

## WORKING TRANSLATION

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

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#### **Recommendation of the Advisory Commission in “Traube v. City of Düsseldorf”**

**Magdeburg, 30 November 2015.** The Advisory Commission on the return of cultural property seized as a result of Nazi persecution, especially Jewish property, chaired by Prof. Dr Limbach, has produced an opinion on the case of Traube v. City of Düsseldorf.

The proceedings concern the painting “Stilleben mit Früchtekorb. Kürbis, Melone und Pfirsiche an einer Eiche” (Still life with basket of fruit. Squash, melon and peach next to an oak tree) by Abraham Mignon (oil on canvas, 87 cm x 68 cm, about 1670, loan of the city of Düsseldorf to the Museum Kunstpalast Düsseldorf).

It is undisputed that the painting was in the possession of the Gemäldegalerie Dresden (Old Masters Picture Gallery) from at least 1772 and was transferred to members of the Wettin dynasty in 1924 as part of the compensation of the nobility in 1924 for their expropriation following World War I. After that, and probably before 1928, the painting came into the possession and ownership of Berlin publisher Ludwig Traube, who died on 9 May 1928. In his will, he made his third wife, Gertrud Traube, and his six children from his three marriages the heirs of this painting.

The painting was located in the villa at Joseph-Joachim-Str. 11-13, in the Berlin district of Grunewald, where Gertrud Traube lived with the children and her new husband, Eduard Bühler, whom she married in 1929. In 1935, the painting was sold at an auction held on 3 and 4 May by the Berlin auction house Union, owned by Leo Spik. The auction was announced in the press as an “auction due to conversion of the villa site”. There was an auction catalogue with the title *Besitz B.: Villeneinrichtung und Kunstbesitz* (Possessions B.: Villa furnishings and artworks) listing 294 individual items and 125 groups of items, with numerous illustrations, also of the painting in question.

It is not known who bought the painting at the auction or for what price; no record of the auction exists. In response to this question, Leo Spik stated in 1961 that the “records showing the proceeds were destroyed by wartime activities in February 1944”. By 21 April 1936 at the latest, the painting was in the possession of Galerie Paffrath in Düsseldorf, which no longer has any record of the circumstances of its acquisition (letter of 9 June 2001: “our archive was destroyed by fire in World War II”). Galerie Paffrath sold the painting for 4,900 Reichsmarks to the city of Düsseldorf (or the Städtisches Kunstmuseum (municipal art museum)); the gallery confirmed completion of this contract of sale in its letter of 12 June 1936 to the director of the Städtisches Kunstmuseum.

It is disputed whether the auction of the Mignon painting in May 1935 constituted a loss of property as the result of Nazi persecution (*NS-verfolgungsbedingter Vermögensverlust*), and whether the city must therefore return the painting to Ludwig Traube’s community of heirs.

The indemnification office (*Entschädigungsamt*) in West Berlin recognized the auction of the artworks, including the Mignon painting, and contents of the house as the result of persecution. The indemnification office approved compensation of 20,000 Deutschmarks in 1962 for the loss of part of the contents of the house and the artworks auctioned in 1935 as well as for the costs of emigration. In this way, based on the circumstances known at the time, the auction of the Mignon painting in 1935 was recognized as the result of persecution.

The community of heirs has argued that, as Jews, Gertrud Bühler, the family members as joint heirs and Eduard Bühler were victims of collective persecution as referred to in Article 1 (1) of the Order of the Allied Kommandatura in Berlin on the Restitution of Identifiable Property (*Rückerstattungsanordnung*, REAO). Gertrud and Eduard Bühler and five of Ludwig Traube’s six children were classified as “full Jews” (*Volljuden*) according to the racist categories of the Nazi state; Traube’s daughter from his second marriage was classified as a “half-breed in the first degree” (*Mischling 1. Grades*). This fulfils the legal presumption of Article 3 (1) (b) of the REAO, which states that legal transactions by persons subject to collective persecution after 30 January 1933 are to be considered the result of persecution (*verfolgungsbedingt*).

The community of heirs has also argued that, after Adolf Hitler’s appointment as chancellor of the Reich on 30 January 1933, Gertrud and Eduard Bühler found themselves in dramatically worsening financial circumstances due to individual persecution. They state that the Ludwig Traube publishing

business was “Aryanized” in October 1933, which significantly reduced the family’s income. They state that, for racist reasons, Eduard Bühler was banned from all activity in publishing by order of 10 May 1935 and was thus no longer able to support himself, his wife or her children from her first marriage. According to the heirs, Gertrud Bühler was therefore forced to cash in the life insurance policies for herself and the children, to divide the parcel of land on which the villa stood and sell the two parcels on which no structures had been built, and to convert the villa, in which the family had lived alone up to that time, into seven flats in order to support the family with rental income. The heirs say that the auction of part of the villa furnishings and the artworks was due to economic need resulting from anti-Semitic persecution.

Based on the circumstances described by the community of heirs, after oral proceedings the city of Düsseldorf decided to respond to the claim for restitution filed in 2009 by proposing a compensation payment in 2012. The settlement negotiations were based on three expert opinions: Art historian and former museum director Professor Dr Mai assessed the value of the painting at €350,000 to €400,000; art historian Dr Kraemer-Noble, a recognized Mignon expert, gave the painting’s estimated value as €210,000, noting the poor condition of the nearly 350-year-old painting; and Dr Mund, an art historian from the Brussels office of the Kunsthaus Lempertz hired by the community of heirs, appraised the value at €1.1 million. However, Dr Mund did not see the original still life. The community of heirs turned down the city of Düsseldorf’s offered compensation of €150,000, thus the attempt at a friendly settlement failed.

The city of Düsseldorf then decided on 11 July 2013 to refer the matter to the Advisory Commission if both parties were willing to abide by the Commission’s final decision (i.e., recommendation). After the community of heirs indicated its agreement in a letter of 5 March 2014, both parties called on the Commission to reach a “fair and just solution” in the case.

Based on newly discovered documents, the city of Düsseldorf argued in opposition to the restitution claim that the auction was not the result of persecution, but instead was held for the purpose of dividing the deceased’s estate among the community of heirs. According to the city of Düsseldorf, the notarially attested contract on the distribution of the deceased’s estate, which was concluded on 17 July 1935, was solely to “manage disputes within the family and a threatening amount of accrued debts”. The financial difficulties in which the community of heirs found itself started in the 1920s and could not be attributed to anti-Semitic persecution by the Nazi regime, according to the city of

Düsseldorf, which stated that Ludwig Traube and his publishing business had long been deep in debt. According to the city of Düsseldorf, the publishing business was sold in October 1933 but not “Aryanized”, as the buyers and later owners included Jews. The city of Düsseldorf argued that the “career ban” on Eduard Bühler could not have been the reason for the auction, because the auction was held already several days before the ban was issued. According to the city of Düsseldorf, the sale of some of the land, the conversion of the villa into rental flats and the auction of much of the villa’s contents and artworks at this time were due to excessive borrowing against the villa property and a forced sale (to pay property taxes in arrears) that had already been ordered. According to the city of Düsseldorf, the fact that the Berlin Stadtbank had already granted a debt reduction of 50,000 RM and extended a loan of 33,000 RM to renovate the property at Joseph-Joachim-Str. 11–13 furthermore clearly indicated that the legal transactions related to the property were not forced by persecution.

The community of heirs countered that the heirs at that time were subject to collective persecution whose financial difficulties were the result of persecution, and that the auction of the Mignon painting therefore constituted a loss as the result of persecution (*verfolgungsbedingte Verlust*), requiring the city of Düsseldorf to make restitution.

In its efforts to achieve a “fair and just solution” in this case, the Advisory Committee assumed that the community of heirs were persons subject to collective persecution during the Nazi regime. Other than two daughters from the first and second marriages, who were living in Rome and Paris at the time the National Socialists came to power in 1933, all members of the community of heirs were forced to emigrate during the 1930s. To refute the assumption that the auction of the painting constituted a loss resulting from persecution, the painting’s sale price would have had to be appropriate and the sellers would have had to be able to dispose freely of the proceeds.

It is undisputed that the community of heirs was able to dispose freely of the proceeds of the sale in May 1935; this is also confirmed by the arrangements made in the contract on the distribution of the deceased’s estate. The price received from auctioning the painting is however unknown and is impossible to determine given the lack of records. It may be assumed that a professionally organized auction at that time would have brought actual market prices, especially since the painting was one of the items illustrated in the auction catalogue. Further, in 1961 the auctioneer stated that this auction brought relatively good prices. But it is impossible to answer this question definitively.

The financial difficulties of the community of heirs at the time the painting was auctioned are undisputed. It is impossible to overlook the fact that the financial difficulties of the publishing business and the accumulation of debts against the property on Joseph-Joachim-Strasse had already begun before Ludwig Traube's death in 1928, and there is no concrete evidence to indicate whether and to what extent these difficulties were exacerbated by the general economic crisis and/or the start of the Nazi regime. The city of Düsseldorf has argued that the auction was held in order to divide Ludwig Traube's estate among his heirs. Whether the pressure of Nazi persecution played an important role in this auction remains uncertain.

Given the impossibility of clarifying the history of the auction of the Mignon painting, the Commission is unable to recommend restitution as demanded by the community of heirs. The Commission finds that the fair and just solution lies in balancing the interests of both parties. The Advisory Commission therefore recommends that the city of Düsseldorf should not return the painting but should however pay Ludwig Traube's community of heirs €200,000.

The task of the Advisory Commission is to mediate in case of disputes between the parties presently in possession of cultural goods and their former owners or the heirs of the latter, if both parties so desire. The Commission can issue an ethically grounded recommendation for resolving the dispute. Former President of the German Bundestag Professor Dr Rita Süßmuth, former President of the Federal Constitutional Court Professor Dr Jutta Limbach, legal scholar Dr Hans Otto Bräutigam, legal philosopher Professor Dr Dr Dietmar von der Pfordten, historian Professor Dr Reinhard Rürup, art historian Professor Dr Wolf Tegethoff and philosopher Professor Dr Ursula Wolff have agreed to serve as honorary members of the Commission.

The Deutsches Zentrum Kulturgutverluste (German Lost Art Foundation) is the office of the Advisory Commission and point of contact for those submitting claims.

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