

At its meeting on 28 September 2007, the Advisory Board in accordance with Section 3 of the Federal Act of 4 December 1998, Federal Law Gazette (BGBl.) I 181, unanimously adopted the following

DECISION

The Federal Minister for Education, Arts and Culture is recommended to return the 53 hummingbird skins with the signatures 32415 - 32455 and 32457 - 32468 from the Natural History Museum Vienna to the heirs of Siegfried Roubicek, as listed in the enclosed dossier labelled "Roubicek & Purm".

GROUNDS

Siegfried Roubicek was persecuted by the Nazis because of his ancestry and had to emigrate to London on 11 May 1939, where he died on 22 August, 1939. He was the sole owner of the company Roubicek & Purm, which was entered in the commercial register under "Waren Kommissionshandel".

In 1938, the bird collection of the Natural History Museum acquired 54 hummingbird skins, although neither the exact purchase price nor the exact date of purchase can be found in the written documents. An enquiry at the Natural History Museum has revealed that there are no documents relating to the purchase. According to the information provided, however, it is unlikely that the purchase took place before 13 March 1938, because according to the entry book of the bird collection, it was the fourth of a total of five purchases in 1938. Siegfried Roubicek had to cease his business activities on 31 December 1938 due to persecution - the company was deleted from the commercial register on 31 January 1939. It is therefore highly likely that the sale of the hummingbird skins took place in the second half of 1938. 53 bird skins are still in the Natural History Museum, one was given to the Ethnological Museum in 1957, where it no longer exists according to additional information obtained from the archivist of this institution.

Section 1 of the Federal Law of 15 May 1946, Federal Law Gazette (BGBl.) 106 also declares legal transactions against payment during the German occupation of Austria null and void if they were carried out in the course of political and economic penetration by the German Reich in order to deprive natural persons of assets to which they were entitled on 13 March 1938.

According to Section 2 (1) of the 3rd Restitution Act, Federal Law Gazette (BGBl.) 1947/54, a null and void seizure of property exists "if the owner was subjected to political persecution by National Socialism and the acquirer of the property does not prove that the transfer of property would also have taken place regardless of the seizure of power by National Socialism". The jurisdiction of the Restitution Commission stated that, as it was known in court, no further proof was required that "Jews in Austria were subjected to political persecution by the National Socialist rulers". This nullity, which was already valid on the basis of the Nullity Act Federal Law Gazette (BGBl.) 1946/106, required an assertion by way of an application based on the restitution legislation. In the present case, it can be assumed with a probability bordering on certainty that the requirements for the restitution of the bird skins in question were met. As far as can be seen from the documents, no application for restitution was filed with regard to the bird skins, and the given nullity of the sale was not asserted. As a result of this failure to file an application in accordance with the Third Restitution Act, the Federal Government lawfully acquired ownership of the objects in accordance with Art. 22 of the State Treaty in conjunction with the first State Treaty Implementation Act. Therefore, the factual requirements of Section 1. (2) of the Restitution Act, namely a transfer of ownership that is to be considered null and void and a subsequent lawful acquisition of ownership by the federal government, are met. The facts of the case in accordance with Section 1. (2) of the Restitution Act are fulfilled and the above-mentioned recommendation was to be made to the Federal Minister for Education, Arts and Culture.

Since the Federal Law of 4 December 1998, Federal Law Gazette (BGBl.) I 181 only recognizes transfers of ownership free of charge, the purchase price paid for the bird skins at the time, the amount of which is otherwise unknown, should be dispensed with.

Although the Federal Law of 4 December 1998, Federal Law Gazette (BGBl.) I 181, expressly refers only to "works of art", the Advisory Board also subsumed the objects in question under this term when broadly interpreted.

Vienna, 28 September 2007

Chairman: Univ.-Prof. Dr. Clemens JABLONER

Members:

Vice President Dr. Manfred KREMSEK, Finanzprokuratur:

Ministerialrat Dr. Peter PARENZAN, Federal Ministry of Economics and Labour:

Univ.-Prof. Dr. Artur ROSENAUER, University of Vienna:

Mag. M. Christian ORTNER, Museum of Military History:

Advocate General Dr. Peter ZETTER, Federal Ministry of Justice:

OR Mag. Eva BLIMLINGER, University of Vienna: