

For immediate release:

**EXPERT OPINION FINDS KIRCHNER'S "BERLIN STREET SCENE"
PAINTING WAS CORRECTLY RETURNED TO HESS HEIR**

The historian Dr. Monika Tatzkow and the Berlin attorney Gunnar Schnabel, authors of the well known art restitution treatise "Nazi Looted Art – Worldwide Art Restitution," were asked by the heir of Hans Hess to prepare an independent historical and legal expert opinion regarding the historical facts and legal analysis of the Kirchner "Berlin Street Scene" painting restitution. This study was prompted by numerous press articles in which crucial historic facts were omitted, facts were taken out of context, or which simply presented completely false accounts where authors failed to recognize the actual conditions prevailing during the Nazi era. As experts, Dr. Tatzkow and attorney Schnabel have painstakingly reconstructed the historical facts, on the basis of proven facts, and explain the chronology of the events leading to the restitution of the Kirchner painting. The expert opinion therefore distinguishes the unproven allegations cited in some accounts in the media and the actual facts proven on the basis of historical documentation.

On May 25, 2007, Dr. Tatzkow and attorney Schnabel presented the results of their independent investigation to the members of the special committee of Berlin's house of representatives.

All interested parties can now retrieve the expert opinion in German and English, at: www.nazi-looted-art.de/kirchner-restitution and at: www.nazi-looted-art.com/kirchner-restitution

In essence, the experts state the following:

- a) Prior to his flight from Nazi Germany in 1933, Hans Hess, son and heir of Alfred Hess, not only owned an art collection of significant value, consisting of about 4,000 artworks, but also owned real estate and securities and earned a well above average salary from the Berlin publisher, Ullstein. After some economic difficulties beginning with the end of 1930, until the summer of 1933, the Hess shoe factories were completely free of debt and continued to operate profitably from 1933 on.
- b) Constrained by German and Swiss property control regulations, Thekla Hess was forced to send the artworks that had been shipped to Switzerland in 1933, on temporary loan for exhibition purposes, back to the German Reich. Had she not done so, she faced the threat of criminal prosecution and possible imprisonment. Other Jewish art collectors suffered the same fate in trying to save their collections.
- c) The loss of the painting "Berlin Street Scene" was caused by direct Nazi persecution against Hans Hess who was forced to flee Germany in 1933, and additionally the legal presumption of a loss due to persecution was not refuted:

- aa) Not one document has been found to date that substantiates the amount of the alleged purchase price (RM 3,000), and no document or other evidence has been located which reflects the payment of this amount to Thekla or Hans Hess.
 - bb) An analysis of contemporary sales and insurance documents of comparable Kirchner paintings, show that a realistic market value for the "Berlin Street Scene" painting in the 1930's, was between 6,000 to 15,000 Reichmark, far above the 3,000 Reichmark sales price alleged to have been paid for the "Berlin Street Scene" painting. For example, the 1930's insured value of a comparable Kirchner painting, "Potsdamer Platz," was 15,000 Reichsmark.
 - cc) Documentary evidence shows that absent pressure from the Nazi regime, the economic and personal circumstances of Hans and Thekla Hess would not have forced them to sell "Berlin Street Scene" at the end of 1936/early 1937. In the absence of the Nazi regime, the sale would not have occurred at this time, at this location, or at the alleged purchase price.
- d) Hans Hess never declared that he would forego any restitution claims for artworks, especially with respect to "Berlin Street Scene".

The State of Berlin made a legally correct decision concerning the restitution of the "Berlin Street Scene" painting. This decision is based on the principles in the Joint Declaration of December 1999 and supplemental guidelines (Handreichung). The decision was in favor of the heir of a Jewish family forced to flee due to racial persecution in Germany. The heir appreciates very much that the State of Berlin, in particular its Administration for Science, Research and Culture, correctly adhered to and conformed its decision to the principles of restitution specified in the supplemental guidelines. These principles are part of Allied and German restitution law and are the basis for processing hundreds of thousands of restitution and compensation proceedings since 1945. At issue is restitution, even when, as shown by some media commentary in the last months, restitution decisions in Germany today may require courage. The media campaign promoted by some individuals and groups, using willfully devised erroneous information and misrepresentation, sometimes even denying that the Hess family was persecuted by the Nazi system, and the initiation of criminal charges against the individual decision makers in the Berlin Senat, is not only shameful, but is diametrically opposed to the spirit of the Washington Conference, the Joint Declaration, and the goal of restoring property lost due to racial persecution during the Nazi era.

When discussing the restitution of the "Berlin Street Scene" painting, it should not be forgotten, that the Federal Republic of Germany assumed internationally binding obligations after WWII and in the 1990 reunification agreements, to settle the issue of assets lost due to Nazi persecution. More recently in the 1998 Washington Conference, Germany and 43 other nations agreed to abide by the eleven adopted principles, thereby obligating themselves to reconstitute cultural assets lost due to Nazi persecution. This obligation is reiterated and implemented by the

Joint Declaration of December 14, 1999, and the supplementary guidelines of February 2001, as well as the further commitments the German federal, state, and community governments have agreed to.

Since the end of WWII, the Federal Republic of Germany has done much to remedy the criminal actions of the Nazis, through restitution legislation, and restitution enforcement using historical research. The worldwide acknowledgment of Germany's considerable restitution achievements, is now threatened by the recent factual errors, and the polemic, insulting, and even dishonorable commentary which has recently appeared in the news media regarding the "Berlin Street Scene" restitution.

In the future discussion of how restitution matters should be handled, decision makers should take into account the considerable and valuable record of historical and legal knowledge, which has already been gained from earlier decisions in similar cases.

May 10, 2008, marks the tenth anniversary of the Washington Conference. We support international requests for a follow-up conference for the purpose of having signatory countries report on their experience during the last ten years of actual implementation of the eleven adopted principles. We also look forward to a further exchange regarding the further implementation and enforcement of the principles of the Washington Conference, in particular with respect to how and when Nazi era assets should be returned to their rightful owners.

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