



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 10 December 2020 in the case of the heirs of Max Fischer versus Land Baden-Württemberg, to recommend that the painting *Geschwister* [Siblings] by Erich Heckel be restituted to the heirs of Max Fischer.

Recommendation of the Advisory Commission in the case of the

Heirs of Max Fischer

v.

Land Baden-Württemberg

1. This case concerns the painting *Geschwister* [Siblings] by Erich Heckel (1883–1970). The work is an oil painting on canvas, 76.2 x 64.6 cm, depicting Milda Frieda Heckel, née Georgi (1891–1982), also known as Siddi, with her younger brother. On the basis of inscriptions by Heckel recto and verso, the painting was originally dated to 1911. It was not until 1968 that the date of its creation was corrected by the artist to 1913 at the suggestion of Dr. Johann Eckart von Borries, an employee of the Staatliche Kunsthalle Karlsruhe. The painting was acquired by the Staatliche Kunsthalle Karlsruhe (SKK 2576) in 1967 as a donation from Erich Heckel himself.

The Land Baden-Württemberg is the body responsible for the Staatliche Kunsthalle Karlsruhe and is represented by the Ministerium für Wissenschaft, Forschung und Kunst Baden-Württemberg. The claimants in the case are the heirs of Max Fischer: Eva Marx (née Fischer) and George Fischer, or rather his widow Marylou M. Fischer.

2. It is undisputed that Dr. Max Fischer (1893–1954) was persecuted during the National Socialist era, both individually and collectively. Fischer was the son of Ludwig Fischer (1860–1922) and Rosy Fischer, née Rosa Bertha Haas (1869–1926), a couple who had lived in Frankfurt am Main since 1899. Fischer, who held a doctorate in history, worked as a journalist and foreign correspondent for various newspapers and journals, and also for radio broadcasts. When the National Socialists came to power on 30 January 1933, Fischer’s working circumstances changed as a result of his Jewish origins. The *Deutsche Allgemeine Zeitung* did not extend his contract, lectures that had already been confirmed were canceled, and he was excluded from the German editors’ organization and the Berlin press association. According to his application for compensation for “Schaden im beruflichen Fortkommen” [damage to professional advancement] of July 1952, he suffered significant financial losses: His annual income in 1932 had been approximately 20,000 Reichsmark, but this had dropped to approximately 5,500 Reichsmark in 1933. In 1934 he made around 1,000 Reichsmark from freelance work as a writer, while in 1935 his earnings from these activities were only around 500 Reichsmark.

Max Fischer’s living arrangements also changed after January 1933. While he was still resident at Waldemarstraße 54 in Berlin-Schlachtensee at the start of the year, by October 1934 he was living with Charlotte Wanzke (1904–1989) at Roscherstraße 17 in Berlin-Charlottenburg. Max Fischer left Berlin on 20 October 1935 and four days later boarded a ship in Hamburg. He sailed to New York on a tourist visa, arriving on 1 November 1935. He brought with him hotel vouchers for a week, 24 US dollar and very little luggage. As far as is known, he left his other possessions in the safekeeping of Charlotte Wanzke in Berlin, probably in an apartment at Ansbacher Straße 38 in Berlin-Schöneberg, where Wanzke resided from at least 1937 until 1944. Max Fischer was also officially registered at this address as of 1 April 1936, but both parties assume that he never set foot in the apartment. As from 1936, he sought to obtain permanent resident status in the United States and for this reason left the country for Canada. From there, he was able to emigrate to the United States on 8 October 1936. On 15 October 1936, his Reichsfluchtsteuer [Reich Flight Tax] was set at 9,733 Reichsmark plus surcharges. An account belonging to Max Fischer with more than 3,000 Reichsmark was impounded. The family was also forced to let go of real estate assets. Charlotte Wanzke was involved in managing some of Max Fischer’s financial matters in Berlin until at least 1937, sometimes with the assistance of a lawyer. Max Fischer was deprived of his citizenship in 1941, and his assets became the property of the German Reich.

Max Fischer died of a heart attack on 21 May 1954, just before setting out on a ship to Germany, a journey he had been planning since at least March 1953. To finance the trip, he had asked the Entschädigungsamt Berlin to process the application he submitted in 1952 as a matter of priority and grant an advance payment. His younger brother Dr. Ernst Fischer (1896–1981) was his sole heir. Ernst Fischer was a physician with a professorial level teaching qualification and became a lecturer at the University of Frankfurt am Main in 1928. He was dismissed after the Gesetz zur Wiederherstellung des Berufsbeamtentums was passed in April 1933, and lost his authorization to teach the following year. Ernst Fischer fled to the United States in 1934 together with his wife Anne, née Rosenberg (1902–2008), and their two children George (1926–2020) and Eva (*1932).

3. The painting *Geschwister* was owned by Ludwig and Rosy Fischer probably from 1917 onward, and at the latest from 1919. The couple, who lived in Frankfurt am Main, had begun to assemble an extensive art collection in 1905 and, from 1913 onward, they placed a special emphasis on works by the group of artists known as *Die Brücke*. The Fischer collection was one of the most important private collections of Expressionist art in Germany.

By the time Ludwig Fischer died on 25 April 1922, the collection contained around 500 works of art, including at least 89 paintings. In accordance with the wish set out in her joint will with her husband, Rosy Fischer sold a total of 24 paintings from their collection to the Städtisches Museum für Kunst und Kunstgewerbe in Halle in December 1924. The painting *Geschwister* was not part of the set of works sold and, accordingly, it remained in the ownership of Rosy Fischer. After her death on 27 February 1926, the couple's sons Max and Ernst inherited the artworks left in the collection on equal terms, according to information currently available, and they divided the works between them. Since then, it has been possible to identify 379 of the artworks from the Fischer estate, including *Geschwister*. Even though there is no known estate inventory or estate distribution list, both parties accept that Max Fischer had received the painting when the works were split between the heirs because he gave it to the Galerie Ferdinand Möller on consignment at the end of 1931.

Together with a further 17 works from the estate of Ludwig and Rosy Fischer, *Geschwister* is recorded on a list of works received on consignment from Dr. Fischer. This list from the Galerie Ferdinand Möller in Berlin is dated 11 November 1931. It has not been proven so far that the painting was shown in an exhibition, but Ferdinand Möller

(1882–1956) did offer the artwork to three potential buyers in January 1933, as evidenced by one of the gallery’s index cards for the estate. Because there is a handwritten note “zurück [return] 5/I 34” for *Geschwister* on the consignment list, it is assumed by both parties that no sale took place and Ferdinand Möller gave the painting back to Max Fischer on 5 January 1934.

There is an – undated – list from Erich Heckel’s wife Siddi headed “Nach dem Krieg aus den verschiedenen Depots zurück erhaltene Bilder” [Pictures received back from various storage sites after the war], on which “1912 Geschwister” is also mentioned. Thus, the parties believe that the painting was put into storage for security reasons by Erich Heckel before or during the war and it is said to have been located in the cellar of the residential building at Emser Straße 21 in Berlin-Wilmersdorf, which largely survived an air raid in January 1944. In March 1944, the artworks still at that location were taken to a safer place in the country. The parties therefore both assume that the painting *Geschwister* came into the possession of Erich Heckel at some unspecified point between January 1934 and before January 1944.

After 1945, *Geschwister* was shown for the first time in an exhibition in summer 1948. The exhibition catalog *Chronik KG Brücke* by the Kunsthalle Bern records it at no. 31 as “Besitz des Künstlers” [property of the artist]. In 1950, it was put up for sale for 3,000 Deutschmark at the Kunstverein Freiburg art association and the Städtische Kunsthalle Mannheim. It was exhibited at the XVI Biennale in Venice with the title *Fratelli*. No ownership information was provided in the catalog. A catalog for an exhibition organized in Münster in 1953 to mark Erich Heckel reaching his seventh decade lists the painting as “Privatbesitz” [privately owned].

The painting was also displayed at the *documenta I* exhibition in Kassel in summer 1955, lent via the Staatliche Kunsthalle Karlsruhe. After the exhibition, on 8 December 1955, the Kunsthalle officially acquired the painting as a long-term loan from Erich Heckel, and also continued to send it out repeatedly for exhibition purposes. After the painting was presented at the Württembergischer Kunstverein in Stuttgart, it went to Erich and Siddi Heckel in Hemmenhofen. The 1956 publication *Die Künstlergemeinschaft Brücke* by Lothar-Günther Buchheim mentions “Frau Siddi Heckel, Hemmenhofen” as the provenance of *Geschwister* in its list of illustrations. Prior to August 1958, Erich Heckel loaned the painting to the Hessisches Landesmuseum Darmstadt, until it once again went to the Staatliche Kunsthalle Karlsruhe in June 1963 as a loan from the artist. In 1967, *Geschwister* was part of a donation agreement between Erich Heckel and the Staatliche Kunsthalle Karlsruhe.

4. The parties are in agreement that Max Fischer was the owner of the painting until at least January 1934 and that Erich Heckel acquired *Geschwister* at an unspecified point before January 1944.

a) The Land Baden-Württemberg argues that a legal transaction must have taken place between Max Fischer and Erich Heckel in which it was highly probable that a fair purchase price was paid. Max Fischer could have freely disposed of this. Furthermore, the repurchase of the painting *Geschwister* would have happened even without National Socialist rule; after all, Fischer had already given the artwork on consignment in 1931. The presumed sale is therefore not considered as confiscation as the result of Nazi persecution.

Since it can be demonstrated that Max Fischer tried to sell the painting from November 1931 onward via the Galerie Ferdinand Möller but received it back from Ferdinand Möller in January 1934 after efforts to sell it were unsuccessful, the Land Baden-Württemberg argues that the most probable course of events is that Max Fischer subsequently sold the artwork to Erich Heckel. As early as 1924, Erich Heckel had expressed an interest to Rosy Fischer in buying back the painting. This is indicated in a letter of recommendation from Dr. Max Sauerlandt (1880–1934) which he composed prior to the purchase of 24 paintings from the Fischer collection by the Städtisches Museum für Kunst und Kunstgewerbe in Halle. Since Erich Heckel was represented by the Galerie Ferdinand Möller, it can be assumed that Möller informed him of the failed attempts to broker a sale and the subsequent return of the painting, meaning that Heckel could have approached Fischer with his request to repurchase the artwork. The painting had a strong presence on the national and international exhibition scene after 1945. However, no member of the Fischer family claimed it back. This can only be interpreted as a tacit admission that the sale had taken place under normal conditions. Furthermore, Erich Heckel's personal ties to the Fischer family would support an acquisition at a fair price and the option to freely dispose of this. Alternative scenarios are not documented and are also highly unlikely, since they would not explain how the painting came into Heckel's possession.

b) Max Fischer's heirs, however, consider other courses of events to be no less likely. In several letters, relatives and friends of Max Fischer had reported on his claims of how his property was seized, stolen or lost. Although expressed in a simple manner of speaking, this supports the assumption of an involuntary confiscation of assets. Confiscation, loss as a result of fleeing the country, or a sale by Charlotte Wanzke or a third party with or without Max Fischer's knowledge are therefore equally possible

courses of events. It should be borne in mind that there is no evidence of a legal transaction between Max Fischer and Erich Heckel – let alone the specific circumstances – meaning that confiscation as the result of Nazi persecution has to be assumed.

Erich Heckel's interest in buying back his early work, as mentioned by Max Sauerlandt in 1924, cannot necessarily be attributed to 1934 and explicitly to the painting *Geschwister*. There is no obvious reason why Heckel did not act on his alleged intentions to repurchase the artwork during the intervening years. Furthermore, there is no evidence that Max Fischer and Erich Heckel were personally acquainted at the time in question. The presented hypothesis of a legally transacted transfer from Max Fischer to Erich Heckel by October 1935 therefore remains speculative. However, the inability to clarify the circumstances of the case should not be to the detriment of the heirs. Likewise, the fact that neither Max nor subsequently Ernst Fischer sought the return of the painting *Geschwister* after 1945 does not invalidate the current restitution claim.

5. The Advisory Commission believes that the painting *Geschwister* by Erich Heckel should be restituted to the claimants. It could not be established when and under what conditions Erich Heckel came into possession of the painting or even obtained ownership of it between January 1934 and January 1944. The assertion by the Land Baden-Württemberg that a legal transaction on fair terms between Max Fischer and Erich Heckel is the only conceivable option is neither convincing nor designated a “typical course of events” in line with 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*).

a) Erich Heckel's interest in repurchasing the painting, as cited by the Land Baden-Württemberg, which was mentioned by Max Sauerlandt in a letter dated 7 December 1924 addressed to Felix Weise (1876–1961) and the mayor of Halle Dr. Richard Robert Rive (1864–1947), cannot, in the Commission's view, be used as a meaningful indication of a legal transaction involving the painting *Geschwister* in 1934. Max Sauerlandt, who acted as mediator between Rosy Fischer and the Museum für Kunst und Kunstgewerbe in Halle – where he had been director until 1919 – composed the multi-page letter in order to dispel any concerns about the purchase. In the letter, he underlined the importance of acquiring the works from the Fischer collection for Halle's position as a gallery of living art and called it a “truly vital matter” for the future of the

museum. Sauerlandt justified the price demanded by Rosy Fischer – which was perceived as high by Halle – by explaining that there was a supply shortage of paintings from the early phase of Expressionism on the open market, while at the same time, demand was on the rise. Even the artists themselves, such as Emil Nolde and Ernst Ludwig Kirchner, bought back their own artworks. Erich Heckel, too, had asked Rosy Fischer to grant him the right of repurchase for his painting if she were to sell her collection. But because the collection was going to be transferred to a museum, Rosy Fischer rejected the request. The mentioning of the fact that Heckel was interested in buying back his paintings must be interpreted in the context of Sauerlandt's general mediation efforts. It also served strategic purposes, namely the justification of what was a high price from a buyer's perspective.

Heckel himself did not make a corresponding request to members of the Fischer family, neither in general nor with regard to the painting *Geschwister*. In a personal letter from Erich Heckel to Rosy Fischer dated 29 December 1924, the artist said he was pleased about the successful sale to Halle, but expressed no interest in his early works, in particular *Geschwister*, which was not among the works being sold to Halle and thus would still have been available for negotiations. Furthermore, it is not apparent why Heckel supposedly exercised his alleged interest in a repurchase ten years later on. There are no known other repurchases by Heckel in the 1920s and 1930s of paintings from his early years, which could have added weight to the presumption of a repurchase of *Geschwister*.

b) The list of 11 November 1931 proves that Max Fischer gave the painting to the Galerie Ferdinand Möller on consignment, so at least at this point there was an interest in selling. However, as the Land Baden-Württemberg itself points out, the handwritten note on the consignment list which says “zurück [return] 5/I 34” for *Geschwister* need not necessarily mean a return to the owner and thus to Max Fischer, but also opens up other possible interpretations. It is also conceivable that this documented the return of a consignment on approval. The correspondence between Ferdinand Möller and Max Fischer, of which only parts are preserved in the gallery's estate, at least shows that the business relationship was still ongoing in January 1934, and an exchange of works took place until at least 1935. The Commission therefore finds it difficult to understand why the painting may have come to Erich Heckel from Max Fischer alone, and could not just as likely have reached the artist or the art market again via a third party, such as Ferdinand Möller or Charlotte Wanzke. Charlotte Wanzke was in contact with the Fischer family and their lawyer Dr. Hermann E. Simon until at least 1937, as she was involved in the family's

affairs to arrange the final emigration and clearly took care of the property left behind in Germany by Max Fischer. In 1938, Dr. Kurt Feldhäusser (1905–1945) acquired two paintings by Ernst Ludwig Kirchner: *Bei Grünau; Sandhügel am Engadin* [By Grünau; Sand Hills in the Engadine] (1917/1918) and *Taunusstraße; Autostraße im Taunus* [Taunus Road] (1916). Consequently, works that had been given on a commission basis to the Galerie Ferdinand Möller by Max Fischer in November 1931 were traded on the German market even after he emigrated. Ultimately, the close relationship between Erich Heckel and the Galerie Ferdinand Möller increases the plausibility of alternative scenarios. It is hard to believe that a painting that Heckel had supposedly been seeking to buy back since 1924 was first offered on the art market by Möller, only for it then to be given back to the owner for him to sell to Heckel. Less improbable, although likewise not documented, is a transfer of ownership from Möller directly to Heckel.

It thus remains unclear how and when Heckel came into possession of the artwork, sometime between January 1934 and January 1944. Knowledge of it formerly belonging to the Ludwig and Rosy Fischer collection and to the property of Max Fischer was gradually lost. Because the provenance “Fischer” was no longer mentioned after 1945, it was only through research for the 1990 exhibition entitled *Expressionismus und Exil. Die Sammlung Ludwig und Rosy Fischer* at the newly established Jüdisches Museum in Frankfurt am Main that the painting *Geschwister* from the Ludwig and Rosy Fischer collection was successfully identified as the work located in the Staatliche Kunsthalle Karlsruhe. In this context, it was surmised for the first time that Erich Heckel could have bought back the painting from Max Fischer, but the administrator of Heckel’s estate declared this to be “speculation” at the time.

c) In the view of the Commission, the fact that the art collection, and explicitly the painting *Geschwister*, was not claimed back after 1945 cannot be taken as a tacit admission that the transfer of ownership was based on a proper legal transaction. Also, the fact that the painting did not play a role in Max Fischer’s compensation proceedings only has a very limited indicative effect, in the Commission’s opinion.

When Max Fischer died in 1954, his brother Ernst, as sole heir, carried on the compensation proceedings that Max had already initiated. According to the Bundesentschädigungsgesetz in force, the destruction, defacement, abandonment for plundering, or the abandonment of property were offenses for which compensation was liable to be paid (§§ 18, 20; later § 51). Ernst Fischer was not able to prove any of these. To be able to make statements in particular on whether Max Fischer had abandoned his collection in the sense that meant compensation was obliged to be paid, Ernst Fischer would have had

to provide information not only on the exact inventory of the collection but also on the relationship between Max Fischer and Charlotte Wanzke. However, Ernst Fischer had fled to the US in 1934 and therefore, at the relevant time, had not lived in Germany for a long period. Just because he was not able to make any conclusive statements in this regard, it does not mean that he would not have disputed the loss.

Furthermore, it cannot be assumed that a corresponding submission would have been a success. The option of abandonment was fulfilled if the person concerned had given up his belongings without entrusting them to the care or custody of a third party, meaning that access by third parties was uncontrollable; this was the case particularly in the event of hasty departures (Blessin-Wilden, BEG, 1957, § 51 Rn. 16; van Dam-Loos, BEG, 1957, § 51 7. b). The limited scope of the compensation proceedings therefore does not suggest an increased likelihood of a sale to Erich Heckel, as retention in the Galerie Ferdinand Möller or sale by Charlotte Wanzke also would not have led to entitlement to compensation according to the Bundesentschädigungsgesetz.

Ernst Fischer repeatedly addressed the issue of the loss of his brother's collection in a cursory way, but details of the fate of individual artworks appear to have been unknown or are subject to confusion. In addition to conceivable sales prior to Max Fischer's emigration, Ernst Fischer questioned the disappearance and the confiscation of artworks from the Berlin apartment in which Charlotte Wanzke resided until at least 1944. The fact that hope for clarification existed until 1989 is evidenced by the interest of the Stiftung Neue Synagoge Berlin – Centrum Judaicum in Wanzke's estate. This was taken over as it was thought to include documents belonging to Max Fischer of "cultural, historical and museological value". Apart from empty envelopes addressed to Charlotte Wanzke from Max Fischer from around 1949/1950 and an undated personal attempt at contact by Ernst Fischer, no documents from the Fischer family have been preserved, however. The estate thus does not provide any clues as to the fate of the artworks remaining in Germany, nor any information about the development of the relationship between Max Fischer and Charlotte Wanzke after 1937.

d) As a result, this means: In the case of a loss resulting from a legal transaction, the presumption of confiscation as the result of Nazi persecution is disprovable. But, according to the *Guidelines*, a fair purchase price and the option of free disposal must be demonstrated. In the present case, however, neither a legal transaction nor indeed a transfer of ownership to Erich Heckel can be demonstrated. In light of the above, the Land Baden-Württemberg failed to cast doubt on the statutory presumption. By referring to its hypothesis as a "typical course of events" and by expecting a refutation from the

claimant, the Land Baden-Württemberg is demanding a reversal of the rules set out in the *Guidelines* for verifying whether a work of art was confiscated as a result of Nazi persecution. The Commission is not able to pursue this.

6. The provenance of the painting *Geschwister* is unique in that, at the end of the National Socialist regime, the artwork was once again with the artist himself. Parts of the artist's creative output were proscribed for reasons of propaganda during the National Socialist era. However, the Commission considers it inappropriate to conclude from the defamation of such artworks as "degenerate" that no confiscation as the result of Nazi persecution took place. Moreover, the Commission emphasizes that the Fischer family was also affected by the "Degenerate Art" campaign in a particular way. For instance, Ludwig and Rosy Fischer's explicit wish to entrust a set of works from their collection to a museum on a permanent basis and thus make it accessible to the public was thwarted by National Socialist art policy. Instead of being appreciated and cared for, a large proportion of the paintings given to the Museum für Kunst und Kunstgewerbe in Halle in 1924 were denounced as "cultural Bolshevism" in a so-called "chamber of horrors" from 1935 onwards, before at least 19 of the paintings from the Fischer collection were confiscated in Halle in 1937 by the Reichsministerium für Volksaufklärung und Propaganda as part of the "Degenerate Art" campaign and sold for the benefit of the German Reich. The annuity payments to Max and Ernst Fischer that had been arranged in 1924 went into a blocked account from 1936 onwards and were prematurely discontinued in 1938. As justification, the city of Halle referred to the status of the artworks as "degenerate". Measures taken by the Fischer family against this practice and the sale of the confiscated works were unsuccessful.

The Fischer couple's accomplishments remained unmentioned even after 1945, and it was only in 1990 with the above-mentioned exhibition *Expressionismus und Exil. Die Sammlung Ludwig und Rosy Fischer* that they were remembered and appreciated. The fate of the part of the art collection that remained in Germany is still largely unknown, however. By contrast, important parts of the collection of Ernst and Anne Fischer were saved when they were taken to the United States. The Ludwig and Rosy Fischer Collection was given to the Virginia Museum of Fine Arts in Richmond in 2009 and thus made accessible to the wider public and to research. The announcement by the heirs of Max Fischer that, in the event of a restitution, Erich Heckel's painting *Geschwister* would also be donated to the Virginia Museum of Fine Arts and thus permanently united with the collection of their grandparents, Ludwig and Rosy Fischer,

is acknowledged by the Commission as a special gesture and a significant contribution towards critically addressing the history of persecution associated with Jewish art collections.

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. Sabine Schulze, Dr. Gary Smith and Prof. Dr. Rita Süßmuth.

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

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