

In accordance with Section 3 of the Federal Act on the Restitution of Art Objects and Other Movable Cultural Property from Austrian Federal Museums and Collections and from Other Federal Property (Art Restitution Act - KRG) as amended by Federal Law Gazette (BGBl.) I No. 158/2023, at its meeting on 27 September 2024, the Art Restitution Advisory Board adopted the following

### DECISION

It is recommended to the Federal Minister of Arts, Culture, the Civil Service and Sport is to transfer the works listed in the dossier of the Commission for Provenance Research 08/2024, "Erwin Rosenthal (Josefine Donat) - Musikhandschriften und Musiknotendrucke" (Music Manuscripts and Printed Music) from the Austrian National Library.

- Mus.Hs.23736, G. F. Händel, Concert accompanied by 2 Vl., 2 Va., Vc., Contrabass
- Mus.Hs. 23739, L. Spohr, Adagio f. Vc. m. Pf. Bgl;
- Mus.Hs. 23740, L. Spohr, Adagio a. d. 9. Violinconc.
- Mus.Hs. 23740, L. Spohr, Adagio a. d. 9. Violinconc.
- M.S. 39009, W. Bargiel, Adagio in G Op. 38 Vc, Pf.
- M.S.39228, David Popper, Du bist die Ruh. Vc, Piano.
- M.S.39230, David Popper, Gavotte No. 2 in D major Op. 23, Vc, Kl.
- M.S.39230, David Popper, Gavotte No. 2 in D major Op. 23, Vc, Kl.
- M.S. 39327, Jos. Werner, 10 Etudes f. Vc.

to the legal successors *causa mortis* of Erwin Rosenthal.

### GROUNDINGS

In its resolution of 25 November 2004, the Advisory Board already recommended the transfer of objects from the music collection of the Austrian National Library to the legal successors of Erwin Rosenthal. The Advisory Board has now received the above-mentioned dossier from the Commission for Provenance Research. Accordingly, the following facts are relevant to the decision: Erwin Rosenthal was born in Breslau in present-day Poland on 19 September 1906. His parents Felix Rosenthal, born on 2 April 1867, and Elisabeth née Donat, called Else, born on 3 November 1876, had married in the city temple in Vienna in 1902. In Breslau, Felix Rosenthal had been employed as a piano teacher at the local conservatory. Else Rosenthal was a singer who also performed together with her husband. The family returned to Vienna after the end of the First World War.

Else Donat's sister Josefine, born in Vienna on 11 August 1865, was also a musician. As early as 1879, she gave concerts on the cello as a pupil of the composer Ignaz Lasner and played successfully for decades as a soloist in various chamber music ensembles and ladies' trios (Scharwenka Trio, a new Ladies Trio), with which she performed on numerous tours in Germany, Bohemia, England, Sweden,

the Netherlands, Norway, Russia, etc. Josefine Donat also worked as a music teacher. She regularly performed at the Wiener Volksbildungsverein (People's Education Association), the Volksheim (People's House) Ottakring and the Volksbildungsverein (People's Education Association) Urania, where her brother-in-law Felix Rosenthal was also active as a lecturer and pianist. From 1920 onwards, the two gave frequent concert appearances in Viennese concert halls. Josefine Donat died in the Kaiserin-Elisabeth-Hospital in Vienna on 7 December 1936. No probate proceedings were conducted due to the lack of estate assets. Her sister Elisabeth Rosenthal and her lawyer Max Balban acted as heirs' representatives. According to an undated handwritten letter from Josefine Donat to her "beloved siblings", submitted to the Probate Office at the Hamburg District Court in 1964, she had made a decree:

"My cello including case, bows and sheet music and 2 music stands belong to Erwin. The piano, the furniture and everything else is yours to divide as you wish and need."

Josefine Donat's nephew Erwin Rosenthal was therefore to receive her sheet music as well as her cello. Only a few weeks after the death of his aunt, his father Felix Rosenthal died on 30 December 1936, in whose fragmentary probate file "sheet music" is listed as an asset of the estate under point IV. A probate was also not carried out.

After the "Anschluss" of Austria to the National Socialist German Reich, Erwin Rosenthal lost his job as a technician at the company Kabelfabrik & Drahtindustrie A.G. Together with his mother, he moved into a smaller apartment in the same building at Josefstädterstraße 87 in Vienna's eighth district. In May 1938, he registered with the emigration department of the Jewish Community of Vienna (IKG) and stated that he wanted to emigrate to the USA; his mother was to join him later. Dated 1 July 1938, Erwin Rosenthal submitted his completed "List of Jewish Assets as of 27 April 1938" to the Property Office.

In addition to a savings account, he listed a gold watch with chain and a cello under item IV g) "Objects made of precious metal, jewellery and luxury items, works of art and collections". There is no declaration of assets from Elisabeth Rosenthal.

Erwin Rosenthal left Vienna for England on 15 June 1939; the ticket was likely paid for with the support of the emigration department of the IKG. His removal goods, consisting of "1 chest of removal goods", "1 cello crate " and "2 colli of removal goods", he handed over to the Bäuml forwarding company, which was to ship them to Hamburg. As an "Enemy Alien", Erwin Rosenthal was interned in three different camps in England from June to November 1940.

In the same month that he managed to escape, his mother Elisabeth Rosenthal had to leave the apartment on Josefstädterstraße. From then on, she lived at several addresses in Vienna-Leopoldstadt (Vienna's 2nd district).

She last lived with Lea Zagrebelni and her daughter Helene and Julianne Schwarzenberg in a so-called collective apartment at Rotensterngasse 31/12. All four women were deported from Vienna to the Izbica ghetto in the Lublin district (Poland) on 15 May 1942, along with around 1,000 other Jews on the 21st deportation transport and were presumably murdered in the Sobibor or Belzec extermination camps. According to the "List of assets of the following Jews evacuated to the eastern territories" to be filled out immediately before her deportation, Elisabeth Rosenthal had RM 17 in cash and RM 33 in "Reich insurance" at that time.

On 30 October 1940, a confiscation order was issued by the Gestapo's "Administration Office for Jewish Removal Goods" (Vugesta) in Vienna regarding two "Colli Umzugsgut" (colli of removal goods) belonging to Erwin Rosenthal, which were probably already in the port of Hamburg at the time. This is indicated by the relevant correspondence from the Gestapo, which is now held by the Vienna Financial Directorate in the Austrian State Archives. The removal goods were ordered back to Vienna with the transaction number 287/5 assigned by the Vugesta. On 27 October 1942, the Vugesta submitted the statement of the subsequent sale: RM 100 had been achieved in direct sales proceeds, minus expenses and a commission, RM 18.47 were transferred to the German Reich. It is not known which specific items were sold and who acquired them. The music manuscripts and printed music in question were handed over to the National Library and were subsequently inventoried with the abbreviations "P 1941" and "P 1942".

After the end of the war, Erwin Rosenthal wrote to the Austrian National Library from England on 8 April 1946, stating that he had learned from the pianist Hanne Linsbauer that

"the compositions and manuscripts of my father, Dr. Felix Rosenthal, have been requested by the National Library. At the same time, a box of things which are of no interest to the general public and which for the most part belong to me has been kept for me. I would be very grateful if you could let me know whether the items are safely stored and whether I could get the manuscripts back and what I need to do to be able to have the compositions copied".

The National Library confirmed that Felix Rosenthal's estate was in the library or in the salvage depot, but that he would have to submit an application for restitution to the Vienna Financial Directorate. Finally, on 16 September 1947, the District Court of Vienna's first District granted Erwin Rosenthal permission "to take over the deceased's writings (manuscripts and treatises) which were in the custody of the National Library of Vienna", while the library was instructed "to hand over these writings to the named person, if necessary, in the restitution proceedings".

As mentioned in the 2004 Advisory Board resolution, Erwin Rosenthal concluded an agreement with the Austrian National Library (ÖNB) on 1 December 1947, according to which he donated some already signed manuscripts from his father's estate as well as a series of printed music to the library, in return for which he received photocopies of some of the writings. The unsigned material in the magazines (including Felix and Erwin Rosenthal's personal notes) was returned to him. He later donated parts of it to the ÖNB. However, he did not receive the entire estate back and it is not known where the remaining parts of his estate had gone. The nine music prints and music manuscripts in question, all of which bear Josefine Donat's handwritten note of ownership, are not mentioned in the correspondence after 1945 and were neither returned to Erwin Rosenthal nor were they the subject of an agreement with the National Library.

The Advisory Board considered the following:

According to 1. (1). 2 of the Art Restitution Act, objects that are the property of the State but had previously been the object of a legal transaction or a legal act under Section 1 of the Nullity Act 1946 may be transferred to their original owners or their legal successors *causa mortis*. Section 1. (1). 2a of the Art Restitution Act extends this to objects which, although legally transferred to the ownership of the Federal Government, were the subject of a legal transaction or legal act between 30 January 1933 and 8 May 1945 in the territory under the rule of the German Reich outside the territory of the present-day Republic of Austria, which are comparable to legal transactions or legal acts in accordance with Section 1 of the Nullity Act 1946.

According to Section 1 of the Nullity Act 1946, "legal transactions and other legal acts against payment or free of charge during the German occupation of Austria are null and void if they were carried out in the course of its political or economic penetration by the German Reich in order to deprive natural or legal persons of assets or property rights to which they were entitled on 13 March 1938."

Erwin and Elisabeth Rosenthal were persecuted as Jews by the Nazi regime, and the recommendation of the Advisory Board of 25 November 2004 already recommended the transfer of objects from the music collection of the Austrian National Library to the legal successors of Erwin Rosenthal.

While Erwin managed to escape to England, his mother Elisabeth Rosenthal was deported on 15 May 1942 on the 21st deportation transport from Vienna to the Izbica ghetto in the Lublin district and was subsequently murdered in an extermination camp.

Erwin Rosenthal's household effects were probably confiscated in Hamburg by order of the "Gestapo Administration Office for Jewish Removal Goods" (Vugesta) on 30 October 1940. Based on the handwritten letter from Josefine Donat to her "beloved siblings", in which she bequeathed her cello and her "sheet music", among other things, to "Erwin", it can be assumed that the works in question, all marked "Josefine Donat", went to her nephew Erwin Rosenthal after her death in 1936 and were therefore included in the confiscated removal goods. The fact that they came to the National Library by way of confiscation is also suggested by the inventory abbreviations "P[olizei] 1941" and "P 1942"; as the Advisory Board has stated in numerous earlier decisions, this is clear evidence of Nazi persecution-related confiscation.

The confiscation undoubtedly constitutes a null and void legal act pursuant to Section 1 of the Nullity Act 1946 or, should it have taken place in Hamburg, as the sources suggest, it is to be treated in the same way as such legal acts. Therefore it is recommended to the Federal Minister of Arts, Culture, Civil Service and Sport that the ownership of the aforementioned works should be transferred to the legal successors of Erwin Rosenthal in accordance with Section 1. (1). 2 and 2a of the Art Restitution Act.

Vienna, 27 September 2024  
Prof. Dr. Clemens JABLONER (Chairman)

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