

Advisory Commission
on the return of cultural property seized as a result of Nazi persecution,
especially Jewish property

Office: Seydelstr. 18, 10117 Berlin

Recommendation of the Advisory Commission in the case of
the heirs of Heinrich Rieger v. The City of Cologne

The Advisory Commission on the return of cultural property seized as a result of Nazi persecution, especially Jewish property, chaired by Prof. Hans-Jürgen Papier, decided unanimously on September 29, 2020, in the case of the heirs of Heinrich Rieger v. the City of Cologne to recommend that the latter restitute the watercolor *Kauernder weiblicher Akt* (Crouching Nude Girl) by Egon Schiele to the heirs. The Commission had given the respondent until December 31, 2020, to submit facts proving that the work of art was relinquished voluntarily before March 1938. The respondent was unable to provide any such facts.

The Commission justifies its recommendation as follows:

1. Parties involved in the proceedings

The heirs of Dr. Heinrich Rieger bring forth a claim to the watercolor *Kauernder weiblicher Akt* by Egon Schiele dated 1917. The work in question is a watercolor on paper measuring 45.5 x 29.5 cm, and is signed and dated. The back of the sheet is stamped “Medizinalrat Dr. H. Rieger WIEN VII Mariahilferstr. 124”. The work was acquired in 1966 by the “Freunde des Wallraf-Richartz-Museum” association for the City of Cologne. Today it is part of the Museum Ludwig’s collection in Cologne and has the inventory no. ML/Z 1966/019.

Both sides approached the Advisory Commission, though with different objectives: The heirs of Dr. Rieger are asking for a resolution by the Commission. The City of Cologne is asking that further research be assigned to the academics previously involved in the case before a resolution is taken.

2. Dr. Heinrich Rieger: an art collector persecuted by the Nazi regime

Dr. Heinrich Rieger (1868–1942) was a dentist in Vienna and a major collector of contemporary art. He was personally acquainted with a number of artists and often provided medical treatment in exchange for works of art. In addition, he invested “his entire income” in paintings (F.J.W.: Bilder als Honorar, in: CibaZeitschrift. Vom Honorar des Arztes. 1/6 [1934], p. 198 f.). At the beginning of National Socialist rule in Austria, the collection comprised about 800 items. Dr. Heinrich Rieger was praised in several articles in the contemporary press which rated the quality of his collection as superior to that of public institutions.

For Dr. Heinrich Rieger, the artist Egon Schiele (1890–1918) was the “main focus of the collection” (Austrian Art Restitution Advisory Board, Resolution of November 25, 2004); his works constituted the core of the collection. Rieger had a special room reserved for these pieces, “where the largest collection of Egon Schiele’s drawings [...] anywhere is being kept” (Ludwig W. Abels, Wiener Sammlungen moderner Kunst, in: Neues Wiener Journal 34 [1926], No. 11,874, p. 17). Articles about the collection highlight in particular the quality of the invaluable

Schiele drawings (see for instance Anonymous, Sammlungen des Ober-Medizinalrates Dr. Heinrich Rieger und Dr. Alfred Spitzer. From the exhibit at the Künstlerhaus, Vienna, in: Österreichische Kunst. Monatshefte für bildende Kunst, Year 6, Vol. 12, Vienna, December 1935, p. 12 f.). Today, even the Schiele works in the collection alone would undoubtedly be worth a fortune.

From the time of Austria's annexation to the German Reich on March 13, 1938, at the latest, Dr. Rieger was persecuted as a Jew, dispossessed, and finally murdered in Theresienstadt concentration camp. His entire family was persecuted. His wife Berta was deported from Theresienstadt to Auschwitz on May 16, 1944, and probably murdered in the gas chambers upon arrival; she was declared dead in 1948. Their son Dr. Robert Rieger was able to escape to New York via Paris with his family in August 1938. Dr. Heinrich Rieger lost the important art collection as a consequence of Nazi persecution – through forced sales and acts of "Aryanization". These losses due to persecution are documented, for instance, in letters from Berta Rieger to her son. Berta Rieger wrote on September 11, 1939: "The one terrible thing is that we have to sell almost all of our things at cutthroat prices. We are taking only the bare necessities for one room. And everything has to be done by October 15 [...]". On March 6, 1941 she wrote: "Liquidating the last of our pictures is a great deal of work [...]". An employee of Würthle Gallery in Vienna, which was Aryanized in April 1938, testified in court in 1949 that Dr. Heinrich Rieger brought his collection to the gallery to be sold on commission immediately after the Nazis took power. The collection stayed at the gallery for at least a year. Its Aryanizer Friedrich Welz himself acquired several pieces of the collection in 1939 or 1940. By March 1941 at the latest, Luigi Kasimir, the Aryanizer of the Vienna gallery Gall und Goldmann, acquired the main share of the Rieger collection. Dr. Heinrich Rieger's blocked account was credited with 14,400 Reichsmark on March 21, 1941. The further history of a large part of the collection during the National Socialist era is evidently still unclear, even though some sales or transfers are documented.

In 1947, Dr. Robert Rieger reported the loss of works from his father's collection to the Austrian Bundesdenkmalamt (Federal Monuments Office). This report included the collection of Schiele drawings, which he stated to have encompassed 130 to 150 pieces. Individual pieces have been restituted to Dr. Robert Rieger, though their numbers and work identities are unclear.

3. Provenance of the watercolor *Kauernder weiblicher Akt*

3.1. Uncontested provenance

It is not contested that the watercolor *Kauernder weiblicher Akt* by Egon Schiele was the property of Dr. Heinrich Rieger. This is proven by the collector's stamp on the back of the piece: "Medizinalrat Dr. H. Rieger WIEN VII Mariahilferstr. 124". There is no documentation of how long it was in his possession.

In 1965, it was the property of Walter Geyerhahn, who sold it through the Vienna art dealer Christian M. Nebenhay to the Swiss art dealer Marianne Feilchenfeldt. Feilchenfeldt established a sales contract with the "Freunde des Wallraf-Richartz-Museum" association in Cologne on April 23, 1966, for the amount of DM 18,000, listing the provenance information "Collection: Dr. H. Rieger, Vienna" and "W. Geyerhahn". The asset was taken over by the City of Cologne, who thus claims ownership. Since 1976, the watercolor has been managed by the Museum Ludwig in Cologne, where it was transferred by the Wallraf-Richartz Museum.

3.2. Contested provenance: Time of sale or loss of the watercolor

The point of contention between the parties is when Dr. Heinrich Rieger parted with the watercolor, and whether he sold it voluntarily or whether it was lost due to Nazi persecution. The key question is whether the piece was sold prior to the annexation in March 1938. A sales contract or documentation of the sale does not exist (any longer).

The following are discussed below:

- a) Notarial deed of 1921
- b) Size of the collection in 1928 and 1939
- c) Disposal of six Schiele works prior to March 1938
- d) Dr. Robert Rieger's restitution request of 1947
- e) Recommendation of the Michalek-Kommission in 2011
- f) Geyerhahn family provenance
- g) Further research

a) Notarial deed of 1921

On July 29, 1921, Dr. Heinrich Rieger signed a notarial deed obliging him to make his art collection accessible to the Austrian Staatsdenkmalamt (State Monuments Office) under specific conditions, and to report any relevant changes to the location of works. It is uncontested that no such report of a change in location exists.

The City of Cologne does not consider this proof that the watercolor in question was not sold prior to the annexation because there was no contractual sales commitment prior to the notarial deed – i.e. prior to 1921. They also add that the contractual commitment ended on August 6, 1930, and that on several occasions during the contract period, Dr. Rieger provided works on loan for exhibitions without reporting the fact as agreed. In addition, the City of Cologne refers to a letter by Dr. Heinrich Rieger to the Staatsdenkmalamt dated June 12, 1925. In it, he asked that changes to complete his collection be permitted, such as trading works by artists who were already well represented against works by artists who were not yet included in the collection. In the letter, he listed 14 artists already represented in his collection, among them Schiele. He undertook to report such trades to the Staatsdenkmalamt as well. Nothing is known about such report or about any reaction by the Staatsdenkmalamt to Dr. Rieger's request.

Assessment

In the Commission's view, the very fact that Dr. Heinrich Rieger established the notarial deed expresses his intention to maintain the collection for years to come. The notarial deed was conditional for tax exemption and obliged Dr. Rieger to make the collection accessible and maintain it. The goal of the notarial deed was not to exclude the public; on the contrary, it was intended to provide public access to private property. The deed did not – contrary to what the City of Cologne puts forth – restrict the lending of works for exhibition purposes. Rather, it obliged Dr. Rieger to report to the Denkmalamt only if a loan "might complicate or hinder the viewing". If Dr. Rieger loaned works for exhibition purposes, this did not complicate viewing, but actually made it easier compared to viewing the works in his residence (where viewing was limited to twelve dates per year).

This assessment is not affected by Dr. Heinrich Rieger's request from 1925 for permission to make changes to the collection by, for instance, trading pieces. No such report is known. In

light of the 14 listed artists and the significance of the Schiele pieces for Dr. Heinrich Rieger, it is considered rather unlikely that he would have disposed of this part of his collection to an appreciable extent.

b) Size of the collection in 1928 and 1939

The City of Cologne argues that Dr. Heinrich Rieger, in a letter to the Tel Aviv Art Museum dated May 28, 1939, mentions a collection of 70 drawings and watercolors by Schiele, while in 1928 the collection encompassed 150 pieces, so that 80 Schiele drawings must have been disposed of between 1928 and 1939. The City of Cologne therefore considers it equally likely that piece was sold before or after the annexation on March 13, 1938.

Assessment

The Commission is not convinced by this line of reasoning. There does not appear to be an exact list of the Schiele works in the collection. Dr. Heinrich Rieger always refers to the works in lots (Notarial deed of 1921: 50 drawings; list from 1928: 150 drawings and 3 oil paintings, list from November 1938: about 80 drawings and 1 Schiele folder). Later research cites between 120 and 150 sheets. In 2011, the Austrian Michalek-Kommission assumed that there were still 130 to 150 drawings by Schiele in Dr. Heinrich Rieger's possession in 1938 (resolution of June 9, 2011). If Dr. Heinrich Rieger mentions 70 drawings and watercolors by Schiele in his letter to the Tel Aviv Art Museum on May 28, 1939, while in 1928 that number was 150 pieces, it leads one to believe that 80 Schiele pieces must have been disposed of between 1928 and 1939. However, these dates and numbers do not provide any indication of how many of the sales were conducted before or after the annexation, nor on whether or not the watercolor in question was among the sales prior to that event. However, the sources support the assumption that any sales that did occur were mainly due to the pressure of National Socialist persecution starting in March 1938.

c) Disposal of six Schiele works prior to March 1938

In its letter from August 26, 2020, the City of Cologne cites six earlier and therefore not National Socialist persecution-related disposals of Schiele works from the Rieger collection in order to prove that the Schiele portion of the collection prior to 1938 should be considered more "dynamic" than has been previously assumed and is claimed by the heirs of Dr. Rieger.

Assessment

After four years of research, the intensity of which cannot be called into question, the Commission feels that the sum of six Schiele pieces voluntarily sold prior to March 1938 is, in light of a collection size of 130 to 150 works (March 1938) according to the current state of research, too small to indicate that the Schiele portion of the Rieger collection was "dynamic", or that a significant number of pieces were sold unrelated to persecution. Between 1923 and 1935, Dr. Rieger provided Schiele works on loan to exhibits. As shown by exhibition catalogs and accompanying letters from 1923, 1928 and 1935, loaned pieces were not for sale. In addition, it must be noted that at least three of the disposals listed by the City of Cologne did not serve a commercial purpose. The fact that Dr. Rieger gave Hilde Ziegler the portrait of herself, which she had not been able to buy herself because of Schiele's premature death, was a humane, generous gesture and does not constitute suitable evidence that Rieger was generally

selling Schiele pieces. The same applies to the transfer of the drawing *Lesbisches Paar* (Lesbian Couple) to the sister of the deceased artist and to the trade of a drawing against a piece by his patient, the artist Lisel Salzer. Finally, in the Commission's view, the sales of two pieces to the famous Vienna-based film director Josef von Sternberg also do not indicate that Dr. Rieger was regularly selling Schiele's works.

d) Dr. Robert Rieger's restitution request of 1947

In 1947, Robert Rieger searched for his father's collection with the help of his attorneys Dr. Oskar Müller and Dr. Christian Broda in order to effect restitutions. This is evidenced by his loss report to the Austrian Staatsdenkmalamt of May 17, 1947. The enclosed list names in summary "130–150 drawings (whereabouts unknown)" by Schiele. A second list submitted during the same year is somewhat more detailed, but also summarizes large numbers of drawings without naming individual works. In the first loss report, Dr. Broda mentions "140 reproductions of drawings by Egon Schiele", which he had acquired in order to find the works. Between 1948 and 1955, photos were taken based on these reproductions depicting Schiele drawings from the Rieger collection. 54 of these pictures are preserved as negatives. One of them shows Schiele's *Kauernder weiblicher Akt*.

To the heirs of Dr. Heinrich Rieger, the loss report in combination with the negative of a photo of a reproduction of the watercolor *Kauernder weiblicher Akt* proves that Dr. Robert Rieger and his attorneys were searching for the watercolor in 1947. They state that the negative was taken "around 1947", and shows a reproduction of the drawing, not the original.

The City of Cologne asserts that Dr. Robert Rieger's knowledge of the collection after August 1938 – the time of his emigration to New York – was incomplete. He had therefore mistakenly assumed in 1947 that the Schiele collection had still been in the possession of Dr. Heinrich Rieger in 1942, immediately before his deportation to Theresienstadt. The City of Cologne also points out that the search lists of 1947, which do not include the watercolor in question, were based on older lists from the 1930s. Thus they also document "the status of the collection prior to March 13, 1938". The same applies to the 140 reproductions Robert Rieger's attorneys used to search for the lost works in 1947. The fact that Heinrich or Robert Rieger "had a large number of Schiele drawings photographed at great effort and expense during times of persecution" seems "hardly plausible" to the city. The reproductions used for the search are thus likely to be older.

The City of Cologne further names "at least 31 Schiele drawings" that Robert Rieger, after his escape to New York, offered to local art dealer Otto Kallir for sale. The enclosed documents do not specify which works these were. Twelve – also unidentified – Schiele drawings were sold by 1944. In the view of the City of Cologne, Robert Rieger's possession of these drawings in exile suggests that this "new knowledge [...] should prompt an overall re-evaluation of the fate of a portion of the Schiele drawings from Dr. Heinrich Rieger's collection".

Assessment

It cannot be proven that the watercolor in question was among the 130 to 150 Schiele drawings Robert Rieger searched for in 1947. However, it is quite safe to assume that it was, since the watercolor is shown on a negative of a photo which, as the City of Cologne agrees, is likely part of the collection of reproductions used for the search in 1947.

The parties agree that Dr. Robert Rieger knew his father's collection very well. In August 1938, he emigrated from Austria to New York and demonstrably offered to sell 31 Schiele drawings to art dealer Otto Kallir, who had also emigrated. It is safe to assume that he took these drawings from his father's collection into exile with him. The Commission believes that this supports the assumption of his excellent knowledge of the collection in August 1938 rather than contradicting it.

It can be assumed that Dr. Robert Rieger was not fully informed about the collection's further developments until his parents were deported to Theresienstadt. Due to his being in exile, he was probably not able to realistically estimate the size of the collection in 1942. It seems plausible that he is mistaken, as the City of Cologne claims, when he mentions that his father was still in possession of the entire Schiele collection in 1942. However, any incomplete knowledge of the status of the collection in 1942 does not change the fact that Robert Rieger must have known the collection very well until August 1938. This is the only knowledge under discussion here.

The fact that Robert Rieger was searching for 130 to 150 Schiele drawings in 1947 with the help of lists based on old compilations from the early to middle 1930s, and with the help of around 140 reproductions, which were possibly older as well, does not provide any indication that he was not informed about the scope of the collection as it was in March 1938. In 1947, he was clearly assuming that the collection had been rather static until March 1938, meaning that older lists and reproductions were suitable to aid with his search.

e) Recommendation of the Michalek-Kommission in 2011

In a recommendation from 2011 cited by the City of Cologne, the Austrian Michalek-Kommission resolves against the restitution of the Schiele drawing *Sich Aufstützende in Unterwäsche* (Woman in Underwear) from Dr. Heinrich Rieger's collection. For one, the Art Restitution Advisory Board states, there is no "definite conclusion" on who possessed the work under dispute after March 1938. For another, it cannot be "definitively determined whether the efforts of Dr. Robert Rieger (during the post-war era) to find his father's collection of Schiele drawings, among them possibly the work in question, were successful" (Michalek-Kommission, resolution of June 9, 2011). The City of Cologne feels the case is comparable, but does not appear to suggest that the drawing *Kauernder weiblicher Akt* could also have come into Robert Rieger's possession after 1945 as a result of his search.

Assessment

The Commission does not feel that the quoted case is comparable to the current case. The Michalek-Kommission emphasizes "that Dr. Heinrich Rieger probably possessed a large and mostly complete collection of Schiele drawings even at the time of persecution". However, this does not permit any "definitive conclusions about the individual fate" of the drawing in question. Such a definitive conclusion, according to the rules of the "Guidelines for implementing the Statement by the Federal Government, the Länder and the national associations of local authorities on the tracing and return of Nazi-confiscated art, especially Jewish property", (in short, "Guidelines") is not actually necessary. Rather, a coherent description of a typical course of events is sufficient. The fact that the Schiele collection remained complete until March 1938 is therefore sufficient reason to assume, according to the Guidelines, that this typically was also the case for the work in dispute.

As far as the situation after 1945 is concerned, it must be assumed that the drawing *Kauernder weiblicher Akt* did not come into the possession of Dr. Robert Rieger after the end of the National Socialist regime. The argumentation of the City of Cologne also merely suggests that it must be clarified how likely it is that Dr. Heinrich Rieger disposed of the watercolor before March 1938, or after that date and as a result of persecution, and does not mention any possible restitution or successful search after 1945.

f) Geyerhahn family provenance

The fact that Walter Geyerhahn owned the watercolor in 1965 is not disputed. It is evidenced by a bill of sale issued by the Feilchenfeldt gallery and by a journal entry by intermediary art dealer Nebehay.

However, there is disagreement about whether and when the work came into the possession of Walter's father, Norbert Geyerhahn. The City of Cologne assumes that Walter Geyerhahn inherited the watercolor from his father Norbert. The Jewish merchant Norbert Geyerhahn emigrated to Brazil in July 1938 to flee from the National Socialists and took the watercolor with him. This assumption is based on an e-mail from the grandson of Norbert Geyerhahn, Norberto Geyerhahn, dated February 3, 2017, in which the grandson states that his grandfather took 23 works by Schiele with him when he fled, which he had bought from the artist himself. The City of Cologne concludes that the drawing *Kauernder weiblicher Akt* was among them. For the City of Cologne, the only remaining question is whether Norbert Geyerhahn acquired the watercolor before or after the annexation on March 13, 1938.

The heirs of Dr. Heinrich Rieger doubt the oral record of the Geyerhahn family because of factual errors regarding the acquisition. Norbert Geyerhahn, they state, demonstrably did not buy *Kauernder weiblicher Akt* directly from the artist; the work was indisputably part of the Rieger collection. The heirs of Dr. Heinrich Rieger point out that Walter Geyerhahn – as an art dealer – could have bought the watercolor on the art market after 1945.

Assessment

It is not disputed that Walter Geyerhahn owned the watercolor in 1965, as he sold it that year. However, it is questionable whether that specific piece was part of a set of 23 Schiele works that his father Norbert, as the family remembers, brought with him when he emigrated to Brazil in 1938. The e-mail correspondence provided by the City of Cologne does not show any reference to *Kauernder weiblicher Akt*. Rather, the grandson Norberto writes that he has no knowledge (“no data”) about the 23 Schiele works his father Walter mentions. His statement that these 23 Schiele works were bought by his grandfather Norbert Geyerhahn directly from the artist and sold by his father Walter in the early 1950s does not correspond with the facts known about the *Kauernder weiblicher Akt*.

The Commission feels that based on these sources, it cannot be stated with certainty whether Norbert Geyerhahn ever owned the watercolor and when it came to be in the possession of his son, Walter.

g) Further research

In its appeal to the Advisory Commission, the City of Cologne asks for a recommendation to conduct further basic research. The City of Cologne hopes that an examination of previously

inaccessible archives – such as that of the art dealer Jane Kallir – will yield further insights that could contribute to reaching a “fair and just solution” to the case at hand.

Assessment

The Commission feels that such further research is not likely to yield any appreciable new results regarding the provenance of the watercolor in dispute. In light of the total size of the collection and the mostly unspecific titles of individual drawings, it must be assumed that it will not be possible to clarify the provenance of larger groups of works. The Commission thus considers a recommendation to conduct basic research into the collection of Dr. Heinrich Rieger to cause a disproportionate delay of the decision.

The fact that the City of Cologne has only proven six disposals of Schiele works from the collection prior to March 1938 after four years of research, contributes to the assessment. In light of these results, the Commission feels it is unlikely that within a period of time acceptable to the heirs, further research could reveal enough information about disposals prior to March 1938 that would make it more likely that the watercolor under dispute was not sold due to National Socialist persecution. Years of previous research would have needed to uncover considerable traces to evidence such disposals. This was not the case.

4. Overall assessment

As a rule, it is up to the applicant to prove their right of ownership of the artwork in dispute at the time of persecution. The heirs of Dr. Heinrich Rieger have fulfilled this requirement as far as possible and as can be expected. Point 4 of the Washington Principles recognizes that gaps in the provenance of objects are unavoidable. For this reason, each party can satisfy their burden of proof with so-called *prima facie* evidence. This depends on the existence of undisputed/proven facts and historical information indicating that “a certain course of events was typical in such cases”. (Guidelines, p. 36) The opposing party can cast doubt on *prima facie* evidence by “providing evidence indicating the serious possibility (and not merely asserting) that the course of events was not typical.” (*ibid.*)

In the case at hand, the Commission felt that the typical course of events would have been that the Rieger collection, at least with regard to the works by Egon Schiele, remained largely static until March 1938. To the extent of current knowledge, disposals of Schiele works were only proven in a few isolated cases before March 13, 1938. According to current knowledge, Dr. Heinrich Rieger lost nearly his entire collection due to persecution in emergency sales or through acts of Aryanization. It would therefore be incumbent on the City of Cologne to prove that the watercolor in question met with an atypical fate, in other words, that it was most probably not among the works lost due to persecution. The City of Cologne has not provided any such proof. It has collected several indicators that Dr. Heinrich Rieger could have disposed of the work before the start of the National Socialist regime in Austria. However, taking all this into consideration, it is the Commission’s opinion that it is still much more likely that the piece was sold or lost due to persecution after March 13, 1938, than that it was relinquished voluntarily at an earlier date.

Admittedly, the City of Cologne received some information from the previously inaccessible archive of Jane Kallir (Galerie St. Etienne) just prior to the hearing. In the interest of a fair and just solution, the Advisory Commission had thus given the City of Cologne a period of three months to follow up on this lead and provide facts that prove the voluntary disposal of this

particular watercolor before March 1938. The City of Cologne, however, was not able to gather any relevant findings during that time. The Commission thus considers it a proven fact that Dr. Heinrich Rieger was in possession of the work of art under dispute on March 13, 1938, and considers the assumption of loss due to Nazi persecution as not disproved. The Commission thus recommends that the piece under dispute be restituted.

In the event of disputes concerning cultural property seized as a result of National Socialist persecution, the function of the Advisory Commission is to mediate between those currently in possession of the cultural property and the former owners, or their heirs, if requested to do so by both parties. Contributors to the above recommendation as members of the Commission in an honorary capacity were Prof. Hans-Jürgen Papier (chairman), Prof. Wolf Tegethoff (deputy chairman), Marieluise Beck, Marion Eckertz-Höfer, Prof. Raphael Gross, Dr. Eva Lohse, Dr. Sabine Schulze, Dr. Gary Smith and Prof. Rita Süßmuth.

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