

**Advisory commission
in connection with the restitution of cultural property seized as a result
of Nazi persecution, in particular from Jewish ownership**

Office: Seydelstr. 18, 10117 Berlin

**Recommendation of the Advisory Commission in the
matter of heirs to Heinrich Rieger ./ City of Cologne**

On September 29, 2020, the Advisory Commission on the Restitution of Cultural Property Confiscated as a Result of Nazi Persecution, especially from Jewish Ownership, under the chairmanship of Prof. Dr. Hans-Jürgen Papier in the case Heirs of Heinrich Rieger v. City of Cologne, unanimously decided to recommend the restitution of the watercolor *Crouching Female Nude* by Egon Schiele. However, it instructed the defendant to provide facts by December 31, 2020, proving that the work of art had been voluntarily handed over before March 1938. The respondent was not able to provide these facts.

The Commission justifies its recommendation as follows:

1. Parties to the proceedings

The heirs of Dr. Heinrich Rieger claim the watercolor *Crouching Female Nude* by Egon Schiele from 1917. It is a watercolor on paper, 45.5 x 29.5 cm, signed and dated. On the reverse it bears the stamp "Medizinalrat Dr. H. Rieger WIEN VII Mariahilferstr. 124". The work was acquired in 1966 by the Friends of the Wallraf-Richartz-Museum for the city of Cologne. Today it is in the collection of the Museum Ludwig, Cologne and bears the inventory number ML/Z 1966/019.

Both sides have appealed to the Advisory Commission, but with different requests: The heirs of Dr. Rieger are asking for a decision by the Commission. The City of Cologne requests that, before a decision is made, further research be commissioned in cooperation with the scientists who have been involved in the matter to date.

2. Dr. Heinrich Rieger, art collector and persecuted by the Nazi regime

Dr. Heinrich Rieger (1868-1942) was a dentist in Vienna and an important collector of contemporary art. He was acquainted with many artists and treated them partly in exchange for works. In addition, he invested "his entire income" in pictures (F.J.W.: Bilder als Honorar, in: CibaZeitschrift. Vom Honorar des Arztes. 1/6 [1934], p. 198 f.). At the time of the beginning of the Nazi regime in Austria, the collection comprised about 800 works. Dr. Heinrich Rieger received some tributes from the contemporary press, which classified his collection as superior to the public.

Egon Schiele (1890-1918) was Dr. Heinrich Rieger's "main collection area" (Austrian Art Restitution Council, decision of November 25, 2004), and his works formed the core of the collection. He had reserved a separate room for these works, "in which the largest collection of Egon Schiele's drawings [...] is kept" (Ludwig W. Abels, Wiener Sammlungen moderner Kunst, in: Neues Wiener Journal 34 [1926], No. 11.874, p. 17).

The quality of the drawings in particular ("Die unschätzbaren Schiele-Blätter") is emphasized in reviews of the collection (cf. for example Anonymus, Sammlungen des Ober-Medizinalrates Dr. Heinrich Rieger und Dr. Alfred Spitzer. From the exhibition at the Künstlerhaus, Vienna, in: Österreichische Kunst. Monatshefte für bildende Kunst, 6. Jg., H. 12, Vienna December 1935,

p. 12 f.). Today, the collection would undoubtedly be worth a fortune based on Schiele's works alone.

At the latest with the "Anschluss" of Austria to the German Reich on March 13, 1938, Dr. Rieger was persecuted as a Jew, dispossessed and finally murdered in Theresienstadt. The persecution affected his entire family. His wife Berta was deported from Theresienstadt to Auschwitz on May 16, 1944, and was probably gassed on arrival; she was declared dead in 1948. Their son Dr. Robert Rieger managed to escape with his family via Paris to New York in August 1938. Dr. Heinrich Rieger lost his important art collection in the course of Nazi persecution, through distress sales and "Aryanizations". These losses due to persecution are documented by letters from Berta Rieger to her son. Berta Rieger wrote on September 11, 1939: "Only one thing is terrible, that we have to sell almost all our things at knock-down prices again. We are only taking the most necessary things for 1 room. And all this must be done by October 15 [...]". On March 6, 1941, she wrote: "With the liquidation of the last remnant of our paintings, we have very, very much work [...]". An employee of the Würthle Gallery in Vienna, which had been "Aryanized" in April 1938, testified in court in 1949 that Dr. Heinrich Rieger had brought his collection to the gallery for sale on consignment immediately after the beginning of Nazi rule. The collection remained in the gallery for at least a year. Its "Ariseur" Friedrich Welz acquired some works from the collection himself in 1939 or 1940. By March 1941 at the latest, Luigi Kasimir acquired, "Ariseur" of the Viennese art dealer Gall and Goldmann, the largest part of the collection Rieger. Dr. Heinrich Rieger's blocked account received an amount of 14,400 Reich marks on March 21, 1941. The further history of a large part of the collection during the Nazi era is apparently still unclear, even though there is evidence of sales or transfers.

In 1947, Dr. Robert Rieger reported the loss of works of art from his father's collection to the Austrian Federal Monuments Office. In doing so, he also listed the collection of Schiele drawings, the extent of which he stated to be between 130 and 150 works. Individual restitutions to Dr. Robert Rieger have been made, but their extent and work identities have not been clarified.

3. Provenance of watercolor *Crouching female nude*

3.1. Undisputed provenance

The watercolor *Crouching Female Nude* by Egon Schiele was indisputably owned by Dr. Heinrich Rieger. This is evidenced by the collector's stamp on the back of the work: "Medizinalrat Dr. H. Rieger WIEN VII Mariahilferstr. 124". About the period in which it was in his possession, there are no records.

In 1965 it was owned by Walter Geyerhahn, who acquired it through the Viennese art dealer Christian

M. Nebehay sold it to the Swiss art dealer Marianne Feilchenfeldt. The latter concluded a purchase agreement with the "Freunde[n] des Wallraf-Richartz-Museums in Köln" (Friends of the Wallraf-Richartz Museum in Cologne) for the amount of DM 18,000 on April 23, 1966,

with the provenance information "Sammlung: Dr. H. Rieger, Wien" and "W. Geyerhahn". The assets were taken over by the City of Cologne, which therefore reclaimed ownership. Since 1976, the watercolor has been administered by the Museum Ludwig, Cologne, to which it was transferred by the Wallraf-Richartz-Museum.

3.2. Provenance in dispute: date of sale or loss of the watercolor

In dispute between the parties is when Dr. Heinrich Rieger parted with the watercolor, whether it was a sale of his own free will or a loss due to Nazi persecution. The essential question here is whether a sale took place before the "Anschluss" in March 1938. A contract of sale or a record of a sale does not exist (anymore).

To this end, the following are discussed:

- a) Notarial deed from 1921
- b) Collection size 1928 and 1939
- c) Levy of six Schiele works before March 1938
- d) Dr. Robert Rieger's restitution request from 1947
- e) Recommendation of the Austrian Art Restitution Advisory Board 2011
- f) Provenance Geyerhahn family
- g) Further research

a) Notarial deed from 1921

On July 29, 1921, Dr. Heinrich Rieger undertook by notarial deed to the Austrian State Monuments Office to make his art collection accessible according to specified conditions and to notify any relevant change in the location of works. Such a notification indisputably does not exist.

The City of Cologne does not consider this to be evidence for a non-sale of the aquarelle negotiated here before the "Anschluss", since there was no contractual obligation for sales before the notarial deed - i.e. before 1921 -, since, moreover, the contractual obligation ended on August 6, 1930, since, furthermore, Dr. Rieger had lent out works for exhibitions several times during the term of the contract without notifying this, as agreed. In addition, the City of Cologne refers to a letter from Dr. Heinrich Rieger to the State Monuments Office dated June 12, 1925. In it, he requested that changes be permitted to complete his collection, for example by exchanging works by artists who were already well represented with works by artists who were not yet represented. In the letter, he listed 14 artists already represented in his collection, including Schiele. He also undertook to report any such exchange to the State Monuments Office. Neither of such a report nor of a reaction of the Staatsdenkmalamt to Dr. Rieger's request is known.

Assessment

In the Commission's assessment, the very fact that Dr. Heinrich Rieger concluded the notarial deed speaks for his efforts to preserve the collection over the years. The notarial deed was part of a tax exemption and obliged Dr. Rieger to make the collection accessible and to preserve it. The aim of the notarial act was precisely not to exclude the public, but on the contrary to create publicity for private property. The act did not - contrary to what the City of Cologne claims - restrict the lending of objects for exhibition purposes. Rather, the obligation to notify the Office of Historical Monuments existed only if the loan "would allow the viewing

of the objects could complicate or impair." If Dr. Rieger published works for exhibition purposes, this did not make viewing more difficult, but in fact made it easier compared to viewing in his living quarters (which was limited to twelve dates a year).

Dr. Heinrich Rieger's request in 1925 to be allowed to make changes in the collection, for example by exchanging it, does not change this assessment. A corresponding application is not known. In view of the 14 artists' names listed and the importance of the Schiele collection for Dr. Heinrich Rieger, the probability that any disposals would have affected this collection to any extent worth mentioning can be considered low.

b) Collection size 1928 and 1939

The City of Cologne argues that in a letter to the Tel Aviv Art Museum dated May 28, 1939, Dr. Heinrich Rieger mentioned a stock of 70 drawings and watercolors by Schiele, whereas in 1928 the stock had amounted to 150 objects, so that between 1928 and 1939 80 Schiele drawings had been sold. From the point of view of the City of Cologne, there was therefore just as much probability of a sale before as after the "Anschluss" on March 13, 1938.

Assessment

The Commission does not find this argument convincing. A precise list of the collected Schiele works probably does not exist. Dr. Heinrich Rieger always names the works as bundles (notarial deed of 1921: 50 drawings; list of 1928: 150 drawings and 3 oil paintings, list of November 1938: approx. 80 drawings and 1 Schiele folder). Later research mentions between 120 and 150 sheets. In 2011, the Austrian Art Restitution Advisory Board assumes that 130 to 150 drawings by Schiele were still in Dr. Heinrich Rieger's possession in 1938 (decision of June 9, 2011). When Dr. Heinrich Rieger mentions in his letter to the Tel Aviv Art Museum of May 28, 1939, a stock of 70 drawings and watercolors by Schiele, while in 1928 the stock amounted to 150 objects, so that between 1928 and 1939 80 Schiele works had been sold, these dates and figures give no indication of how many sales took place before or after the Anschluss, nor that the watercolor in question belonged to the sales before this event. However, the sources make it seem very likely that the sales that did take place were largely due to the pressure of Nazi persecution from March 1938 onward.

c) Levy of six Schiele works before March 1938

In its letter of August 26, 2020, the City of Cologne cites six earlier and thus not Nazi persecution-related donations of Schiele works from the Rieger Collection in order to substantiate that the Schiele holdings in the collection prior to 1938 are apparently to be considered more "dynamic" than previously assumed and claimed by the heirs of Dr. Rieger.

Assessment

After four years of research, the intensity of which is beyond doubt, the sum of six Schiele works sold of their own free will before March 1938 seems to the commission to be too small, in view of a collection stock of 130 to 150 works (March 1938) to be assumed according to the current state of research, for a "dynamics" of the Schiele stock of the Rieger Collection, i.e. for a noteworthy number of donations not due to persecution, to be concluded from this sum. Between 1923 and 1935, Dr. Rieger loaned works by Schiele to exhibitions. As can be seen from catalogs or letters accompanying exhibitions in 1923, 1928 and 1935, the works on loan were not for sale. Moreover, it should be noted that at least three of the loans cited by the City of Cologne were not for marketing purposes. The fact that Dr. Rieger gave Hilde Ziegler, who had been portrayed by Schiele, the portrait that she had been unable to acquire herself due to Schiele's early death was a humane, generous gesture that cannot be used as evidence that he sold Schiele works on principle. The same applies to the transfer of the drawing "Lesbian Couple" to the sister of the artist, who had died in the meantime, and to the exchange of a drawing for a work by his patient, the artist Lisel Salzer. Finally, in the opinion of the Commission, the sales of two works to the famous film director Josef von Sternberg, who came from Vienna, also do not prove a common trade of Dr. Rieger with Schiele works.

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

With the help of his lawyers Dr. Oskar Müller and Dr. Christian Broda, Robert Rieger searched for his father's collection in 1947 in order to obtain restitution. This is evidenced by his loss report to the Austrian State Monuments Office of May 17, 1947. The attached list summarily lists "130-150 drawings (whereabouts unknown)" by Schiele. A subsequent list submitted in the same year is more detailed, but also summarizes large stocks of drawings without naming individual works. In the first loss report, RA Broda mentions "140 reproductions of drawings by Egon Schiele" that he had obtained in order to locate the works. Between 1948 and 1955, probably on the basis of these reproductions, photographs were made showing Schiele drawings from the Rieger Collection. 54 of these photographs have been preserved on negative film. One of these photographs shows Schiele's *Crouching Female Nude*.

For the heirs of Dr. Heinrich Rieger, the report of loss in combination with the recording of a reproduction of the watercolor *Kauernder weiblicher Akt* on negative film proves that Dr. Robert Rieger, with the help of his lawyers, was looking for this watercolor in 1947. The film originated

"from the time around 1947", on it a reproduction of the drawing was shown and not the Original.

The City of Cologne states that Dr. Robert Rieger's knowledge of the collection after August 1938 - the time of his emigration to New York - showed gaps. In 1947, for example, he erroneously assumed that the Schiele collection was still in the possession of Dr. Heinrich Rieger in 1942, immediately before the deportation to Theresienstadt. The City of Cologne also points out that the search lists of 1947, on which the watercolor under discussion here could not be identified, dated back to older listings from the 1930s. They thus "also documented the status of the collection before March 13, 1938." This applies

also for the 140 reproductions with which Robert Rieger's lawyers searched for the lost works in 1947. It seems "hardly plausible" that Heinrich or Robert Rieger "had a large number of Schiele drawings photographed at great expense and effort in times of persecution. The reproductions used for the search were therefore rather older.

The city of Cologne also lists "at least 31 Schiele drawings" that Robert Rieger gave to the local gallery owner Otto Kallir for sale after his escape to New York. It is not clear from the attached documents which works these are. Twelve - also unknown - Schiele drawings were sold by 1944. In the opinion of the City of Cologne, Robert Rieger's possession of these drawings in exile speaks for the fact that with this

"new state of knowledge [...] a re-evaluation of the fate of a part of the Schiele drawings from the collection of Dr. Heinrich Rieger as a whole should go hand in hand".

Assessment

It cannot be proven that the watercolor discussed here was among the 130 to 150 Schiele drawings searched for by Robert Rieger in 1947. However, this can be assumed with a high degree of probability, since the watercolor can be found on a negative film recording, which, in turn, is probably based on the collection of reproductions used for the search in 1947, also in the opinion of the city of Cologne.

It is undisputed between the parties that Dr. Robert Rieger knew his father's collection very well. In August 1938, he emigrated from Austria to New York and, according to evidence, gave 31 drawings by Schiele to the art dealer Otto Kallir, who had also emigrated, for sale. It can be assumed that he took these drawings from his father's collection with him into exile. In the opinion of the commission, this supports rather than contradicts the assumption of his excellent connoisseurship in August 1938.

It can be assumed that Dr. Robert Rieger was not fully informed about the further development of the collection until the deportation of his parents to Theresienstadt. Due to the exile situation, 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 states, when he mentions a Schiele collection that was still completely with his father in 1942. However, possible gaps in knowledge regarding the status of 1942 do not change the fact that Robert Rieger must have known the collection very well until August 1938. Only this state of knowledge in 1938 is at issue here.

The fact that Robert Rieger searched for 130 to 150 Schiele drawings in 1947 with the help of lists, which in turn were based on older compilations from the early to mid-1930s, as well as with the help of about 140 possibly also older reproductions, also gives no indication that he was not informed about the collection holdings from March 1938. Apparently, in 1947 he assumed a rather static collection until March 1938, so that older listings and reproductions were suitable to support the search.

e) Recommendation of the Austrian Art Restitution Advisory Board 2011

In a 2011 recommendation cited by the City of Cologne, the Austrian Art Restitution Advisory Board argued against the restitution of the Schiele drawing *Sich Aufstützende in Unterwäsche* from the collection of Dr. Heinrich Rieger. On the one hand, there is no "compelling

conclusion" on the ownership of the work in dispute after March 1938, on the other hand, it could "not be conclusively determined whether Dr. Robert Rieger's efforts [in the postwar period] to locate his father's collection of Schiele drawings, possibly including the figurative one, were successful" (österreichischer Kunstrückgabebeirat, resolution of June 9, 2011). The City of Cologne considers the case to be comparable, but does not seem to want to imply that the *Crouching Female Nude* could also have come into Robert Rieger's possession after 1945 in the course of his search.

Assessment

In the opinion of the Commission, this case is not comparable to the present one. The Austrian Art Restitution Advisory Board emphasizes "that Dr. Heinrich Rieger probably still possessed a large and essentially closed collection of Schiele drawings at the time of the persecution". However, this does not permit a "compelling conclusion as to the individual fate" of the drawing in dispute. Such a compelling conclusion is not necessary according to the rules of the *handout for the implementation of the "Declaration of the Federal Government, the Federal States and the Central Associations of Municipalities on the Discovery and Restitution of Cultural Property Seized as a Result of Nazi Persecution, in Particular from Jewish Property"* (in short: *handout*). Rather, the conclusive presentation of a typical course of events is sufficient in this respect. From the fact that the Schiele collection remained closed until March 1938, it can therefore be concluded, which is sufficient according to the *Handreichung*, that this typically also applied to the work at issue.

As far as the situation after 1945 is concerned, it can be assumed here that the *Crouching Female Nude* did not come into the possession of Dr. Robert Rieger after the end of Nazi rule. The argumentation of the city of Cologne also only aims at clarifying the probability that Dr. Heinrich Rieger gave up the watercolor before March 1938 or afterwards and then due to Nazi persecution, and does not mention a possible restitution or a success of the search after 1945.

f) Provenance Geyerhahn family

It is undisputed that Walter Geyerhahn was the owner of the watercolor in 1965. This is evident from the purchase invoice of the art dealer Feilchenfeldt as well as from a diary entry of the middleman Nebbehay.

However, there is disagreement as to whether and when the work became the property 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 on the run from the National Socialists, he had the watercolor with him. This assumption is based on an email from Norbert Geyerhahn's grandson, Norberto Geyerhahn, dated February 3, 2017, in which he states that his grandfather carried 23 works by Schiele with him in the course of his flight, which he had acquired from the artist himself. The City of Cologne concludes from this that the *crouching female nude* was among them. For them, the only question is whether Norbert Geyerhahn acquired the watercolor before or after the Anschluss on March 13, 1938.

The heirs after Dr. Heinrich Rieger doubt the oral tradition of the Geyerhahn family due to the factual errors regarding the acquisition. Thus Norbert Geyerhahn had

The heirs of Dr. Heinrich Rieger argue that Walter Geyerhahn, as an art dealer, could have acquired the watercolor after 1945. The heirs of Dr. Heinrich Rieger state that Walter Geyerhahn, as an art dealer, could have purchased the watercolor on the art market after 1945.

Assessment

It is undisputed that Walter Geyerhahn was in possession of the watercolor in 1965, and that he sold it that year. However, it is questionable whether it was part of a portfolio of 23 Schiele works that his father Norbert, according to the family's recollection, executed in July 1938 in the course of his emigration to Brazil. From the e-mail correspondence of the city of Cologne, no reference to the *crouching female nude* is apparent. Rather, the grandson Norberto writes that he has no knowledge ("no data") about the 23 executed Schiele works by his father Walter. His statements that his grandfather Norbert Geyerhahn acquired these 23 Schiele works directly from the artist and that his father Walter sold them in the early 1950s do not correspond to the facts that are documented for the *Crouching Female Nude*.

In the opinion of the commission, no statement can be made on the basis of the sources as to whether Norbert Geyerhahn ever owned the watercolor and from when it was in the possession of his son Walter.

g) Further research

With its appeal to the Advisory Commission, the City of Cologne is asking for the recommendation of further fundamental research. It hopes that the examination of several previously inaccessible archives - such as that of the gallery owner Jane Kallir - will provide further information that could contribute to a "fair and just solution" in the present case.

Assessment

In the opinion of the commission, no new results worth mentioning regarding the provenance of the disputed watercolor can be expected from such a research assignment. In view of the overall size of the collection and in view of the mostly unspecific titles of the respective paintings, it is to be assumed that the provenances of larger groups of works cannot be clarified. The commission therefore considers a recommendation for a fundamental research of the collection of Dr. Heinrich Rieger as a disproportionate delay of the decision.

This assessment is supported by the fact that, after four years of research, the City of Cologne has only found evidence of six donations of Schiele works from the collection that took place before March 1938. In view of this result, the commission considers the probability to be low that, within a reasonable period of time for the heirs, further research could bring to light donations prior to March 1938 in a dimension that would also make a donation of the disputed watercolor that was not due to Nazi persecution appear probable. Traces of levies in such a dimension should already have been found in the years of research spent. However, this was not the case.

4. Overall assessment

In principle, it is up to the claimant to prove his ownership of the disputed work of art at the time of the prosecution. This obligation is incumbent on the heirs according to Dr.

Heinrich Rieger complied within the bounds of what is possible and expected. Point 4 of the *Washington Principles* recognizes that gaps in the tradition are unavoidable. Not least for this reason, each party can also meet its burden of proof with the so-called prima facie evidence. This presupposes that there is an undisputed basic fact and historical findings "according to which typical sequences of events followed in such case constellations" (*Handreichung*, p. 36). The opposing party can shake such a prima facie case if it "proves (not only asserts) evidence that seriously raises the possibility of an atypical course of events" (*ibid.*).

In the present case, in the opinion of the commission, the typical course of events was that the Rieger Collection, at least with regard to the works of Egon Schiele, remained largely static until March 1938. According to the current state of knowledge, there is only evidence of a few individual cases of Schiele works being given away before March 13, 1938. According to current knowledge, Dr. Heinrich Rieger lost almost his entire collection through distress sales or aryation. Therefore, it is up to the city of Cologne to prove that the watercolor under discussion here had an atypical fate, i.e., that it was most likely not one of the works lost due to persecution. The city of Cologne has not provided such proof. It has gathered some indications that Dr. Heinrich Rieger could have given the work away before the beginning of the Nazi regime in Austria. In the opinion of the commission, however, the probability of a sale or loss after March 13, 1938 due to persecution far outweighs the probability of an earlier sale of his own free will.

However, the City of Cologne received information from the previously inaccessible archive of Jane Kallir (Galerie St. Etienne) only shortly before the hearing. In the interest of a fair and equitable solution, the Advisory Commission therefore granted the City of Cologne a period of three months to follow up on this lead and to produce facts proving that the watercolor in question was voluntarily given up before March 1938. However, the City of Cologne has not been able to ascertain any new findings during this period. Therefore, the Commission considers the proof of Dr. Heinrich Rieger's ownership of the disputed work of art on March 13, 1938 to be established and the presumption of a Nazi persecution-related loss to be not refuted. Therefore, it recommends the restitution of the disputed painting.

The task of the Advisory Commission is to mediate between the current owners and the former owners or their heirs in the event of differences of opinion about cultural property seized as a result of National Socialist persecution, if this is desired by both sides. Prof. Dr. Hans-Jürgen Papier (Chairman), Prof. Dr. Wolf Tegethoff (Deputy Chairman), Marielise Beck, Marion Eckertz-Höfer, Prof. Dr. Raphael Gross, Dr. Eva Lohse, Dr. Sabine Schulze, Dr. Gary Smith and Prof. Dr. Rita Süßmuth participated in the aforementioned recommendation as honorary members of the Commission.

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