



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 6 September 2024 in the case of the heirs of George Grosz versus Freie Hansestadt Bremen not to recommend restitution of

- a) the painting *Pompe Funèbre* by George Grosz and
- b) the painting *Stilleben mit Okarina, Fisch und Muschel* by George Grosz to the heirs of George Grosz.

### **Recommendation of the Advisory Commission in the case of the**

#### **Heirs of George Grosz**

**v.**

#### **Freie Hansestadt Bremen**

1. Subject of the proceedings are the paintings *Pompe Funèbre* and *Stilleben mit Okarina, Fisch und Muschel* by George Grosz. In detail:

a) *Pompe Funèbre* (1928), oil on gilt bronze on canvas, measuring 100 x 70 cm. The painting was acquired in 1979 by Kunstverein Bremen with funds provided by Freie Hansestadt Bremen. It is in the holdings of Kunsthalle Bremen (1230-1979/6).

b) *Stilleben mit Okarina, Fisch und Muschel* [Still life with ocarina, fish and shell] (also *Stilleben mit Okarina* [Still life with Ocarina]) (1931), oil on canvas, measuring 54.5 x 36 cm (divergently 53 x 36 cm). The painting was acquired in 1972 by Kunstverein Bremen with funds provided by Freie Hansestadt Bremen. It is in the holdings of Kunsthalle Bremen (1075-1972/23).

The claimants are the heirs of George Grosz.

2. Georg Ehrenfried Groß (known as George Grosz) (1893–1959) was one of the prominent artists of the Weimar Republic. He was a member of the Communist Party and the November Gruppe, co-organiser of the First International Dada Fair and co-founder of politically radical journals. Between 1921 and 1932, artworks created by him were the subject of several court cases due to accusations that they were indecent and were critical of society and the war.

In the early 1930s, George Grosz gained increasing recognition as an artist in the USA, in particular as a result of the exhibition *Modern German Painting and Sculpture* at the New York Museum of Modern Art in 1931 and the *12th International Watercolour Exhibition* at the Art Institute in Chicago in the spring of 1932. In the summer of 1932, Grosz taught as a lecturer at the private art academy Art Students League in New York. At the same time, his plans to open the Sterne-Grosz Studio took on concrete shape, a project that he developed together with Maurice Sterne (1877–1957) and art dealer Israel Ber (also known as I. B. or J. B.) Neumann (1887–1961). Thus, Grosz took the decision between June and September 1932 to emigrate to the USA with his family. He returned to Berlin briefly in mid-October 1932 to prepare the move. He and his wife Anna Luise Eva Grosz, née Peter, (1895–1960) left Germany on 12 January 1933, just a few days before the National Socialists came to power. Grosz received American citizenship in 1938, having applied for it in 1933.

George Grosz suffered individual persecution under the National Socialists due to his political opposition to National Socialism and on ideological grounds. In addition and independently of this, approximately 500 of his works, including eight paintings, were confiscated from public ownership in connection with the “Degenerate Art” campaign in 1937, with some of them being defamed at propaganda exhibitions of the same name. Even though Grosz himself emphasised that he had not emigrated to the USA for political reasons, already in March 1933 his decision to do so seemed to him to be a “Wink des Schicksals” [“stroke of destiny”]. The *Deutscher Reichsanzeiger* [Official Gazette of the German Reich] reported his denaturalisation as a German citizen for 8 March 1938. As a consequence, the Grosz couple’s assets that remained in Germany after their departure in 1933 were confiscated to the benefit of the German Reich. In a compensation proceeding under the Bundesentschädigungsgesetz, Grosz i.a. claimed damage to property and assets with regard to artworks lost in Germany. He was unable to name specific works, however, so in 1971 the heirs of George Grosz were awarded a lump sum compensation of 50,000.00 Deutschmark by settlement.

3. Galerie Alfred Flechtheim GmbH was the official agent for George Grosz's works of art from 1923 onwards. This contractual cooperation was terminated by Alfred Flechtheim (1878–1937) at the end of 1931. In June 1932, Grosz started working at the private art academy Art Students League in New York. At the same time, he planned to open his own art school and decided to emigrate to the USA with his family. While Grosz was in Berlin from October 1932 to organise his move, Galerie Alfred Flechtheim GmbH attempted to settle its business affairs with Grosz. As early as 1928, the artist had accumulated debts of 16,200.00 Reichsmark to Galerie Alfred Flechtheim GmbH. Sales of his works had stalled, and joint strategies to restimulate demand had failed. Shortly before his departure for New York on 24 May 1932, Grosz had remarked to Flechtheim, that he “hätte überhaupt sehr gern unsere ganze Sache einmal richtig klargestellt” [“would very much like to get the whole matter between us settled once and for all”]. In October 1932, Curt Valentin (1902–1954), an employee at Galerie Alfred Flechtheim in Berlin, sent Grosz an account balance sheet dated 1 October 1932 showing debts of 16,565.00 Reichsmark. He asked the artist to consider how these debts might be reduced, at the same time proposing on behalf of the gallery that Grosz undertake to pay part of the amount in cash, while the gallery would be prepared “für den anderen Teil Aquarelle zu übernehmen” [“to accept watercolours to cover the rest”]. On 28 November 1932, Valentin noted down in writing on behalf of both parties the results of a meeting with Grosz which had taken place that same day. According to this, the company and Grosz agreed that the balance due of 16,565.00 Reichsmark was to be paid back by Grosz half in watercolours and half in cash, as previously proposed in October. From 1 January 1933 onwards, Grosz was to send five watercolours from New York to the gallery every two months, calculated at 200.00 Reichsmark each, and also transfer 500.00 Reichsmark every two months.

Alfred Flechtheim suffered collective and individual persecution under the National Socialists on racial grounds. In view of the fact that developments in Germany threatened his livelihood, Alfred Flechtheim decided at the beginning of September 1933 to appoint the auditor Alfred E. Schulte (1892–1972) to take care of the affairs of his company. While Schulte attended to the company, Flechtheim travelled to Paris at the end of September 1933 to arrange an assignment for the Mayor Gallery in London with his long-time business partner Daniel-Henry Kahnweiler (1884–1979). Flechtheim was able to transfer a collection of works by George Grosz from Germany to France, informing the artist in a letter dated 6 October 1933 that his “Bilder” [“pictures”] were at Galerie Pierre in Paris. In the event of a sale, 50 % of the proceeds were to go to Grosz, 25 % to Galerie Pierre and 25 % to Flechtheim, until such time as the debt had been paid off.

Just three weeks later, Schulte, operating from Berlin, began contacting all the creditors and debtors of Galerie Alfred Flechtheim GmbH, and in mid-November 1933 he asked Grosz to settle his debt with Galerie Alfred Flechtheim GmbH, which by then totalled 16,255.00 Reichsmark, in cash. Compared to October 1932, therefore, the debt had only decreased by 310.00 Reichsmark over a period of one year. Thus, Grosz had not honoured the repayment agreement made in November 1932, otherwise the debt would have been reduced by about half.

At the end of March 1934, Alfred E. Schulte succeeded in reaching an out-of-court settlement with the creditors of Galerie Alfred Flechtheim GmbH which prevented bankruptcy, thereby enabling the company to continue to exist for the time being. Due to a lack of sources, it is no longer possible to ascertain what arrangements were made with George Grosz in this context with regard to his remaining debts. Since he was in urgent need of cash, Alfred Flechtheim attempted to sell the watercolours and oil paintings that were in his possession in London and Paris. In a letter to Grosz dated 15 April 1934, Flechtheim mentioned the transfer of ownership of these watercolours and oil paintings “als Sicherheit” [“as security”]: “Deine Aquarelle, die Du mir als Sicherheit ließest, sind in London unverkauft. Die Geschäfte gehen auch in England schlecht. (schlechter aber hier.) [...] Noch schwerer als mit den Aquarellen, ist es mit den Oelbildern, die du mir gleichfalls als Sicherheit übereignetest. Sie lagen fast ein Jahr in der Galerie Pierre, die mich im[m]er vertröstete. [...] Jetzt habe ich sie bei Billiet deponiert.” [“The watercolours you left with me as security have not sold in London. Business is bad in England too. (but worse here.) [...] It is even more difficult with the oil pictures of which you also transferred ownership to me as security than it is with the watercolours. They have been at Galerie Pierre for almost a year, who kept putting me off. [...] Now I’ve deposited them with Billiet.”]

Joseph Billiet (1886–1957) had already organised the first solo exhibition of works by George Grosz in Paris in 1924 and had been in contact with the artist ever since. Galerie Billiet put on a public presentation of the set of works handed over to it by Alfred Flechtheim in April 1934. Paul Westheim (1886–1963), who had fled to France in 1933, wrote a review of the exhibition in the *Pariser Tageblatt* which he sent to Grosz in New York. Flechtheim himself organised solo exhibitions of the artist’s work in London in June 1934 and April 1936; I. B. Neumann was also informed of these by Flechtheim and Daniel-Henry Kahnweiler. An exhibition entitled *George Grosz* took place at Kunstzaal van Lier in Amsterdam in July 1936. Carel van Lier (1897–1945) had been in business contact with Flechtheim from at least 1927 onwards, but Grosz had also met the Dutch art dealer in person in Laren as late as 1935. At the end of November 1936, Flechtheim tried

to interest the New York art dealer Pierre Matisse (1900–1989) in taking on the set of around 70 works, which were located in Amsterdam at the time of the offer. The minimum prices offered did not even cover 50 % of the outstanding debt. Around the same time as he made this offer to Matisse, Flechtheim suffered severe blood poisoning which resulted in his death.

At the beginning of 1936, Alfred Flechtheim had been forced to liquidate his company in Germany, divorce his wife Bertha (known as Betty/Betti) Flechtheim, née Goldschmidt, (1881–1941) who remained in Berlin, and change his will accordingly. Flechtheim died in London on 9 March 1937, just a short time after his company had been deleted from the Handelsregister [German commercial register]. His sole heir was the nephew of his divorced wife, Heinz Alfred Hulisch (later Henry Alfred Hulton) (1910–1992), who had fled to London in 1933. Hulisch appointed the London law firm Herbert Oppenheimer, Nathan & Vandyk to settle matters relating to the estate and inheritance. From October 1937 at the latest, there is evidence that the estate administration endeavoured to sell works from Flechtheim's estate. Almost a year after Flechtheim's death, Carel van Lier delivered over 70 works by George Grosz to the Amsterdam auction house Mak van Waay. The set of works was offered as *Nalatenschap Alfred Flechtheim te Berlijn (gedeeltelijk) Werken van G. Grosz* [(Part of the) Alfred Flechtheim estate from Berlin. Works by G. Grosz], forming lot 275 to 336 of the auction *Moderne en oude Schilderijen Aquarellen Teekeningen* [Modern and old Paintings Watercolours Drawings] which took place on 1 and 2 February 1938. Even at the end of July 1938, an auction of various works from the estate was advertised at Willis's Rooms in London, authorised by Flechtheim's estate administration.

a) *Pompe Funèbre*

George Grosz delivered the painting *Pompe Funèbre* (1928) to Galerie Alfred Flechtheim GmbH on commission basis in 1929. From January 1930 onwards the gallery made the painting available for sales exhibitions at Galerie Commeter in Hamburg and Kunsthaus Zürich, as well as for an exhibition organised by the Deutscher Künstlerbund e.V. in Stuttgart. Subsequently, in October 1930, it was included in the exhibition *George Grosz. Ölgemälde und Aquarelle* [George Grosz. Oil Paintings and Watercolours] held at Galerie Alfred Flechtheim in Düsseldorf. From March 1931 to April 1932, it was on loan from Galerie Alfred Flechtheim in Berlin to various exhibitions in the USA, including the 1931 exhibition *Modern German Painting and Sculpture* at the Museum of Modern Art, New York, and the *Thirtieth International Exhibition of Paintings* at the Carnegie Institute Pittsburgh, which travelled via Baltimore to St. Louis until spring 1932.

When Alfred Flechtheim was in Paris at the end of September 1933, he informed George Grosz in a letter dated 6 October 1933 that his “Bilder” [“pictures”] were on sale at Galerie Pierre in Paris. Although the works at Galerie Pierre were not explicitly named, it can be assumed that the painting *Pompe Funèbre* was being stored there, as it appears as no. 5 “Pompes funèbres” on a depot list issued by Galerie Billiet / Pierre Vorms, Paris. Flechtheim sent this depot list to Grosz on 15 April 1934 together with a letter in which he noted that the oil paintings located at Galerie Billiet, of which Grosz had transferred ownership to him “als Sicherheit” [“as security”], had lain unsold at Galerie Pierre for almost a year.

It cannot be determined conclusively whether the painting *Pompe Funèbre* was presented at the exhibition organised by Alfred Flechtheim in spring 1936 at Leicester Galleries in London entitled *Paintings by George Grosz*, or at the subsequent exhibition entitled *George Grosz* at Kunstzaal van Lier in Amsterdam. A letter from Charlotte Weidler (1895–1983) to Paul Westheim confirms that the painting was located in the Netherlands by October 1937 at the latest: “Das Bild [gemeint ist *Pompe Funèbre*] ist mit vielen anderen von George G [unleserlich] Holland und man ist glücklich eins loszuwerden. Man sucht Abnehmer für den dortigen Bestand, den niemand haben will.” [“The picture [meaning *Pompe Funèbre*] is with a lot of others by George G [illegible] Holland and they’d be happy to get rid of one of them. They’re looking for buyers for the set there that no one wants.”] Weidler obtained the information from Betti Flechtheim, who for matters concerning the Grosz works in the estate of her deceased divorced husband referred to the London law firm Herbert Oppenheimer, Nathan & Vandyk.

Almost a year after Alfred Flechtheim’s death, Dutch art dealer Carel van Lier delivered the painting *Pompe Funèbre* together with over 70 other works by George Grosz to the Amsterdam auction house Mak van Waay. The latter integrated this set of works as *Nalatenschap Alfred Flechtheim te Berlijn (gedeeltelijk) Werken van G. Grosz* [(Part of the) Alfred Flechtheim estate from Berlin. Works by G. Grosz] in the auction *Moderne en oude Schilderijen Aquarellen Teekeningen* [Modern and old Paintings Watercolours Drawings], which took place on 1 and 2 February 1938. The works by Grosz from the Flechtheim estate were offered as lot 275 to 336; *Pompe Funèbre* was acquired as lot 293 by a buyer named Slijper. The catalogue annotations made by the auction house indicate that Slijper altogether paid 11.00 Dutch guilders [15.07 Reichsmark] for this painting and the two subsequent catalogue numbers, lot 294 *Frau im Mantel auf Diwan* [Women in coat on a divan] (1928) and lot 295 *Stilleben mit Spielzeugenten, Fächer etc.* [Still life with toy ducks, fan etc.] (1930).

Forty years later, in April 1978, the painting *Pompe Funèbre* was offered again

at an auction at Mak van Waay in Amsterdam with reference to the provenance of Alfred Flechtheim, and again at Sotheby Parke Bernet & Co. in London in July 1979. Kunstverein Bremen acquired it through the Bremen art trade in the same year with funds provided by Freie Hansestadt Bremen. It is in the holdings of Kunsthalle Bremen.

b) *Stilleben mit Okarina, Fisch und Muschel*

George Grosz delivered the painting *Stilleben mit Okarina, Fisch und Muschel* (1931) to Galerie Alfred Flechtheim GmbH on commission basis in September 1931. From mid-April to the beginning of May 1932, in collaboration with Société L'Art Vivant, Alfred Flechtheim organised an exhibition entitled *George Grosz* in Brussels at the Palais des Beaux-Arts, at which the still life was presented as “Ocarina, poisson et moules – 1931” [“Ocarina, fish and mussels – 1931”].

The provenance of the painting after the Brussels exhibition from May 1932 to January 1960 is unclear. It is questionable whether no. 25 “Ocarina” on the depot list of Galerie Billiet / Pierre Vorms, Paris, that Alfred Flechtheim sent to George Grosz on 15 April 1934 referred to the painting *Stilleben mit Okarina, Fisch und Muschel*; it is likewise questionable whether the undated French customs stamp on the back of the painting offers an indication that it was among those works Flechtheim transferred to Paris. Further, there is no evidence the painting was included in the exhibition *George Grosz* at Kunstzaal van Lier in July 1936 or in the (partial) Alfred Flechtheim estate offered for auction by the Amsterdam auction house Mak van Waay in February 1938. The only potential indication of the location of the still life around 1945 is a letter from the interim possessor Leo Lionni (1910–1999) dated January 1981, according to which his father Louis Lionni (1888–1962) had acquired four works by Grosz in Amsterdam “soon after the war”, including a watercolour “Still-life with Ocarina”, though here one would have to disregard the fact that the work in dispute is a painting and not a watercolour.

What is certain is that after the provenance gap of almost thirty years, *Stilleben mit Okarina, Fisch und Muschel* was in the possession of the illustrator Leo Lionni in New York. He donated the painting to the New York Museum of Modern Art in January 1960 for a charity auction held at Parke-Bernet Galleries on 27 April 1960. The still life was deemed unsuitable for the charity auction, however, and was instead delivered by the museum to Klipstein & Kornfeld in Bern for its 103rd auction held on 9–10 June 1961. When it could not be auctioned there either, the auction house acquired the painting itself in post auction sale and offered it ten years later at its own 145th auction held from 15–17 June 1972. There it was acquired by Kunstverein Bremen with funds provided by Freie Hansestadt Bremen. It is in the collection of Kunsthalle Bremen.

4. It is certain that George Grosz was individually persecuted between 30 January 1933 and 8 May 1945 on account of his political opposition to National Socialism and ideological reasons. This is undisputed between the parties.

The matter under dispute is when George Grosz lost ownership of the paintings and whether this was a result of Nazi persecution regarding each painting.

a) *Pompe Funèbre*

aa) The claimants are of the opinion that the painting *Pompe Funèbre* was in the possession of Alfred Flechtheim or his heir on commission basis until it was sold at the 1938 auction at Mak van Waay in Amsterdam and was therefore still in the ownership of George Grosz. This sale at auction is to be considered a seizure as a result of Nazi persecution. The claimants say that the auction took place for the purpose of enriching the consignor Carel van Lier, without either Flechtheim's descendants or Grosz's having knowledge of it or being in favour of it, and that it was a sham auction. The work was sold far below market value, and Grosz was not able to dispose of the proceeds. According to the claimants Grosz lost ownership "in sonstiger Weise" ["in any other form"]. Thus, the statutory presumption stands in his favour. Furthermore, there was no loss of ownership through transfer by way of security to Grosz's longstanding gallerist, Flechtheim, in 1934 or before; according to the claimants there are no documents that might prove otherwise. A letter from the lawyer of the heirs of Alfred Flechtheim written in 2009 according to which the latter did not assert any claims to the painting is to be interpreted as a reflection of the fact that the heirs of Alfred Flechtheim likewise regard Grosz as having been the owner of the painting.

bb) Freie Hansestadt Bremen is of the opinion that George Grosz transferred the ownership of the painting to Alfred Flechtheim as security for existing debts, presumably even before the National Socialists seized power on 30 January 1933. The auction was held in the Netherlands in 1938 before the country was occupied and was therefore outside the Nazi sphere of control, so it was not linked to Grosz's persecution. There are no indications that the auction was a sham held for the purpose of the enrichment of Carel van Lier.



b) *Stilleben mit Okarina, Fisch und Muschel*

aa) The claimants are of the opinion that the painting *Stilleben mit Okarina, Fisch und Muschel* was located at Galerie Billiet in Paris in 1934 and subsequently in the Netherlands, where it was sold to Louis Lionni in 1939 as a result of Nazi persecution. There is no evidence of the painting having been sold in Brussels in 1932 on the occasion of the *George Grosz* exhibition organised by Alfred Flechtheim in collaboration with Société L'Art Vivant, where the still life was presented as “Ocarina, poisson et moules – 1931” [Ocarina, fish and mussels – 1931].

bb) Freie Hansestadt Bremen is of the opinion that the painting can no longer be located after it was exhibited in Brussels in May 1932 and that it may have been sold in this connection. There is no proof that the work listed as “Ocarina” by Galerie Billiet in Paris in 1934 was in fact the painting in dispute. The listed price of 600.00 francs [98.88 Reichsmark] suggests that it was a watercolour and not a painting. In addition, there is no evidence of the painting having been sold to Louis Lionni in the Netherlands in 1939; in fact, a letter from Leo Lionni proves that the painting was only sold after the end of the war. According to Freie Hansestadt Bremen, the claimants bear the burden of proof with regard to ownership and loss of ownership of the painting during the period of persecution.

5. In the opinion of the Advisory Commission, the paintings *Pompe Funèbre* and *Stilleben mit Okarina, Fisch und Muschel* by George Grosz are not items of cultural property seized as a result of Nazi persecution. It therefore recommends not to reconstitute the paintings.

According to the Rules of Procedure of the Advisory Commission, the basis for assessing the facts of the case is provided by 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*).

It has been established that the claimants are the rightful legal heirs to George Grosz.

The *Guidelines* draw a distinction between collective persecution and individual persecution. George Grosz was individually persecuted on account of his political opposition to National Socialism and ideological reasons. This is undisputed between the parties and has been recognised in various compensation proceedings.

a) *Pompe Funèbre*

The Advisory Commission is convinced that George Grosz lost ownership of the painting *Pompe Funèbre* by transferring ownership to Alfred Flechtheim no later than April 1934. Even if such a transfer of ownership had not taken place, however, Grosz would have lost ownership of the painting at an auction in the Netherlands in 1938 at the latest, without this being causally linked to his persecution, so here again, this would not constitute a case of seizure as a result of Nazi persecution.

aa) The Advisory Commission is of the opinion that George Grosz lost ownership of the painting *Pompe Funèbre* as a result of a transfer of ownership to his former gallerist Alfred Flechtheim or the latter's company prior to 15 April 1934.

The painting was created by George Grosz in 1928 and was therefore initially owned by him. It was indisputably delivered to Galerie Alfred Flechtheim GmbH in 1929 on commission basis for the purpose of sale, together with ten other oil paintings. This delivery therefore did not result in Grosz losing ownership of the painting.

There are a number of indications that support a later transfer of ownership to Flechtheim or his company, which, taken together, hardly allow any other assessment. Alfred Flechtheim writes in a letter to George Grosz dated 15 April 1934: "Deine Aquarelle, die Du mir als Sicherheit ließest, sind in London unverkauft. [...] Noch schwerer als mit den Aquarellen, ist es mit den Oelbildern, die du mir gleichfalls als Sicherheit übereignetest. Sie lagen fast ein Jahr in der Galerie Pierre, die mich im[m]er vertröstete. Aber dann weder sie, noch die Galerie Simon wollten sich damit abmühen. Geschäftsgang zu schlecht. Nicht allein hier, sondern auf dem ganzen Continent. Jetzt habe ich sie bei Billiet deponiert. Anbei dessen Liste und Preise. Vielleicht verkauft er was. Hoffnung hat aber weder er, noch ich." ["The watercolours you left with me as security have not sold in London. [...] It is even more difficult with the oil pictures of which you also transferred ownership to me as security than it is with the watercolours. They have been at Galerie Pierre for almost a year, who kept putting me off. But then neither them nor Galerie Simon wanted to bother with it. Business is too bad. Not only here, but all over the continent. Now I've deposited them with Billiet. I enclose his list and prices. Maybe he'll sell something. But neither he nor I have any hope."]

The lack of a written contract as direct evidence of the transfer of ownership does not prevent from drawing different conclusions than the claimants based on the indications available. Neither party benefits from the fact that George Grosz's logbook of his works and their respective whereabouts is missing those 12 pages that cover the periods in question, meaning that there is no entry concerning a possible transfer of

ownership. Rather, it also needs to be noted that Grosz owed Galerie Alfred Flechtheim GmbH approximately 16,200.00 Reichsmark from no later than 1928, and this debt remained over the subsequent years with slight fluctuations. Grosz evidently failed to adhere to an agreement of November 1932 between himself and Galerie Alfred Flechtheim GmbH according to which the debts (at that time 16,565.00 Reichsmark) were to be reduced from January 1933 by means of regular payments from Grosz and by crediting him for new watercolours to be delivered from the USA.

Furthermore, George Grosz does not appear to have complied with the written request by the auditor Alfred E. Schulte just under a year later to settle the debt of 16,255.00 Reichsmark. Alfred Flechtheim had appointed Schulte to prevent the company from going bankrupt in view of the increasingly threatening situation after the National Socialists seized power. In the context of the negotiations with the creditors, Schulte was also in contact with the debtors. In a letter dated 18 November 1933, sent by registered mail to New York, he requested Grosz to pay off his debts: “Die Galerie Flechtheim ist geschlossen. Ich bin zur Zeit mit der Auflösung des Unternehmens befasst. Ich versuche, den an sich unvermeidlichen Konkurs zu verhüten, indem ich versuche die notwendigsten Barmittel zur Befriedigung der vorberechtigten Forderungen zu beschaffen. Wie ich in den Büchern der Galerie festgestellt habe schulden Sie der Galerie noch einen Betrag von RM 16.255,--. Ich muss Sie bitten auf dem schnellsten Wege diese Schuld zu begleichen, weil ich das Geld dringend gebrauche. [...] Ich bitte Sie meine Ausführungen mit dem nötigen Ernst behandeln zu wollen. Würde es mir nämlich nicht gelingen die Angelegenheit Flechtheim unter der Hand zu erledigen, so würde ein Konkurs unvermeidlich sein. Der Konkursverwalter würde aber ohne jeden Zweifel rücksichtslos die Forderungen an dortiger Stelle eintreiben lassen. [...] Ich bitte Sie, mir nicht den Einwand zu machen, dass die Galerie von Ihnen noch Kunst in Kommission zum Verkauf hat. Wie Sie wissen, ist diese Kunst zur Zeit absolut unverkäuflich. Ich muss unter allen Umständen Bargeld von Ihnen haben.” [“Galerie Flechtheim has closed. At the moment I am dealing with the dissolution of the company. I am attempting to avert the inevitable bankruptcy by trying to procure the most essential cash to satisfy prior claims. As I have seen in the gallery’s accounts, you still owe the gallery the sum of RM 16,255,--. I must ask you to settle this debt as quickly as possible as I urgently require the money. [...] I would ask you to treat my comments with the seriousness they deserve. If I am unable to settle the Flechtheim matter on the quiet, bankruptcy will be unavoidable. The liquidator would undoubtedly be ruthless in collecting the claims there. [...] Please do not object by saying that the gallery still has art of yours on commission basis. As you know, this art is currently absolutely unsellable. I need to have cash from you at all costs.”]

There is no reply from George Grosz or further letters from Alfred E. Schulte. The parties agree that no payment was made as a result of this letter from Grosz. However, the claimants are of the opinion that the debts did not exist or did not exist in this amount; they say that Alfred Flechtheim, for his part, sold goods on commission by Grosz and failed to pay out the margin to which Grosz had been entitled. In support of this claim, they present a letter from Grosz to Flechtheim dated 24 May 1932. In it, Grosz rejects any new contractual commitment, as had apparently been proposed by Flechtheim, stating at the end: “N[ota]B[ene]: ich hätte überhaupt sehr gern unsere ganze Sache einmal richtig klargestellt.” [“N[ota]B[ene]: I would very much like to get the whole matter between us settled once and for all.”] The claimants regard this as proof that Grosz had no debts to Flechtheim. The Advisory Commission cannot concur. Grosz’s desire to settle “unsere Sache” [“the whole matter between us”] does not allow the conclusion to be drawn that Flechtheim had, conversely, failed to make outstanding payments to Grosz. In addition, a meeting took place between Grosz and Galerie Alfred Flechtheim GmbH in November 1932, the results of which Curt Valentin summarised in detail in a letter. According to this, Grosz was to pay back the balance due – amounting to 16,565.00 Reichsmark after offsetting all claims and obligations on both sides – half in watercolours and half in cash, which was to be done by sending five watercolours from New York every two months from 1 January 1933 onwards, calculated at 200.00 Reichsmarks each; Grosz was also supposed to transfer 500.00 Reichsmark every two months. The documents submitted in the course of the proceedings thus provide a consistent overall picture of Grosz’s high burden of debt to the company and/or Flechtheim personally.

By the end of March 1934, Alfred E. Schulte had reached an agreement with the creditors and averted bankruptcy. A few weeks later, in mid-April 1934, Alfred Flechtheim sent the quoted letter to George Grosz in which Flechtheim referred to the works that had originally been in his possession on commission basis but for which now ownership had been transferred to him as security.

The Advisory Commission assumes that what occurred here was that ownership of the painting in question was transferred as security. This is more than plausible in view of Alfred E. Schulte’s efforts for the Galerie Alfred Flechtheim GmbH to arrive at an out-of-court settlement in 1934. George Grosz had not paid off his debts at this point in time. The painting under dispute, *Pompe Funèbre*, had been at Galerie Alfred Flechtheim GmbH on commission basis for years. After Schulte asked Grosz very urgently for payment, which was not forthcoming, Flechtheim wrote him the quoted letter, which contained a mention of the works, described as “als Sicherheit übereignetest” [“transferred ownership of as security”]. Whether this transfer of

ownership as security is to be understood as a transfer of property by way of security in the classic sense or in a broader sense is ultimately irrelevant. In any case, it can be assumed that Flechtheim and Grosz did not yet regard the transfer of ownership of the paintings and watercolours as resulting in settlement of the accumulated debts. Rather, in accordance with common business practice, it can be assumed that there was a security agreement, so that the proceeds from the paintings were to be offset against the debt; any excess proceeds would therefore have had to be paid to Grosz, while any shortfall would have meant the debt subsisted in the remaining amount.

The claimants deny that the “Oelbilder” [“oil pictures”] mentioned in Alfred Flechtheim’s letter of which ownership had been transferred as security also included the painting *Pompe Funèbre*. But from the wording of the letter (“Noch schwerer als mit den Aquarellen, ist es mit den Oelbildern, die du mir gleichfalls als Sicherheit übereignetest. [...] Jetzt habe ich sie bei Billiet deponiert. Anbei dessen Liste und Preise.” [“It is even more difficult with the oil pictures of which you also transferred ownership to me as security than with the watercolours. [...] Now I’ve deposited them with Billiet. I enclose his list and prices.”]) in conjunction with the Galerie Billiet / Pierre Vorms depot list, which includes *Pompe Funèbre*, it is clear that the works that Flechtheim had handed over to Galerie Billiet included the set of which ownership had been transferred.

Another point to be taken into account is that if George Grosz had not agreed to the transfer of ownership, he could and should have objected to it. In addition, the Mak van Waay auction house described the Grosz works at its auction catalogue as being (part of the) Alfred Flechtheim estate from Berlin. Finally, if Grosz considered himself to be the owner of the works previously delivered to Flechtheim, the obvious step for him to have taken when Flechtheim died in 1937, if not before, would be to look into the question of their whereabouts. The fact that he did not do so can be regarded as further evidence of a transfer of ownership of the work in dispute.

The Advisory Commission does not agree with the claimants’ view that a letter from the lawyer of the heirs of Alfred Flechtheim written in 2009 suggests that George Grosz remained the owner of the painting, because in this letter the heirs of Flechtheim do not assert any claims to the work. The letter does not allow any conclusions to be drawn as to the ownership of the work – especially since the lawyer was representing the heirs of both Flechtheim and Grosz at the time.

Freie Hansestadt Bremen is of the opinion that the fact that George Grosz did not list the works in his compensation proceedings in the 1950s also indicates a transfer of ownership as security. From the point of view of the Advisory Commission, the fact that there is no list of Grosz’s works lost during the National Socialist era does not allow

any reliable conclusions to be drawn as to the way in which Grosz lost ownership of his property.

Freie Hansestadt Bremen also believes that a transfer of ownership as security can be assumed to have taken place before the National Socialists came to power, in other words before 30 January 1933. It probably makes this assumption based on the fact that George Grosz already had such high debts before his emigration to the USA in January 1933 that a transfer of ownership as security would have been the obvious course of action. In view of the agreement drawn up in November 1932, shortly before the National Socialist seizure of power, between Grosz and Galerie Alfred Flechtheim GmbH, represented by Curt Valentin, on how Grosz was to gradually reduce his debts in the future – without any reference of the works in commission being converted into property serving as security – the assumption of a transfer of ownership as security is not obvious at this point in time.

For these reasons, it can be concluded that by no later than 15 April 1934, ownership of the painting *Pompe Funèbre* was transferred to Galerie Alfred Flechtheim GmbH or to Flechtheim personally.

bb) In the opinion of the Advisory Commission, the transfer effected by George Grosz does not constitute a case of seizure as a result of Nazi persecution.

According to the *Guidelines*, a special statutory presumption applies to those persecuted under the Nazi regime, including George Grosz. This states that the loss of an item of cultural property resulting from a legal transaction which took place within the National Socialists' sphere of control during the period of persecution should be generally considered as cases of unjustified confiscation as a result of Nazi persecution (*Guidelines*, p. 33f.). Even though neither Grosz, Alfred Flechtheim or the work in question were in the Nazi sphere of control at the time of the transfer, as is the case here, this does not necessarily preclude application of the *Guidelines*. However, it is then up to the claimants to demonstrate and prove a causal link between persecution and loss of the asset. Evidence to this effect is lacking here. By 1928 at the latest, Grosz already owed Galerie Alfred Flechtheim GmbH approximately 16,200.00 Reichsmark. He did not pay off these debts before the seizure of power on 30 January 1933, nor did he do so in the years that followed. At various sales exhibitions organised by Flechtheim in different countries, Grosz's works were difficult to sell. Grosz was in the USA from mid-January 1933 onwards. He had a teaching position there and seems to have subsequently established himself economically to such an extent that he was able to move into a house on Long Island with his family and open an art school together with the artist Maurice Sterne and

with the participation of I. B. Neumann. There is no evidence that Grosz was destitute and that he failed to make payments on his debt to Flechtheim for this reason. What is more, there is no indication that he would have settled or started to settle his debts after the transfer of ownership as security. The transfer of ownership of the painting can therefore only be regarded as a consequence of the debt he had owed Flechtheim since at least 1928 – and not as being the result of Grosz’s political persecution.

cc) Even if the claimants’ view were correct and a transfer of ownership of *Pompe Funèbre* to Alfred Flechtheim or his company had not taken place, George Grosz’s loss of ownership of the work would not have been the result of Nazi persecution. In this case, loss of ownership of the work would have been the result of the submission of *Pompe Funèbre* into the auction held on 1 and 2 February 1938 at Mak van Waay in Amsterdam and the acquisition of the painting at that auction by a buyer named Slijper.

It is undisputed that the work was in Amsterdam from no later than October 1937. Carel van Lier consigned it together with other works by George Grosz to the Mak van Waay auction house. The latter integrated this set of works as *Nalatenschap Alfred Flechtheim te Berlijn (gedeeltelijk) Werken van G. Grosz* [(Part of the) Alfred Flechtheim estate from Berlin. Works by G. Grosz] in the auction *Moderne en oude Schilderijen Aquarellen Teekeningen* [Modern and old Paintings Watercolours Drawings], which took place on 1 and 2 February 1938. The works by Grosz from the (partial) Flechtheim estate were offered in lot 275 to 336; *Pompe Funèbre* was acquired by the buyer Slijper as lot 293. The auction house’s annotations in the catalogue indicate that he paid 11.00 Dutch guilders [15.07 Reichsmark] for this painting together with the two subsequent catalogue numbers, lot 294 *Frau im Mantel auf Diwan* [Women in coat on a divan] (1928) and lot 295 *Stilleben mit Spielzeugenten, Fächer etc.* [Still life with toy ducks, fan etc.] (1930). This transfer of ownership took place even if – as the claimants argue – van Lier handed over the works without being authorised to do so. This is because ownership was transferred to the purchaser, regardless of whether the consignor was authorised in his actions or not – in particular since van Lier was not acting under the influence of the Nazi regime in Netherlands, which was not yet occupied.

The transfer of ownership in connection with the auction does not constitute a seizure as a result of Nazi persecution. When assessing the transfer of ownership, it is not the rules for legal transactions that apply but those pertaining to the sustaining of a loss “in sonstiger Weise” [“in any other form”]. This is because although the loss of ownership of the work was the result of a legal transaction, it was not one in which George Grosz was involved. The consignor to the Mak van Waay auction house was the

Amsterdam art dealer Carel van Lier – on whoever’s behalf he may have been acting. The loss of an object “in any other form” is only deemed to be a result of Nazi persecution if it was causally caused by the persecution measures imposed by the National Socialists. The burden of proof in this case lies with the claimant. In addition, the loss of ownership at the auction took place before the occupation of the Netherlands by the National Socialists, i.e. outside the Nazi sphere of control. Even though cases are conceivable in which a transfer of assets outside the Nazi sphere of control could also be causally linked to persecution by the Nazi regime, in the view of the Advisory Commission there is no causal link between Grosz’s persecution on the one hand and the consignment for auction by van Lier and the subsequent auction on the other

The claimants maintain that the consignment and the auction took place without either Alfred Flechtheim’s estate administration or George Grosz having knowledge of it or being in favour of it, and with the fraudulent intention of enriching Carel van Lier, who they claim to have been the main beneficiary of the auction. This is said by the claimants to have been an exploitation of Grosz’s situation as a persecuted individual and was consequently the cause of the loss. Such an interpretation is not supported by the sources that are available.

George Grosz met Carel van Lier in person in the Netherlands in the summer of 1935 on a trip to Europe that lasted several months. A year later, in July 1936, Kunstzaal van Lier in Amsterdam organised an exhibition of 25 works by Grosz. Grosz was informed of this exhibition by Herbert Fiedler (1891–1962), who sent him a newspaper article about it. As such, it would be far-fetched to assume that Grosz was unaware of the whereabouts of his works or that selling them would have been contrary to his interests. Nor do the available sources support the idea that Alfred Flechtheim’s heir was deceived, which could have been detrimental to Grosz as a consequence. The law firm Oppenheimer, Nathan & Vandyk is known to have represented the Flechtheim estate from 1937 onwards. There is no indication that it failed to fulfil its obligations in this regard. Indeed, it was able to fulfil these obligations because it knew where *Pompe Funèbre* was located at the time of the auction. This is documented in a letter from Charlotte Weidler to Paul Westheim written in October 1937. The letter clearly conveys that after Flechtheim’s death, the estate administration first had to obtain an overall picture of the estate. It also shows unambiguously that the law firm was aware in October 1937 – i.e. before the disputed work was consigned to the auction – that *Pompe Funèbre* was in the Netherlands: “Mit Betty F. sprach ich wegen ‘Pompe Funèbre’. D. h. ich habe es schon ein paar Mal getan. Man wusste nur nicht, wo die Bilder hingekommen waren. Sie sagte mir, Du möchtest nach London schreiben. An die Adresse Messrs. Herbert Oppenheimer, Nathan,



van Dyck & Mackay, London [...] 152, Finsbury Square. Das Bild ist mit vielen anderen von George G [unleserlich] Holland und man ist glücklich eins loszuwerden. Man sucht Abnehmer für den dortigen Bestand, den niemand haben will.” [“I spoke to Betty F. about ‘Pompe Funèbre’. I.e., I’ve already done so a few times. They just didn’t know where the pictures had ended up. She told me you should write to London. To the address of Messrs. Herbert Oppenheimer, Nathan, van Dyck & Mackay, London [...] 152, Finsbury Square. The picture is with a lot of others by George G [illegible] Holland and they’d be happy to get rid of one of them. They’re looking for buyers for the set there that no one wants.”]

The set of works consigned to the auction were described in the auction catalogue as belonging to the (partial) estate of Alfred Flechtheim from Berlin. The Flechtheim estate was also explicitly mentioned in an auction announcement and a review in *De Telegraaf* of 28 January 1938 and in the *Algemeen Handelsblad* of 29 January 1938. It is not apparent that the auction house would have made these announcements and specified that the works belonged to a (partial) estate without consulting Flechtheim’s estate administration. Moreover, according to the documents available, Carel van Lier was not the main beneficiary of the auction. He acquired only five paintings and three drawings from a total of over 70 works by George Grosz from the (partial) estate of Alfred Flechtheim. The work *Pompe Funèbre* was not acquired by van Lier, but by a buyer named Slijper. In the view of the Advisory Commission, there is therefore no reliable evidence that van Lier consigned the work without being authorised to do so by Flechtheim’s estate administration. In addition, the auction *Moderne en oude Schilderijen Aquarellen Teekeningen* [Modern and old Paintings Watercolours Drawings], at which the (partial) estate of Alfred Flechtheim was offered, was not a sham auction. The fact that the works were offered in the catalogue without minimum prices can be interpreted as a customary sales tactic aimed at generating more bidders. The auction was advertised in Dutch daily newspapers and was therefore accessible to all interested parties.

dd) Taking all the circumstances into account, the Advisory Commission therefore comes to the recommendation not to reconstitute the painting *Pompe Funèbre* by George Grosz to the heirs of George Grosz.

b) *Stilleben mit Okarina, Fisch und Muschel*

In the opinion of the Advisory Commission, the painting *Stilleben mit Okarina, Fisch und Muschel* by George Grosz should likewise not be restituted as cultural property seized as a result of Nazi persecution. The evidence presented does not support the assumption that the still life was in France from 1933 onwards and that Grosz

remained its owner. However, even if the “Ocarina” that appeared on the Galerie Billiet / Pierre Vorms depot list dated April 1934 were in fact the painting *Stilleben mit Okarina, Fisch und Muschel*, it does not follow that George Grosz lost ownership of his work as a result of Nazi persecution.

aa) According to the *Guidelines* (p. 33), the relevant period for assessing whether a case constitutes seizure due to Nazi persecution is 30 January 1933 to 8 May 1945. For this reason, the question is significant as to whether the disputed work was owned by George Grosz during the period of persecution, and also, if this were the case, whether the loss of ownership occurred during this period. Here, the burden of proof lies with the claimant. The Advisory Commission is convinced that the evidence to this effect has not been provided.

George Grosz created the painting in 1931. In September of the same year, he delivered it to his gallery owner Alfred Flechtheim for sale on commission basis. The latter exhibited it from 23 April to 6 May 1932 at an exhibition entitled *George Grosz* at the Palais des Beaux Arts in Brussels under the title “Ocarina, poisson et moules – 1931” [“Ocarina, fish and mussels – 1931”]. It is up to the claimants to prove that despite abandoning possession of the work by delivering it to Flechtheim, Grosz still retained ownership of it on 30 January 1933, and therefore during the relevant period. Number 4 of the Washington Principles does take account of the fact that gaps in provenance are unavoidable after such a long period of time and should not be assessed to the detriment of victims. This idea is also taken up by the *Guidelines*, not least in the explicit admission of prima facie evidence. However, this presupposes that there are “undisputed/proven facts and historical information indicating that a certain course of events was typical in such cases.” (*Guidelines*, p. 34) Since Grosz had delivered the work for sale, this is not a case where the typical course of events would have resulted in Grosz retaining ownership.

What is more, it was not proven that the painting *Stilleben mit Okarina, Fisch und Muschel* belonged to the group of works that Alfred Flechtheim sent to Paris. On the reverse of the painting there is – indisputably – an undated French customs stamp. Furthermore, a work entitled “Ocarina” appears on the Galerie Billiet / Pierre Vorms depot list dated April 1934 which was enclosed with Alfred Flechtheim’s letter to George Grosz dated 15 April 1934. Freie Hansestadt Bremen assumes that this was a different work with the same motif: the argument here is that Grosz used the flute motif in several of his paintings, so the title “Ocarina” is not sufficient to establish the identity of the work in question. Furthermore, according to Freie Hansestadt Bremen, the price of 600.00 francs [98.88 Reichsmark] quoted for “Ocarina” on the depot list is very low, indicating

that it was probably a watercolour and not an oil painting. This reasoning behind the assessment of the price is consistent with Flechtheim's letter of 15 April 1934, in which he states that he intends to charge a gross price of "approx. 100 M" for watercolours. However, another letter from Flechtheim to Pierre Matisse dated 22 November 1936 indicates that Flechtheim assumed a price range starting from 5.00 pounds [61.75 Reichsmark] for paintings by Grosz, while also quoting a price of 5.00 pounds [61.75 Reichsmark] for watercolours. This indicates that the lower end of the price range for paintings was the same as the price for watercolours, thereby weakening the argument that the price of only 600.00 francs [98.88 Reichsmark] would suggest a watercolour. From the point of view of the Advisory Commission, the price indicated on the Galerie Billiet / Pierre Vorms depot list of April 1934 therefore does not allow any conclusions to be drawn as to whether the work listed is a watercolour or a painting. Yet, the undated French customs stamp on the back of the work and the inclusion of "Ocarina" in the depot list are not sufficient to assume that the work in question was located in France from 1933 onwards.

Even if the painting *Stilleben mit Okarina, Fisch und Muschel* had been deposited by Alfred Flechtheim at Galerie Billiet in 1934, as asserted by the claimants, this would not constitute seizure as a result of Nazi persecution. If this were the case, this painting too, like *Pompe Funèbre*, would have been among the works of which ownership was transferred to Flechtheim. The letter from Flechtheim to George Grosz dated 15 April 1934 with the enclosed Galerie Billiet / Pierre Vorms depot list (which includes a work entitled "Ocarina") refers to works of which Grosz had transferred ownership to Flechtheim as security. For these works, as already explained in detail above, there is no causal link between the persecution of Grosz and the transfer of ownership of the work as security. The reason for this transfer of ownership was Grosz's debt to Flechtheim, which had been ongoing from no later than 1928 onwards, and not his situation as a persecuted individual.

bb) Even taking the claimants' assertion to be true that *Stilleben mit Okarina, Fisch und Muschel* is the work that appears on the Galerie Billiet / Pierre Vorms depot list of 1934 and the work was still on commission basis at the time, i.e. it was still owned by George Grosz in 1934, there is no evidence that he lost ownership of it prior to 1945, and thus potentially as a result of Nazi persecution. The burden of proof of loss of ownership during the period of persecution lies with the claimant. Yet it is undisputed that the work was not included in the Carel van Lier exhibition in Amsterdam in 1936 or in the Mak van Waay auction in Amsterdam in 1938 at which *Pompe Funèbre* was sold. Whether or not

the work ever found its way to Amsterdam is irrelevant. The claimants argue that the fact the still life was located in Amsterdam can be concluded from a letter written by Leo Lionni to Grosz's son, Peter Grosz, dated 20 January 1981. In this letter, Leo Lionni tells of a purchase made by his father, Louis Lionni, in Amsterdam after the war: "Many years ago, soon after the war, my father [illegible] bought in Amsterdam 4 paintings by your father: 2 watercolors ('On the Beach' and 'Still-life with Ocarina') and two large oils 'Selfportrait with model' and 'Promenade'."

However, there is no evidence as to who Louis Lionni acquired the still life from in Amsterdam and when exactly this occurred. The claimants assume that Lionni acquired it in the Netherlands as early as 1939, i.e. not after the war as described in the letter, but they are unable to substantiate this. This is contradicted by Leo Lionni's recollection of the purchase having taken place after the war. What is more, it is unclear whether Lionni might have been mistaken in his description of his father's purchase, and that the "Still-life with Ocarina" might have been a watercolour or perhaps an oil painting after all. The only certainty is that the disputed work was offered by Leo Lionni to the Museum of Modern Art in New York for a charity auction in 1960. As such, there is a gap regarding the whereabouts of the work either from 1932, when it was exhibited by Alfred Flechtheim in Brussels and possibly sold, or from 1934, when it was possibly located at Galerie Billiet in Paris, until 1960, when it was offered to the Museum of Modern Art by Lionni.

cc) Taking all the circumstances into account, the Advisory Commission therefore comes to the recommendation not to restitute the painting *Stilleben mit Okarina, Fisch und Muschel* by George Grosz to the heirs of George Grosz.

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. Eva Lohse and Dr. Gary Smith.

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

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