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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 30 March 2022, 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 Baroque statuette, *Chronos*, inv. no. 3980, listed in the Commission for Provenance Research dossier “Dr. Adolf Proksch” (04/22) should **not** be returned to the legal successors *causa mortis* of Adolf Proksch.

### FOUNDATIONS

The Advisory Board has considered the above-mentioned dossier from the Commission for Provenance Research and established the following facts of relevance to the decision.

Adolf Proksch was born on 18 January 1886 in Olmütz/Olomouc, Moravia, as the son of a professional army officer. He was a Roman Catholic. After attending the Theresianisches Gymnasium and the I. Handelsakademie, he obtained a doctorate in 1910 from the University of Vienna Faculty of Law. He worked initially for Rosario Currò in Trieste and then at Siemens-Schuckert-Werke in Vienna. He served during the First World War on the home front. In November 1914 he was awarded the Cross of Honour 2nd Class of the Red Cross, no doubt on account of his material donations to the voluntary Red Cross emergency service. He also enlisted as a one-year volunteer and was assigned to the k.u.k. Feldhaubitzen-Regiment “Freiherr von Krobotin” No. 8. After several postings, he was promoted on 13 April 1918 to the rank of Kriegswirtschaftskommissar [war economy commissar] and assigned to Department 10/KW in the Ministry of War. In the same month he was awarded the Gold Cross of Merit on the ribbon of the Bravery Medal. He married Sabine Hagenauer (1890–1974) during the war, on 27 July 1916. The ceremony was witnessed by Ferdinand Neureiter, director of the Österreichische Siemens-Schuckert-Werke, and Count Franz Walterskirchen, k.u.k. Geheimer Rat. The couple had four children: Johannes (1918–2018), Christoph (1920–1941), Adolf (1921–2017) and Elisabeth (1928–2018). Christoph was killed in 1941 in Cherkasy, Ukraine, as indicated in the death notice by the Proksch family in the *Völkischer Beobachter* of 6 October 1941.

After working for a time on his farm in Aggsbach Markt, Lower Austria, which he had acquired in 1918, Proksch returned to Siemens-Schuckert-Werke in Vienna and in 1923 became commercial manager of Jugoslawische Siemens AG in Zagreb. In 1928 he returned to Vienna as a member of the board of directors, a position he held until 1933. Until 1932/33 he and his wife had a vineyard in Haselbrunn near Leibnitz, Styria, and until 1941 (other sources say 1943) the farm in Aggsbach Markt. According to a curriculum vitae written in 1946 in the personnel file of the Federal Ministry of Trade and Reconstruction, he was a member of the Christian Social Party (CSP) “under Lueger and Seipel”. This party ceased to exist under the Austrofascism regime and was incorporated into the Vaterländische Front [Patriotic Front] founded by Engelbert Dollfuß. Proksch was an adviser in this organization from 24 January 1934 and from early 1935 head of the finance and budget unit. Under federal chancellor Kurt Schuschnigg, who became leader of the Patriotic Front in 1936, Proksch was appointed head of the general administration department (Intendanz) and, following the restructuring, head of Group IV and also of the unit responsible for financial affairs. In 1936 federal president Wilhelm Miklas awarded him the Knight’s Cross 1st Class for services to the Patriotic Front and as head of the Intendanz. The activity listed in Nazi files from 1942 to 1944 as

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“secretary of federal chancellor Kurt Schuschnigg” could not be verified and is more likely to be a simplified description of the various positions held in the Patriotic Front.

Following the annexation of Austria to the Nazi German Reich, Proksch was arrested on 13 March 1938 on account of his involvement in the Patriotic Front and interned until 31 March at the Vienna police prison on Rossauer Lände. He was sent to Dachau on 1 April 1938 on the first “VIP transport”, as it was called, together with other former supporters of the Austrofascist regime and Patriotic Front functionaries, including the future federal chancellor Leopold Figl and the former mayor of Vienna Richard Schmitz, along with prominent Jewish or left-wing regime opponents. He was released from there after almost ten months on 18 January 1939.

During his internment, his family was reliant on support. The Patriotic Front liquidation office had already applied to the National Socialist People’s Welfare (NSV) on 3 March 1938 for support for Sabine Proksch and the four children. A handwritten note by Proksch on this sheet says “nothing received!”. In October 1938, however, Sabine Proksch was granted “S 700” by the Office of the Reich Commissar for the Reunification of Austria with the German Reich from her husband’s frozen savings account. After his release, Adolf Proksch himself consulted the Office of the Reich Commissar because he had difficulties finding employment. On 14 July 1939 he obtained confirmation signed by district head Karl A. Kleemann, special NSDAP adviser at the Office of the Reich Commissar for the city of Vienna for claims by “political offenders”, that there were “no political objections” to his employment in the private sector. Proksch was enlisted at the latest in autumn 1939 as an administrative official in Stockerau with the rank of Oberzahlmeister d. R. [senior paymaster in the reserve, equivalent to first lieutenant in the Wehrmacht]. In November 1939 he became a member of the NSV and also the German Labour Front (DAF). After several investigations, he was assigned to Generalintendant der Wehrmacht Bruno Becker as the adviser responsible for personnel and internal affairs of Military District XVII (Vienna, Upper Danube and Lower Danube) and promoted to the rank of Oberzahlmeister z.V. (zur Verfügung – temporary). The local Buchenfeld branch of the Vienna NSDAP objected, however, because Proksch was “absolutely unsuited” for such a “confidential post” because of his “previous life”. The branch leadership also objected to the fact that Proksch used a Wehrmacht service vehicle every day to travel to and from work, which Proksch was to describe after 1945 as an alleged personal repressive measure and means of surveillance. In 1942 the local branch confirmed its opinion but added that Proksch “fulfils his duty to the state completely, in spite of his political attitude” and mentioned his son Christoph, who had fallen “for the Führer and Volk”.

Tasked with the work of a Kriegsverwaltungsrat [military administration councillor] and with the rank of a Kriegsverwaltungsrat a.K. (auf Kriegsdauer – for the duration of the war), in December 1940 Proksch was one of the first officials in Military District XVII to be decorated with the War Merit Cross 2nd Class with Swords. No sources have been found to explain the award of this medal, which is normally given “for particular merit under enemy fire or [...] military warfare”.

By order of 5 August 1943 the military administration councillors were abolished with effect from 31 December 1943 and their a.K. status removed. In this way, from January 1944 Proksch also lost his employment with and secondment to the Wehrmacht and was demoted to his original rank of Oberzahlmeister. He later described this again in his report of 30 April 1959 in file no. 23293 of the Provincial Tax Office in the Austrian State Archive as a “further persecution measure” as a result of a change of leadership, which caused him financial hardship. After the first “Unbedenklichkeitsbescheinigung” [certificate of no impediment] of July 1939, later political assessments were less unfavourable. On 2 May 1944, for example, the Gaupersonalamt [Gau personnel department] confirmed his unobjectionable behaviour and deemed him to be politically harmless:

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From a political point of view there is no objection to the recruitment of Vg. [Volksgenosse] Dr. Proksch as contract employee of the Reichsdomänenverwaltung [Reich Domain Administration].

In February 1944, Proksch was already assigned to the Reichsdomänenverwaltung in the Reichsstatthaltereie Niederdonau (dept. IVb), where he worked after his final discharge from the Wehrmacht as a contract employee until the end of the war.

After he had been detained from 28 August to 6 December 1945 in the US internment camp in Golling near Salzburg as a result of a confusion with the Austrian Nazi and former NSDAP Landesleiter [provincial leader] and Reichstreuhandler [Reich trustee] Alfred Proksch (1891–1981), he once again worked as a contract employee until 31 May 1946 in the Domänenverwaltung der Niederösterreichischen Landesregierung [domain administration of the Lower Austrian provincial government]. In June 1946, following the intervention of federal chancellor Figl and others, he obtained a position in the Federal Ministry of Trade and Reconstruction, where he remained (in part through a special contract later criticized by the court of auditors) until his retirement in January 1953.

On 18 July 1946, he was issued official certification and a Begünstigungsheft [privilege booklet] by Municipal Department 12 following his application under the Victim Welfare Act, whose conditions he was deemed to have met as a result of his actions for a “free and democratic Austria” and his internment in the Vienna police prison on Rossauer Lände and in Dachau concentration camp. He submitted his membership application for the ÖVP-Kameradschaft der politisch Verfolgten [ÖVP association of veterans of political persecution] on 22 April 1952. In September 1952 he also applied to Municipal Department 12, Victim Welfare, for compensation for his internment on Rossauer Lände and in Dachau. In April 1953 he was awarded ATS 431.20 per month for eleven months of internment, or ATS 4,743.20 in total. In 1961, he once again applied for compensation following an amendment to the Victim Welfare Act and in 1962 was awarded ATS 4,716.80. By decision of 1 August 1962 he received a further ATS 10,000 from the municipal department for loss of earnings. His claim of 15 January 1953 for compensation under the Beamtenentschädigungsgesetz [Public Servant Compensation Act], BGBl. 181/1952, was unsuccessful, however.

During the Nazi period, Proksch had acquired two “Aryanized” properties: in August 1943 for RM 28,000 a two-third share in a property at Gumpendorfstrasse 114 in Vienna’s 6th district, which had previously been expropriated by the German Reich from Margit and Arnold Löffler in August 1939 as part of “Aktion Gildemeester”; and on 14 March 1944 a leasehold property at Tandelmarktgasse 10 in the 2nd district expropriated from Nanette Schechner, who was deported in October 1941 to Łódź/Litzmannstadt and murdered there. He paid the purchase price of RM 33,000 to the Reichsfinanzverwaltung des Oberfinanzpräsidenten [Reich Finance Administration of the Chief Tax Officer] in Vienna in cash. He subsequently transferred title to the property to his sons Hans and Adolf jun., who were entered in the land register as owning a half-share each. In his later declaration under the Asset Expropriation Registration Regulation, BGBl. 166/1946, he explained the donation by stating that in 1942 he was not allowed to acquire the property himself and had only obtained it for his two sons “in the field”. He wanted to provide financial security for his family, as he anticipated “a repeat internment” after his release from the concentration camp. When Nanette Schechner’s son Theodor Eiler claimed restitution of the leasehold property in Tandelmarktgasse, Proksch demanded a property in return or reimbursement of the purchase price paid in 1944. The property was restituted to Theodor Eiler in 1951 but there is no indication in the restitution file as to whether Proksch received any compensation. The negotiation in

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1949 regarding restitution of the property in the 6th district ended in a settlement whereby Proksch paid ATS 37,000, the equivalent of the price paid when he purchased it in 1943. The former owner Margit Löffler was obliged to file suit for payment in 1950 at the Innere Stadt local court.

Apart from these two proceedings, in which Proksch was involved as beneficiary of “Aryanizations”, he also made a claim in his asset expropriation declaration as a victim. On 15 December 1946 he declared the expropriation in 1938/39 of an investment of ATS 25,000 before 1933 as a silent partner in Wiener Metallwarenfabrik Benno Waluszczyk. In its decision of 14 October 1947, the restitution commission considered that it did not have jurisdiction and that Proksch should pay the court costs of ATS 300.

Proksch also sold several art objects during the Nazi period, but it is not possible to reconstruct what his private art possessions consisted of or how extensive they were. They could have come from the family of his wife Sabine, who was a descendant of the sculptor Johann Baptist Hagenauer (1732–1810). In February 1944 Proksch sold the painting *Four Doves* by Jacob Victors (1640–1705), a copper panel by Pietro Berettini da Cortona (1596–1669) and a floral still life on wood by Johann Baptist Drechsler (1786–1811) to Galerie Sanct Lucas in Vienna for RM 10,000. The Österreichische Galerie purchased the wooden statuette *Chronos* directly from Proksch on 20 March 1944. Director Bruno Grimschitz complied with his request for the rapid transfer of the invoice amount of RM 5,000. Compared with other sculptures acquired by the museum in 1943/44, the price paid was relatively high.

The painting *Four Doves*, which Galerie St. Lucas sold on 29 March 1944 to the “Sonderauftrag Linz (Linz no. 3539) and which was stored directly afterwards in Altaussee, was transferred to the Central Collecting Point (CCP) in Munich on 8 July 1945. As part of a collective claim for Austrian art objects, Proksch was informed by the Federal Monuments Authority on 17 January 1949 that the painting *Four Doves* which had been owned by him was in the CCP in Munich. At the same time, he was requested to produce proof of ownership so that it could be returned to Austria and to indicate whether the acquisition had been coerced “under circumstances resulting from the National Socialist occupation of Austria”. At the time Proksch had not claimed restitution of the artworks sold by him in 1944. He replied immediately to the request by the Federal Monuments Authority. He confirmed that he had owned the painting on the cut-off day in March 1938 but that his situation had obliged him to sell three paintings, including *Four Doves* by Jacob Victors. He made no mention of the sale of the sculpture to the Österreichische Galerie. After the Federal Monuments Authority had sent the proof of ownership to Munich, several years passed with no result. In a letter of 23 June 1957, Proksch once again mentioned his political persecution:

I would never have considered selling the picture if I had not been a victim of the political situation and got into financial difficulties after 1938. As a political persecutee I eventually sold the picture very cheaply to Galerie St. Lucas in Vienna in 1944. I can therefore declare to anyone under oath that the above-mentioned picture was already owned by me in Vienna – I have always been an Austrian – before 12 March 1938.

On 1 October 1957 the claim by the Republic of Austria for restitution of *Four Doves* was recognized by the Federal Office for Foreign Restitution and the painting transported to Austria. The Federal Monuments Authority informed Proksch that he should contact the Provincial Tax Office for Vienna, Lower Austria and Burgenland regarding its return to him. Although Proksch informed the Provincial Tax Office once again in early 1959 of his precarious financial situation at the time he sold the painting:

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I would never have sold it if, as a political persecutee, I had not been under pressure twice over – the mental pressure caused by the long-standing fear of confiscation and arrest, and the material pressure because of my lack of means at the time

the Office rejected the claim for return of the picture on 25 June 1959 on the grounds that Proksch's political persecution was in 1939 whereas he had not sold the picture until 1943 [actually 1944], so that the picture cannot be considered to have been expropriated in the meaning of the Second Restitution Act, BGBl. 53/1947. The appeal was also rejected. In its decision of 30 November 1959, the Federal Ministry of Finance stated with regard to the connection between Proksch's political persecution and the sale of the painting in 1944:

It is quite possible that the appellee, who was a high functionary in the Patriotic Front, got into financial difficulties after the Nazi seizure of power. [...] The positions occupied by him cannot be regarded as equivalent to his earlier functions.

Proksch therefore explained the "incriminated transaction" but this was not adequate to qualify the sale as an expropriation.

The decision continued:

In considering the assets, it should also be taken into account, however, that this picture was returned from the Federal Republic of Germany to the Republic of Austria as an asset that had been acquired by force. The appellee should therefore make a claim to the body administering this asset, namely the Federal Ministry of Education and the Federal Monuments Authority, for return of the picture to him against payment of the particular and pro rata general costs incurred by the Republic of Austria as a result of the restitution.

Proksch availed himself of this possibility. Despite the decision on the appeal that the "facts available" were not sufficient for treatment "as an invalid expropriation of assets according to the restitution laws", he was given the painting on 3 May 1960 after payment of ATS 195 as calculated by the Federal Monuments Authority and obtaining a customs receipt.

The whereabouts of the other two art objects sold by Proksch to Galerie Sanct Lukas in 1944 cannot be reconstructed.

By contrast, the wooden statuette *Chronos* is still held by the Österreichische Galerie Belvedere, inventory number 3908. No claim for restitution has been made.

The Advisory Board considered the following:

According to Section 1.(1).2 (and 2a) 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*.

According to Section 1 of the 1946 Annulment Act, legal transactions or other legal acts during the German occupation of Austria are null and void if they were carried out as part of the political or economic

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penetration by the German Reich in order to expropriate the assets or rights of natural or legal entities that they held on 13 March 1938.

The dossier under consideration indicates that the wooden statuette, *Chronos*, which is still in the Österreichische Galerie Belvedere today, was sold directly to the museum by Adolf Proksch in 1944 for RM 5,000. The Board therefore had to determine whether this sale was a legal transaction in the meaning of Section 1 of the 1946 Annulment Act.

As the Board has established on several occasions with reference to the rulings of the restitution commissions, relevant legal transactions by persons considered to have been persecuted are invalid in principle in the meaning of Section 1 of the 1946 Annulment Act. The Board has deviated from this principle only in very rare cases. In its recommendation of 10 June 2011 on Karl Mayländer, and then in the recommendations of 16 March 2018 on Carl Heumann and on 19 April 2019 on the Wittgenstein family, it mentioned with regard to the scope of Section 1.(1).2 (and 2a)) of the Art Restitution Act the need to consider “whether a specific legal transaction of this nature had only an indirect connection with the persecution and whether this connection was outweighed by other (unsuspicious) motives. [...] With reference to the Third Restitution Act, restitution could be refused only if the transfer of assets would also have taken place regardless of the seizure of power by the Nazis.”

According to the facts presented, Adolf Proksch may be regarded as having been politically persecuted. He was arrested after the annexation in 1938 because of his employment within the administration of the Patriotic Front and taken to Dachau in the “VIP transport”. After his release on 18 January 1939, however, he managed to find employment in the Wehrmacht administration. In July 1939 the Office of the Reich Commissar for the Reunification of Austria with the German Reich confirmed that there were “no political objections” to his employment in the private sector, which appears also to have applied to the Wehrmacht, where he served as an Oberzahlmeister from autumn 1939 at the latest. In December 1940, by now working as a Kriegsverwaltungsrat with the rank of Kriegsverwaltungsrat a.K., he was one of the first officials in Military District XVII to be awarded the War Cross of Merit 2nd Class with Swords. After the abolition of the Kriegsverwaltungsräte and the cancellation of all a.K. positions as of 31 December 1943, he was employed from February 1944 in the Reich Domain Administration in Reichsstattthalterei Niederdonau. In August 1943 he paid RM 28,000 for two-thirds of a property in Vienna’s 6th district previously expropriated from the Löffler couple. On 14 March 1944 he purchased a leasehold property in the 2nd district, expropriated from Nanette Schechner, who is thought to have been murdered in Łódź/Litzmannstadt in 1941. He paid the purchase price of RM 33,000 to the Reichsfinanzverwaltung, Oberfinanzpräsident Vienna, in cash. In the same period, early 1944, he is documented as having sold three works of art for RM 10,000 to Galerie St. Lucas in February 1944, one of which, the painting *Four Doves* by Jacob Victors, was subsequently sold to the “Sonderauftrag Linz”. After the claim for restitution by the Republic of Austria was recognized by the German Federal Office for Foreign Restitution and the painting was returned to Austria, Proksch – in order to have the painting returned to him personally – made a claim to the Provincial Tax Office for Vienna, Lower Austria and Burgenland stating that he would never have sold it if, as a political persecutee, he had not been under pressure twice over – the mental pressure caused by the long-standing fear of confiscation and arrest, and the material pressure because of my lack of means at the time. The claim was rejected by the Provincial Tax Office as it did not consider the painting to have been expropriated. In the decision on the appeal in 1959, it stated that the facts presented were not sufficient for the transaction to be regarded as an invalid expropriation of assets in accordance with the restitution laws. Despite this, the painting was returned to Proksch against reimbursement of the costs incurred.

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The wooden statuette under consideration was sold to the Österreichische Galerie for RM 5,000 on 20 March 1944, just six days after Proksch had acquired the “Aryanized” property in Vienna’s 2nd district. His request for transfer of the invoice amount as soon as possible was complied with by the museum management. He did not report the sale after 1945 as an expropriation in the meaning of the Asset Expropriation Registration Regulation nor did he apply for return of the statuette under the restitution legislation.

No continuous political persecution after 1938/39 or financial difficulties as a result of persecution by the Nazis, which Proksch repeatedly claimed after the war, can therefore be established. Although he earned less in the Wehrmacht administration than hitherto in the Patriotic Front, he had a regular income after autumn 1939 from the German Wehrmacht and later acquired two previously “Aryanized” properties, which would probably not have been possible if he had been regarded at the time as politically unreliable or a regime opponent. A sale by the Nazi state to an opponent of the regime is not very plausible. Moreover, it is highly unlikely that a person persecuted by the Nazi regime and thus affected by the Nazi asset expropriation would have had the not inconsiderable sum of RM 61,000 at his disposal, RM 33,000 of which was in cash, with which to purchase properties expropriated from previously persecuted individuals. The fact that the purchase of the properties in August 1943 and the March 1944 came at the same time as the sale of the art objects in February and March 1944 would suggest rather that Proksch used the sale in part to finance the purchases.

After 1945, Proksch cited his demotion from Kriegsverwaltungsrat to Oberzahlmeister as proof of his political persecution. This argument is not convincing either, because the demotion was more likely to have been in the context of the deteriorating war situation for the German Reich, prompting a reduction in administrative posts so as to free resources for the fighting troops. The argument that the demotion was politically motivated is also refuted by the confirmation by the Gau personnel department of 2 May 1944 that Proksch was politically unobjectionable.

Proksch’s financial situation at the time of the sale of the statuette under consideration to the Österreichische Galerie is unclear, but in view of the purchase of properties for RM 33,000 at around the same time, there can be no question of financial hardship. The sale cannot therefore be seen as a legal transaction carried out as part of the political or economic penetration of Austria by the German Reich and was thus also unaffected by the Nazi seizure of power.

The Board therefore concludes that although there is no doubt that Adolf Proksch was politically persecuted after the annexation, the sale under consideration to the museum in 1944 was not a result of politically motivated persecution or financial hardship. The Provincial Tax Office also decided in 1959 that the conditions for expropriation in the meaning of the Second Restitution Act were not met. The recommendation is therefore made to the Federal Minister not to transfer title to the legal successors *causa mortis*.

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Vienna, 30 March 2022

Univ. Prof. Dr. Clemens Jabloner (chairman)

Members

Univ.-Prof.in Dr.in Sonja Bydlinski, MBA  
Assoz. Univ.-Prof.in Dr.in Birgit Kirchmayr  
Ministerialrätin Dr.in Eva B. Ottlinger  
A.o. Univ.Prof.in Dr.in Sabine Plakolm-Forsthuber  
Hofrat d. VwGH Dr. Franz Philipp Sutter

Alternate

Hofrat Dr. Christoph Hatschek