

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 25 February 2025, the Art Restitution Advisory Board adopted the following

DECISION

The Federal Minister of Labour and Economy is recommended not to transfer the 42 movable assets listed in the dossier of the Commission for Provenance Research 04/2025, "Vermögensverfall 'Lebens-born' (Mobiliar Sanatorium Wienerwald / Hugo Kraus und Arthur Baer)" from the Federal Real Estate Administration to the legal successors *causa mortis* of Dr. Hugo Kraus and Dr. Arthur Baer.

GROUNDINGS

At the suggestion of the Federal Property Administration, the facts of the case were investigated by the Commission for Provenance Research, so that the above-mentioned dossier is now available to the Advisory Board. This dossier contains the following facts which are relevant to the decision:

Arthur Baer was born in Rosowitz/Rosovice in Bohemia as the son of the tenant farmer Moriz and his wife Philippine, née Vondörfer on 1 August 1872. He was distantly related to Hugo Kraus, son of the doctor Julius Kraus and Malvine, née Simon, born in Časlau/Čáslav, also in what is now the Czech Republic, on 8 June 1872. Both attended the German grammar school in Prague and studied medicine at the German University of Prague starting in the winter semester of 1890/91. After completing his doctorate, Arthur Baer worked at the Vienna General Hospital and the Falkenstein Sanatorium in the Hessian Taunus - one of the first institutions of its kind in Germany - while Hugo Kraus initially practised in Prague and Vienna. Both soon specialised in pulmonary and bronchial medicine.

In 1903, Arthur Baer and Hugo Kraus acquired, to equal shares, several plots of land at an altitude of around 600 metres above sea level in the Lower Austrian village of Feichtenbach, in the municipality of Pernitz, in order to build a clinic for patients with pulmonary issues based on the Swiss and German model, commissioning the construction company Mörtinger and the Pernitz town architect Hans Jauernig to build the private "Wienerwald" clinic (Sanatorium "Wienerwald"), which opened on 1 July 1904.

After Hugo Kraus married the accountant Marie ("Mary") Heinlein in 1907, their son Hans was born in the facility on 24 July 1908 and was baptised a Catholic. In the baptismal register of the parish of Pernitz, Hugo is recorded as "Mosaic", his wife is recorded as "non-denominational". In 1903, Arthur Baer had previously entered into a civil marriage with Elisabeth, ("Lis[s]a") Spitzmacher, born in Moscow in 1884. The couple had two daughters: Magdalene (who later called herself "Madlene"), born on 5 February 1906, and Margarete ("Grete"), born on 16 September 1908; both were baptised Catholic in

1909. In 1912, the father converted from the Jewish to the Catholic faith, and the parents' marriage was "legitimised" as Catholic in 1912. Family life took place in spacious flats in the sanatorium.

As the "Wiener Montags-Post" (Vienna Monday Post) reported on 3 October 1904, the facility offered an affluent clientele "the opportunity to find convalescence at home, close to their families and doctors". According to the "Neues Wiener Tagblatt" (New Vienna Daily News), the four-storey, 880m² main building was equipped with "all the facilities of modern hygiene, while also being elegantly and comfortably furnished". Nestled in a spacious park, it had around 80 rooms, most of them single rooms, with private balconies the majority of which were furnished with rustic wood furniture. Two dining rooms, salons, a music room and a lounge provided further amenities for patients; the chairs were made by the major bentwood furniture manufacturers Gebrüder Thonet, Jacob & Josef Kohn and Mündus. With its own spring water supply, central heating, electric lighting and a sewage treatment plant, the clinic was self-sufficient. This was advertised by Kraus and Baer with advertisements in daily newspapers, on picture postcards and in advertising brochures. In 1904, in the "Zeitschrift für Tuberkulose und Heilstättenwesen" (Journal for Tuberculosis and Sanatorium Administration), they emphasised the "combination of modern advances in hygiene and construction technology". Their services were used primarily by affluent members of society leading to the economic success of the institution, which was subsequently expanded further.

Kraus and Baer were actively involved in the community, taking on various roles on the school board, and collecting donations for the children of Feichtenbach, including donations from the patients of the clinic. The community, which experienced an economic boom as a result of the facility eventually granted the two doctors and their families the right of residence due to their commitment.

With the outbreak of the First World War, international patients stopped coming, horses and cars were requisitioned for the Imperial and Royal Army and staff were drafted into the military service. Baer and Kraus also fulfilled their "patriotic duty", taking part in war relief efforts and caring for soldiers and officers wounded in the war. In July 1916, the "Patriotic Aid Association of the Red Cross for Lower Austria" opened a war hospital ("Kriegerheilstätte") for 60 soldiers suffering from lung diseases on the grounds of the clinic which Baer and Kraus made available free of charge for this purpose for 10 years, for which they received the 2nd Class Military Medal of Honour from the Red Cross. After 1918, people seeking rest and relaxation and patients with lung diseases returned to Feichtenbach. Growing tourism created the financial means to equip the clinic's rooms with hot water and also set up a modern operating room. Prominent patients such as Ignaz Seipel and Franz Kafka were treated in Feichtenbach. Over the years, the facility had to reduce its staff again, probably due to the global economic crisis. After the annexation of Austria to the National Socialist German Reich, the structures of the Nazi state were quickly extended to the new territories of the Reich. Founded in 1935, "Lebensborn e.V." (Le-

Lebensborn Association), an instrument of the SS and one of the pillars of National Socialist "racial hygiene", was also intended to expand its activities to the new Gaue (districts). According to a letter from SS Standartenführer Gregor Ebner dated 21 June 1938, this was intended to ensure that "the wives and fiancées of underprivileged SS comrades in the Ostmark could be helped as soon as possible". At the instigation of Ebner, the medical director of the Lebensborn homes, the Wienerwald Clinic became the central institution in the "Ostmark" between 1938 and 1945. Under the title of the "Second Regulation for the Law on the Reunification of Austria with the German Reich" (RGBl I 1938, p. 262), the Gestapo seized the facility and its furnishings for the Lebensborn Association on 21 April 1938 by decree of the Reichsführer SS and Chief of the German Police of the Reich Ministry of the Interior dated 23 March 1938. According to his wife and other witnesses, Hugo Kraus was interrogated for hours and was so brutally treated, intimidated and put under psychological pressure that he attempted suicide in the facility on the same day. According to a former employee, he was not taken to the hospital in Wiener Neustadt until the following day, where he lay without regaining consciousness until he died on 23 April 1938. Hugo Kraus' entire estate was seized and, as the Gestapo stated in 1940, no probate proceedings were held due to a lack of assets. Marie Kraus' securities were also seized by the Gestapo and eventually sold; the sum of over RM 80,000 was used to furnish Lebensborn-Heim (Home). While Marie Kraus subsequently went to Vienna, her son Hans managed to escape to France in July 1938, where he survived the war. He never returned to Austria.

Arthur Baer was imprisoned in the Vienna Regional Criminal Court in the eighth district of Vienna from 2 May until 11 June 1938 and his private bank assets were seized. After his release, the couple lived at Hermann-Bahr-Straße 14 in Vienna-Floridsdorf (Vienna's 21st district) before fleeing, completely destitute, to what was then Czechoslovakia in September 1938, where they stayed with Arthur's older brother, Otto Baer (Bär), in Pardubice. While daughter Margarete had already moved to Hungary following her marriage to Tibertius Koloman Jancsó in February 1933, her sister Magdalene lived with her husband Georg Zdenko Maria Anton Leo Thun und Hohenstein and their two children in the centre of Vienna. While Lissa Baer moved back to Vienna in May 1941, Arthur remained in Pardubice. In the course of the dismantling of Czechoslovakia and the establishment of the "Protectorate of Bohemia and Moravia" and the increasing marginalisation of Jews, his situation deteriorated, and as of March 1939, he was no longer allowed to practise as a doctor. He died in Pardubice on 4 October 1941. His brother Otto died in the Nazi ghetto Theresienstadt on 26 April 1943.

Although Hugo Kraus and Arthur Baer were married to women who were considered "Aryan", they were unable to pass on their assets within the family. The clinic and both family homes were seized in April 1938, both being handed over to "Lebensborn e.V.", and both families were forbidden to take their personal belongings with them. The property on which the clinic stood was incorporated into "Lebensborn e.V." on 31 May 1938. On 15 October 1938, the "Lebensborn" Home was opened as the

"SS-Mutter- und Kindheim 'Ostmark' "(SS Mothers' and Children's Home 'Ostmark'). By order of the Gestapo, Vienna Stapo Headquarters, dated 30 April 1939, the association officially became the owner of the clinic buildings by way of confiscation; as a result, some of the furnishings and medical equipment were looted and removed. The buildings were then partially renovated. In May 1942, the home was renamed "Wienerwald". Women were admitted on a voluntary basis, but according to "racial" selection. The Lebensborn birth centres were aimed at women who were considered "Aryan" and were expecting children - whether legitimate or illegitimate - from members of the SS and were supposed to give birth to them in as much privacy as possible. If they were not already convinced of the Nazi ideology before arriving at the home, they were to be trained to become loyal "Volksgenossinnen" ("Women of the People"). At the opening, the staff comprised 53 employees, mostly from the surrounding area. A doctor who belonged to the SS was in charge. Karl Sernetz was succeeded in 1940 by the dentist Norbert Schwab, who was succeeded by August Hagemeyer from the Pommern Home in June 1944. Hagemeyer was to remain in charge of Feichtenbach until April 1945.

After the evacuation of the Home to Steinhöring in Upper Bavaria on 2 April 1945, a unit of the Waffen SS stayed in the building for a few days before retreating from the approaching Red Army. There were several battles in the region, and during the fighting in the final days of the war the facility is said to have been severely damaged and looted by soldiers and the local population.

After the end of the Second World War, the assets of the "Lebensborn " Association were forfeited to the Republic of Austria in accordance with Section 1 of the Constitutional Act on the Prohibition of the NSDAP of 8 May 1945 (Prohibition Act, StGBI. 13/1945). This placed the property under public supervision, and in August 1945 Clemens Friemel (the first communist district leader of Favoriten, Vienna's 10th district) became the administrator of the property. The City of Vienna expressed interest in leasing the former clinic in order to set up a holiday home for children and young people. Regarding the circumstances in 1938, it was stated that Hugo Kraus had "died in the meantime" and Arthur Baer had "emigrated and is currently of unknown whereabouts". The City of Vienna subsequently leased the property, which was used as a holiday home for Viennese children and young people until the end of 1948.

The Kraus and Baer families had been looking for ways to get the clinic and the land back since 1946. Notary Guido Perger, commissioned by the Wiener Neustadt District Court to deal with the estate of Hugo Kraus, registered the expropriation of the property on 11 April 1946 on behalf of the widows of Hugo Kraus and Arthur Baer and filed a claim for "restitution". Pointing out that corresponding laws were being drafted, the State Office for Property Security and Economic Planning replied,

"that the aforementioned ' Wienerwald' clinic is undoubtedly to be regarded as a expropriated property within the meaning of Section 1 of the law of 10 May 1945, St.G.BI.Nr 10, which will be restituted to the former owners or their heirs in accordance with the legal provisions in the scope of restitution. "

This led to a discussion about the responsibilities of the authorities and the question of which restitution law the case fell under. The current Federal Ministry for Property Security and Economic Planning came to the conclusion that the "Lebensborn" Association did not fall under the Prohibition Act, as it was not listed in the NSDAP's organisation book and the application for restitution should therefore be submitted to the responsible Restitution Commission. Parallel to the notification and the application of April 1946, the lawyers of the two families, who favoured a new use as a pulmonary clinic, contacted Municipal Department 17 in order to prepare a sale or lease of the property. While the negotiations dragged on through the spring of 1947, the Baer and Kraus families submitted applications for the restitution of the respective halves of the property and the proceeds in the autumn of 1947; Arthur Baer's relatives submitted an "inventory of the clinic furnishings made from memory as well as a further inventory of the furnishings in the flat of the aggrieved owner and testator Med. Rat Dr. Arthur Baer", the Kraus heirs submitted a total of nine inventory sheets drawn up by employees in May 1938, which listed the personal furnishings in detail. In addition, the applicants submitted a detailed list of the clinic facilities, including the inventory of the offices and patient rooms as well as therapeutic equipment.

However, the restitution proceedings were not initiated as the Federal Ministry of Finance determined that the First Restitution Act was not applicable due to the non-utilisation of the property by the State or the Province of Lower Austria on the basis of the Transition of Authorities Act. It was only when August Rainer-Harbach, a friend of the Baer family - who later married Magdalene, whose husband is said to have been shot by members of the Ustasha in May 1945 - wrote to Federal Chancellor Leopold Figl in February 1948 that things began to move forward. The official who subsequently worked in the Federal Ministry for Property Security and Economic Planning stated that "the entire account betrays a profound ignorance of the restitution legislation", and that the statement by Department I of the Federal Ministry that the "Lebensborn" Association did not fall under the provisions of the Prohibition Act had been revoked in November 1947. Neither the 3rd nor the 1st Restitution Act would apply in the present case, since

"it concerns assets forfeited under the Prohibition Act of the Republic of Austria and therefore the 2nd Restitution Act must be applied"

and consequently, the Financial Directorate for Vienna, Lower Austria and Burgenland was responsible for carrying out the restitution. As a result, Elisabeth Baer and her daughters Madlene Thun-Hohenstein and Grete Jansco filed an application for restitution of their respective portions of the property, including the seized inventory on 23 February 1948, while Mary and her son Hans Kraus filed on 20 March 1948 and the income accrued since 23 March 1938 in accordance with the Second Restitution Act. Subsequently, the main issues discussed were the income to be calculated and the question of how much the "Lebensborn" Association had invested in the property between 1938 and 1945,

thereby contributing to an increase in the value of the property. When the applicants requested a separate decision regarding the furnishings during an on-site inspection on 31 May 1949, a list of the items that were still present in the facility was drawn up. On 13 October 1949, the heirs submitted an offer to the Ministry in which they sought restitution by way of settlement and stated their willingness to take back the clinic "with all furnishings and fittings and inventory as it stands", "in return for which we waive our right to an accounting of the proceeds from the period of public administration by the Ministry". The Ministry did not agree to this proposal, as it considered it "most appropriate to settle the restitution matter by means of a decision to be issued by the Financial Directorate for Vienna, Lower Austria and Burgenland, which was responsible for the matter". After Friemel submitted the statement of income from the property between 1945 and 1950, the property was restituted to the heirs of Hugo Kraus and Arthur Baer by decision of the Financial Directorate for Vienna, Lower Austria and Burgenland dated 14 June 1950.

A separate decision on the restitution of the inventory was issued on 19 December 1950, for which the authorities used lists drawn up by administrator Friemel and others during a new site inspection on 7 November 1950 and submitted on 16 November 1950. On the basis of this "compilation" of the entire inventory in the former clinic (List A), which Friemel claimed to have drawn up as early as August 1945, the movables attributable to "Lebensborn" were listed in List B and those movables that had been in the Wienerwald Clinic before 1938 were compiled in a separate list (C). It is not known how or according to which assessment criteria Friemel categorised the furnishings. Accordingly, the furnishings listed in the (complete) Inventory A, with the exception of those in Inventory B, were restituted to the heirs of Arthur Baer and Hugo Kraus:

"Restitution will be made to the aggrieved owners as of 31 December 1950:

The fixtures and fittings in the custody of the aggrieved owners listed in the inventory in Supplement/A, which forms an integral part of this decision, with the exception of those included in the list in Supplement /B, which also forms an integral part of this decision".

It is further stated:

"Of the furnishings currently located in the 'Sanatorium [sic] Wienerwald' listed in Supplement A/, a small part, which is listed in Supplement B, originates from the property of the 'Lebensborn' Association Munich, which used the property in question to operate a maternity ward and mothers' home, not from the expropriated assets of the historical owners. It is therefore not to be restituted."

The objects of the "Lebensborn" listed under B remained the property of the Republic; they were forfeited to it in accordance with Section 1 of the Prohibition Act. In 1951, they were handed over to the Federal Real Estate Administration; most of the furniture was quickly disposed of again due to its condition, but in 1954, some of it was reused to furnish student flats at the request of the Rector of the University of Vienna.

However, a recent examination of the photographs from the historical (advertising) brochures and anniversary publications of the Wienerwald clinic and the Lebensborn Home after 1938 suggests that furniture from the original clinic of Baer and Kraus was also listed in Directory B and thus attributed to the Lebensborn Association. Based on the historical photographs, it is possible to attribute the 25 "Feichtenbacher boxes" made of Rustenholz and a bentwood chair (MD 024465) from the former dining room in the collection of the Federal Property Administration to the Wienerwald Clinic before it was seized by the Gestapo or taken over by the "Lebensborn" Home in 1938. This probably also applies to the eleven beds (MD 024435–024437; MD 024440–024444; MD 024446–024448) made in the same style and from the same wood; the metal bed (MD 024489) is also likely to have been part of the earlier furnishings of the clinic's patient rooms, as are the four bentwood chairs made by Gebrüder Thonet, J. & J. Kohn and Mundus (MD 024462–024464; MD 024466), as these were broken after the "Anschluss". In contrast, the child's bed MD 024449, which is also still in the today Federal Property Administration, was probably correctly assigned to the Lebensborn Home. In 1950, the legal successors of Arthur Baer and Hugo Kraus sold the former clinic to the Trade Union Federation and Metal and Mining Workers' Union, which extensively renovated the facility and eventually opened a vacation home where training and further education courses were also held.

In 1958, Hans Kraus filed an application for restitution of securities and objects in Bavaria, also already arguing that the wrong furniture had been restituted. He received a fraction of the actual value as compensation for the expropriated securities. After 17 years, the Restitution Chamber of the Munich I Regional Court reached a settlement with both families regarding the expropriated furniture. Mary Kraus and Elisabeth Baer did not live to see the conclusion of these proceedings in Germany in 1975.

The Advisory Board has considered this:

In accordance with Section 1. (1). 2 of the Art Restitution Act, objects owned by the State which were the subject of a legal transaction or legal act in accordance with Section 1 of the Nullity Act 1946 may be transferred to the original owners or their legal successors *causa mortis*.

Arthur Baer and Hugo Kraus, who had opened the private "Lungensanatorium Wienerwald" (Wienerwald Pulmonary Clinic) in 1904, were persecuted by the Nazi regime for being Jewish. On 21 April 1938, the Gestapo seized the clinic and its furnishings for the "Lebensborn" Association in accordance with the "Second Regulation for the Law on the Reunification of Austria with the German Reich" (RGBl I1938, p. 262) by decree of the Reichsführer SS and Chief of the German Police of the Reich Ministry of the Interior dated 23 March 1938. The now established "SS Mothers' and Children's Home" was to become the central institution in the "Ostmark". Hugo Kraus died on 23 April 1938 as a result of a suicide attempt, which he made after being interrogated by the Gestapo in the course of the seizure of the clinic. Arthur Baer, who fled to his brother Otto in Pardubice, Czechoslovakia in September 1938

and shortly afterwards was no longer permitted to practise as a doctor in the "Protectorate of Bohemia and Moravia", died there on 4 October 1941; Otto Baer died in the Nazi ghetto Theresienstadt in April 1943.

In accordance with Section 1 of the Prohibition Act of 8 May 1945 (Prohibition Act, StGBI. No. 13/1945), the assets of the "Lebensborn" Association were forfeited to the Republic of Austria. Following restitution claims made by the Baer and Kraus families, during the processing of which the Austrian administration dealt with issue as to which restitution law was applicable and which authority was therefore responsible, the property of the clinic was restituted to the legal successors of Hugo Kraus and Arthur Baer on 14 June 1950; this was followed on 19 December 1950 by the decision of the Financial Directorate for Vienna, Lower Austria and Burgenland regarding the movable assets, including the distribution in accordance with the integrated supplements. The heirs received restitution of the expropriated objects listed in supplement/A, minus the objects in supplement/B, which were considered to have originally been the property of the "Lebensborn" Association and therefore remained the property of the Republic. In 1951, these objects were handed over to the Federal Property Administration, which, however, quickly disposed of most of them again.

Even if the current comparison of the photographs from the historical (advertising) brochures and anniversary publications of the Wienerwald Clinic and the "Lebensborn" Home shows that some of the furnishings from Baer and Kraus' original clinic and the 25 "Feichtenbacher boxes", five bentwood chairs, eleven wooden beds and one metal bed which are now in the collection of the Federal Property Administration should have been attributed to the Wienerwald Clinic in 1950 and not – like a still existing child's bed – to the furnishings of the Lebensborn Home, a legally binding decision of the Financial Directorate for Vienna, Lower Austria and Burgenland made on 19 December 1950 already exists. (In 1975, a settlement was also reached with both families before the Restitution Chamber of the Regional Court of Munich I regarding the expropriated furnishings.)

In the past, the Advisory Board has repeatedly emphasised the fundamental importance of legally binding decisions insofar as they also affect issues which it is responsible for resolving. In its recommendation concerning Dr Josef Blauhorn of 29 June 2012, the Advisory Board stated that it "takes legally binding decisions into account insofar as they have ruled that an expropriation of assets' [...] has occurred. The principle of the uniformity of the legal system and the principle of *ne bis in idem*, for example, speak in favour of the relevance of such legally binding decisions." It was also stated that neither the Art Restitution Act nor the related parliamentary materials indicate that the legislator's aim in passing the Art Restitution Act was to re-treat cases that had already been decided upon.

However, this does not apply to cases in which the Advisory Board comes to the conclusion "that this earlier that decision - based on the time of the decision - 'represented an extreme injustice'" (see the recommendation concerning Alma Mahler-Werfel of 8 November 2006). An extreme injustice cannot

[unofficial translation]

be established in the present decision of the Financial Directorate. Although in 1950, the 1,905 properties in Supplement/A were distributed as a lump sum or probably without detailed examination, a total of almost 90 per cent (over 1,700) were still set aside for the families.

The transfer of ownership to the legal successors of Dr. Hugo Kraus and Dr. Arthur Baer *causa mortis* is therefore not to be recommended to the Federal Minister.

Vienna, 25 February 2025
Prof. Dr. Clemens JABLONER (Chairman)

Members:

Brigadier
Stefan KIRCHEBNER, MA

Associate Professor
Dr. Birgit KIRCHMAYR

Ministerial Councillor
Dr. Eva B. OTTILLINGER

Senior Public Prosecutor
Mag.^a Eva REICHEL

Counsellor of the Administrative Court
Dr. Franz Philipp SUTTER

Substitute member:

Univ.-Prof.
Dr. Raphael ROSENBERG

[unofficial translation]

Supplement

Inventory number	Property description
MD 024401	Polished Box
MD 024402	Polished Box
MD 024405	Polished Box
MD 024406	Polished Box
MD 024407	Polished Box
MD 024408	Polished Box
MD 024409	Polished Box
MD 024410	Polished Box
MD 024413	Polished Box
MD 024414	Polished Box
MD 024415	Polished Box
MD 024416	Polished Box
MD 024417	Polished Box
MD 024419	Polished Box
MD 024420	Polished Box
MD 024421	Polished Box
MD 024425	Polished Box
MD 024426	Polished Box
MD 024427	Polished Box
MD 024428	Polished Box
MD 024429	Polished Box
MD 024430	Polished Box
MD 024432	Polished Box
MD 024433	Polished Box
MD 024434	Polished Box
MD 024435	Polished Bed
MD 024436	Polished Bed
MD 024437	Polished Bed
MD 024440	Polished Bed
MD 024441	Polished Bed
MD 024442	Polished Bed
MD 024443	Polished Bed
MD 024444	Polished Bed
MD 024446	Polished Bed
MD 024447	Polished Bed
MD 024448	Polished Bed
MD 024462	Armchair
MD 024463	Armchair
MD 024464	Armchair
MD 024465	Armchair
MD 024466	Armchair
MD 024489	Metal bed

[unofficial translation]