



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 29 September 2020 in the case of the heirs of Heinrich Rieger versus Stadt Köln, to recommend that the watercolor *Kauernder weiblicher Akt* [Crouching Nude Girl] by Egon Schiele be restituted to the heirs of Heinrich Rieger. The Commission had given the Stadt Köln until 31 December 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.

Recommendation of the Advisory Commission in the case of the

Heirs of Heinrich Rieger

v.

Stadt Köln

1. The heirs of 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” for the Stadt Köln. Today it is part of the Museum Ludwig’s collection in Cologne and has the inventory no. ML/Z 1966/019.

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

2. 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 treated them 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 Nazi rule in Austria, the collection contained about 800 pieces. Heinrich Rieger received praise in several articles in the contemporary press that rated his collection as superior to those of public institutions.

For Heinrich Rieger, the artist Egon Schiele (1890–1918) was the “main focus of the collection” (Austrian Art Restitution Advisory Board, Resolution of 25 November 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). Particularly the quality of the invaluable Schiele drawings is highlighted in articles about the collection (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, December 1935, P. 12 f.). Today, the collection would undoubtedly be worth a fortune just for the Schiele pieces alone.

From the time of Austria’s annexation to the German Reich on 13 March 1938 at the latest, Rieger was persecuted as a Jew, disowned, and finally murdered in Theresienstadt concentration camp. His entire family was persecuted. His wife Berta was deported from Theresienstadt to Auschwitz on 16 May 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. Heinrich Rieger lost the momentous art collection as a consequence of Nazi persecution—through emergency 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 11 September 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 6 March 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 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 lion's share of the Rieger collection. Heinrich Rieger's blocked account was credited with 14,400 Reichsmark on 21 March 1941. The further history of a large part of the collection during the Nazi era is evidently still unclear, even though some sales or transfers are documented.

In 1947, Robert Rieger reported the loss of works from his father's collection to the Austrian Bundesdenkmalamt. 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. It is not contested that the watercolor *Kauernder weiblicher Akt* by Egon Schiele was the property of 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. Nebhay to the Swiss art dealer Marianne Feilchenfeldt. Feilchenfeldt established a sales contract with the "Freunde des Wallraf-Richartz-Museum" in Cologne on 23 April 1966, in the amount of 18,000 Deutsche Mark, giving the provenance information "Collection: Dr. H. Rieger, Vienna" and "W. Geyerhahn". The asset was taken over by the Stadt Köln, 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.

The point of contention between the parties is when 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 Austrian Art Restitution Advisory Board in 2011
- f) Geyerhahn family provenance
- g) Further research

a) On 29 July 1921, Heinrich Rieger signed a notarial deed obliging him to make his art collection accessible to the Austrian Staatsdenkmalamt under specific conditions, and to report any relevant changes to the location of works. It is not contested that such a report of a change in location does not exist.

The Stadt Köln 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 6 August 1930 and that on several occasions during the contract period, Rieger provided works on loan for exhibitions without reporting it as agreed. In addition, the Stadt Köln refers to a letter by Heinrich Rieger to the Staatsdenkmalamt dated 12 June 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 any such report or about any reaction by the Staatsdenkmalamt to Rieger's request.

In the Commission's view, the very fact that Heinrich Rieger established the notarial deed speaks for his intention to maintain the collection for years to come. The notarial deed was part of a tax exemption and obliged 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 Stadt Köln puts forth—restrict the lending of works for exhibition purposes. Rather, it obliged Rieger to report to the Denkmalamt only if the loan “could complicate or hinder the viewing”. If 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 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 Heinrich Rieger, it is considered rather unlikely that he would have disposed of this part of his collection to an appreciable extent.

b) The Stadt Köln argues that Heinrich Rieger, in a letter to the Tel Aviv Art Museum dated 28 May 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 Stadt Köln therefore considers it

equally likely that piece was sold before or after the annexation on 13 March 1938.

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. 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 Art Restitution Advisory Board assumed that there were still 130 to 150 drawings by Schiele in Heinrich Rieger's possession in 1938 (resolution of 9 June 2011). If Heinrich Rieger mentions 70 drawings and watercolors by Schiele in his letter to the Tel Aviv Art Museum on 28 May 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 make it appear very likely that any sales that did occur were mainly due to the pressure of Nazi persecution starting in March 1938.

c) In its letter from 26 August 2020, the Stadt Köln cites six earlier and therefore not Nazi 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 Heinrich Rieger.

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 an appreciable number of pieces were sold unrelated to persecution. Between 1923 and 1935, Rieger provided Schiele works on loan to exhibits. As shown by exhibit catalogs and accompanying letters from 1923, 1928 and 1935, the loaned pieces were not for sale. In addition, it must be noted that at least three of the disposals listed by the Stadt Köln did not serve a commercial purpose. The fact that 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 Rieger was regularly selling Schiele's works.

d) In 1947, Robert Rieger searched for his father's collection with the help of his attorneys Oskar Müller and Christian Broda in order to effect restitutions. This is evidenced by his loss report to the Austrian Staatsdenkmalamt of 17 May 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, 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 Heinrich Rieger, the loss report in combination with the negative of a photo of a reproduction of the watercolor *Kauernder weiblicher Akt* proves that 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 Stadt Köln asserts that 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 Heinrich Rieger in 1942, immediately before his deportation to Theresienstadt. The Stadt Köln 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 Stadt Köln 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 Stadt Köln, Robert Rieger's possession of these drawings in exile suggests that this "new knowledge [...] should prompt an overall reevaluation of the fate of a portion of the

Schiele drawings from Dr. Heinrich Rieger's collection".

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 Stadt Köln agrees, is likely part of the collection of reproductions used for the search in 1947. The parties agree that 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 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 Stadt Köln 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) In a recommendation from 2011 cited by the Stadt Köln, the Austrian Art Restitution Advisory Board resolves against the restitution of the Schiele drawing *Sich Aufstützende in Unterwäsche* [Woman in Underwear] from 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" (Austrian Art Restitution Advisory Board, resolution of 9 June 2011). The Stadt Köln 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.

The Commission does not feel that this case is comparable to the current case. The Austrian Art Restitution Advisory Board 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, of December 1999* (New edition 2019) (hereinafter: *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 under dispute. As far as the situation after 1945 is concerned, it must be assumed that the watercolor *Kauernder weiblicher Akt* did not come into the possession of Robert Rieger after the end of the Nazi regime. The argumentation of the Stadt Köln also merely suggests that it must be clarified how likely it is that 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) 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 Stadt Köln 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 Nazis, and took the watercolor with him. This assumption is based on an e-mail from the grandson of Norbert Geyerhahn, Norberto Geyerhahn, dated 3 February 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. From this, the Stadt Köln concludes that the drawing *Kauernder weiblicher Akt* was among them. For the Stadt Köln, the only remaining question is whether Norbert Geyerhahn acquired the watercolor before or after the annexation on 13 March 1938.

The heirs of 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 the *Kauernder weiblicher Akt* directly from the artist; the work was indisputably part of the Rieger collection. The heirs of Heinrich Rieger point out that Walter Geyerhahn—as an art dealer—could have bought the watercolor on the art market after 1945.

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 Stadt Köln does not show any reference to the *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) In its appeal to the Advisory Commission, the Stadt Köln asks for a recommendation to conduct further basic research. The Stadt Köln 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 just and fair solution to the case at hand.

The Commission feels that such further research is not likely to yield any appreciable new results regarding the provenance of the watercolor under dispute. In light of the total size of the collection and the mostly unspecific titles of the 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 Heinrich Rieger to be a disproportionate delay of the decision. The fact that the Stadt Köln 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 Nazi persecution. The years of research already conducted would have had to uncover some considerable trace evidence of such disposals. This was not the case.

4. As a rule, it is up to the applicant to prove their right of ownership of the masterpiece under dispute at the time of persecution. The heirs of Heinrich Rieger have fulfilled this requirement as far as is possible and can be expected. Point 4 of the Washington Principles recognizes that gaps in the histories of pieces 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. 34). “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 proven in only a few isolated cases before 13 March 1938. According to current knowledge, Heinrich Rieger lost nearly his entire collection due to persecution in emergency sales or through acts of “aryanization”. It would therefore be up to the Stadt Köln to prove that the watercolor in question here met with an atypical fate, in other words, that it was most probably not among the works lost due to persecution. The Stadt Köln has not provided any such proof. It has collected several indicators that Heinrich Rieger could have disposed of the work before the start of the Nazi 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 13 March 1938, than that it was relinquished voluntarily at an earlier date.

Admittedly, the Stadt Köln received some information from the previously inaccessible archive of Jane Kallir (Galerie St. Etienne) just prior to the hearing. In the interest of a just and fair solution, the Advisory Commission had thus given the Stadt Köln 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 Stadt Köln, however, was not able to gather any relevant findings during that time. The Commission thus considers it a proven fact that Heinrich Rieger was in possession of the work of art under dispute on 13 March 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 Nazi 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. Dr. Hans-Jürgen Papier (Chair), Prof. Dr. Wolf Tegethoff (Deputy Chair), Marieluise Beck, Marion Eckertz-Höfer, Prof. Dr. Raphael Gross, Dr. Eva Lohse, Dr. Sabine Schulze, Dr. Gary Smith and Prof. Dr. Rita Süßmuth.

Beratende Kommission im Zusammenhang mit der
Rückgabe NS-verfolgungsbedingt entzogenen Kulturguts,
insbesondere aus jüdischem Besitz

Seydelstraße 18
10117 Berlin

geschaeftsstelle@beratende-kommission.de
www.beratende-kommission.de