

[unofficial translation]

In accordance with Section 3 of the Federal Act of 4 December 1998, Federal Law Gazette (BGBl.) I 181, at its meeting on 23 August 2000, the Advisory Board unanimously adopted the following

DECISION

It is recommended to the Federal Minister for Education, Science and Culture that the following art object from the Austrian National Library

Gabriel Bodenehr the Younger Mezzotint, portrait of Franciscus Georgius von Schönborn,
Picture Archives and Graphics Department of the Austrian
National Library, Inv. No. 56.879, Sign. 112.030:2

be transferred to the heirs of Richard Weinstock.

GROUNDINGS

The subject matter of this report is a mezzotint by Gabriel Bodenehr the Younger, which was transferred from the Richard Weinstock Collection to federal ownership. This work of art is listed under the name "Richard Weinstock" in the accompanying dossier compiled by the Commission for Provenance Research. The Advisory Board assumes that this dossier is accurate and complete.

On 14 May 1939, Richard Weinstock wrote to the Albertina offering two prints from his personal collection (including the above-mentioned mezzotint) for sale, as he was "not permitted to take these works with him when he emigrated, according to the decision of the Monument Protection Authority". This letter bears a handwritten note by a curator of the Albertina dated 19 May 1939: "Bodenehr purchased by the Albertina, the other sheet released as it is available here in better quality." On 17 May 1939, Richard Weinstock reported to the Central Office for the Protection of Monuments: "In accordance with your instructions, I hereby inform you that of the two pictures blocked for export, one, namely the etching by Daniel Hopfer, has been subsequently released by you, while the mezzotint "The Archbishop of Trier" by Gabriel Bodenehr was acquired by the Albertina State Graphic Collection." However, in the Albertina's inventory book, the acquisition of the print is described as a "gift". There is also no document in the Albertina's records indicating that a purchase price was paid. In 1949, the object was transferred from the Albertina to the portrait collection of the Austrian National Library.

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Ownership of the object in question was transferred to the German Reich (Albertina Graphic Arts Collection) through a purchase agreement or donation in 1939. According to the information provided in the survey report of the Commission for Provenance Research, Richard Weinstock sought to liquidate his assets in preparation for emigration.

This is evidenced by his letter to the Albertina dated 14 May 1939 (Document 1). According to the information in the investigation file, the Weinstock couple were also victims of looting. Based on these facts, it can be assumed that the acquisition of the Albertina was a legal transaction which, in accordance with Section 1 of the Federal Act of 15 May 1946, Federal Law Gazette (BGBl.) 106, was null and void. According to Section 2 (1) of the Third Restitution Act, Federal Law Gazette (BGBl.) 1947/54, a deprivation of property is void "if the owner was subjected to political persecution by the National Socialists and the acquirer of the property does not prove that the transfer of property would have taken place independently of the National Socialists' seizure of power". The case law of the restitution commissions has established that it is known to the court that no further proof is required that "Jews in Austria were subject to political persecution by the National Socialist rulers" (Rkb Wien 83/47), and furthermore, that in the case of sales by politically persecuted persons, it is irrelevant for the restitution obligation whether the purchase price was reasonable or whether the seller initiated the sales negotiations himself (Rkv 7/48, Rkb Wien 97/47). The proof to be provided by the purchaser that the transfer of assets would have taken place even without the National Socialists' seizure of power requires evidence of contract negotiations that had already taken place under comparable economic conditions or of a hopeless financial situation of the seller that was independent of the National Socialists' seizure of power (Rkb Wien 905/48). It can therefore be assumed with certainty that the works of art in question would have had to be returned.

However, as far as can be ascertained, no application for restitution was filed, nor was the invalidity of the sale or gift asserted. As a result of this failure to file an application under the Third Restitution Act, the Federal Government acquired ownership of the works of art in accordance with Article 22 of the State Treaty in conjunction with the First State Treaty Implementation Act, thereby lawfully acquiring ownership of the works of art.

Thus, the factual requirements of Section 1(2) of the Restitution Act are met, namely a transfer of ownership that is to be considered null and void and a subsequent lawful acquisition of ownership by the Federal Government. The conditions of Section 1(2) of the Restitution Act are fulfilled and the above recommendation was made to the Federal Minister of Education and Cultural Affairs.

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Vienna, 18 August 2000

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