

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

**Recommendation of the Advisory Commission in the case of the
heirs of Robert Graetz v. Stiftung Stadtmuseum Berlin**

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, has issued a recommendation in the case of the heirs of Robert Graetz ./ Stiftung Stadtmuseum Berlin on July 12, 2021 and unanimously decided not to recommend restitution of the painting *Portrait of Alfred Kerr* by Lovis Corinth to the heirs of Robert Graetz.

1. The subject of the proceedings is the painting *Portrait of Alfred Kerr* (1907) by Lovis Corinth (1858–1925). It is an oil painting on canvas, framed, measuring 103.5 x 58.5 cm.

The painting was acquired by the Staatliche Schauspielbühnen Berlin in 1956/1957 and transferred to the Berlin Museum in 1974. It is in the holdings of the Stiftung Stadtmuseum Berlin (Inv. No. GEM 74/74). The claimants are the heirs of Robert Graetz.

2. Robert Graetz (1878–1945) was indisputably persecuted individually and collectively under National Socialism. From 1907, together with equal partner Georg Glass, he ran the textile manufacturer Glass & Graetz oHG, based in Berlin. He had two children, Hilda (1912–2013) and Helmut (1914–1989) from his first marriage to Ella, née Wagner (1880–1926). On April 28, 1934, Robert Graetz married the widow Bluma Haas, née Brin (1899–1985), called Betty, who already had a son, Werner Haas (b. 1925). The family lived in a villa at Erdener Str. 13-15 in Berlin-Grunewald from 1919. This was also the location of the art collection, which by the mid-1930s had grown to about 245 works, including notable Impressionist and Expressionist paintings. Under the pressure of Nazi persecution, the villa had to be rebuilt and divided into several apartments around 1935/1936, one of which the Graetz family occupied while the rest was rented out.

Eventually, on March 31, 1939, the liquidation of Glass & Graetz oHG began, and on April 18, 1940, the company was deleted from the commercial register. Also on April 18, 1940, the marriage of Robert and Bluma Graetz was dissolved. A number of statements consistently confirm that the Graetzes continued to live together despite the divorce. As a result of the divorce, Bluma recovered her Latvian citizenship, presumably in the hope of being able to better protect assets and to enable emigration to Riga. In December 1940, Robert Graetz was forced to sell his property at Erdener Strasse 13-15 to Deutsche Erd- und Steinwerke GmbH, an SS company. As a consequence, on February 25, 1941, Bluma Graetz consigned furniture, household goods and art objects to be auctioned via the firm of Gerhard Harms. From March 1941, the formally divorced couple lived together in two rooms of a four-room apartment as

subtenants with their neighbor Artur Barasch (1872–1942) at Wissmannstraße 11 in Berlin-Grunewald. Barasch had already been forced to sell his property in May 1939.

Robert Graetz's daughter Hilda was able to emigrate to Johannesburg around 1935/1936, and his son Helmut managed to escape to Argentina on December 9, 1938. Werner, then fourteen years old, was brought to England on a Kindertransport on August 22, 1939. After the invasion of the Soviet Union on June 22, 1941, Bluma Graetz was classified as an "enemy of the state" because of her nationality and extradited to Russia via Turkey, where she had to do forced labor for six years. From 1947 she was employed as a nurse in Riga for 20 years. Only in 1969 was she able to leave Russia and emigrated via London to Buenos Aires to live with her stepson Helmut Graetz and his wife, Hilde, née Kann. Robert Graetz presumably planned to emigrate to Switzerland, but was deported on April 14, 1942, on the 14th transport to the Trawniki concentration camp near Lublin. A last message to his daughter Hilda has survived from the Warsaw Ghetto, dated June 16, 1942. He was declared dead on December 31, 1945.

3. The painting was created in 1907 by Lovis Corinth to mark the 40th birthday of the Berlin journalist and theater critic Alfred Kerr (1867–1948). Until at least 1922 it was with the artist himself. By 1926 at the latest, it was the property of the architect Leo Nachtlicht (1872–1942). Based on a handwritten date note by Charlotte Berend-Corinth, both parties assume that Robert Graetz acquired the painting from Leo Nachtlicht on May 27, 1932. The subsequent fate of the portrait, however, is hard to trace. At the auction of February 25, 1941 by the firm of Gerhard Harms, commissioned by Bluma Graetz, only a few oil paintings were offered; the only work by Corinth among them was a drawing entitled *Hände*, but not the *Portrait of Alfred Kerr*. According to Bluma Graetz's recollections, the auction concerned a quarter to a third of her movable property. Some remaining items, such as furniture and carpets, which could not be accommodated in the new, much smaller apartment in Wissmannstraße, were stored at the forwarding companies Hess & Co and Gebr. Inventories of these items have not survived. About a month after the deportation of Robert Graetz on April 14, 1942, the Reich Finance Administration visited the apartment at Wissmannstraße 11. In addition to a few items of clothing, suitcases and other paraphernalia, three unspecified paintings and two bronzes, each valued at RM 10, were confiscated. The total value of the listed assets was estimated by the tax authorities at RM 118. A registration sheet on 27 June, 1942 for Bluma Graetz, by then already in the Soviet Union, concerning "im Inland befindliches feindliches Vermögen" ["enemy property located in Germany"] listed household effects and clothing worth RM 691.89, as well as debts for storage fees with Hess & Co in the amount of RM 316.50.

On August 24, 1948, Hilda Rush (Ruschkewitz), née Graetz, and Helmut Graetz filed a claim for damages against the German Reich for the unjustified seizure of valuable art objects. Among other things, the "Porträt Kerr" ["Kerr Portrait"] was listed, albeit erroneously attributed to Max Slevogt. The proceedings dragged on for several years, as the claimants were unable to provide more detailed information about the seizure process and their own legitimacy as heirs. The reparation authority subsequently declared itself unable to clarify the facts of the case and rejected the claim in September 1954. Before this decision became legally binding, the whereabouts of the painting at issue here became known. From at least February 1956,

Ilse Valecka, née Kahle, div. Meyer-Thoene (1921–unknown) and Wolfgang Kahle (1925–unknown) offered the *Portrait of Alfred Kerr* on the art market. They were the children of the marriage of Fritz Kahle (1891–1958) and Gertrud Kahle, née Neumann (1897–1945) in 1919. The couple divorced in the spring of 1939; and in October 1940 Fritz Kahle married his second wife Gertrud Kopischke (1905–unknown). Gertrud Kahle, née Neumann, had been living at “Konstanzer Straße 10, with Schneider”, since September 1941. She was listed at this address in a declaration of assets prepared on April 12, 1942, by Robert Graetz, who stated to the Chief Finance President of Berlin-Brandenburg that he was committed to make monthly payments of RM 50 to her. Shortly before submitting the declaration, on April 3, 1942, Gertrud Kahle had been arrested by the Gestapo. On June 18, 1942, she was deported to Theresienstadt. Her property was confiscated by the Gestapo on May 1, 1942; according to Ilse Valecka’s recollection, this included “3 Ölgemälde, 1 Porträt, 18. Jahrhundert, Art des Tischbein” [“3 oil paintings, 1 portrait, 18th century, Tischbein type”] and “2 Landschaften, frühes 19. Jahrhundert, Rottmann-Schule” [“2 landscapes, early 19th century, Rottmann school”].

Gertrud Kahle survived imprisonment in a concentration camp and returned to Berlin in August 1945. There she lived with her daughter, who had married in the meantime. On November 7, 1945, she took her own life. Ilse Valecka filed an application for compensation for damage to her mother’s property and assets on February 6, 1956. On the same day, the newspaper *Die Welt* published an article by Friedrich Luft entitled *Ein Bild will nach Berlin. Das Kerr-Portrait von Lovis Corinth wird angeboten* [A painting wants to go to Berlin. The Kerr portrait by Lovis Corinth is on offer]. The Schiller Theater Berlin expressed an interest in purchasing the painting, and the acquisition was approved on April 16, 1956 for DM 10,500. Attorney Leonhard, authorized representative of Hilda Rush, née Graetz, and Helmut Graetz in the Robert Graetz compensation proceedings, contacted the legal representative of the heirs of Gertrud Kahle after the whereabouts of the painting became known in order to negotiate a voluntary restitution. Although he achieved an interruption of the purchase process, he was only able to reach a settlement as a result. The purchase by the Schiller Theater was completed after the parties Graetz/Rush and Kahle/Valecka were able to agree on April 26, 1957 on a payment of DM 3,000 – and thus 28.5% of the purchase price – to the heirs after Robert Graetz.

Since 1974, the *Portrait of Alfred Kerr* has belonged to the Berlin Museum through transfer by the Schiller Theater.

4. It is undisputed between the parties that Robert Graetz acquired ownership of the painting *Portrait of Alfred Kerr* before 1933 and included it in his collection. According to current knowledge, the portrait was neither sold at auction through Gerhard Harms in 1941 nor confiscated by the Gestapo in 1942. In 1956, it was owned by Ilse Valecka, née Kahle, and Wolfgang Kahle; in the course of the settlement negotiations in 1956/7, it was claimed that the painting had come into the possession of Gertrud Kahle as a result of a donation by Robert Graetz.

a) The heirs of Robert Graetz are of the opinion that the claim of a donation was a protective assertion which was not unusual in the post-war period and which also lacked plausibility in

the present case. The only comprehensible connection between Robert Graetz and Gertrud Kahle consisted in a statement about a payment of alimony made under duress shortly before the deportation. This is no evidence of a relationship between the two that proves an “Anstandsschenkung” [“gift arising from a moral duty”]. Rather, the claimants assume a loss of the painting due to its storage at the freight office Fritz Kahle. It is to be assumed that the monthly payment of RM 50 to Gertrud Kahle served to camouflage the storage costs. Since Fritz Kahle was obliged to support his divorced wife, he ultimately profited from the payments made by Robert Graetz. This also explained why the *Portrait of Alfred Kerr* had not been among the assets seized from Gertrud Kahle. The portrait had been misappropriated by Fritz Kahle and subsequently passed on to his children Wolfgang and Ilse, who had declared it as a gift to their mother in order to conceal its origin. The claimants therefore assume that Robert Graetz did not voluntarily give up ownership of the painting, but lost it as a result of Nazi persecution. The settlement which the heirs after Graetz concluded with the heirs after Kahle in 1957 was the result of erroneous assumptions and a lack of alternatives. In the overall view, it was therefore null and void and accordingly did not stand in the way of restitution of the painting.

b) The Stiftung Stadtmuseum Berlin, on the other hand, argues that the claimants have not succeeded in proving that the painting was seized before 1945. Thus, no sufficient evidence for a delivery to the forwarding agent Fritz Kahle had been produced so far, neither for the *Portrait of Alfred Kerr* nor with regard to other assets of Robert Graetz. The maintenance payment obligation to Gertrud Kahle stated by Robert Graetz supported the assumption of a donation, as it had been asserted in the course of the settlement negotiations. Therefore, it could not be assumed that there had been a deprivation as a result of Nazi persecution. In any case, however, the private settlement concluded in 1957 between the heirs of Graetz and Kahle precluded restitution. Insofar as this settlement was now annulled on the basis of moral considerations, the Kahle family was implicitly being accused of criminal conduct without evidence of this being available.

5. In the opinion of the Advisory Commission, the painting *Portrait of Alfred Kerr (1907)* by Lovis Corinth is not to be restituted to the heirs of Robert Graetz. The Commission assumes that Robert Graetz lost most of his art collection as a result of Nazi persecution. In the opinion of the Commission, however, it has not been demonstrated with sufficient probability that the painting in dispute was also seized from Robert Graetz as a result of persecution and that he may have been the primary victim. Furthermore, in this case, the settlement concluded in 1957 precludes a restitution to the heirs of Robert Graetz.

a) It has not yet been possible to clarify when the picture entered the collection of Robert Graetz. There is agreement among the parties that Robert Graetz acquired the painting before January 30, 1933. However, the commission does not find this convincing. In 1926, the *Portrait of Alfred Kerr* was part of the *Gedächtnisausstellung Lovis Corinth* at Nationalgalerie Berlin. The lender and owner at the time was the architect Leo Nachtlicht (1872–1942). Nachtlicht

ran his own practice in Berlin from 1904. With his wife Anna Nachtlicht (1880–1942), née Levy, he had two daughters, Ursula (1909–1999) and Ilse (1912–unknown). With the onset of National Socialism, the family was subjected to repression and Nachtlicht's professional practice became increasingly difficult. Attempts to obtain a work permit in London failed; only the two daughters managed to escape to London in April 1939. Nachtlicht himself died in September 1942 in the Jewish Hospital in Berlin. His wife Anna was deported to Riga in October 1942 and murdered.

Leo Nachtlicht had some works of art from his extensive collection offered for sale by the Berlin auction house Max Perl as early as February 6, 1932. The auction offer included the painting *Inneres einer Tiroler Bauernstube* [*Interior of a Tyrolean Peasant's Parlor*] as well as some drawings and prints by Lovis Corinth, but not the *Portrait of Alfred Kerr*. The claimants assume that the painting in dispute was sold by Leo Nachtlicht to Robert Graetz on May 27, 1932. This assumption is based exclusively on an unspecified date "27.5.32", which Charlotte Berend-Corinth included in her manuscript for the catalog raisonné of Lovis Corinth's paintings published in 1958. The value of this already limited information is further diminished by the fact that it was later crossed out. Nor can it be concluded from other evidence that the painting was already in Robert Graetz's collection before January 30, 1933. Robert Graetz commissioned Leo Nachtlicht to remodel the villa in 1935, so there were connections between the two that certainly make a later purchase of the painting possible.

In light of the couple's history of persecution, Leo and Anna Nachtlicht, it cannot be ruled out that a sale after January 30, 1933 took place under circumstances that, from today's perspective, could be reason for restitution. 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, of December 1999 (New edition 2019)" (hereinafter: *Guidelines*) are still based on the principle that of several aggrieved parties, only the first is entitled to restitution. Therefore, proof – even in the form of prima facie evidence – is required that the painting was already in the collection of Robert Graetz before January 30, 1933. An agreement between the parties cannot replace this proof.

b) In light of the persecution fate of the Graetz family, the Commission assumes that most of the family's extensive art collection was lost during National Socialism as a result of persecution. Evidence to date includes the auctioning of assets in 1941, the storage of furniture and carpets at the Hess & Co and Gebr. Berg shipping companies, and the various confiscations by the Gestapo in 1942. Family members were able to transfer a few works of art abroad.

The *Portrait of Alfred Kerr* was presumably neither among the auctioned or confiscated works of art, nor among those transferred abroad. In February 1956, it was in the possession of Ilse Valecka, née Kahle, and Wolfgang Kahle. How it got there is unknown. The Stiftung Stadtmuseum Berlin considers the claimants to be obliged to prove not only the loss but also the circumstances surrounding it, citing Allied restitution legislation. To what extent this appeal is justified can be left open here, for there are several indications in favor of the interpretation of the events put forward by the Stiftung Stadtmuseum Berlin.

In the declaration of assets that Robert Graetz had to submit shortly before his deportation on April 12, 1942, there is a monthly maintenance payment in the amount of RM 50 listed from Graetz to Kahle. This documents a connection between Graetz and Kahle, which suggests that a transfer of ownership of the *Portrait of Alfred Kerr* from Robert Graetz to Gertrud Kahle or her divorced husband, Fritz Kahle, took place by 1942 at the latest, and that the picture passed from there to the Kahle children at a later date. A loss related to Nazi persecution by way of a disguised safekeeping agreement with subsequent misappropriation, as stated by the applicants, is only insufficiently supported by the submitted reports from memory. Conversely, the nature of the relationship between Robert Graetz and Gertrud Kahle cannot be deduced solely from the declaration of assets submitted immediately prior to the deportation. It should be added, however, that in the same declaration Graetz also listed alimony payments to his sister and a cousin, i.e. named recipients with whom a closer relationship may presumably have existed. Moreover, when the painting was offered for sale by the children of Gertrud Kahle in 1956, her former husband Fritz Kahle – who had remarried in 1940 – was still alive. This justifies the assumption that the picture passed from Gertrud Kahle directly to her children, which also speaks against the declaration of a concealed custody agreement with Fritz Kahle, unless one accused the entire Kahle family of collusive action at the expense of the Graetz family – and Gertrud Kahle herself.

c) Ultimately, however, the private settlement that Hilda Rush, née Graetz, and Helmut Graetz concluded with Ilse Valecka, née Kahle, and Wolfgang Kahle in 1957 regarding the painting in question stands in the way of restitution in this case. The *Guidelines* considers it grounds for exclusion of restitution if a former owner “reached a private settlement with the holder of the confiscated artwork after 1945 on the basis of the Allies’ restitution laws; such settlements allowed the artwork to remain in the possession of the holder if the holder paid compensation to the party entitled to restitution.” This implies the possibility of examining such agreements to determine whether, from today’s perspective, they can be granted an effect that excludes restitution. Thus, it is quite conceivable that one side entered into an unfavorable settlement only because it was still suffering from the continuing effects of National Socialist persecution. In the present case, too, there are indications that the settlement between the heirs of Robert Graetz and the heirs of Gertrud Kahle should not be taken into account in the assessment of an obligation to restitution. For example, the painting in dispute was – still under false attribution – part of the compensation proceedings that had been ongoing since 1948, but the settlement was reached outside of these compensation proceedings. It was, therefore, precisely not a settlement reached “on the basis of the Allies’ restitution laws” in the sense of the *Guidelines*. In addition, the children of Robert Graetz had difficulties with their application for compensation, among other reasons, because they were unable to prove their entitlement to inherit. This, in turn, was a direct consequence of the National Socialist persecution, under the pressure of which Robert Graetz had first transferred his assets to his second wife and then divorced her as a subterfuge. His children from his first marriage thus faced considerable problems in proving their continued legitimacy.

As far as the settlement is concerned, however, it should be borne in mind that the donation to Gertrud Kahle, which had already been asserted at that time, could – to this day – neither be proven nor disproven. A lawsuit by the heirs of Robert Graetz against the heirs of Gertrud Kahle for the return of the painting would hardly have had any chance of success. The heirs of Gertrud Kahle, who for their part also belonged to the circle of those persecuted by the Nazis, cannot, however, be assumed to have acted immorally or even criminally, especially since the presumption rule of the *Guidelines* does not refer to events of the post-war period. Despite a legal situation that was favorable to them, the heirs of Gertrud Kahle agreed to a similar arrangement for “Gründe der Pietät” [“reasons of respect”] and waived 28.5% of the purchase price achieved. This may also have been due to the fact that the purchase by the Schiller Theater was threatened with a delay due to the intervention of the heirs of Robert Graetz, which the heirs of Gertrud Kahle were keen to avoid. In this respect, the settlement was not only an expression of the legal situation at the time, but also followed an economically comprehensible logic. In the Commission’s view, there is, therefore, no reason to subject the settlement concluded at the time to an ethical and moral correction.

d) In its overall assessment, the Advisory Commission has therefore come to the conclusion that the painting is not to be restituted to the heirs of Robert Graetz. However, the commission attaches importance to the statement that the painting’s history is closely bound to the stories of three – if one adds the sitter, of four – families persecuted by the Nazis. The families of Alfred Kerr, Leo Nachtlicht, Robert Graetz and Gertrud Kahle were all victims of Nazi persecution. They were oppressed, robbed, deported, forced to flee or murdered. The Commission recommends that the Stiftung Stadtmuseum Berlin acknowledge this provenance in an appropriate manner in its future display of the *Portrait of Alfred Kerr*.

The task of the Advisory Commission is to mediate between the current owners and the former owners or their heirs in the event of disagreements over cultural property seized as a result of Nazi persecution, if requested to do so by both parties. The honorary members of the Commission who participated in the aforementioned recommendation were Prof. Hans-Jürgen Papier (Chairman), Prof. Wolf Tegethoff (Deputy Chairman), Marieluise Beck, Marion Eckertz-Höfer, Prof. Raphael Gross, Dr Eva Lohse, Prof. Jürgen Rüttgers, Dr Sabine Schulze, Dr Gary Smith and Prof. Rita Süßmuth.

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