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November 23, 2018

Ambassador Stuart Eizenstat
Covington & Burling LLP/850 Tenth Street, NW
Washington, DC 20001-4956

Dear Ambassador Eizenstat:

We represent the Leon Fischer Trust for the Life and Work of Fritz Grünbaum. Franz Friedrich (“Fritz”) Grünbaum was murdered in the Dachau Concentration Camp on January 14, 1941, following his continuous incarceration from his arrest by the Gestapo on March 22, 1938, two weeks after Austria’s annexation by Nazi Germany.

We write in light of your role in the upcoming Berlin Conference on the 20th Anniversary Washington Conference Principles on Nazi-Confiscated Art to request your assistance and the assistance of the U.S. Department of State to press both Austria and Germany to honor fully their treaty obligations and commitments under the Washington Conference Principles, which you had such a critical role in forging. The Washington Conference’s accomplishments remain essential to resolving ownership claims to *Dead City III* and other Egon Schiele artworks stolen from Grünbaum during his captivity. Our clients were first recognized by a 2003 Austrian probate decree; Austrian law has never entitled anyone else to legal possession of Grünbaum’s property.

We ask for assistance in **three ways**: (1) please request that the Government of Germany restore or direct the restoration to the Lost Art Database of claims by the Fischer-Grünbaum Trust; (2) please request that the Government of Austria agree without further delay to arbitration of ownership claims to *Dead City III* and other artworks at the Leopold and Albertina Museums; and, (3) if Germany and Austria fail to take these overdue steps, please report this lack of progress to the U.S. Congress under the Justice For Uncompensated Survivors Today Act (the “JUST Act”), signed into law by President Trump on May 9, 2018.

1. Germany Should Restore the Claims of the Fischer-Grünbaum Trust to the Lostart.de Database.

First, please ask Germany to restore the 63 claims to works by Egon Schiele that Germany removed against the wishes of the Fischer-Grünbaum Trust and without due process of law. Germany’s abrupt removal of the artworks at the request of art dealers sadly transforms the database from an important positive step by the Government of Germany into a tool for art

dealers to launder artworks stolen by Nazis. A New York court has ruled that the Nazis looted *Dead City III* and Fritz Grünbaum's art collection, the Lost Art database should record this. As a *New York Times* article described <https://www.nytimes.com/2018/08/26/arts/design/nazi-art-egon-schiele-fritz-grunbaum.html>, Germany's removal of the claims violates the Washington Conference Principles.

2. Austria Should Agree to Arbitration of the Fischer- Grünbaum Trust's Claims

Second, please ask Austria to arbitrate the claims of the Fischer-Grünbaum Trust. Austria has failed to provide Holocaust victim families with legal remedies to claim ownership of works in Austrian museums. As explained in the comments of Austrian attorney Dr. Wolfgang Berger, below, Austria's Art Restitution Act violates Article 6 of the European Convention on Human Rights by blocking claimants to inspect evidence, participate in proceedings, or to appeal the results which have the effect of law. As found in *Altmann v. Austria*, Austria's civil courts fail to provide effective or fair access for claimants. As in *Altmann v. Austria*, the Fischer- Grünbaum Trust cannot afford the Austrian courts. Even if the Trust could, Austria has failed to extend its civil statutes of limitations as Article 26 of the Austrian State Treaty (requiring property to be returned to Nazi persecutees) and the Washington Conference Principles would require to provide a fair forum. Unless Austria agrees to arbitration, the Fischer- Grünbaum Trust has no fair remedy in Austria. Austria's failure to encourage claimants to come forward by a lack of a fair legal mechanism and its failure to give access to alternative dispute resolution violate the Washington Conference Principles.

3. If Germany and Austria Do Not Agree to Fair Solutions, the State Department Should Report These Failures to Congress Under the JUST Act

Third, we ask that the State Department report to the U.S. Congress under the JUST Act on any lack of progress in achieving justice.

Respectfully yours,

Raymond J. Dowd

cc: Thomas Yazdgerdi, Special Envoy for Holocaust Issues
Susan Sandler, Deputy Director, Office of the U.S. Special Envoy for Holocaust Issues
Dr. Wolfgang Berger

Encl. List of Grunbaum works at Leopold and Albertina Museums

Comments of Dr. Wolfgang Berger On Illegality of Austria Art Restitution Law

Dr. Wolfgang Berger represents Mag. Ralf Jacobs - a family member and heir of Erich Lederer - one of the major collectors of Klimt and Schiele - in the matters of Klimt's Beethoven Frieze and Klimt's Apfelbaum II against the Republic of Austria. Dr. Berger criticises the Austrian Art Restitution Act as follows:

Just as the Art Restitution Act was applied in connection with many proceedings, contrary to its purpose it did not redress injustice, but even created new injustice and left the heirs feeling powerless vis-à-vis the Austrian state. The Art Restitution Act contains neither a party status nor a right to submit comments or to inspect files and thus contradicts the procedural guarantees of Article 6 of the European Convention on Human Rights. From the perspective of the applicants for restitution, the procedure under the Art Restitution Act is a "secret procedure", the outcome of which is published but does not provide for any possibility of participation before the Advisory Council's recommendation is made. Nor is the content of the recommendation, which the Federal Minister practically always follows, verifiable by an appeal. The restitution of art is thus to be regarded de facto as a "gift from the state" and the Advisory Council and its recommendation are not subject to any constitutional control.

The consequence of the lack of involvement of the applicants for restitution was, for example, the wrong decision, which has meanwhile become evident, to restitute the painting "Apfelbaum II" to the wrong heirs in 2001.

The Constitutional Court and the Administrative Court, with reference to the character of the Art Restitution Act as a norm of the private sector administration, have rejected the application of the regulations on file inspection and party hearing, but have not made any statement as to how the procedural guarantees of Art 6 of the Munich Art Restitution Act and a transparent examination of requests for restitution could be complied with.

It would therefore be high time that the legislator created a position corresponding to Art. 6 MRC for the applicants for restitution in the Art Restitution Act! Also, from the point of view of the chairman of the art restitution advisory board, an improvement of the position of the applicant for restitution, especially the possibility to inspect the files, would be quite adequate. Nevertheless, it seems that the Advisory Council is quite right that it is de facto not subject to any control of its decision-making, although the Federal Minister practically always follows the recommendation of the Advisory Council. (inspection of files, right to submit comments, party status, appropriate right of review) and thus the proceedings are governed by the rule of law.

Hon. Stuart Eizenstat
November 23, 2018
Page 4

DUNNINGTON
BARTHOLOW & MILLER LLP

Finally, a law should be created which provides heirs with a fair legal hearing in matters of restitution. This would not only be in the interest of all descendants of affected families.

Dr. Berger would be pleased to provide additional comments or information to the U.S. State Department and is happy to assist.

Dr. Wolfgang Berger
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