

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 Federal Law Gazette (BGBl.) I No. 117/2009, at its meeting on 14 June 2019, the Art Restitution Advisory Board adopted the following

DECISION

It is recommended to the Federal Minister for the European Union, Art, Culture and Media that the sheet listed in the Commission for Provenance Research dossier “Luise Simon”

Friedrich Schilcher
Design for a curtain for Theater an der Wien, watercolour (Z)
Albertina, inv. no. 29522

be transferred to the legal successors *causa mortis* of Luise Simon under the conditions of Section 1.(2) of the Art Restitution Act.

GROUNDINGS

The Board was presented with a dossier and supplement from the Commission for Provenance Research along with an updated report from its office. It dealt with the object in question in its decision of 10 April 2002 and is now studying the dossier again in the light of the current legal situation. On the basis of these documents, it has established the following facts.

Luise Simon was persecuted as a Jew by the Nazi regime and escaped in 1939 to Switzerland. Her art collection remained in Vienna and was seized by the Gestapo on 6 November 1940. The watercolour in question was given to the Dorotheum to auction and was acquired by the Albertina for RM 200 in 1942 either through purchase from the Dorotheum or directly from Vugesta.

Luise Simon died on 15 July 1946. On 13 December 1946, on behalf of her successors, namely the daughter Margarete Altmann and the granddaughter Hedwig Keunemann, the lawyer Emerich Hunna asked the Federal Monuments Authority (BDA) to conduct research on the Simon graphics collection. The list submitted to the BDA also included the Schilcher watercolour, which was identified in the Albertina in 1948.

Otto Benesch, director of the Albertina at the time, responded to the request for restitution by offering the sheet in exchange for two Vienna *vedute*, stressing in a letter of 5 January 1949 to the heirs:

If not, your claim for restitution would have to be settled through official channels, and following the drawn-out proceedings the sheet could be made available to you after payment of 200 schillings to the “Verlassenschaftsfond [sic] des Deutschen Reiches”.

The heirs replied on 30 August 1950 that the “suggested exchange is not acceptable” and demanded the restitution of the watercolour. Benesch then wrote to the legal representative of the heirs on 31 August 1950 that he was willing to hand over the sheet:

As this was a suspicious purchase, the watercolour will of course be returned to you without reimbursement of the sum paid by the Albertina at the time. [...] As the sheet is [...] of interest and importance [...] from the point of view of local history, the monuments authority has forbidden its export. The watercolour can therefore be kept in the country and be owned by your clients but may not leave Austria.

On the same day, he applied to the Federal Monuments Authority for export prohibition, and on 5 September 1950, the entry “not for export” was added to the relevant BDA file Zl. 8020/50. The following comment was added to the file on 22 September 1950:

A further measure besides the notification to the owner [sic!] that export authorisation for the sketch in question cannot be expected does not appear appropriate in this case, file closed.

There is no written evidence of the further negotiations between the heirs and the Albertina, but as payment receipts of 30 October and 13 November 1950 indicate, the sheet was sold by the heirs to the Albertina for USD 40.

The Advisory Board considered the following:

According to Section 1.(1).1 of the Art Restitution Act, objects owned by the State which were the object of restitution to their original owners or their legal successors *causa mortis* or which would have been restituted under the regulations at the time and which became the property of the State in direct connection with proceedings under the provisions of the Export Prohibition Act may be returned to their original owners or legal successors *causa mortis*.

The dossier clearly shows that Luise Simon’s art collection, including the watercolour in question, were expropriated. The watercolour was therefore unquestionably to be restituted. While recognising the restitution claim, however, Otto Benesch informed the heirs that the sheet was banned from export, and a corresponding comment was made in the BDA file.

The Advisory Board is aware of the fact that the heirs did not submit a formal application to the Federal Monuments Authority (BDA) for export approval, but that an export prohibition had already been noted by the BDA, and the heirs were informed of this by the museum wishing to purchase the object. The fact that the commentary in the government bill (Regierungsvorlage, 238 der Beilagen, StenProtNR, XXIV. GP) explicitly speaks of “pressure” being exerted on the former persecutees through the export prohibition is of significance. In considering the question of the possible connection between the export prohibition and the acquisition of title, it is therefore also important to determine whether the decision to sell was motivated substantially by the export prohibition proceedings. It is evident that the collusion between the BDA and the Albertina was such that export authorisation, if applied

for, would be refused, and it is also clear that the heirs were aware of this. The fact that the heirs had previously rejected the offer of an exchange is also significant.

The Advisory Board therefore establishes that there is a close temporal and factual connection between the restitution, export prohibition and acquisition. It concludes that the conditions of Section 1.(1).1 of the Art Restitution Act are thus met and recommends the return to the legal successors *causa mortis* on the condition that the sum equivalent to USD 40 is repaid before the transfer in accordance with Section 1.(2) of the Art Restitution Act.

Vienna, 14 June 2019

Rektorin Mag. Eva Blimlinger (Deputy chairperson)

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