (Chairman)

Members:

Assoz. Univ.-Prof.in

Dr.ⁱⁿ Birgit KIRCHMAYR

Ministerialrätin

Dr.ⁱⁿ Eva B. OTTILLINGER

A.o. Univ.Prof.ⁱⁿ

Dr.in Sabine PLAKOLM-FORSTHUBER

Hofrat d. VwGH

Dr. Franz Philipp SUTTER

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Alternates:

Richterin

Mag.^a Eva REICHEL

Hofrat

Dr. Christoph HATSCHEK

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