

Expert Opinion

Commissioned by:

Anita Halpin, daughter and sole heir of Hans Hess, granddaughter of Alfred Hess.

Represented by:

Law Offices Rowland & Associates, New York, USA and Schink and Studzinski, attorneys, Berlin, Germany.

Prepared by:

Gunnar Schnabel, attorney, Dr. Monika Tatzkow, Scientific Documentation Services for Issues involving Lost Assets, both based in Berlin.

Scope of commission:

Dr. Monika Tatzkow, a historian, and Gunnar Schnabel, attorney, were commissioned **“to investigate the historic and legal bases for the restitution by the State of Berlin of the painting “Berliner Strassenszene [Berlin Street Scene]” by Ernst Ludwig Kirchner.**

Preliminary remarks by the experts:

We, Dr. Monika Tatzkow and attorney Gunnar Schnabel, the experts rendering an opinion, were commissioned to undertake the aforementioned assignment for an expert opinion at the end of March 2007. The opinion is based on sources accessible by the public and/or published documents. All references to sources are identified. They are enclosed as attachments.

Only documented facts were applied. **Alleged** facts drawn from other expert opinions, positions taken by third parties (especially media releases) were taken into consideration only if these **alleged** facts could be documented.

The experts had unrestricted access to the files of the petitioner, were not constrained to evaluate the information for this opinion in any way and were authorized to make the information available as attachments to this document.

Independently and without instructions, the experts evaluated their own research of primary sources and launched further investigations into the historical context of the facts in the case.

The experts confirm that they arrived at their expert opinion exclusively on the **basis of facts**, independently and without outside instructions.

The legal opinion (part 2 of the expert opinion) was prepared by the expert attorney Gunnar Schnabel exclusively on the basis of the proven historical facts reported in part 1 of the expert opinion.

Table of Contents

	Page
Chapter 1 Economic Development of the Hess Shoe Factories and the Other Assets of the Alfred Hess Estate.	5
I. Summary of the Following Findings of Facts	5
II. M.u.L. Hess Schuhfabrik AG, Erfurt	6
III. Establishment of the Schuhfabrik Hess AG	8
IV. Economic Development of Grundstücks AG - Shareholder of the Newly-Founded Schuhfabrik Hess AG	9
V. Other Assets in the Estate of Alfred Hess	9
VI. Real Estate Assets of Alfred/Hans Hess Ascertained So Far	10
a) Unimproved Lot on Radowitzstrasse 25 in Erfurt	10
b) Meadow in Bad Berka	11
VII. Summary - Findings	11
Chapter 2 Hans Hess' Personal and Economic Situation in the Period from 1929 to 1947.	13
I. Summary of the Following Findings of Fact	13
II. Life of Hans Hess until January 30, 1933	13
III. Life of Hans Hess from 1933 to 1945	14
IV. His Life in Post-War Europe	16
Chapter 3 Findings Regarding the Fate of the Alfred Hess Art Collection, Including the Kirchner Painting "Berlin Street Scene" from 1913.	17
I. Situation Before the Nazis Came to Power	17
II. Situation in 1933 Following the Nazi Takeover	19
III. Situation in 1934	22
IV. Situation in 1935/36	24
V. Situation in 1937	39
VI. Situation in 1938 and Thereafter	32
VII. Further Provenance of the Kirchner Painting "Berlin Street Scene"	35
Chapter 4 Safekeeping of the Hess Collection in Switzerland for a Limited Time Period.	36
I. Preliminary Remarks	36
II. Summary of Highlights of the Following Determination of Facts	36
III. Final Importation - Import Prohibition	37
IV. Time Restrictions on Imports for Exhibition Purposes	37
V. Treatment Transferred Artwork from the German Reich to Destinations Abroad	39

Chapter 5	Reconstruction of the Acquisition of the "Berlin Street Scene" Based on Published Original Correspondence.	40
I.	Basic Facts	41
II.	Summarized Determinations - Findings from the Original Correspondence	41
III.	Events since 1934 in Chronological Order	44
Chapter 6	Post-War Reparations Law and its Application to the Hess Case.	50
I.	Summary of Following Findings of Facts	50
II.	Primary Reparations Law - Allied Restitution Regulations	50
III.	Secondary Reparations Law	51
IV.	Conclusions	55
Chapter 7	Legal Analysis Regarding the Return of "Berlin Street Scene".	57
I.	Claims Under Civil Law	57
	1. Acquisition of the Painting by Hagemann	57
	2. Summary and Result	58
	3. Subsequent Ownership Transfers	58
II.	Restitution Claims under Public Law	58
	1. Allied Restitution Law	58
	2. Federal Restitution Act	59
	3. Monetary Compensation Under the Compensation Act	59
III.	Claims under the Washington Principles and the Joint Declaration	60
	1. Washington Conference of December 1998	60
	2. Supplementary National Provisions and Declarations	60
	3. Implementation of the Washington Principles in the Prussian Cultural Heritage Foundation Council Resolution of June 4, 1999	62
	4. Joint Declaration of December 14, 1999	63
	5. Review of the Loss of Assets Pertaining to the "Berlin Street Scene" on the Basis of the Allied Restitution Order of July 26, 1949	63
	a) Legal Presumption of Persecution by the NS-Regime	63

b)	Legal Presumption of Loss of Assets Due to Persecution	63
c)	Lesser Burden of Refutation of the Presumption of Asset Loss Due to Persecution	64
d)	Stricter Burden of Refutation of the Presumption of Asset Loss Due to Persecution	65
e)	Procedural Requirements	66
6.	The Compensation Settlement of 1961 Does Not Preclude the Painting's Return	67
7.	No Need to Reimburse the 1980 Purchase Price	68
Chapter 8	Conclusion.	70
I.	Summary of Factual Determinations	70
II.	Legal Findings	72

Chapter 1

Economic Development of the Hess Shoe Factories and Other Assets of the Alfred Hess Estate.

I.

Summary of the Following Findings of Facts.

- Until **September 30, 1930** the “M. und L. Hess Schuhfabrik AG” operated on a sound economic basis. Assets increased from year to year. Until then, yearly net earnings totaled RM 400,000.
- Payment difficulties arising out of corporate liabilities were reported for the first time on **April 13, 1933** and led to a court filing for temporary relief from creditors.
- Only a month later, **May 19, 1933**, the temporary relief proceeding was withdrawn.
- Following the death of Alfred Hess on December 24, 1931 the liabilities arising out of the estate were settled by the sole heir, Hans Hess, including liabilities owed to the deceased brother of Alfred Hess by conveying the Villa Hess, at Richard-Breslau Strasse 14 in Erfurt, Germany to him. The settlement of other estate liabilities by Hans Hess was largely concluded by **September 17, 1932**.
- Schuhfabrik Hess AG, a shoe manufacturer, newly-established on **November 24, 1933** as well as M. und L. Hess Schuhfabrik, which had ceased to do business on that date but continued operations as Grundstücksaktiengesellschaft Moltkestrasse AG, a stock corporation engaged in real estate, were able to settle all earlier liabilities to third parties using existing corporate assets and operated as economically-sound enterprises into 1937, the time when their businesses were “aryanized” by the Nazis.
- Having **fled** to Paris in **June 1933** Hans Hess no longer had any possibility to control or utilize assets he inherited from his father Alfred Hess, especially the stockholdings in M. und L. Hess Schuhfabrik or as stockholder in the newly-established Schuhfabrik Hess AG, for instance, by selling shares and/or collecting dividends. The same applies to the co-ownership by Hans Hess of at least two properties located in Erfurt and Bad Berka. He could not control or utilize them.

II.

M. u. L. Hess Schuhfabrik AG, Erfurt
(hereafter referred to as M. u. L. Hess Schuhfabrik).

The **15th Annual Report**, issued by the M. und L. Hess Schuhfabrik on January 27, 1928 states that following the difficult crisis experienced in Spring 1926 shoe industry business had improved and that the company was again able to match 1925 sales volume. The company posted total assets of RM 9,681,344.23 and earnings of RM 712,679.38.

In this fiscal year Alfred Hess owned 1,252 shares and a further 1,000 shares through a Dutch company. Altogether, the company had 3,698 shares outstanding. In fiscal 1927 his uncle Georg Hess retired from the Board of Directors after 40 years of service to the company. He was elected to the Supervisory Board and moved to his retirement home in Berlin-Grunewald. Concurrently with his retirement, Georg Hess, who had been a partner until then, sold 500 shares of the company to his nephew Alfred Hess for Gold Marks 120,000 Gold Marks (GM). This indebtedness was secured by a security mortgage in this amount placed on Alfred Hess' private property at Richard-Breslau Strasse 14 in Erfurt.

Evidence: 15th Annual Report of the M. u. L. Hess Schuhfabrik of January 28, 1928 covering the period from October 1, 1926 to September 30, 1927.

The **16th Annual Report**, published on February 16, 1929 notes a sharp economic decline beginning in February 1928. Nevertheless the company is able to boost total assets to RM 11,437,542.60, post net earnings of RM 554,547.31 and pay out an 8 % dividend for fiscal 1927/28.

Evidence: 16th Annual Report published on February 16, 1929 covering the period from October 1, 1927 to September 30, 1928.

The **17th Annual Report**, published on February 21, 1930, mentions the 50th anniversary of the company and singles out fiscal 1928/29 as a real crisis year due to the slide of business since early 1928, having reached its deepest point in the Spring of 1929. Yet total assets still amounted to RM 11,317,768.55, with earnings of RM 303,397.62.

Evidence: 17th Annual Report published on February 21, 1929, covering the period from October 1, 1928 to September 30, 1929.

The **18th Annual Report** for the fiscal year ending September 30, 1930 takes note of the crisis in the shoe business necessitating a change in the sales organization. Yet, at RM 12,364,660.28, assets were again higher; net earnings were RM 397,597.24.

Evidence: 18th Annual Report published on December 8, 1930 for the period from October 1, 1929 to September 30, 1930.

The **19th Annual Report** comments on the dire effects of the Great Depression. The substantial volume of bad debts caused considerable losses for the company, their first loss in its 50-year history. Nevertheless the indebtedness to banks was reduced by about RM 600,000 to about RM 2,200,000. Liabilities to third parties were lowered by about RM 800,000 to RM 1,300,000. The Annual Report issued on May 14, 1932 then notes the sad loss of the company's long-term member of its Board of Directors, Alfred Hess. He died suddenly on December 24, 1931. Total assets still came to RM 8,713,751,60.

Evidence: 19th Annual Report published on May 14, 1932 for the period from October 1, 1930 to September 30, 1931.

The subsequent 20th Annual Report for the fiscal period of October 1, 1931 to September 30, 1932 is not available.

Proceedings for temporary relief from creditors were initiated on **April 13, 1933** as a consequence of further deterioration of business conditions due to the worldwide economic crisis.

Evidence: File No. 16 N.38/33 of the Municipal Court in Erfurt.

In the minutes of the March 29, 1933 meeting of the Board of Directors it is recorded that the 09/30/1932 balance sheet shows a loss of RM 413,744.12 and that corporate assets amount to only RM 836,255.88

Evidence: Attachment 2 to the notarized minutes of the Board of Directors meeting on September 30, 1932 issued on March 29, 1933.

The creditor protection proceeding initiated on April 13, 1933 was terminated as a result of the ruling by the Erfurt Municipal Court on May 19, 1933, (thus only one month after the filing).

Evidence: Ruling of the Erfurt Municipal Court of May 19, 1933.

M. u. L. Hess Schuhfabrik continued under a different name, Grundstuecksgesellschaft Moltkestrasse AG, a stock corporation engaged in real estate property. It ceased its operations as a shoe factory on October 1, 1933. Grundstuecksgesellschaft Moltkestrasse AG was liquidated in 1939 and deleted from the Commercial Register.

Evidence: Earlier commercial register documents of M. u. L. Hess Schuhfabrik; findings in the German Federal Administrative Court decision dated April 28, 2004 - 8C 12.03 in ZOV 2004, 192 - and decision of the Gera Administrative Court of August 8, 2002 – 5 K 1136/97 GE, not published.

III.**Establishment of the Schuhfabrik Hess Aktiengesellschaft**
(hereinafter called Schuhfabrik Hess AG).

The Schuhfabrik Hess Aktiengesellschaft was founded on the basis of a partnership agreement notarized on November 24, 1933. All assets of M. u. L. Schuhfabrik were transferred as contributions in kind to the newly-established Schuhfabrik Hess AG. It was agreed that as of October 1, 1933 only the newly-established Schuhfabrik Hess AG would continue the business of the M. u. L. Hess Schuhfabrik. The contribution in kind totaled RM 449,600. In exchange, M. u. L. Hess Schuhfabrik received shares at a nominal value of RM 449,600. The capital stock of the newly-founded Schuhfabrik Hess AG amounted to RM 450,000 which meant that the contribution of in kind, totaling RM 449,600, by the former M. u. L. Hess Schuhfabrik made it the principal partner in the new Schuhfabrik Hess AG. The contributions cited in the notarized partnership agreement of November 24, 1933 indicate that the M. u. L. Hess Schuhfabrik at this time held at least some RM 450,000 in assets which it had contributed to Schuhfabrik Hess AG.

Evidence: Notarized partnership agreement of November 24, 1933 and notarized minutes of negotiations on November 24, 1933.

Walter Holtschmitt, the auditor registered by the Chamber of Commerce and Industry in Erfurt, made the following determination on November 28, 1933:

“If other creditors were still to file claims against M. u. L. Hess Schuhfabrik Aktiengesellschaft predating October 1, 1933, there are, based on documentation of the former company made available to us, still sufficient funds to cover these liabilities so that no threat is posed in this respect to the new company. We were expressly assured by the Board of Directors that the contributed raw materials and other supplies, machines, etc. were not encumbered by obligations to third parties. That appears to be plausible also because neither the new company nor the old company has any noteworthy liabilities that could be encumbered by any ownership or other rights of third parties.”

Evidence: Page 6 of the audit report by Walter Holtschmitt of November 28, 1933.

Already in the first (foreshortened) fiscal year from October 1933 to July 1934, the Annual Report observes that business was satisfactory during the first nine months. The assets totaled almost RM 800,000, net earnings were about RM 16,000.

Evidence: 1st Annual Report of October 25, 1934.

On the basis of the evaluation of subsequent Annual Reports it is shown that both assets as well as net earnings of the newly established company improved.

IV.

**Economic Development of the Grundstuecks AG
- Shareholder of the Newly-Founded Schuhfabrik Hess AG.**

To settle third-party liabilities Grundstuecks AG (the former M. u. L. Hess Schuhfabrik) subsequently sold shares worth RM 185,000 to creditors.

Evidence: Findings of the Federal Administrative Court and administrative court in Gera, in the place cited.

According to a list prepared on February 5, 1936, as a result of two capital reductions the nominal value of the capital stock of the Grundstuecks AG amounted to RM 80,000. Of this amount RM 57,420 was held by "Aryan" owners and RM 22,580 by "non-Aryans". In 1936 the state economic advisor of the NSDAP, the Nazi party, demanded clarification of the Jewish participation in the Grundstuecks AG and the Schuhfabrik Hess AG. Consequently the [Jewish] share ownership in Grundstuecks AG and the Schuhfabrik Hess AG had to be transferred to a consortium of creditors at a prescribed price amounting to 79% of the shares par value. According to the findings of the Gera administrative court and the Federal Administrative Court, this sale of the Schuhfabrik Hess AG stock by its owner, the Grundstuecksgesellschaft, represented a loss of assets due to Nazi persecution because the sale was transacted at rates below the actual price of the shares.

Evidence: Findings of the Gera administrative court and the Federal Administrative Court, in the place cited.

Until now it has not been possible to state categorically on the basis of company and commercial register records how large a share Hans Hess owned of the Grundstuecksgesellschaft at the time the Schuhfabrik Hess AG was established on November 28, 1933 (at the time, the "value" of the M. u. L. Schuhfabrik was put at about RM 450,000).

Through his stock participation in the Grundstuecksgesellschaft and through it indirectly in the Schuhfabrik Hess AG, it can be determined that Hans Hess owned a significant participation in the assets which however were not available to him since he was compelled to flee Germany in June 1933.

V.

Other Assets in the Estate of Alfred Hess.

Upon the sudden death of 52-year old Alfred Hess on December 24, 1931 the designated sole heir, Thekla Hess, widow of the deceased, waived her right to the entire estate in favor of her only son, Hans Hess. Based on settlements with creditors of the estate following the death of his father on December 24, 1931 until the conclusion of the notarized sales contract of **September 17, 1932** (concerning the villa property at Richard Breslau Strasse 14) Hans Hess was able to avert estate bankruptcy proceedings and settle Alfred Hess' estate liabilities.

Evidence: Preamble to the notarized sales agreement of September 17, 1932.

For the purpose of satisfying the registered security mortgage in favor of Georg Hess, the uncle of Alfred Hess, on the residential property at Richard Breslau Strasse 14 in Erfurt, the September 17, 1932 notarized sales contract was officially recorded and the property purchase price of RM 70,000 was used to offset the debt arising out of the registered mortgage amounting to Gold Mark (GM) 120,000, while the remaining GM 50,000 were forgiven. As a result the liability toward Georg Hess, created by the security mortgage on the property, was settled. It resulted, as explained above, from the purchase of 500 shares of the M. u. L. Hess Schuhfabrik that Alfred Hess had bought from his uncle in 1927 when he retired from the family company for reasons of age after 40 years of service.

Evidence: Same as above.

Except for a few occasional sales of artwork (see Chapter 4), the art collection of Alfred Hess, consisting of 4,000 items, had remained nearly complete by January 30, 1933. Alone the

- 58 paintings
- 1 glass painting
- 1 carpet
- 34 water colors

which had been shipped to be exhibited at the Kunsthau in Basel in October 1933, were insured for SFR 170,000.

Evidence: Letter of the Baseler Kunstverein dated June 1, 1934 addressed to Dr. Wartmann, director of the Kunsthau Zurich.

The remaining portion of the collection in Germany included

- at least 28 paintings
- watercolors
- original drawings and graphic works.

Evidence: Explanation of losses and damages suffered in an attachment to substantiate reparation claims of Hans Hess, through von Pückler, an attorney, on April 1, 1958.

VI.

Real Estate Assets of Alfred Hess / Hans Hess Ascertained So Far.

a) Unimproved Lot on Radowitzstrasse 25 in Erfurt.

Hans Hess was one-third owner of the property on Radowitzstrasse 25 in Erfurt. On January 1, 1935 its assessed value was RM 19,800 (Hans Hess' share RM 6,600). Based on a notarized sales agreement dated March 9, 1935 the property was sold for RM 15,000 by an attorney empowered to act

for the three Hess co-owners. The property was sold again for RM 21,780 in 1939. In the course of property law proceedings the AROV (Office for the Settlement of Pending Property Claims) Erfurt, in its decision of 06/19/1997, ruled on the property law claims in favor of the Jewish Claims Conference, (as legal successor to Hans Hess) and determined that the sale of the property represented a **loss of assets due to persecution** because the sale price was substantially below the property's assessed value at the time and as demonstrated by the significantly higher sales price (RM 15,000 : RM 21,780) four years later. It was not determined whether Hans Hess actually received one-third of the sales price.

Evidence: Decision of AROV Erfurt on June 19, 1997 A.

b) Meadow in Bad Berka.

Hans Hess was a registered co-owner of a meadow and agricultural property measuring 34,564 square meters. Through his inheritance from Alfred he owned one-fourth (or 5/20). For the purpose of taking the property for persecutorial reasons, the tax office in Weimar undertook an appraisal of the assets of Hans Hess. It was not completed and Hans Hess retained ownership of the registered 5/20 or one-quarter share inherited from his father Alfred Hess.

Evidence: 10/1/2002 decision by the AROV branch office in Rudolstadt. Letter of the BADV of December 8, 2006 in addition to pertinent excerpt from the Registry of Deeds. 6/14/1944 and 02/26/1946 B letters from the Weimar Tax Office.

VII.

Summary – Findings.

Alfred Hess was a major partner in M. u. L. Hess Schuhfabrik, a company largely family-owned. As a member of the Board of Directors, he was active in a managerial position. As a market leader in the German Reich the shoe factory employed several thousand workers and operated dozens of retail outlets. Based on the Annual Reports published in the period from October 1928 to September 1931 the 50-year old enterprise had assets up to RM 11 million and annual earnings up to RM 700,000. Due to the Great Depression the company suffered its first business difficulties in the October 1930/September 1931 fiscal year. As a result of persisting economic difficulties it experienced its first loss and, in order to avoid bankruptcy in April 1933 the company filed for temporary relief from creditors, a proceeding that was reversed 4 weeks later. The M. u. L. Schuhfabrik Hess AG closed its original business on October 1, 1933 and transferred its assets of about RM 450,000 to the newly-established Schuhfabrik Hess AG which continued to operate as a sound business in subsequent years. The original M. u. L. Schuhfabrik Hess AG was renamed Grundstuecksgesellschaft Moltkestrasse AG and was able to shed all its liabilities arising from the global economic crisis by selling assets as well as part of the stock in the Schuhfabrik Hess AG. The debt-free company was liquidated and its listing in the Commercial Register was deleted.

By September 1932 Hans Hess had succeeded in settling the personal liabilities of Alfred Hess (which in part may have resulted from the latter's secondary liability toward creditors of the M. u. L. Hess Schuhfabrik) as a result of payments in full and settlements. Files do not reveal any other liabilities toward third parties at this time.

The assets of M. u. L. Hess Schuhfabrik at the time of the cessation of its operations on **October 1, 1933** totaled at least about RM 449,800. This sum was transferred as a contribution in kind to the newly-founded Hess Schuhfabrik AG. Other liabilities of M. u. L. Hess Schuhfabrik, renamed Grundstuecksgesellschaft Moltkestrasse AG, were settled through sales of left-over operating assets.

Findings:

In respect to his participation in the company the assets inherited by Hans Hess from Alfred Hess were free of indebtedness by **October 1933** at the latest. At this time **corporate assets** already amounted at least to **RM 360,000**. Through his share ownership Hans Hess participated significantly indirectly in these assets.

Moreover, to the extent so far determined he was co-owner of two real estate properties in Erfurt and environs.

Moreover the **insurance/market value** of the **part of the art collection** which was in Basel in 1933 amounted to at least **SFR 170.000**.

Apparently liabilities to third parties as well as corporate and private liabilities were eliminated by **September 1932**, at the latest, upon the sale of the Richard Breslau Strasse Villa in Erfurt. As a result of the sale, the estate's liabilities were eliminated.

Chapter 2

Hans Hess' Personal and Economic Situation in the Period from 1929 to 1949.

I.

Summary of the Following Findings of Facts.

- Having been trained in advertising in the United States for several years, Hans Hess was employed at a good salary **prior to 1933**. He initially earned RM 1,500 per month.
- Since beginning his employment (with Ullstein) in October 1932 he had been able to increase his compensation from **RM 600** to **RM 800 monthly by June 1933** and, given conditions at the time, was earning an above-average salary (see average income of German blue and white collar workers in 1933).
- Hans Hess' **employment** at the Ullstein Verlag was **terminated in June 1933** for **racial** and political reasons. Hans Hess thus lost his place of work and regular income.
- Hans Hess fled to Paris from the German Reich **in June 1933** and managed to get along there by taking odd jobs until the end of 1935.
- **Since 1936** in England, then intermittently (1940-1943) interned in Canada, Hans Hess was **without a regular income**. His monthly income averaged 12 English pounds.
- Only after he was able to get regular **employment at a museum** in Leicester **in January 1944** did he earn 250 English pounds per month. His salary then continued to gradually increase, and by 1948 he was earning 1,000 English pounds per month, a sum **sufficient** to support his family and his mother, Thekla Hess, who lived with him.

II.

Life of Hans Hess until January 30, 1933.

Hans Hess, the son of Thekla Hess, nee Pauson, and Alfred Hess, was born March 28, 1908.

Evidence: Birth certificate No. 801/08 of the Civil Registrar in Erfurt, dated December 13, 1938.
In this document the religious affiliation of his parents is identified as Hebrew.

The only son of Thekla and Alfred Hess, Hans concluded several years of education in the United States before joining M. u. L. Hess Schuhfabrik AG in 1929. He was named head of advertising. His salary was RM 1,500. His annual advertising budget totaled about RM 400,000.

Evidence: Sworn testimony taken on November 17, 1957 of Josef Heilbronner, former deputy member of the board of directors of Schuhfabrik Hess AG.

Apparently due to the economic difficulties of the M. u. L. Hess Schuhfabrik AG – as of the end of 1931 – which led to decisive economic changes in the company (in 1933 a brief four-week temporary relief from creditors and settlement proceeding, followed by a capital reduction; in 1934 continuation as Grundstuecksaktiengesellschaft (real estate company) and establishment of a subsidiary, Hess Schuhfabrik AG), Hans Hess' services as the head of the advertising department were terminated by the fall of 1932, at the latest.

Hans Hess moved his residence to Berlin and was employed as of October 1932 in the so-called "Magazine Propaganda" department of Ullstein Verlag, a publisher. His starting salary was RM 600 per month, which shortly thereafter was raised to RM 700 and, upon his leaving the job in June 1933, totaled RM 800 and would have been RM 900 per month had he continued to be employed there.

Evidence: Attestation by Ullstein AG, dated January 20, 1958.

III.

Life of Hans Hess from 1933 to 1945.

Ullstein AG confirms that Hans Hess' employment was terminated by the company in June 1933 for reasons of race. A July 3, 1933 letter to the chairman of the German student group from the company's Nazi operating cell confirms that at this time the Ullstein publishing organization was systematically being "cleaned" [aryanized]. The letter states: "You may be assured that the Nazi operating cell at Ullstein, one of the largest cells in the Reich, proceeded courageously in the spirit of the Great Fuehrer. We have replaced all Jewish editors-in-chief with Christian gentlemen. In addition we have staffed the most important editor positions in such a way that at long last all enemies of the state have now been incarcerated or fired."

Evidence: Same as above, attestation by Ullstein AG on January 20, 1958; based on "The Art Policies of the Nazis" by Hildegard Brenner.

Initially Hans Hess lived in Berlin-Charlottenburg at 45 Berliner Strasse, and finally at 10 Laubenheimer Platz in Berlin-Wilmersdorf. He left that residence for an unknown destination on **October 1, 1933.**

Evidence: Note of the Tax Office in Weimar on October 12, 1943 re: "Assets accruing to the Reich, in this case Hans Hess, businessman from Charlottenburg."

When Hans Hess resided at Ms. Elisabeth Hauptmann's home on Berliner Strasse 45, shortly before or after the seizure of power by the Nazis, their home was raided and ransacked. Following the Nazi take-over, Elisabeth Hauptmann, a German writer who worked with Berthold Brecht, was one of the first to be attacked by the Nazis due to her leftist activities.

Evidence: Sworn testimony of Elisabeth Hauptmann given on September 21, 1957, submitted as No. 7 in the application letter by Count von Pueckler, attorney, on April 1, 1958.

Having contracted a cold, Hans Hess returned late to the Berlin residence following a Christmas party and his participation in the memorial service on the first anniversary of his father's death. He found the residence ransacked and empty. Elisabeth Hauptmann, his roommate, had been arrested during the raid. Neighbors told Hess that the Nazi rowdies had boasted "that they would return for the others." Hans Hess, 25 at the time, personally shocked and intimidated by these events, prepared for his emigration not later than after the publication of the "empowerment laws" and the new Reichstag (parliamentary) elections in March 1933 when the last hopes for a political change in the German Reich vanished.

Evidence: Declaration by Anita Halpin (daughter of Hans Hess) on January 14, 2004.

Based on his own statement Hans Hess emigrated from the German Reich for Paris, France, on June 11, 1933. He lived there at least until December 1935 and earned 12 English pounds (converted) monthly as a free lancer.

Evidence: BEG (Federal Compensation Act) form, dated November 23, 1959, signed by Hans Hess in his own hand. Attachment to the April 1, 1958 letter by Count von Pueckler, attorney, supporting reparation case of Hans Hess, and declaration by Anita Halpin on January 14, 2004, in the place cited.

Living in London since 1936, without a regular income, Hans Hess was a part time advertising agent, salaried employee of an official British refugee committee, etc. His monthly income was said to average 12 British pounds.

Evidence: See above. Page 2 of the attachment: "Depicting the Persecution Process".

From 1940 to 1942 Hans Hess was interned in Canada. Upon returning to England in 1943, he worked in agriculture earning 3 British pounds per week (roughly 12 pounds per month).

From January 1944 to August 1947, he was an employee of the municipal museum in Leicester. His annual income in 1944 totaled about 250 British pounds, by 1945, 300 British pounds, and as of 1947 about 1,000 British pounds.

Evidence: Letter from City of Leicester Museum and Art Gallery of November 19, 1962.

At that time Hans Hess was married, with one child (daughter Anita Hess, born 1943). Initially, his annual income did not suffice to take care of his family.

Evidence: Affidavit by Hans Hess, dated December 4, 1962, and rationale for the July 22, 1958 application for approval of an advance of DM 10,000 due to his obligations, among others, to care for his mother Thekla Hess who lived with him but had no assets

IV.

His Life in Post-War Europe.

It became possible to rent a small house only after Hans Hess was named deputy or second-ranking art director of the Gallery in the fall of 1946. He lived there modestly with his wife, daughter Anita, and his mother Thekla.

His assets left in the Soviet Occupation Zone were no longer accessible. His dire economic conditions made him dependent on "sales from (his) possessions." Since the only assets of which he was freely able to dispose were some pieces from the Alfred Hess art collection that he had managed to bring to England, he now sold some of these pieces.

Evidence: See above affidavit by Hans Hess dated December 4, 1962.

Chapter 3

Findings Regarding the Fate of the Alfred Hess Art Collection, Including the Kirchner Painting "Berlin Street Scene" from 1913.

I.

Situation Before the Nazis Came to Power.

It was only in the early nineties that the importance of Alfred Hess as collector, patron and art promoter became better known and appreciated (see Mechthild Lucke, *Alfred Hess, the Collector and Patron from Erfurt*, in *Avantgarde und Publikum*, 149 et seq. (pub. *Henrike Junge*, 1992).

The Alfred and Thekla Hess art collection was assembled in the period from 1918 to 1931. Alfred Hess purchased the works in his collection mostly from the artists themselves. In this effort Edwin Redslob and later Walter Kaesbach, directors of the Erfurt Museum, were important advisors. "They introduced him", as his son Hans Hess later wrote, "to the new art and the new artists. Together they visited the painters in their studios and exhibitions and selected artworks. During these difficult times, my father helped the artists because they needed help and he understood their art. The artists trusted him because he was attentive to their efforts and because they knew that they were being appreciated. That was how the new paintings of German Expressionism and new friends came to our house."

Evidence: Thanks in Color. From the Alfred and Thekla Hess guestbook, Munich 1957.

However, Alfred Hess also bought from art dealers, such as Justin Thannhauser whose gallery he visited in 1928 and 1930 in Berlin according to information from the Thannhauser-Archives (located in the central archive of the international art trade, known for short as ZADIK, a non-profit organization in Cologne).

It is assumed that Alfred Hess purchased the "Berlin Street Scene" painting by Ernst Ludwig Kirchner between 1919 and 1922. In 1918 the painting was still for sale at a Kirchner exhibition. At the Kirchner exhibition in Erfurt in 1922 it was shown as a loan from Alfred Hess. It is possible that Alfred Hess acquired the painting from Schames, an art dealer in Frankfurt am Main, either in 1919, 1920 or 1922.

Part of the collection (including the "Berlin Street Scene") was shown on a loan basis over many years in major museum collections of modern art, such as the Anger Museum in Erfurt, in the Kronprinzenpalais of the National Gallery in Berlin and in the Moritzburg Museum in Halle.

It is not currently known whether or which art works Alfred Hess sold by the time of his death on December 24, 1931. At this time his collection of expressionistic art included about 4,000 paintings, drawings, graphic works, sculptures, etc.

There is no document to back up assertions often made in public that Alfred Hess was selling artworks continuously beginning in 1926, but especially as of 1929, due to business difficulties caused by the Great Depression. As a matter of fact, the M. u. L. Hess Schuhfabrik AG was able to increase its assets and its annual net earnings to close to RM 400,000 by 09/30/1930 despite the crisis in the shoe industry (see also Chapter 1, II, 1, 18th Annual Report). Economic difficulties first occurred in the fiscal October 1, 1930 to September 30, 1931 year (see Chapter 1 II. 1, 19th Annual Report).

It is known that the kind of art which was in the collection of Alfred and Thekla Hess had been closely observed by the Nazis in the State of Thuringia since 1930. Wilhelm Frick, a member of the Nazi party, named Interior and Education Minister, shortly after taking office published the infamous edict: "Against Negro Culture and for German Tradition." With active protection from his cultural advisor Paul Schultze-Naumburg it led to the first attack on the modern classics in Weimar where within a few hours all avant-garde works were removed from the exhibition space of the Weimar State Museum. The action involved about seventy works of all reputable representatives of the genre, who had also been promoted by Alfred Hess and whose paintings he collected.

It was already in the twenties that major right-wing papers had been thundering against the "Jewishness of Erfurt" and cited the Hess shoe factories and their owner Alfred and Thekla Hess by name, claiming they exemplified the prevailing "Jewishness" of the German economy.

Evidence: Echo Germania No. 42/27 and 47/27, a weekly publication.

Following the sale of their villa in Erfurt to Georg Hess, an uncle, in September 1932, Thekla Hess' life was centered at the home of her family, the Pausons, in Lichtenfels, Bavaria, her birthplace. She took the works of art that had been in the villa, thus getting them out of reach of the nationalistic agitators in Thuringia. It is said that she gave two Nolde paintings to family members, as reported in the article "The Collection of Alfred Hess" by Christina Feilchenfeldt and Peter Romilly.

Evidence: "Weltkunst" [World Art], October 1, 2000, 1855 –1857.

According to records of the Berlin art dealer Justin Thannhauser, Stefan Pauson, the brother of Thekla Hess indicated on the occasion of a visit to him in early October 1932 that his sister was not well and that he, Stefan, wanted to urge her to sell some of the artworks.

Evidence: Customer files of the Gallery Thannhauser in reference to the Stefan Pauson visit on October 12, 1932.

However, no such sales took place. Other than the two cited Nolde paintings that were given to family members, there is no proof of any works of the Hess collection changing ownership during the period of difficult economic conditions (documented as of October 1930). Nor are there any indications that works from the collection were offered to art dealers at the time.

The loans to the museums from the Hess collection remained in place.

The son, Hans Hess, moved to Berlin in October 1932 to begin his job in the advertising department of the Ullstein Verlag. He sublet a room in the apartment of Elisabeth Hauptmann.

What was to happen to such an important collection?

In Lichtenfels, Thekla Hess lacked the opportunity to store it adequately. The same applied to her son, the sole heir Hans Hess, living in Berlin. If the time was suitable would they move together, perhaps to Berlin, and also keep the paintings there? Until that time both appear to have been eager to find a suitable home for the collection commensurate with its significance.

At the end of 1932 Thekla Hess asked to have works on loan to the Kronprinzenpalais sent to the Anger Museum (7 Marc and 1 Feininger paintings). The director of the Anger Museum explained the transfer on short notice to the director of the National Gallery Ludwig Justi by indicating that a "high commission" would be considering "the matter of the Hess Collection" before year-end.

Evidence: Letter of the Anger Museum Erfurt to the director of the National Gallery in Berlin.

Apparently Thekla Hess had proposed to the Kunstmuseum, the art museum in Basel, Switzerland, at the end of 1932/early 1933 to purchase the art collection either as a whole or parts thereof. The museum had no detailed knowledge of the collection and wanted to learn more.

Evidence: Minutes of the January 9, 1933 meeting of the art commission of the Kunstmuseum Basel.

Interim summary of 1932 findings: The 1932 activities and those at the end of 1933 indicate that Thekla Hess was trying to find a suitable home for the collection and that it was to be in a major museum in Germany or abroad. No paintings were sold either for reasons of space or economic difficulties.

II.

Situation in 1933 Following the Nazi Takeover.

"An iconoclasm will have to sweep German lands." Some German media had published the demand already in 1930. The "Kampfbund für Deutsche Kultur" [association fighting for German culture], led by the Nazi's chief ideologist Alfred Rosenberg, swept through German cities and in defamation campaigns slandered expressionist artists and their works. Representatives of modern art were depicted as "anti-national cultural Bolsheviks" and promoters of world revolution who had to be attacked with all means at hand.

Thekla Hess was living in Nazi Germany with her collection of expressionistic artworks, despised in Nazi Germany as degenerate art. Her son could no longer help

her in securing and maintaining the works because in June of 1933 he turned his back on Germany by fleeing to Paris, where he lived without any income.

On March 11, 1933 the weekly "Echo Germania" devoted its title page "Museum Democracy and the Hess Family" to defaming the Erfurt museum's purchase and loan policies and announced that now finally the Reich art counselor would remove Dr. Redslob and his successor in the Erfurt Museum, Walter Kaesbach, from their offices.

Evidence: Echo Germania, No. 10/33.

The discussion on the "Matter of the Hess Collection" in the Anger Museum concluded with the return of the artworks they had loaned the museum (including the "Berlin Street Scene") to the Hess family.

Evidence: Letter from the Anger Museum of August 8, 1961, including a list of the artworks loaned from the Hess collection.

In 1933, Thekla Hess, acting in concert with her son, Hans, owner of the paintings who at the time was no longer in Germany, sent the most valuable part of the collection, particularly the paintings and water colors, to the Kunsthhaus, the museum in Basel. Documents in the Basel state archives show that at least by mid-September 1933, this shipment was located in the museum's storage facilities in Basel.

Storage records show that nine boxes AH 1 to AH 9 containing at least 100 works of art reached Basel. The shipment included the "Berlin Street Scene" the 1913 painting by Ernst Ludwig Kirchner with the name "Encounter? Street in Paris."

Evidence: Two-page excerpt from the storage records of the Kunstmuseum in Basel.

Graphic works in the collection, consisting of some 1,000 sheets, several oil paintings (for instance, three by Feininger) and watercolors continued to remain in Lichtenfels.

Evidence: Letter from Thekla Hess mailed on November 30, 1933 (postmark) to Wartmann, the director of the Kunsthhaus Zurich.

Until now it is not known whether the "Modern German Paintings from Private Collections" show at the Basel Kunstmuseum in October 1933 was planned largely on the basis of this shipment or had been planned earlier. However, the exhibition project made it possible to declare the shipment of the Hess paintings to Basel from Nazi Germany as a loan and therefore was not suspected to be an illegal transfer of assets into a foreign country. Otherwise, the transaction would have been subject to severe penalties based on German tax and foreign exchange offenses.

Jews were threatened in particular because any transfer of movable assets into a foreign country was subject to intense controls. Since the Nazis seized power, tax and foreign exchange laws were used as a means of repression against them. Affected were not only emigrating Jews or those preparing such a move but also

those whose emigration or flight was merely suspected. Archival material, until now unpublished, indicates that the Minister of Finance of the Reich announced on June 9, 1933 that reports of tax evasion and the flight of capital had increased “recently”. He issued instructions “to seize all means possible against such actions.” The president of the regional finance office in Berlin, which had national jurisdiction, circulated a general order on November 14, 1933 on how to “determine those liable for taxes on assets that are secretly moved abroad and their subsequent flight there.” Tax authorities, foreign exchange and customs offices, Gestapo, and security services worked hand in hand in this endeavor.

Evidence: Orders of the state finance office of November 14, 1933 and November 6, 1935. Report to the Reich Finance Minister of February 27, 1936.

For this reason it was of highest importance that the artworks in the Hess collection were to be declared as loans for exhibition purposes so that they could be shipped freely to Basel and not be subjected to customs.

The Kunstmuseum Basel showed “Modern German Paintings from Private Collections” from October 7 to 29, 1933. The owner of the paintings was not revealed in the catalog.

Evidence: Catalog of the “Modern German Paintings from Private Collections” show in the Kunsthaus Basel, October 7-29, 1933.

Provenance research has revealed that at least 40 oil paintings and water colors as well as drawings from the Hess collection were shown, including the “Berlin Street Scene” 1913 painting by Ernst Ludwig Kirchner. It was titled “Street in Paris”.

The catalog mentioned that a number of paintings were for sale. It prompted Dr. Wilhelm Hoch, an attorney from Schopfheim, to ask the museum for prices and sellers’ addresses of the exhibition pieces listed by him. The museum answered by return mail that, with a few exceptions, the works were not for sale.

Evidence: Letter of Dr. Hoch, the attorney, to the Kunstverein Basel dated October 21, 1933 and reply from the Kunstverein dated October 24, 1933.

The exceptions, thus the paintings for sale, did not relate to the Hess collection. This leads to the conclusion that Thekla Hess was intent on having the entire collection housed adequately and securely and not interested in seizing every opportunity to sell paintings separately.

In the same vein on October 18, 1933 she wrote to Wartmann, the director of the Kunsthaus Zurich. In the meantime it had become clear to her that she would never again live under circumstances that would permit her to have all the artworks around her. She writes from the heart that the works of art should “initially stay in Switzerland.” She asks Wartmann about the possibility of a follow-up exhibition in his museum and commented – unlike she did to attorney Hoch – that she would sell one or another of the works to the respected Zurich museum.

Evidence: Letter from Thekla Hess on October 18, 1933 to Wartmann, director of the Kunsthaus Zurich.

The Basel Kunstmuseum showed no interest in taking over the Hess collection.

Evidence: Minutes of the October 23, 1933 art commission meeting of the Basel Kunstmuseum.

Interim summary of 1933 findings: Not a single painting was sold from the collection of some 4,000 artworks, even though Hans Hess received only a minimal income since July 1933 and his assets in Germany (real estate, corporate shareholdings, artworks) were not accessible. In terms of keeping the most valuable part of the collection, Thekla and Hans Hess had decided to leave it in Switzerland for the time being.

III.

Situation in 1934.

Thekla Hess was glad to learn that there would be an opportunity to exhibit parts of the collection in Switzerland at the Kunsthaus Zurich. However she made clear to Wartmann at the end of November 1933 that under no circumstance was her name to be shown in the catalog.

Evidence: Letter from Thekla Hess dated November 30, 1933 (postmark) to Wartmann, director of Kunsthaus museum in Zurich.

Preparations for the Zurich exhibition proceeded during the first half of 1934. Wartmann was not particularly happy that in May 1934 four paintings from the Hess collection were sent from Basel to Erfurt. Some were said to have been purchased by the museum, others were being considered by the museum's purchasing commission. Thekla Hess had evidently traveled to Erfurt to conclude this transaction.

Evidence: Letter from the director of the Kunsthaus Zurich dated May 29, 1934 to Thekla Hess, reply sent on June 4, 1934.

Thekla and Hans Hess continued to live on small incomes. To subsist it became inevitable to divest artworks. In keeping with their ambition, mother and son tried first to sell to a significant museum like the one in Erfurt with whom the collection had a long association.

Eleven boxes (AH 1 to 9, NG 170 and 178) were received by the Kunsthaus Zurich from the Kunstverein Basel on June 7, 1934. The shipment of 58 paintings, 14 pastels, watercolors, drawings and woodcuts as well as a tapestry and a glass painting also included the 1913 "Berlin Street Scene" painting by Ernst Ludwig Kirchner, with the identification "Street in Paris (Street in large city)".

Evidence: Undated letter received by Kunsthaus Zurich and June 7, 1934 letter from the director of the Kunsthaus Zurich to Thekla Hess, plus list dated June 4, 1934.

It appears that Thekla Hess recognized the possibility that she might have found a home for a large part of the collection in Zurich. She wrote to Wartmann that she was particularly delighted “to know that the paintings are in your fine museum.

Evidence: Letter from Thekla Hess dated May 28, 1934 to Wartmann, the director of the Kunsthaus Zurich.

For these reasons the Kunsthaus Zurich also received shipments of five watercolors by Rohlf's which had been left with a private party (Dr. A. Calfisch) and another shipment from Paris containing what Thekla Hess considered the most beautiful of Rohlf's watercolors, sent by her son who had emigrated there. Thekla Hess also wished that the seven Lehmbrock works that had remained in Basel should also be sent to the Kunsthaus Zurich as their final home.

In regard to sales of artworks then located in Zurich, Thekla Hess wrote to Wartmann: “Of course I would like to sell one or the other painting to a museum or private party. I would especially appreciate if your beautiful Kunsthaus would acquire some_” She would be amenable to talk about a good price in the event of serious interest. She asked Wartmann for the “names of several good and very dependable art dealers in Zurich, Lucerne or Bern with whom one could maintain a trusting relationship.” Particularly, she no longer wished to keep the large paintings by Heinrich Naue, because “never again will I have rooms large enough to accommodate them.”

Evidence: Thekla Hess letters dated June 4 and 16, 1934 to Wartmann, director of the Kunsthaus Zurich.

From June 21 to July 15, 1934 the Kunsthaus Zurich staged the showing of “New German Paintings”. Thirty-five oil paintings and 10 watercolors of the altogether 139 works exhibited came from the Hess collection. Item no. 71 was Kirchner's “Berlin Street Scene” 1913, presented under the title “Big City Street, Paris”. The “Zürcher Post”, a publication, reported on the exhibition on June 30, 1934, including the cited picture by Kirchner: “A typical example is his “Big City Street” featuring cavorting men and women with extended longish figures. It represents virtuosity in painting which perhaps is not free of amazing effects. Remarkable, like a marionette, is the man with the cigarette. You cannot tell whether he is coming or going.”

Evidence: Catalog of the “New German Paintings” exhibition at the Kunsthaus Zurich from June 21 to July 15, 1934. Newspaper report on the exhibition, dated June 30, 1934.

The fact that the “Big City Street, Paris” and “Berlin Street Scene” 1913 is the same painting is therefore clear.

The exhibition catalog shows prices for most of the pictures – including for all from the Hess collection, including SFR 2,500 for “Big City Street, Paris”. The impression is created that all Hess works were for sale. Thekla Hess herself had set the prices

(cf. document 09/04/1936). However, she had declared very clearly that she would sell [only] “one or the other picture to a museum or private party”, especially the Kunsthaus Zurich. Only two watercolors from the exhibited part of the collection were ultimately sold (Rohlf's, cat. no. 111, Schmidt-Rottluff cat. no. 130).

Evidence: Reports on sales to Thekla Hess by the Kunsthaus Zurich on July 24 and 27, 1934.

Incidentally, shortly after the opening of the exhibition Ernst Ludwig Kirchner called to the attention of his friend, the Frankfurt art collector Carl Hagemann, the showing of Hess collection works, including some of his own, in the Kunsthaus Zurich.

Evidence: Letter from Ernst Ludwig Kirchner to Carl Hagemann on June 24, 1934, published in” Kirchner, Schmitt-Rottluff ...

Recognized as an enthusiast of Kirchner paintings, Carl Hagemann had bought two pictures from the artist at the Kirchner show (March 5 – April 17, 1933) in Berne one year earlier. However, under the then prevailing regulations it was difficult for a German collector to buy art abroad with foreign currency. To circumvent these German foreign exchange problems Hagemann did not pay for his purchases in Swiss francs but established an account for Erika Kirchner in Germany into which he paid the purchase price in successive installments.

Evidence: Letters from Ernst Ludwig Kirchner to Carl Hagemann on March 28 and 31, 1933 (footnote 5), published in Kirchner, Schmitt-Rottluff ...

During the exhibition in Zurich Thekla Hess anxiously asked the director of the Kunsthaus on July 5, 1934 whether it would be possible for him to retain some of the works out of the collection being shown in Zurich. All works received by the Kunsthaus remained there. Others followed to Zurich.

Interim summary of 1934 findings: Most of the collection located in Basel was taken over by the Kunsthaus Zurich and left there even after the exhibition. Thekla Hess tried to transfer other works from Germany (for instance, from the Kronprinzenpalais in Berlin and in Lichtenfels) to the Kunsthaus Zurich because they would be safe there and there was less pressure to make a final decision on the fate of the paintings.

Even though they were without debt or liabilities to third parties their circumstances (mother and son were largely without income) now called for selling pictures. It is proven that at least two watercolors were sold to private parties from the exhibition in Zurich.

IV.

Situation in 1935/36.

Apparently Thekla Hess learned in February 1935 that the Cologne Kunstverein (hereafter referred to as KKV) would organize a Nolde exhibition in February. She asked director Wartmann to expedite two Nolde works and one by Kokoschka

immediately to Cologne. The KKV would bear the cost of the transfer. Both Nolde pictures were assumed to have been sold at the exhibition.

Evidence: Thekla Hess – Kunsthaus Zurich correspondence dated February 4, 5 and 8, 1935.

One month later Thekla Hess decided to commission the Berlin art dealer Justin Thannhauser, with whom she and her husband had been associated for many years, with selling some of the art works. On February 23, 1935 Thannhauser was visited by Hugo Borst from Stuttgart. Borst was a collector and enthusiast particularly for modern classic works. On the basis of photos Thannhauser offered pieces from the Hess collection. On the same day Thannhauser informed Borst about the price the owner thought she should get.

Evidence: Customer files of the Thannhauser Gallery on Hugo Borst, Stuttgart – Visit on March 23, 1935, note on a letter dated March 23, 1935.

On April 5, 1935 Thekla Hess asked Wartmann, the director of the Kunsthaus Zurich to transfer on commission eight of the oil paintings and one watercolor in his care to Thannhauser, the Berlin art dealer. They included three oils by Marc, one by Feininger and one by Kirchner.

Evidence: Letter dated April 5, 1935 from Thekla Hess to Wartmann, the director of Kunsthaus Zurich.

Early in June 1935 director Max Luetze from Berlin-Zehlendorf looked at the pictures at the Thannhauser Gallery.

Evidence: Customer files of the Thannhauser Gallery in reference to the visit by Max Luetze on June 7, 1935.

Luetze later acquired one Marc painting from the artworks offered by Thannhauser.

At the end of August 1935 Thekla Hess asked the Kunsthaus Zurich to send four of her pictures to Erfurt. She was very eager to have the Kunsthaus certify that the shipment consisted of loans which were now being returned to Germany. This would avoid the suspicion that she had transferred assets abroad.

Evidence: Correspondence between Thekla Hess and Kunsthaus Zurich dated August 31, 1935 and September 7, 1935.

The Kunsthaus Zurich complied with the request. The four artworks dispatched to Erfurt - two of which would later find their way into exile - were also being offered by Thannhauser to director Max Luetze and Nierendorf, the Berlin art dealer.

Evidence: Customer files of the Thannhauser Gallery in reference to Max Luetze, Berlin – Information dated September 25, 1935.
Customer files of the Thannhauser Gallery in reference to Nierendorf Gallery – information dated October 12, 1935.

Thannhauser's offerings of high quality artworks from the Hess collection were obviously not lost on admirers of Kirchner paintings. Ernst Gosebruch, the former head of the Folkwang Museum who retired in 1933 and became privately active as an art consultant/broker, also knew of their availability. On 2/11/1936 he wrote to Carl Hagemann, the collector, whom he had been advising since 1912: "Can you imagine - here in the Thannhauser Gallery were – and still are some – pictures for sales from the Hess collection in Erfurt." On March 4, 1936 the lawyer, art collector and amateur graphic artist Arnold Budczies appeared at Thannhauser. Gosebruch had called his attention to the paintings there from the Hess collection. Budczies was exclusively interested in Kirchner paintings. On the basis of photos and actual paintings, Thannhauser offered six of the paintings, including for RM 3,500 one with the title "Postdamer Platz" – and noted: "He is aware that the paintings belong to Mrs. Hess." Some weeks later, on April 26, 1936, Budczies reported to his fellow collector Carl Hagemann: "In the Thannhauser Gallery I saw two large paintings from the Hess collection: a) the Fehmarn Farmhouse (Staberhof)... and b) the Woman in the Hammock...the salesman at Thannhauser was so naïve as to tell me that the prices had been lower earlier but have since been raised after another Kirchner picture from the same owner was sold (to Lange in Krefeld)."

Evidence: Letter from Ernst Gosebruch to Carl Hagemann on February 11, 1936; letter from Arnold Budczies to Carl Hagemann dated April 26, 1936, included in: Kirchner, Schmitt-Rottluff ...
Customer file of the Thannhauser Gallery on Arnold Budczies' Berlin visit on March 4, 1936

The collectors Budczies and Hagemann also exchanged information about other "very good pictures" by Kirchner – for instance on April 26, 1936 when Budczies reported on the opportunity to purchase a street scene "Two Women on the Street" 1914, identified by him as "Two Cocottes on the Street", calling it "a very good painting, formerly owned by Westheim." Especially interesting is the price quotation - RM 2,000 – as well as Budczies' expectation that the picture "could now be considerably cheaper."

Evidence: Letter from Arnold Budczies to Carl Hagemann dated April 26, 1936. included in: Kirchner, Schmitt-Rottluff

Budczies' assumption was apparently based on the fact that the painting had been owned by Paul Westheim, a Jewish art publicist and author. Since 1917 Westheim had published "Das Kunstblatt", a periodical devoted especially to modern art. Immediately after Hitler came to power, Westheim was directly accused of being a "cultural Bolshevik" and his publication ceased to exist after 1933. Westheim fled to Paris in August 1933, leaving his art collection behind.

On August 16, 1936 Thekla Hess asked Wartmann, the director of the Kunsthaus Zurich, to send "my Marc paintings, then at the [Zurich] Kunsthaus, to the Kunstverein in Cologne on the occasion of the big Marc exhibition to be held in early September. Also send 4-5 Kirchner pictures ... and 1 Macke pastel." The costs were to be assumed by the KKV which was glad to have these beautiful pictures "on loan". However Thekla Hess was in no way happy about this transaction. She "approves" it "very reluctantly."

Evidence: Letter from Thekla Hess dated August 16, 1936 to Wartmann, director of the Kunsthaus Zurich.

On September 4, 1936, Wartmann expedited the pictures for the KKV to Bronner, a shipping company in Basel. The shipment included the "Berlin Street Scene" - entitled here "Potsdamerplatz" or "Big City Street" and insured for CHF 3,000.

Evidence: Letter of the director of the Kunsthaus Zurich of September 4, 1936, plus list.

The shipment is likely to have arrived at the KKV in September. The scheduled Marc retrospective exhibition in Cologne was not approved by the Reich Chamber for Fine Arts, which meant in effect that it was forbidden. The Gestapo had already interfered with the earlier Marc exhibition (May 3 to August 19, 1936) in Berlin. However, it was not shut down due to the Olympic Games held from August 1 to 16, 1936, during which the Nazis wished to demonstrate their pretense of political liberalism, also in the art sector.

The fact that the Cologne Kunstverein has received several high quality paintings, including several by Ernst Ludwig Kirchner, and that the KKV as well as the Thannhauser Gallery in Berlin were authorized to sell them, took the art world by storm, particularly in collectors' circles. Apparently Carl Hagemann reported this to Ernst Ludwig Kirchner who wanted more information about the pictures. Kirchner replied to Hagemann on October 30, 1936: "of the 3 pictures mentioned in your letter the street scene measured 90 x 120 – it is mainly green, featuring striding large figures. The identification is wrong. It is not Potsdamer Platz, that picture is owned by Lange in Krefeld." Arnold Budczies, too, was aware that the KKV offered Kirchner paintings. He asked Hagemann on December 15, 1936: "What's with the four KKV pictures? Do you know them? What do they represent? What's the price?" In regard to the origin of the works Kirchner assumed: **"It's likely that the pictures belong to Jewish people who have to emigrate..."** He was absolutely right – and Gosebruch, Budczies and Hagemann were also aware of those circumstances, based on information from Thannhauser.

Evidence: Letter from Ernst Ludwig Kirchner to Carl Hagemann of 10/30/ 1936, letter from Arnold Budczies to Carl Hagemann of 12/15/ 1936, included in: Kirchner, Schmitt-Rottluff...

Following the shipment to Cologne the director of the Kunsthaus Zurich took care of the artworks from the Hess collection remaining in Zurich to the extent that they could be stored safely for another year and without being subjected to custom duties. However, it would no longer be possible to accommodate them free of charge. As of October 1, 1936 he would have to charge the regular fee of CHF 144 for storing and insuring the 40 remaining paintings, 13 framed and 19 unframed watercolors and drawings, the tapestry and glass painting. He informed Thekla Hess to this effect in a letter dated 09/23/1936. She replied a few days later and expressed first how delighted she was "to know that the pictures are in good hands." If it were up to her alone she would gladly pay the storage and insurance fees "but since you know what problems the 'authorities' nowadays cause when 'foreign exchange payments' are involved, it will not be so simple because I have to provide an affidavit that I am not paying for storage." Thekla Hess indicated that upon her return to Germany in early

November 1936 “she would negotiate with the foreign exchange office and all the other associated organizations” regarding this matter.

Evidence: Correspondence Thekla Hess – Kunsthaus Zurich dated September 23 and 30, 1936

Until this point in time efforts to have the artworks in Switzerland regarded as loans had been successful. Nevertheless, German authorities could learn at any time that the artworks originally sent for exhibition (1933 in Basel, 1934 in Zurich) - at least since the end of the Zurich exhibition (due to an extension only in August 1934) - were no longer being kept by them as pieces for exhibition. Since then, Thekla Hess had continuously lived under the threat of being accused of having brought her possessions into a foreign country or at least of having them left there in order to protect them from access by German officials. Her September 23, 1936 letter demonstrated that she had already provided an affidavit to German authorities responsible for foreign exchange matters to the effect that no foreign exchange was paid for the artworks stored in Switzerland. Accordingly, the German officials were already aware prior to September 1936 of the Swiss whereabouts of the Hess collection artworks.

In early November 1936 Thekla Hess was to have discussed the disposition of the artworks stored in Switzerland with the German foreign exchange office and to clarify legal foreign exchange payments. This is reflected in the Hess letter dated September 23, 1936. Based on the circumstances as related by Thekla Hess, it can be deduced that she was requested by the German authorities to repatriate the artworks no longer needed for exhibition in Switzerland back to Germany. If not, she faced the threat of repressive measures by the Nazi regime, a situation that portended the greatest dangers for her and her family members.

Similar fates of other Jewish art collectors during the Nazi regime have already been documented.

In the mid-thirties Walter Westfeld, the art collector and dealer in Duesseldorf, had brought some of his works of art to Paris, in anticipation of his emigration. This did not go unnoticed by the Nazi authorities. They arrested Westfeld, accusing him of having committed a foreign exchange deception. They sentenced him to prison and to pay a large fine which was settled by their auctioning off his entire art collection. Having completed his prison term, Westfeld was deported because his release would have posed “a threat to the existence and security of the people and the state.” Westfeld later perished in the Auschwitz concentration camp.

Carl Sachs, the Jewish industrialist and art collector from Breslau, had succeeded in shipping 22 works of art from his high-caliber collection of French impressionists to Switzerland for exhibition purposes. In 1939 he emigrated to Switzerland with only RM 10 in his pocket and sustained himself by sales of pictures. One year later the Economics Ministry of the Reich demanded the repatriation of the artworks and seized as “settlement” all assets remaining in Germany.

Evidence: Schnabel/Tatzkow, *Nazi Looted Art, worldwide Art Restitution Handbook*, 476-478 (Berlin, 2007), Tatzkow/Hinz, *Citizens, Victims*

and Historical Justice. The Fate of Jewish Art Collectors in Breslau, 1 Eastern Europe, 155-57 (2006)

In the case of Thekla and Hans Hess, too, “the authorities” were likely to learn at any time that it was no longer a matter of “asset on loan”, so-called “merchandise to be returned to Germany”, but assets owned by Jews which, in violation of foreign exchange regulations, were being deposited outside Germany and continued to be abroad even upon termination of the exhibition (August 1934). It is likely that Thekla Hess was visited by representatives of “the authorities” and threatened with imprisonment as a “foreign exchange criminal”, unless she ordered the artworks in Zurich to be repatriated.

Evidence: Hans Hess Compensation Proceeding: Depiction of his persecution by attorney Count von Pueckler (see sheet M 15), affidavit provided by Thekla Hess dated April 15, 1958.

Interim summary of 1935/36 findings: Thekla Hess continued to shuttle between Nazi Germany and foreign countries. Apparently she could not decide to leave her family members in Lichtenfels, particularly her mother, on their own by going into exile.

In the meantime her son Hans, heir to the art collection, had moved from Paris to London where he earned a minimal income from occasional jobs.

Both were dependent on selling more pictures for their subsistence. First they sold pictures at the Nolde exhibition in Cologne. There is no record whatsoever that they made the sale to pay for liabilities incurred to third parties for claims that had arisen in 1931/32.

In 1935, mother and son decided to commission Thannhauser, the art dealer in Berlin, with the sale of eleven works of art. A shipment of eight pictures – including Kirchner's “Berlin Street Scene” – was sent “very reluctantly” to KKV. As Kirchner suspected correctly, these pictures were owned “by Jews who had to leave [Germany].” Under the Nuremberg Laws, Thekla Hess and her son were stigmatized also legally as Jews. They owned a collection of “degenerate art”, parts of which was located abroad. To maintain the semblance that the pieces abroad were loans Thekla ordered them returned to Nazi Germany in order to avoid the accusation of being a foreign exchange criminal.

Part of the collection continued to be located at the Kunsthaus Zurich. When the museum demanded storage and related fees that had to be paid in foreign exchange, Thekla Hess was confronted with the serious threat of becoming a target of the Nazi authorities as a “foreign exchange criminal” and thus was threatened with imprisonment.

V.

Situation in 1937.

Did the KKV represent a one-time opportunity to purchase at low prices? Since the end of 1936 the Lord Mayor of Frankfurt had been promoting the exploitation of the

advantageous buying opportunities created by the emigration of Jewish art collectors.

Evidence: Monica Kingreen, *Looting by a Municipality, Frankfurt am Main, and the Appropriation of "Jewish-owned Property"*, in "Buerokratien" [Bureaucracies]. Initiative and Efficiency, Contributions to the History of the Nazis, Volume 17, Berlin 2001, page 21.

It is not known whether Carl Hagemann, the Frankfurt art collector, shared the Mayor's opinion. In any case he appeared in Cologne, presumably during the 1936 Christmas season on his way to visit his family in Essen, as he did routinely at that time. Hagemann capitalized on the opportunity and purchased the "Berlin Street Scene", apparently from Dr. Walter Klug, the director of the KKV, who functioned both as a director of the association and as an art dealer and who had his own showroom in the KKV. The sale through Klug is traceable from a letter dated January 16, 1939 in which Gosebruch reminds Hagemann of the "Hess collection in Erfurt – the source of your wonderful street scene picture by Kirchner." Gosebruch however recommended not to make any more purchases because the "gabby Mr. Klug would not want to go without reporting, urbi et orbi (throughout the world), that Mr. H. from Frankfurt was buying again."

This correspondence indicates that Hagemann did not buy the Kirchner painting directly from Thekla Hess, because it was only after the sale that he wanted additional information from Kirchner about the source of the painting. Correspondence between Budczies and Gosebruch leads to the conclusion that Hagemann saw the Kirchner painting on one of his trips from Frankfurt to Essen - via Cologne – at the end of 1936 and bought the picture from Dr. Walter Klug, who may have been acting for the KKV. A list of the Hagemann collection prepared in 1947 upon his death in order to determine the scope of his estate shows that the picture was purchased in 1937 from the Cologne Kunstverein and indicates – without further details (e.g. in respect to the currency) and unlike the information given for other listed works - a "value" of 3000.

Evidence: Inventory of the Hagemann collection dated March 9, 1947.

Arnold Budczies, always interested in the more important Kirchner paintings, learned that Hagemann had acquired the "Berlin Street Scene". He wrote to the collector on March 25, 1937: "I want to congratulate you heartily on the new K. picture. The acquisition will give you much pleasure, I am sure, yet the price is quite high."

Evidence: See Chapter V: Retracing the acquisition of the "Berlin Street Scene" by Kirchner on the basis of correspondence in: Kirchner, Schmidt-Rottluff, Nolde, Nay... Letters to the Collector and Patron Carl Hagemann, Ostfildern-Ruit 2004.

Even if Thekla Hess wrote in a letter dated August 16, 1936 that she was "very reluctant" to return some of the Marc and Kirchner paintings from Zurich to the KKV, and that this was only for loan and exhibition purposes, it was never-the-less at her request that the shipment back to Germany of most of the artworks was undertaken in March 1937. The request for the return by Thekla Hess was made at a time when,

in October 1936, the Kunsthhaus Zurich had assured Thekla Hess that her collection could be securely left in Zurich for another year.

Evidence: Letter from the Kunsthhaus Zurich dated October 30, 1936 to Thekla Hess.

That is why Thekla Hess' letter of March 1937 requesting the second return shipment came as a surprise to the director of the Kunsthhaus Zurich who indicated: "At the end of 1936, Thekla Hess suddenly requested the return of the pictures to Germany. I had no choice than to comply with this urgently expressed wish, even though I certainly felt that this valuable collection would hardly survive the war, at least not in the possession of Mr. Hess."

Evidence: Declaration by Dr. Wartmann on September 20, 1958.

It is assumed that at this time, November 1936, negotiations with the German authorities were being conducted regarding the foreign exchange treatment of the collection.

Evidence: Letter of the Kunsthhaus Zurich dated October 3, 1936 to Thekla Hess.

These negotiations could only end in one of two outcomes, either repatriation of the collection to Germany or the imprisonment of the "foreign exchange criminal" Thekla Hess. She had decided in favor of the repatriation. Hans Hess asked the Director of the Kunsthhaus Zurich to discuss the organizational details only outside of Germany. He said: "As you know I do not want to correspond with my mother in Germany about the various issues and therefore I ask for your patience until my mother is abroad again."

Evidence: Letter from Hans Hess to the Kunsthhaus Zurich dated March 31, 1937.

On March 18, 1937 the director of the Kunsthhaus Zurich informed Thekla Hess: "We are sending 70 works, No. 1 -70, to Bronner in Basel as freight in unstamped boxes AH 1, 2, 5, 7, 9 as per enclosed list." Wartmann told the shipper, Bronner, "that based on this shipment the free passes are to be completely voided" even though the return shipment did not include all items that had been in storage in Zurich. At least 19 artworks were left in the Kunsthhaus. Others were located in the Aktuaryus Gallery in Zurich and ultimately sent to the Kunsthhaus. Any trace of these pictures had to be eradicated because it was not to be known in Germany that not all pictures were returned. For this reason Thekla Hess, somewhat later, anxiously expressed her worries to Zurich whether in fact only one list accompanied the shipment of pictures to Cologne. She was hoping that the original list was only sent to her in London. It was not to become known that some pictures remained in the Kunsthhaus Zurich. Wartmann sent her a comforting note.

Evidence: Correspondence between Thekla Hess/the shipper Bronner - Kunsthhaus Zurich dated March 18, 21 and 25, 1937.

Interim summary of 1937 findings: Carl Hagemann, the Frankfurt art collector, used the opportunity to acquire the “Berlin Street Scene” painting by Kirchner at the KKV. The price is not known to date, nor is it known what happened to the funds used to purchase the painting.

Thekla Hess had decided to have most of the collection in Switzerland sent back to Germany. By having the free passes voided, she wanted to erase all traces of the pictures left behind in Zurich. By doing so she evaded the accusation of having violated German foreign exchange laws.

VI.

Situation in 1938 and Thereafter.

Thekla Hess spent the first half of 1938 in Germany and abroad. Her life and that of her son was extremely tenuous. There is evidence that at least one watercolor by Kokoschka was sold in Switzerland to Fritz Nathan, an art dealer who had emigrated from Germany to St. Gallen, Switzerland.

Evidence: Correspondence Thekla Hess – Kunsthaus Zurich dated August 24, 26 and 31, 1938

When on November 10/11, 1938 the so-called "Reichskristallnacht" (night of the broken glass) elevated the persecution of Jews to a new level and endangered their lives, and after Thekla's brother Stefan Pauson was incarcerated in the Dachau concentration camp, Thekla Hess prepared her emigration to her son in London. She succeeded in early April 1939, taking a few pieces of art with her into exile.

On April 4, 1939, Thekla Hess, from the safety she found in exile outside Germany, informed Director Wartmann in Zurich about her emigration. She thanked him for the “friendliness that you have accorded me during the difficult times that weighed so heavily on me. It is very comforting for me to have these beautiful things outside [of Germany] because **I was not able** to rescue anything out of Germany – it is all I own and I have to live from it.” Thekla asked Wartmann if he knew someone “who would be interested in one or the other watercolor in order to realize at least a few Swiss Francs.”

Evidence: Letter from Thekla Hess dated April 4, 1939 to Director Wartmann of the Kunsthaus Zurich.

As she had written in 1939, Thekla Hess was not able to rescue anything from Germany – neither the artworks left in Lichtenfels nor those deposited with the art dealer Thannhauser or the KKV.

In the meantime the “Cologne list” of pictures from the Hess collection made the rounds among German collectors of modern art. Budczies looked at it “with interest”. Gosebruch, also looked at it and wrote to Hagemann: “I thought immediately of the Hess collection in Erfurt where your wonderful Street Scene by Kirchner came from. I called Heckel since a number of his paintings and watercolors are on the list. He indicated immediately that they had to be the remains of the Hess collection. Recently I learned from Schmitt-Rottluff that Mrs. Hess was intent on emigrating.”

Gosebruch concluded: **“at this point in time any collection of modern art which is to be sold quickly is likely to be a Jewish collection whose owner is forced to take up his walking stick.”**

Evidence: Letter from Arnold Budczies to Carl Hagemann dated February 14, 1939, letter from Ernst Gosebruch to Carl Hagemann dated December 5, 1938, in: Kirchner, Schmidt-Rottluff ...

While Jewish collectors were forced to reach for their “walking stick,” their non-Jewish “colleagues” surveyed professionally “with interest” the properties being left behind and tried to acquire these artworks.

Thekla Hess was in London without funds. She asked Wartmann to send the pictures still left in Zurich as well as those stored in Basel to London by the most economic means.

Evidence: Letter from Thekla Hess dated April 4, 1939 to Director Wartmann of the Kunsthaus Zurich. Letter from the Kunstverein in Basel dated July 1, 1939 to the director of the Kunsthaus Zurich.

Most of the pictures that reached Great Britain were stored at the Leicester Museum, where Hans Hess had been an employee since 1944, following his release from internment and after having worked in agriculture at a marginal wage. From February 5 – 27, 1944, the museum staged a “Central European Art” exhibition that also included some of the artworks rescued from the Hess collection.

After the collapse of the Nazi regime, Thekla and Hans Hess conducted a search for the artworks left in Germany – including the KKV. It answered on March 10, 1951 that of the pictures stored with Walter Klug, the director at the time, only six could be returned. Thekla’s notation on this reply reads: **“What is one to respond to that?”**

Evidence: Letter of the Cologne Kunstverein dated March 10, 1951 to Thekla Hess.

During the Nazi era Thekla and Hans Hess lost a large number of artworks that were located in the German Reich – among them were at least 40 paintings.

Interim summary of 1938 findings: Thekla and Hans Hess continued to finance their subsistence by selling pictures. Following the pogrom in November 1938, Thekla Hess fled to her son in London. Pictures located in Switzerland reached Great Britain. However, Thekla and Hans no longer had access to the pictures left in Germany. Only a fraction of these pictures were returned to their possession following the collapse of the Nazi regime.

Summary 1932-1938 and thereafter:

1. In Thuringia [Erfurt] expressionist works of art, such as those collected by Alfred and Thekla Hess, became subject to Nazi attacks as early as 1930.
2. There is no proof that any artworks from the Alfred Hess collection were sold in order to overcome economic difficulties in the years 1931/32.
3. After they left Erfurt in September/October 1932, Thekla and Hans Hess tried to find a suitable repository for the collection in domestic or foreign museums.
4. The most valuable part of the collection reached the art museum in Basel and a year later the Kunsthaus Zurich. It was declared to be on loan for exhibition purposes. Some of the works, including "Berlin Street Scene" by Ernst Ludwig Kirchner, were shown at exhibitions in these museums in 1933 and 1934.
5. Hans Hess fled the Nazis in 1933 and arrived in Paris without funds. His mother, Thekla, continued to stay in Germany and traveled abroad repeatedly.
6. Both tried, especially with the help of the director of the Kunsthaus Zurich, to avoid the threat of punitive action on the part of the German authorities, due to the transfer of some of the Hess collection outside of Germany and the potential infringement of German tax and foreign exchange regulations.
7. The evidence shows that in 1934 Thekla and Hans Hess were forced for the first time to sell two watercolors to maintain their subsistence.
8. In the subsequent two years, Thekla Hess had to sell more pictures due to the dire living conditions which she and her son suffered. She sent artworks to Thannhauser (the art dealer in Berlin), to the museum in Erfurt, and to the Cologne Kunstverein. Some of these works were sold, including Ernst Ludwig Kirchner's "Berlin Street Scene," at the end of 1936, beginning of 1937. With respect to this sale, there is no evidence as to either the price paid or as to who obtained the purchase price.
9. At the end of 1936, Thekla Hess, confronted with foreign exchange demands by the Kunsthaus Zurich (for the storage costs), begins to draw the attention of the Nazi authorities who, it can be assumed, ordered her to return the artworks stored in Switzerland to Germany.
10. In 1937 a majority of the artworks were sent to the Cologne Kunstverein, whose director, Klug, carried out additional sales.
11. Following the November pogrom, Thekla Hess fled in early April 1939 to her son in London and no longer had access to the artworks left in Germany. At least 40 paintings were lost in Germany.

VII.

Further Provenance of the Kirchner Painting “Berlin Street Scene.”

Carl Hagemann, the collector who acquired the “Berlin Street Scene” painting at the end of 1936/early 1937, died on November 20, 1940. Following his death Ernst Holzinger, then the director of the Staedel museum in Frankfurt, convinced - in agreement with Ernst Gosebruch - Hagemann’s heirs to store the collection in the Staedel where it survived the Nazi era in the museum’s storage facilities with hardly any damage. In appreciation, the Hagemann family gifted Kirchner’s, “Berlin Street Scene” in 1948 to Holzinger, because Holzinger had rescued the “degenerate” artworks in Hagemann’s collection during the Nazi era.

However, these were not the only actions taken by the director of the Staedel to “rescue German cultural property.” In his function as “Expert in securing and utilizing German cultural property in possession of Jews for the benefit of the Reich” he was very active in aryanizing Jewish art collections in Frankfurt/Main, including, for instance, the Oppenheim, Goldschmidt-Rothschild and Weinberg collections. Since 1941 he had been inspecting/appraising a large number of artworks owned by Jews and negotiated with finance offices, marshals, and auctioneers. Holzinger also kept an eye out for artworks confiscated from Jewish owners in occupied France. He was even excused from military service on account of this work.

Holzinger remained in office after 1945 and was even appointed “Director of the Museums in Greater Hessen.” There, he was also engaged in the restitution of artworks in which he had been involved in expropriating during the Nazi era, a fact that he was, however, no longer able to recall. This “loss of memory” was also continued by his successor, who praised Holzinger’s services in the aryanization of the Oppenheim collection in 1998 with the words: “A savior who deserves our thanks.”

Evidence: Monica Kingreen, as cited above, 33, 36-35, 41-42.

After 1945, the “Berlin Street Scene” painting was exhibited several times. The only time when reference was made to Hagemann as the owner was in 1948, when the painting was presented as part of the “Hagemann Collection,” in an exhibition that hardly drew any attention beyond the city limits. Otherwise catalogs showed its ownership invariably as “Private Collection”. That was also the case at the 1953 “Masterworks of 20th Century German Art” show in Lucerne where Thekla is said to have seen the picture.

Evidence: Excerpt of the catalog of the “Masterworks of 20th Century German Art” exhibition in the Lucerne Kunstmuseum, letter from Thekla Hess to Ferdinand Moeller dated September 3, 1953.

In the authoritative index of artworks by Gordon the painting is also only listed as being from a “Private Collection”.

In 1980 Holzinger’s widow sold the painting to the Bruecke Museum in Berlin for DM 1.9 million.

Chapter 4

Safekeeping of the Hess Collection in Switzerland for a Limited Time Period.

I. Preliminary Remarks.

Various articles on the Kirchner/Hess collection are unanimous in the assumption that: "Thekla Hess was able to rescue the collection by sending it to Switzerland in 1933." Not clarified and still unexplained is why sending the collection to Switzerland was only possible for a limited time and why it was necessary to return it to the German Reich during the Nazi era. The following legal explanations, based on an actual parallel case involving the Kunsthau Zurich from 1936 to 1938, documents the actual and legal treatment of foreign art collections in Switzerland.

II. Summary of Highlights of the Following Determination of Facts

- Based on the intensified regulations in the Foreign Exchange Act an export declaration had to be prepared for exporting works of art. According to the regulations on the flight of capital in the Foreign Exchange Act such works became subject to export tax.
- The export prohibition/export tax regulations of the Foreign Exchange Act and the so-called Reich escape tax could only be circumvented temporarily through the shipment of artworks as loans for exhibition purposes.
- The final importation of an art collection into Switzerland would have required Thekla Hess to pay import duty in Swiss francs, thus foreign exchange.
- The transfer of the art collection could be free of levies and taxes provided it was only sent for a limited time period for exhibition purposes.
- According to Swiss law, the storage of imported works of art was exempted from customs duties and other levies by a free pass limited however only to the exhibition period. The sponsors of the exhibition, in this case the Kunstverein in Basel and the Kunsthau Zurich, were liable for adhering to the regulations.
- Only as an exception was it possible to get from Swiss authorities an extension of the free pass for a limited storage period following the exhibition.
- If artworks were sold in Switzerland, the payment of customs duty, initially deferred, became due and payable in Swiss francs.

- The Foreign Exchange Act of the German Reich, which was strengthened after 1933, for example by the 3rd implementation regulation of December 1, 1935, specified that assets located abroad were subject to duty under the Foreign Exchange Act, and, in the event of a sale of such assets located outside Germany, the proceeds of the sale were subject to German tax.

III.

Final Importation – Import Prohibition.

When artworks were imported into Switzerland, they became subject to Swiss import duty. The duty was due in Swiss francs and to be paid by the importing owner. People from the German Reich who did not have sufficient foreign exchange/Swiss francs in Switzerland in order to pay the import duty were actually not in a position to pay because in accordance with foreign exchange regulations of the German Reich the conversion of Reichsmark into Swiss francs had to be approved and was subject to regulations. Apparently due to the increasingly tense economic and political conditions in Germany a growing number of artworks had been transferred to Switzerland before 1933. A significant rise in 1931 and 1932 has been documented. It decreased continually as of 1934 until the end of the war.

Evidence: Independent Commission of Experts Switzerland - Second World War, *Flight Assets – Looted Assets. The Transfer of Cultural Assets to and through Switzerland from 1933 to 1945, and the Problem of Restitution*, 61, table on page 62, (ed. Francini, Heuss, Kreis 2001).

Already on June 9, 1933, Otto Derendinger, an art dealer in Interlaken, had complained to the Swiss Bundesrat “how long the catastrophic imports of paintings from Germany and Austria by Jewish dealers were to continue?” Allegedly for the protection of Swiss artists and the local art, Derendinger demanded they fight the “import of the Jewish junk” with laws. This led to a decision of the [Swiss] Bundesrat on April 23, 1935, which restricted the import of foreign paintings by law. As of that date, only a few solitary works of art approved by the state could be imported to Switzerland.

Evidence: As above and Thomas Buomberger. *Raubkunst.Kunstraub*, 48-50 (1998).

Findings:

Due to the strict Swiss import laws and based on the necessity to pay import duties in Swiss francs as well as due to the general import prohibition regarding works of art, it was only by way of exception that art from the German Reich “could be rescued.”

IV.

Time Restrictions on Imports for Exhibition Purposes.

Usually the only possibility to bring artworks from Germany into Switzerland was to ship them to a museum/art institution or Swiss art dealer for **exhibition** purposes. Such shipments were governed by the following legal procedures:

- Transfer on a loan basis of artworks for exhibition purposes to an exhibitor identified by name (usually an art association, museum and galleries)
- Swiss authorities were to provide a so-called free pass, usually resulting in a "deferral of payment of duties for at least one year."
- Obligation of the loaning party to store the artworks at the recipient of the loan, e.g. a museum, as collateral.
- Guarantee of duty payment by the recipient of the loan/museum in case of custom regulations violations.

Following the expiration of the term indicated in the free pass, only in exceptional cases was it possible to have the free pass extended, and obtain duty-free storage from the recipient of the loan /museum, or

- the loaned objects had to be returned to the country of origin, or
- in the event the return of the artworks was refused the Swiss duty payment became due.

If the owner of the artworks refused to take the artworks out of Switzerland and also refused to pay the incurred duty as mandated by law, the receiver of the loan, i.e. the museum, was obligated by customs to either auction or sell the artwork for the purpose of satisfying the tax claim.

Evidence: Treatment of the Eichenberger art collection, transferred in 1936, by the Kunsthhaus Zurich, letter of January 29, 1938.

Findings:

Duty-free storage of the art collection at the Kunsthhaus Zurich beyond the end of the exhibition in August 1934 was essentially possible due to the free pass that was usually issued for a maximum period of one year. At least by the end of 1935 the Hess collection would have to be shipped from Switzerland back to Germany, unless Thekla Hess had declared the shipped collection, until then described as a loan for exhibition purposes, as a final transfer to Switzerland and paid the resulting import tax, still to be determined, in foreign exchange/Swiss francs.

The efforts of the Kunsthhaus Zurich, in discussions with the Swiss customs authorities, apparently succeeded in extending the storage period until the end of 1936. In any case Dr. Wartmann, director of the Kunsthhaus Zurich, was able to report already at the end of October 1936 to Thekla Hess that another year of duty-free storage could be realized and that it would be possible to extend the free pass for the collection stored there. Thekla Hess did not make use of this temporary refuge possibility that had been arranged until the end of 1937. Beginning in August 1936 until March 1937 she requested the return of important parts of the Hess collection stored in the Kunsthhaus Zurich to the Cologne Kunstverein.

V.

**Treatment of Transferred Artworks
from the German Reich to Destinations Abroad.**

Based on foreign exchange regulations which had been issued by the Weimar Republic in the beginning of the thirties and toughened by the Nazi regime as of January 30, 1933, a shipment of artworks from the German Reich to another country would be subject to approval by the state. Details were spelled out in the Foreign Exchange Act and its regulations for implementation. These regulations were further tightened from 1933 on. Exports that were not for temporary loans and exhibition purposes but were to be final could be prohibited, or, if approved, an export duty (escape tax) would be levied.

Especially after January 30, 1933, asset transfers from the German Reich, particularly on the part of people persecuted for reasons of race and political views, who wished to transfer assets to secure locations abroad, attracted special attention from the authorities who tried to prevent such transfers or at least to collect the mandated export duties. If Thekla Hess had wished "to save" the art collection by transferring it to Switzerland, she would have been forced to declare the shipment as export goods to German customs in order to obtain their permission to ship the goods. Provided the export had actually been approved, Thekla Hess would have had to pay the mandated tax to the German Reich and to pay duty in Switzerland in Swiss francs to the Swiss customs authorities. The export of the art collection from the German Reich would therefore have been subjected to double taxation. For exports to Switzerland to be free of taxes and duties - for a limited time only - they had to be on temporary loan for exhibition purposes.

Chapter 5

**Reconstruction of the Acquisition of "Berlin Street Scene"
Based on Published Original Correspondence with:**

- **Dr. Carl Hagemann** (04/09/1867 - 11/20/1940)

Purchaser of "Berlin Street Scene", chemist, owner of several dyestuff patents, since 1920 head of the Farbwerke Leopold Cassella und Co. in Mainz, Germany; in 1925 company was purchased by IG Farbenindustrie AG, Hagemann member of the board of directors of IG Farben until his retirement in December 1931, end of active professional life. 11/20/1940: died in a tram accident in Frankfurt.
- **Ernst Ludwig Kirchner** (1880 - 06/15/1938)

1932 last residence in the German Reich, thereafter in Davos, Switzerland. Committed suicide by shooting himself.
- **Ernst Gosebruch** (1872-1953)

Personal art consultant to Hagemann, 1906 to 1921: director of the Essen art museum; friendship with Hagemann, provided advice on buying art; 1922 to 1933: Folkwang museum, dismissed by the Nazi regime, move to Berlin, consultant to Hagemann on the purchase of artwork and promoter of artists; as private art dealer receives commissions for purchases and sales on behalf of third parties.
- **Arnold Budczies** (1866 to 1943)

Lawyer, private art collector, among others specialized on outstanding masterworks including those by E.L. Kirchner.
- **Guido Dinkgraeve** (1906 to 1943)

Art historian, admirer, among others, of the works of Kirchner and, apparently since 1938, privately commissioned by Hagemann to compile a list of the value of the Hagemann collection.

Kirchner to Hagemann on 10/30/1936:

„Of the three paintings that you mentioned, the 90 x 120 Street Scene ... The Street Scene is probably the one also exhibited here in Zurich...The paintings are probably owned by Jews who are forced to emigrate.“

I.

Basic Facts.

- As of 1933 Kirchner oil paintings created before WWI (before 1914) were only sporadically offered on German art markets.
- Foreign exchange regulations made it all but impossible for citizens of the German Reich to buy any works of Kirchner who resided in Switzerland.
- At least three private German art collectors, identified by name, were willing to pay adequate market prices for Kirchner "Masterworks", if such an opportunity presented itself.
- The sale of the "Berlin Street Scene" was apparently arranged by the managing director of the KKV, Dr. Walter Klug, possibly in his capacity as managing director of the KKV or as an art dealer doing business on KKV premises, probably between 12/15/1936 and 02/07/1937.
- Several written inquiries by Hagemann to Kirchner regarding the provenance of the picture (when it was painted and who previously owned it) demonstrate that Hagemann had no personal contacts with Thekla or Hans Hess.
- The following is evidenced on the basis of several written inquiries by Hagemann to Kirchner regarding the painting's quality and former owner, all between 10/30/1936 and 3/5/1937:
 - Since the October 30, 1936 letter, Hagemann was aware that the "Street Scene" belonged to "Jews who are forced to emigrate."
 - Not one letter mentions the amount of the purchase price of the "Berlin Street Scene." This information also cannot be gleaned indirectly from any comments in the available correspondence. Only Budczies, the passionate Kirchner collector - to that extent Hagemann's "competitor" in terms of the acquisition - comments, after congratulating Hagemann on the painting's acquisition, that "the price, however, is very high."

II.

**Summarized Determinations -
Findings from the Original Correspondence.**

Starting in 1933, Kirchner artworks are no longer exhibited, and, in particular, no more sales exhibitions of his works are documented¹. The last exhibition before Kirchner's death on June 15, 1938 was the Kirchner exhibition (March 15 to April 17, 1933) in Berne that had already been planned in 1932, which also included four works on loan from the Hagemann collection.² At that exhibition he bought two additional Kirchner paintings created before WWI (before 1914), which, however, due to the foreign exchange restrictions in force since 1933, could not be purchased in Switzerland outright, rather, the purchase price was paid in installments into a savings account maintained by Kirchner's wife in the German Reich.³ As of 1933 Kirchner oil paintings in particular - to which Kirchner himself refers to as his real and most important works⁴ - can only be bought in the German Reich here and there. Purchases from Switzerland, from Kirchner himself, are almost excluded due to foreign exchange regulations.⁵ Despite the fact that the works were declared

"degenerate art" and were removed from public collections, private art connoisseurs/collectors continued to be extremely interested in purchasing outstanding Kirchner works.

The small circle of collectors of Kirchner paintings with adequate financial means includes Arnold Budczies from Berlin, Ernst Henke, an industrialist from Essen, and Hermann Lange, a silk merchant from Krefeld (1874-1942).⁶ Following his forced retirement in November 1933 as director of the Folkwang Museum, Ernst Gosebruch moves to Berlin at the end of 1933.⁷ From there he continues to provide consulting to numerous private art collectors in connection with their art purchases and sales, work that earns him some income, and he continues to be active as an advisor and assessor in connection with Hagemann's growing collection. When, in the Spring of 1934, Hagemann is offered several early Kirchner works (from the period between 1912 and 1919) by the Nierendorf Gallery, Gosebruch visits the Gallery but "only to express his general desire to see Kirchner paintings" without revealing his activity as Hagemann's consultant. Regarding further purchases, Gosebruch recommends buying a Schmidt-Rottluff "rather than burdening the collection with average quality from Nierendorf's sources, after (Hagemann) purchased those grandiose examples of Kirchner's early works a year ago in Berne." Gosebruch agrees with Hagemann, Budczies, Henke, Jung and Lange, all Kirchner collectors, and even with Kirchner, the artist himself, that "in the pre-war [WWI] period, Kirchner was the most outstanding genius in the German art scene and that one should consider it a duty to collect only the best."⁸

Both Gosebruch and Budczies lament that it is difficult to acquire very good Kirchner paintings, since foreign exchange regulations exclude purchases from Switzerland.⁹ This leaves only the German art market where Gosebruch, on behalf of Hagemann, as well as other collectors such as Budczies, are keeping close watch to see whether and at what conditions masterworks by Kirchner are reaching the market.¹⁰ When Hagemann showed his personal Kirchner collection to a higher court magistrate and collector in Frankfurt, Budczies expressed his concern in a letter to Hagemann: "I hope that the impressions that undoubtedly he will have gotten from your beautiful K. collection do not entice him to enter that market too much, let him remain with Lehbruck."¹¹

Two pictures from the Hess collection, offered in early 1936 by the Thannhauser Gallery in Berlin for 2,300 RM each, which are, however, partly in bad condition, are categorized as very beautiful artists' paintings and landscapes. In April 1936 Budczies makes Hagemann aware of an early work of Kirchner "Two Cocottes on a Street" (what is meant is "Two Ladies on a Street", 1914) and calls it one of Kirchner's "street scene paintings, a very good picture." He also points out the particularly advantageous purchase opportunity, referring to Valentin, the dealer, and explains that the painting originates from the Westheim collection and can therefore be had a lot cheaper. Paul Westheim, a Jewish art collector, fled Nazi Germany in 1933 leaving his art collection behind. His art collection was aryanized, among others, by German art trading companies.¹²

Before Hagemann acquires the "Berlin Street Scene", he asks Kirchner about the painting. On **October 30, 1936** Kirchner informs Hagemann regarding the three paintings described by him that the "Street Scene" had been exhibited in Zurich and that the three paintings most probably belong to Jewish people who are forced to

flee.¹³ On **December 15, 1936** Budczies asks Hagemann about the four paintings at the Cologne Kunstverein (KKV), what they depicted, and what their prices were.¹⁴ **A letter from Budczies to Hagemann dated February 7, 1937**, indicates that prior to that date Hagemann must have viewed the Kirchner paintings at the Cologne Kunstverein on a trip from his residence in Frankfurt to his family in Essen (where he spent Christmas).¹⁵ As he did with the "Four Cocottes" street scene for sale earlier, Budczies makes reference here to a reduced price because both the Westheim and the Hess case involve Jewish property that is to be sold. In any case, on February 10, 1937 Kirchner congratulates Hagemann and writes that he is glad that Hagemann bought the Street Scene in Cologne.¹⁶ Nine days later, on **February 19, 1937**, Kirchner responds to an inquiry by Hagemann regarding the former owners, telling him that in most recent years the paintings had been exhibited in Switzerland and had received very favorable reviews, particularly in Basel.¹⁷ In another letter dated **February 27, 1937** Kirchner asks Hagemann how much he paid for the "Street Scene".¹⁸ [He is asking because] he considered his oils his most important creations, the essence of his works, and they were in demand and traded in the United States, adding that there the prices were normal and "not depressed". The exhibition of the Kirchner paintings (in the Nazi degenerate art exhibit) may have deterred people in Germany from buying his works but, quite to the contrary, this was not the case in other countries.

On **03/05/1937** Kirchner once again replies to a Hagemann inquiry about the "Berlin Street Scene", telling him that the painting was formerly with Hess and that it was created in 1912 or 1913. In addition Kirchner suggests that there might be a demand for his paintings, but because of the foreign exchange regulations, he would be unable to send paintings into the German Reich.¹⁹ On **03/05/1937**, at the latest, the "Berlin Street Scene" is in Hagemann's possession in his Frankfurt residence where Prof. Kurth views the paintings very carefully, finding the recently acquired Kirchner Street Scene "wonderful".²⁰ On **March 25, 1937** Budczies congratulates Hagemann on the Kirchner painting, expressing his conviction that he will enjoy his acquisition very much, "however the price is very high" (no Hagemann letter or a letter by another third party exists that makes reference and would indicate what price Budczies is referring to).²¹ Budczies' additional attempts to acquire other Kirchner paintings in Hamburg, such as in July 1937, fail, because he deemed them to be lacking in quality. Budczies arrives at the conclusion that "almost nothing reaches the market here."²²

Following Kirchner's suicide on June 15, 1938, renewed opportunities for buying his works through his wife Erna Kirchner, who resided in the German Reich, fail not only because she is mistrustful of German art dealers and not willing to bring additional high quality artworks from her husband's estate in Switzerland to the German Reich, but also due to pending inheritance issues to be settled with her co-heirs. Collectors such as Budczies refrain from buying the paintings openly because it violates foreign exchange regulations.²³ Following the revision of his last will on December 04, 1937, Hagemann proceeds to have his works of art assessed and compiled in a list by the art historian Dinkgraeve. In remarks accompanying his last will, Hagemann explicitly explains to his heirs that following the confiscation of artworks in museums, artists such as Kirchner have become rare, and that it could not be ruled out that in a few years the prices paid for such artwork would not be inconsiderable, especially also in America.²⁴

Other works from the Hess collection are offered for sale by the KKV. On **February 14, 1939** the art collector Budczies complains to Hagemann that he reviewed the "Cologne list" the latter sent to him with interest, and "that it was a pity that nothing can be bought."²⁵ Regarding Hess paintings in the possession of the KKV at the end of 1938, Gosebruch advises Hagemann on **December 5, 1938** not to buy these paintings, in particular not through the offices of the very gabby Mr. Klug because, were Hagemann again to buy a painting, Klug would definitely feel obliged to communicate to "urbi et orbi" [i.e. to everybody] that Hagemann had again acquired a work of art at the KKV.²⁶ Two sales offices had been made available by the KKV to Dr. Walter Klug, who until his official retirement on December 31, 1938, had been the managing director of the KKV for 25 years. In addition to his work as director of the KKV he used these offices for his private art dealings.²⁷ Any proceeds were to be split equally between the KKV and Klug.²⁸ Gosebruch's warning of 12/15/1938 therefore clearly shows that Hagemann bought the "Berlin Street Scene" from Klug and that the latter apparently announced to "urbi et orbi" that Hagemann from Frankfurt had acquired the "Berlin Street Scene". On 5/22/36, in a rare moment of candor, Gosebruch commented to Hagemann regarding Klug's character: "Concerning your intention to sell off part of your collection - wouldn't Mr. Rudolf Probs be a trustworthy person... In any case with his extensive education and his reputable character, [he is] an altogether different sort than Nierendorf, Klug, and their kind, who are, after all, nothing but traders."²⁹

III.

Events Since 1934 in Chronological Order.

The following citations are excerpts which are followed by the date of the respective letter and its number, as classified and printed in the book "Kirchner, Schmidt-Rottluff, Nolde, Nay..." by Delfs, von Lüttichau and Scotti, Hatje Cantz-Verlag, 2004.

"I did not see the Kirchner paintings you mentioned at Nierendorf....It is possible that these are pictures from a private collection that he is offering but are not displayed in his showroom. I did not talk about you at all, and only mentioned generally my desire to see the Kirchner pictures."

"...Schmidt-Rottluff is moving. Therefore I postponed my visit. I like his newer, slightly abstract art very much, which probably is not as yet represented in your collection. Take the occasion to buy such a piece rather than burdening the collection with average quality from Nierendorf's sources, after you purchased those **grandiose examples of Kirchner's early style** a year ago in Berne."

2/9/1934 No. 536 Gosebruch to Hagemann

"Dear Mr. Hagemann,...
When I think of the grandiose Kirchner exhibition held last year, I have no doubt that **in the pre-war (WWI) era Kirchner was the greatest genius of the German art scene**. Given your possessions you are positioned to build a museum for this major German painter."

4/12/1934 No. 547 Gosebruch to Hagemann

“The Kunsthaus Zurich is again exhibiting a Hess-Pauson private collection from Germany. It includes some pictures of mine. The director, Wartmann, wants to see if a large show of my works would be possible. It would be nice, for sure.”

6/24/1934 No. 567 Kirchner to Hagemann

“Dear Mr. Hagemann, ...
by the way it was a great pleasure for the Henkes to finally become acquainted with your collection and your home. **Their visit to your home has already shown its effect insofar as they want to become more serious about Kirchner.** You have already acquired some of our friend's best woodcuts. **It is so frustrating that it is now so difficult to acquire a Kirchner.**”

11/5/1934 No. 573 Gosebruch to Hagemann

“Of course, I will gladly refer dealers here to you if they were not successful in offering K’s work to me and kindly ask that you will reciprocate.”

1/8/1936 letter from Budczies to Hagemann

“Can you imagine - here in the Thannhauser Gallery were – and still are some paintings for sale from the Hess collection in Erfurt, including various **beautiful Kirchner paintings of artists and landscapes.**”

2/11/1936 No. 679 Gosebruch to Hagemann

“In the Thannhauser Gallery I saw 2 large pictures from the Hess collection. a) The Inn on Fehmarn island (Staberhof) in blue and green tones, size approximately 90 by 120 cm, price RM 2,300, b) Woman in Hammock, very nice, in green and yellowish colors, size 89 x 120, price also RM 2,300, this picture is unfortunately not well preserved.

The salesman at Thannhauser was so naïve as to tell me that the **prices had been lower earlier but have since been raised after another Kirchner picture from the same owner was sold** (to Lange in Krefeld).”

4/26/1936 No. 709 Budczies to Hagemann

“it is peculiar - with some people, despite all efforts, I am not able to build a relationship, for instance with **Budczies**. He consistently repels me with his brutal manner ... **He is a collector, certainly, an energized collector** ... because there is

no access to his sensitivities which have become atrophied anyhow and have **become overwhelmed by his constant eagerness to get an edge.**"

4/30/1936 No. 714 Kirchner to Hagemann

"Concerning your intention to sell off part of your collection - wouldn't Mr. Rudolf Probst be a trustworthy person...In any case with his extensive education and his proven decent character [he is] an **altogether different sort than Nierendorf, Klug and their kind, who are, after all, nothing but traders.**"

5/22/1936 No. 723 Gosebruch to Hagemann

"I do not know the Higher Regional Court magistrate and collector you mentioned in your letter. I hope that the **impressions that undoubtedly he will have gotten from your beautiful K. collection do not entice him to enter that market too much; let him remain with Lehmbruck.**"

6/10/1936 No. 731 Budczies to Hagemann

"I wonder what will happen to your large and certainly unique Kirchner collection"

10/15/1936 No. 754 Gosebruch to Hagemann

"Dear Dr. Hagemann,
Many thanks for your letter.

Of the 3 pictures mentioned in your letter, the 90 x 120 Street Scene was sold at the time by Gosebruch to the city of Elberfeld [Germany] at a very low price for which he later begged to be forgiven... **The Street Scene is likely to be the one that was also exhibited in Zurich with red and blue, not green. Probably the pictures belong to Jewish people who have to get out.** The small street scene with its crooked architecture is fun. Oh, the good old days - where have they gone."

10/30/1936 No. 761 Kirchner to Hagemann

"On this occasion I want to ask what's happened to the 4 pictures of the Cologne Kunstverein. Do you know them and what is depicted? How much are they? I recently received an offer for 4 to 8 pictures from Hamburg. Even though I have not dealt with this matter as of now, I would like to know whether these are the same pictures."

12/15/1936 No. 775 Budczies to Hagemann

"Dear Dr. Hagemann...

I appreciate receiving the postcard from Essen ... **How were the 4 Kirchner pictures in the Cologne Kunstverein which you wanted to see on your way to**

Essen? Did you buy any? Even the reduced prices about which you wrote are still very high in my opinion.”

2/7/1937 No. 795 Budczies to Hagemann

“**I am glad that you bought the Street Scene in Cologne.** However, I am not sure which it is. Perhaps the green one...
I am glad that you bought the Street Scene in Cologne. However, I am not sure which it is. Perhaps you could take a picture of it.”

2/10/1937 No. 798 Kirchner to Hagemann

“Dear Dr. Hagemann.
Many thanks for your friendly letter. **Yes, I know the picture well. The former owner had exhibited it several times here in recent years and it was well reviewed, particularly in Basel. Now it has found a good home in Germany.**”

2/19/1937 No. 804 Kirchner to Hagemann

“Dear Dr. Hagemann,
Many thanks for your letter and drawing which makes the picture recognizable.”

2/20/1937 No. 805 Kirchner to Hagemann

“Dear Dr. Hagemann,
Because you correspond with Buchholz in Berlin, **it may be opportune for me to ask why Mr. Valentin does not want any of my oil pictures for [sale in] America ... It is very puzzling because oil paintings are the real, the essence of my work and they are in demand and sold over there, while graphic works have no market ... I do not know whether prices for my pictures are down considerably in Germany. What did you pay for the Street Scene? In America normal prices prevail and only pictures and watercolors were sold, no graphic works, even though it was shown to me ... In Germany incomprehensible exhibitions (i.e. the degenerate art exhibition put on by the Nazis) of pictures may have scared people. Not in other countries, quite the opposite.**”

2/27/1937 No. 807 Kirchner to Hagemann

Dear Dr. Hagemann,
Many thanks for your letter of the 1st.
Today I finally received an explanatory letter from Valentin. The gallery is the Buchholz Gallery. **Now he also wants pictures and faster than I can supply them. ... Yes, the picture used to belong to Hess, it was created in (19)12 or 13. Sure, it is possible that the demand for my pictures exists, also for graphic**

works, but I am unable to send anything due to the fact that foreign currency is being blocked. After all, I don't think art, such as mine, that has been discussed that much, is not that easily forgotten."

3/5/1937 No. 809 Kirchner to Hagemann

"Dear Mr. Hagemann,
Prof. Kurth, whom I managed to visit yesterday, is very satisfied with his visit to the Forsthausstrasse ... Incidentally, **he took a careful look at your paintings and found the Kirchner Street Scene which you recently acquired to be wonderful.**"

3/6/1937 No. 810 Gosebruch to Hagemann

"I want to congratulate you on your new K. picture. Certainly this recent acquisition will give you much pleasure, but, to be sure, the price was very high."

3/25/1937 No. 816 Budczies to Hagemann

"In the meantime I have viewed the pictures that were offered to me in Hamburg, but could not make up my mind to buy any. I have only been able to make a few graphic works by Kirchner part of my collection. **Very few come on the market here."**

07/02/1937 No. 850 Budczies to Hagemann

"I saw the Macke picture at Buchholz that was offered to you. Very nice, but the large Macke painting that you already own is probably more significant according to what Nay has told me. **If, in the new Germany, it is to be our challenge to maintain the currently disregarded concept of quality, one should really only collect the best."**

9/6/1938 No. 850 Budczies to Hagemann

"Dear Mr. Hagemann,
 I am sure you would like to know something about Mrs. Kirchner who will probably return to Davos tomorrow, Tuesday. ... There were terrific examples of Kirchner's art among the graphic works which she had with her. They were much more recent and fresher. There is hardly anything available in today's art world to match them. But with the difficulties she faced to sell such works in Germany, **Mr. Budczies felt it necessary to tell her that it would violate exchange regulations if he were to buy something from her. It is difficult for people to understand these constraints."**

12/5/1938 No. 1021 Gosebruch to Hagemann

“Dear Mr. Hagemann,

At this point in time any collection of modern art which is to be sold quickly is likely to be a Jewish collection whose owner is forced to take up his walking stick. **I was thinking right away of the Hess collection in Erfurt – the source of your wonderful street scene picture by Kirchner.** I then called Heckel who has also a number of paintings and water colors on the list. He confirmed right away that this must be the remains of the Hess collection...I would definitely not buy modern paintings through a dealer right now. The very **gabby Mr. Klug** - should you decide to select something among the pieces offered by him - **would not go without reporting, urbi et orbi,** that Mr. H. in Frankfurt was buying **again.**”

1/16/1939 No. 1034 Gosebruch to Hagemann

“I have looked at the Cologne list with interest. It is enclosed herewith. Too bad nothing can be bought.”

2/14/1939 No. 1046 Gosebruch to Hagemann.

“Mr. Klug’s information **concerning our painter friends** must be erroneous. Here **art dealers are saying that sales in this area are brisk. Unfortunately this mostly concerns artworks dealers are getting from private parties; thus our friends do not participate in those profits.**”

3/23/1939 No. 1046 Gosebruch to Hagemann

“I am typing this ‘list of appraisals’ and making several copies. I am sending one to Mr. Probst and one herewith to you.”

Letter of June 1939 No.1061 from Dinkgraeve to Hagemann

“Notes to my new will of December 4, 1937...I suggest considering as an art dealer primarily Mr. Probst from the Kunsthaus Mannheim. He is very fair and trustworthy; **...as a result of the many confiscations in museums the works of artists like Kirchner have become...very rare and it is not to be ruled out that in a few years the prices paid for such artwork will not be inconsiderable, specifically also abroad (America). Therefore do not dump anything...I will have a list prepared which indicates the selling price that I consider adequate for some of the pieces.**”

Handwritten Hagemann will of December 4, 1937, probated on November 27, 1940. No.1178 from Hagemann

Chapter 6

Post-War Reparations Law and Its Application in the Hess Case.

I.

Summary of Following Findings of Facts

- Hans Hess did not obtain back a single work of art from the former Hess collection under the restitution regulations issued by the Western Allies between 1947 and 1949.
- Hans Hess filed timely claims under the Federal Restitution Act of 1957 for the restitution of the artworks lost from the Hess collection. However, the application only cited the artists' names; no individual works were identified by name. Owing to the circumstance that neither the investigating restitution authority nor Hans Hess were able to provide concrete information about the actual whereabouts of individual pieces, the attorney who represented Hans Hess withdrew the restitution application in July 1961.
- Hans Hess filed timely claims for property damage and for damage to professional advancement under the Federal Compensation Act of 1956. The Hess art collection is mentioned collectively. The names of the artists are specified, but the titles of the individual artworks are not mentioned.
- In 1961 Hans Hess received a lump sum payout of DM 75,000, the maximum award permitted, which did not specify individual losses of assets. The compensation settlement refers to all financial losses suffered by Hans Hess, without a concrete break-down as to what losses the lump sum was meant to cover.
- Because of the termination of his employment at Ullstein Verlag in June of 1933 for racially motivated reasons, compensation was ordered in favor of Hans Hess for the loss he suffered in connection with his professional advancement.

II.

Primary Reparations Law - Allied Restitution Regulations.

In the Western occupation zones, including West Berlin, the United States (1947), France (1947) and Great Britain (1949) each had enacted its own restitution provisions. **Assets** that were "unlawfully confiscated" from individuals or legal entities during the Nazi regime (01/30/1933 to 05/08/1945) for reasons of race, religion, nationality, political views or political opposition against National Socialism were subject to restitution on the basis of a state action. "**Unlawful confiscation**" was defined as expropriation, dispossession, destruction of assets by state actions,

i.e. by government actions, but also included losses of assets as a result of legal transactions between private parties. The Allied restitution provisions included a short 12-month deadline for filing claims which began to run with the enactment of the pertinent laws/regulations.

Hess Case:

In the Hess restitution case, no restitution claims were found to be filed with the competent authorities in Germany between 1947 and 1950 by Hans Hess, the party entitled to the claim, or his mother Thekla Hess.

III.

Secondary Reparations Law.

1. Federal Restitution Act (*Bundesrückerstattungsgesetz*).

In the so-called transition agreement dated May 26, 1952, within the framework of the treaty with Allied occupation powers, the Federal Republic of Germany committed itself to continue the former Allied regulations on restitution. On July 19, 1957 the Federal Restitution Act was passed. Claims had to be filed by March 31, 1959.

The Federal Restitution Act - similar to the Allied restitution provisions - provided that losses of assets during the Nazi years suffered by "parties persecuted by the NS-regime" with regard to assets owned by them, must be restituted if they are located in the territory of the Federal Republic of Germany and an "unjustified expropriation of assets" can be determined. The applicant had to identify the assets precisely and describe the circumstances under which they were lost.

Hess Case:

Represented by attorney von Pückler Hans Hess filed for restitution of the following assets with the German government on **March 25, 1958**:

- Paintings and watercolors by:

Franz Marc
Wassily Kandinsky
Marc Chagall
Lyonel Feininger
Paul Klee
Max Pechstein
Erich Heckel
Ernst Ludwig Kirchner
Christian Rohlfs
Karl Schmidt-Rottluff
Otto Müller
Emil Nolde

August Macke
 Wilhelm Lehmbruck
 Alexander Archipenko
 Paula Becker-Modersohn
 Alfred Kubin
 Oskar Kokoschka
 Heinrich Campendonc
 Rudolf Belling
 Heinrich Nauen
 Gerhard Marks

- Graphic works by:

Wilhelm Lehmbruck
 Lyonel Feininger
 Erich Heckel
 Christian Rohlf
 Paul Klee

and others.

The paintings and graphic works included approximately 4,000 pieces.

Evidence: Restitution application letter dated 03/25/1958.

The pleadings dated 11/22/1960, further substantiating the restitution application, again set forth only the names of the artists already identified in the application of 03/25/1958, but do not specify the works of art. The information was limited to the explanation that the collection was compiled between 1918 and 1930 and contained more than 4,000 artworks (oil paintings, water colors, drawings, graphic works, sculptures) by famous artists (who are then named). This is followed by a summary of the whereabouts of the collection, starting in 1933 in Lichtenfels/Bavaria, storage at the Kunsthau (art house) Zurich, Switzerland, repatriation into the German Reich in 1937, etc., essentially with reference to pleadings and exhibits in the reparation/compensation proceedings. No information regarding the individual works of art and their loss is given.

Evidence: Loss substantiation letter dated 11/22/1960.

In view of the fact that 16 years following the end of the war and 3 years after his restitution and compensation application was filed, Hans Hess had not received any reparations at all, he involved the German ambassador in London at the end of 1960 in order to expedite the matter.

Evidence: Letter of the Berlin Ministry of the Interior dated January 24, 1961 and February 17, 1961.

In the 02/17/1961 letter, the minister even specified that the processing of compensation claims did not have to be held up until the end of the

restitution proceedings and that already at that point in time, financial compensation could be assessed and paid out.

Evidence: As before, letter dated 02/17/1961.

As a result the different claims offices, especially in Bavaria, renewed their inquiries into the loss of the Hess art collection. To no avail.

Evidence: Letter of the Berlin Compensation Office dated 06/16/1961.

Based on their interim notification of 05/24/1961, the conclusion of the restitution authorities "that the investigations conducted by the Bavarian authorities did not lead to any positive result regarding the whereabouts of the art collection", the restitution proceedings were terminated and all losses of assets were compensated in a lump sum amount in accordance with the Federal Compensation Act.

Evidence: Letter of the Berlin Compensation Office of 07/07/1961.

However, in the compensation proceedings, a notification of compensation determination in favor of Hans Hess could only be rendered following the conclusion of the restitution proceedings. Because both Hans Hess and the compensation office were unable to locate the lost art collection, Hans Hess' attorney withdrew the restitution application on 07/05/1961 on the grounds that "Hans Hess was unable to produce the necessary documents and evidence to prove confiscation which was necessary to establish a claim against "the German Reich". The attorney did so in order to receive at least some lump sum compensation for losses of assets.

Evidence: Application withdrawal letter dated 07/05/1961.

2. Federal Compensation Act (*Bundesentschädigungsgesetz*).

The Federal Compensation Act (BEG) of 1953/1956 already provided that bodily harm, injuries to health, loss of freedom and professional advancement and property losses suffered during the NS-regime rendered an applicant eligible for monetary compensation. The legal deadline for asserting such claims ended on 04/01/1958 and for the Federal Compensation Final Act, on 12/31/1969. The monetary compensation payable under the BEG, in German Marks, was not based on the then current market value or the value at the time of loss, rather a legal cap of DM 75,000 represented the maximum compensation permitted, irrespective of the amount of actual loss.

Hess Case:

Represented by attorney von Pückler, Hans Hess filed an application for reparations on 08/19/1957, which was substantiated for the first time on 04/01/1958.

Evidence: Reparation application dated 08/19/1957 and pleadings dated 04/01/1958 by attorney von Pückler.

This statement of claim includes, among others, an exhibit entitled "Explanation of losses and damages suffered", which cites the loss of the Alfred Hess art collection, originally consisting of more than 4,000 artworks by important artists, including oil paintings, water colors, original drawings, graphic works and some sculptures. Specifically the followings artists are named:

Franz Marc
 Wassily Kandinsky
 Marc Chagall
 Lyonel Feininger
 Paul Klee
 Max Pechstein
 Erich Heckel
 Ernst Ludwig Kirchner
 Christian Rohlf
 Karl Schmidt-Rottluff
 Otto Müller
 Emil Nolde
 August Macke
 Wilhelm Lehmbruck
 Alexander Archipenko
 Paula Becker-Modersohn
 Alfred Kubin
 Oskar Kokoschka
 Heinrich Campendonc
 Rudolf Belling
 Heinrich Nauen
 Gerhard Marks

The only further specification pertains to the number of artworks by certain artists, such as:

- a) 7 paintings by Franz Marc
 7 works by Lyonel Feininger
 7 paintings by Ernst Ludwig Kirchner
 3 large paintings by Marc Chagall
 2 works by Kandinsky;
- b) and further, "several" works by:
 - Pechstein,
 - Nolde,
 - Heckel,
 - Müller,
 - Rohlf, and
 - Schmidt-Rottluff.

- c) In terms of graphic works the collection contained:
 the mostly hand-colored complete works of Wilhelm Lehmbruck,
 as well as
 the complete works of Lyonel Feininger.
- d) Finally,
 first and early prints of almost all renowned expressionist masters.

The letter does not specify individual works of art, their titles or other designations. The statements of reputable artists, former museum directors and other individuals, included in the application, only confirm that in 1933 the Alfred Hess art collection consisted of numerous master works by the aforementioned artists. Various art experts, notably J.K. Thannhauser, an art dealer who had emigrated to the United States, pointed out in his statement dated 09/23/1958, which had been submitted to the compensation office, that the artistic value of the Hess collection was extraordinary and that the value of the collection would be "several hundreds of thousands of dollars."

Evidence: Letter J.K. Thannhauser dated 09/23/1958.

Without determining individual specified losses of assets and by taking into account that the compensation office recognized that the maximum permitted award of DM 75,000 would in any case only constitute a fraction of the actual loss incurred, the parties involved agreed on a lump sum financial compensation of DM 75,000 for all losses of property and assets incurred by Hans Hess in a compensation settlement dated 01/28/1963.

Evidence: Compensation settlement dated 01/28/1963.

No specific compensation for individual works of art and their loss was determined.

Evidence: As before.

IV.

Conclusions.

In his restitution application dated in March 1958 and ensuing explanatory statement of claims, Hans Hess asserted the loss of the former Alfred Hess art collection only in a general manner, **naming the artists**, but not the individual works of art. In order to obtain monetary compensation (maximum amount possible: DM 75,000), Hans Hess had to withdraw his restitution application regarding the art collection. Not a single restitution decision regarding an individual work of art from the former Alfred Hess collection was issued, which means that not a single work of art was returned or restituted.

In the reparation/compensation proceedings pertaining to all losses of assets suffered by Hans Hess, he was awarded a lump sum compensation amount of DM 75,000 in 1961. In these reparation/compensation proceedings, the former Alfred Hess art collection was only generally included, by **naming the artists**, but not by describing the individual works of art and their titles. In the exhibit entitled "Explanation of losses and damages suffered", the collection's value was, among other facts, described on the basis of:

"7 paintings by Franz Marc
7 paintings by Lyonel Feininger
7 paintings by Ernst Ludwig Kirchner
3 large paintings by Marc Chagall
2 works by Kandinsky..."

The works of art were not named individually and were not further specified. However, it is conceivable, theoretically, that the "7 paintings by Ernst Ludwig Kirchner" also included the "Berlin Street Scene", albeit unnamed.

The article by Feilchenfeldt/Romily in "Weltkunst" (Art of the World), October 2000, creates the erroneous impression that the reparations application mentioned the titles of the artworks of the aforementioned artists. However, the article's footnotes and the titles of paintings named therein only constitute more concrete information by the authors and do not quote portions of the actual text of the compensation application.

Therefore it is a fact that in the restitution as well as in the compensation proceedings commenced in 1957, until its conclusion in 1961, Hans Hess never concretely named any individual works of art from the former Alfred Hess collection. Therefore, the awarded lump sum compensation cannot be attributed to any particular works of art.

Chapter 7

Legal Analysis Regarding the Return of "Berlin Street Scene".

Introduction

The following legal analysis is limited to a brief illustration of the legal questions pertaining to this asset, with a special concentration on the aspects which have been subject to controversial discussion in the public.

I.

Claims under Civil Law.

1. Acquisition of the Painting by Hagemann.

According to the current status of investigations, the "Berlin Street Scene" painting was allegedly sold at the end of 1936, no later than by February 1937, in the then German Reich, probably in Cologne, to the private art collector Hagemann. Analysis of the correspondence between Budczies/Hagemann/Kirchner/Gosebruch demonstrates that Thekla Hess did not personally sell the painting to Hagemann because only after the purchase and transfer of title did Hagemann make inquiries from Kirchner about the former owner (Hess). A comment by Gosebruch to Hagemann in 1939 leads to the conclusion that the sale of the "Berlin Street Scene" to Hagemann was conducted by the former director of the KKV, Dr. Walter Klug, who also, as a sideline, was as a private art dealer with premises located at the KKV.

It is still not clear whether Klug sold the painting to Hagemann by order and on behalf of the KKV or in his capacity as an independent art dealer.

No written sales order has been found so far. In a letter from Thekla Hess to the Kunsthaus Zurich dated 08/16/1936, in which she orders the return to the KKV of the Marc and Kirchner paintings deposited in Zurich, she mentions the planned Marc retrospective exhibition as the reason for the return and emphasizes that she is transferring the paintings "approved by me with great reluctance - on loan."

However, it can be deduced from the Thannhauser documents that at least the Thannhauser Gallery was also authorized to sell the "Berlin Street Scene" and that a sale of the "Berlin Street Scene" by Thannhauser would have occurred with the approval of Thekla Hess. Therefore it could be concluded that the KKV and/or its director, Klug, was authorized to sell the painting.

From a civil law point of view, this signifies the legally effective transaction of a purchase agreement with the owner and the transfer of title of "Berlin

Street Scene" to the buyer, Hagemann, as manifested by the transfer of possession. This is proven by the end of February 1937, at the latest.

It would thus be a fact that Hagemann, in a legally effective manner, concluded a purchase agreement with the owner of the painting, Hans Hess, through his agent, Thekla Hess, in turn acting through the KKV and/or its director, Klug, on the basis of a power of attorney, followed by transfer of ownership to the purchaser, Hagemann.

2. Summary and Result.

Hagemann became the owner of the "Berlin Street Scene" with the transfer of possession of the painting at the end of February 1937, at the latest.

3. Subsequent Ownership Transfers.

The ensuing transfers of ownership

- gift of "Berlin Street Scene" from the heirs of Hagemann to Holzinger (probably end of forties/early fifties) and
- sale of painting to the state of Berlin/Bruecke Museum, 1980

constituted legally valid ownership transfers because in each case the sellers (Hagemann heirs, Holzinger widow) were the owners at the time of the transfers of ownership.

The legal successor of the former owner, Hans Hess, has no claim under civil law for the return of the property.

II.

Restitution Claims under Public Law.

1. Allied Restitution Law.

The so-called Allied restitution provisions issued between 1947 and 1949 in the U.S., British and French occupation zones provided for restitution/return of former property to an eligible party on the basis of state action. Thus, property lost under civil law could be granted back to the original owner by state action.

The various Allied regulations differed in terms of their prerequisites for the return of assets. Details are explained in the Washington Principles, under III. "Review of the Application of Allied Restitution Law".

Applicants had to file claims under the Allied restitution provisions within certain deadlines. The deadlines were extremely short and limited to a year as of the issuance of the regulations, which meant that the deadline for such applications expired in 1950 at the latest. In the case of artworks in which the

whereabouts and current owner were unknown, this short application period often expired before a timely application could be filed.

As far as can be ascertained as of today, Hans Hess did not file such a timely application under Allied restitution provisions.

2. Federal Restitution Act.

The Western Allies and the Federal Republic of Germany agreed, at the time of the so-called transition agreement of 05/26/1952, that the losses of assets that had occurred during the Nazi regime had not been adequately remedied and "repaired" by the Allied restitution regulations up to that point in time. The Federal Republic of Germany committed to continue the restitution ordered by the Allied restitution regulations and to implement it into Federal laws. The Federal Restitution Act of 07/19/1957 granted a legal right to file claims for restitution to parties persecuted by the Nazi regime who had suffered losses of assets in the period between 01/30/1933 and 05/08/1945. The claims had to be filed within a statutory deadline that was to expire on 03/31/1959.

Through his German attorney, Hans Hess filed timely claims with the German authorities against the German Reich for the loss of the Alfred Hess art collection. See Chapter 6.

In order to obtain state-ordered restitution of individual assets, the regulations required that the applicant name the current owner of the asset and that the asset be located within the territory of the Federal Republic of Germany. According to the restitution documents, Hans Hess never identified individual paintings or titles. He was only able to identify the whereabouts of certain works of art - however not including the "Berlin Street Scene" - and its then current owner. Legally mandated investigations by the German authorities, in particular in Bavaria, the last residence of Thekla Hess, did not yield any noteworthy findings regarding the whereabouts of the Hess art collection. The Federal Restitution Act provided for payment of damages in lieu of return of assets only if the applicant could prove that the assets were confiscated by German authorities or the German Reich. Hans Hess was unable to do that at the time. Therefore his attorney, in a letter dated 07/05/1961, withdrew the application on the grounds that "the applicant is unable to procure the required documents or proof to substantiate the elements of expropriation."

3. Monetary Compensation Under the Compensation Act.

If the scope of the Federal Restitution Act did not apply, i.e. if the actual return of assets was not possible, and in the absence of a determination of possible damages for the loss of assets under the Federal Restitution Act, the "reparation" for losses of assets in consequence of Nazi persecution was limited to a compensation claim, payable in the form of a lump sum pay-out. According to the Federal Compensation Act of 09/18/1953, supplemented on 06/29/1956, injuries to body and health, loss of professional advancement,

property and assets were to be compensated in the form of a one-time monetary payment.

Hans Hess had filed timely compensation claims through his German attorney. In the compensation proceeding no concrete value was attributed to individual works of art. Solely on the basis of the official determination that already the works of art left behind in the German Reich exceeded DM 75,000, the maximum award permitted under the law, the parties to the 1961 settlement agreed, for pragmatic reasons and by way of settlement, to apply the one-time payment with a legal limit of DM 75,000. This served to compensate Hans Hess for all losses of property and assets which he had suffered during the Nazi era. For legal reasons the compensation authorities had required the prior withdrawal of the restitution application before they would determine the above monetary compensation.

In the Hess compensation proceeding, individual assets, in particular works of art, were not specified, nor was the value of individual artworks assessed or determined. It is impossible today to ascertain what part of the overall compensation settlement pertained to compensation for the loss of the "Berlin Street Scene" painting.

III.

Claims under the Washington Principles and the Joint Declaration.

1. Washington Conference of December 1998.

Forty-four countries attended the Conference on Holocaust Era Assets, which took place in Washington, D.C. from November 30 to December 3, 1998. At the initiative mostly of the United States and Switzerland, the conference adopted the so-called Washington Principles at its conclusion on December 3, 1998. The preamble of the English-language text specifies in a general way that the signatory states wished to "assist in resolving issues of Nazi confiscated art." The ensuing 11 principles call for the signatories' active research regarding the provenance of the affected works of art, publication of identified works of art in publicly accessible registries, active investigations by governments into the identification of former owners or their heirs, and contact to them for the purpose of some sort of agreement, and, in researching losses due to persecution, ease of the burden of proof regarding the loss in favor of the former owner.

2. Supplementary National Provisions and Declarations.

In the wake of the Washington Conference of December 1998 some especially affected states immediately started the implementation and adoption of the Washington Principles on a national level.

- On 12/04/1998 Austria adopted the Art Restitution Act. In terms of what constitutes a loss it refers back to the so-called Invalidity Act of

05/15/1946, which, among others, includes the purchase and sale of works of art by private third parties due to persecution.

- In France the restitution regulations issued in November 1944 and June 1945 continue to apply unchanged. Accordingly, purchase agreements or other acquisitions of property taking place during the German occupation of France are null and void. Property could not have been acquired legally [during that time]. Under current French law, the original deadline for raising claims, 12/31/1949, does not apply if the applicant has not been able to find out about the circumstances of the loss of assets due to the persecution and find the current owner. In addition, by decree of 09/10/1999, the French government established the CIVS, a commission for the indemnification of victims of spoliation. Its various working groups review Nazi property takings of all kinds, including works of art that occurred during the time of occupation. Losses of assets incurred in legal transactions between private parties are also covered by these proceedings.
- A decree of the Dutch State Secretary of Culture dated 11/16/2001 established an advisory commission that makes recommendations regarding the return of works of art held in Dutch state museums. Works of art lost due to legal transactions between private parties involving circumstances of persecution are also eligible for restitution. For example, the entire sale of the privately-held Goudstikker collection to Hermann Goering was classified as a sale forced by persecution and return was ordered for those works of art in possession of the federal government that were clearly identified as former Goudstikker property.
- The Czech Republic adopted a restitution law in June of 2000, which provided for the return of works of art to their former owners who had lost them during the occupation of Czechoslovakia between 09/29/1938 and 05/08/1945 and which are today owned by the state. The restitution law covers both losses of assets due to direct government pressure, such as confiscation, and due to legal transactions involving parties that were victims of Nazi persecution.
- Great Britain, directed by the Ministry of Culture, established the Spoliation Advisory Panel in February 2000, which renders recommendations regarding claims for the return of works of art that are in state collections. Reports published so far and extensively reasoned recommendations regarding such returns also include circumstances in which the loss of works of art is the result of legal transactions between private parties and not only of confiscations on the part of government authorities.
- In its law of 04/15/1998, revised on 05/25/2000, the Russian Federation adopted a law covering cultural assets carried off to the USSR in the wake of WWII and now located in the territory of the Russian Federation. One aspect of the law - in the West derogatorily called "Trophy Art Law" - that often gets overlooked is that it provides for the return of property formerly owned by parties who were persecuted for reasons of race,

religion or nationality and were active resistance fighters and that had been lost to such parties during the Nazi era. The Russian Federation, recognizes in principle that individuals, persecuted by the Nazis, have a claim to the return of their property.

- United States of America and Canada.

The American Association of Museums (AAM) and the Association of American Museum Directors (AAMD) are committed to the principles of the Washington Conference and treat losses of assets due to Nazi persecution on the basis of the Guide to Provenance Research. Containing several hundred pages, these guidelines also specifically mention "unlawfully appropriated" works of art. Decisions in favor of the return of such works by U.S. museums - 70% of which are not government-owned - also pertain to assets that were lost in legal transactions between private parties.

The Canadian Association of Museums and the Association of Museum Directors have adopted the U.S. guidelines unchanged and apply the US-conventions accordingly.

In addition to the countries specifically mentioned above, no other signatory state subscribing to the Washington Principles has so far interpreted the term "confiscation" in such a narrow way as to limit it to the return of only those assets lost as a result of government actions. Rather, it is a fact that none of the signatory states has made such a narrow application of the principles' scope. On the contrary, all signatory states that have made decisions applying the Washington Principles have recognized losses of assets due to Nazi persecution also when they pertained to losses incurred in connection with legal transactions between private parties. The unsubstantiated allegation brought forth in the press saying that the Washington Principles only apply to government confiscations and not to losses of property as a result of legal transactions between private third parties is refuted by the uniform handling of these issues by the signatory states to that agreement worldwide, some of which have specifically emphasized this aspect in their laws, decrees, orders and regulations.

3. Implementation of the Washington Principles in the Prussian Cultural Heritage Foundation Council Resolution of June 4, 1999.

The Prussian Cultural Heritage Foundation (SPK) decided in a resolution adopted by its Council on 06/04/1999 that works of art formerly owned by Jews that were confiscated from their former owners for reasons of persecution and are now owned by the SPK will, as a matter of principle, be returned to their former owners or their heirs. The restitution case that took place on the basis of this Foundation Council decision involved a drawing by Vincent van Gogh. Persecution by the Nazi regime and his ensuing financial difficulties forced its former Jewish owner, Max Silberberg, to sell this piece at an auction in 1935. Since then, a great number of restitution decisions have been rendered by the SPK pertaining to cases in which assets were lost in sales between private parties which were caused by Nazi persecution.

4. Joint Declaration of December 14, 1999.

To clarify the implementation of the Washington Principles, representatives of the German federal government, the German states, the central associations of municipalities, and the German federation of cities and communities committed in a public declaration on 12/14/1999:

- to return works of art to their legitimate former owners or their heirs, after reviewing the claim (return principle), and
- to the extent that past reparation benefits were awarded for lost artworks, to make the return of the artwork dependent on reimbursement of the compensation paid earlier in order to avoid double compensation (set-off of compensation).

As a guideline for the implementation of the Washington Principles and the Joint Declaration of 12/14/1999 the Federal Government published supplemental guidelines in February 2001. These implementation guidelines adopted by the Federal Government, the German states, central associations of municipalities, museums, and the German federation of cities and communities, recommend that losses of assets due to Nazi persecution be decided by applying the regulations contained in the Allied Restitution Order BK/O (49) 180 issued for Greater Berlin on 07/26/1949.

5. Review of the Loss of Assets Pertaining to the "Berlin Street Scene" on the Basis of the Allied Restitution Order of July 26, 1949.

a) Legal Presumption of Persecution by the NS Regime.

If a party belonged to a group of individuals, which as a whole was excluded from cultural and economic life in Nazi Germany - particularly individuals persecuted for reasons of race - then such party is considered to be a collectively persecuted person. This includes in particular Jews. As evidenced by his birth certificate, Hans Hess was of "Hebrew faith" and considered by the Nazi regime, a "full Jew". Thus he belonged to the circle of persons collectively persecuted by the Nazi regime.

b) Legal Presumption of Loss of Assets Due to Persecution.

Losses of assets incurred by collectively persecuted individuals occurring in the German Reich during the Nazi era (01/30/1933 to 5/8/1945) (in this case: Cologne) were considered to be, as a matter of principle, due to persecution. This category includes all types of losses of assets. In addition to direct government confiscation measures, such as expropriation, confiscation or seizure, it also includes cases in which property was given as a gift or sold between private persons or at auctions.

c) Lesser Burden of Refutation of the Presumption of Asset Loss Due to Persecution.

For legal transactions occurring before the issuance of the Nuremberg race laws (09/15/1935) the current owner may refute the legal presumption of a loss of assets due to Nazi persecution if he proves:

- that the asset was sold at that time at an adequate purchase price (then current market value) and
- the seller was able to freely dispose of the purchase price.

Not a single historical document proves the amount of the purchase price paid by Hagemann. No agreed purchase price was ever mentioned in the correspondence between Hagemann and Kirchner, Hagemann's private art advisor Gosebruch, or other Kirchner buyers such as Budczies etc., nor was it proven that a purchase price was ever paid. The so-called "Hagemann list" dated 03/09/1947 -repeatedly cited as proof of the amount of the purchase price - only lists the "Berlin Street Scene" as having a value of 3,000, without specifying any currency (Reichsmark, Swiss Francs?) and at what time that value was supposedly determined. The list was compiled for inheritance purposes, by Hagemann's heirs, seven years after his death.

Thus, the amount of the purchase price agreed to at the time of the sale has never been established.

In addition, [according to the Allied Restitution Order] it must be proven beyond doubt that the agreed purchase price corresponded to the then current market value.

Media reports have repeatedly claimed, without further explanation and evidence on the basis of comparable sales etc., that the purchase price paid by Hagemann (RM 3,000) was far above-average. There is no evidence whatsoever to substantiate this allegation.

So far, for the 1936/1937 time frame at issue here, it has been impossible to determine sales prices of comparable Kirchner paintings created in the relevant period prior to 1914, a time that art experts (such as Hagemann's art consultant, Gosebruch) called Kirchner's most important creative period. Before 1936, substantially higher purchase prices or insurance values were found for comparable Kirchner paintings created up to 1914:

- In July 1931 the insurance value of the "Potsdamer Platz" street scene was stated by its then owner, Hermann Lange, at RM 15,000.
- On 02/30/1926 Kirchner himself appraised the paintings "Studio" and the "Dancers" at between RM 4,000 and 5,000, adding that it would be unwise to sell these paintings below that price because they

originated from a special creative period and could fetch higher prices at a later time.

- The Kirchner painting "In the Street" was insured by the National Gallery, Kronprinzenpalais, at a value of RM 6,000 on 08/02/1933.
- In December 1924, a purchase list from the Fischer Gallery lists seven Kirchner paintings identified by name, dating from the period between 1912 and 1915, at insurance values ranging between RM 8,000 to 18,000.

These comparative amounts involving Kirchner paintings from the creative period before 1914 indicate that the alleged unproven RM 3,000 sales price for the "Berlin Street Scene" fell far short of the market value of comparable pre-1913/14 Kirchner oil paintings.

d) Stricter Burden of Refutation of the Presumption of Asset Loss Due to Persecution.

For legal transactions occurring in the German Reich since 09/15/1935 the legal presumption that a loss of assets due to Nazi persecution took place, can only be refuted by evidence that:

- the sale involved a purchase price corresponding to the market value, and
- the seller obtained the benefit of the undiminished proceeds of the sale, and
- and that the legal transaction, in its essence, would also have happened in the absence of the Nazi regime, **or** the acquirer successfully protected the financial interest of the seller in a special way, for example, by helping to transfer the sales proceeds to a country outside Germany.

The sale at issue in this case, apparently in Cologne, took place at least 15 months after 09/15/1935, the cut-off date for the application of the more stringent presumption rules. As explained under c) above, there is neither proof of the amount of the agreed purchase price - and thus also no proof of its correspondence to the market price - nor is there any evidence that Thekla Hess was able to obtain or benefit from the undiminished purchase price.

Therefore in this case, from a legal point of view, there is no need to prove that the transaction would have occurred in the absence of the Nazi regime. However, refutation of the presumption of a loss of assets having occurred due to persecution requires evidence beyond any doubt that Thekla Hess would have sold the "Berlin Street Scene" at the end of 1936/early 1937 exclusively through the Cologne Art Association (KKV) and/or its director, Klug, at the alleged price of RM 3,000.

The contrary can be established just on the basis of a few considerations:

- In the absence of the Nazi regime Hans Hess would still have been employed by Ullstein Verlag, earning an above-average salary of at least RM 900 per month. There would have been no economic reasons to sell individual paintings to maintain his subsistence or that of his mother, at least not at that time.
- In the absence of the Nazi regime Hans Hess would have had access to other assets located in the German Reich (stocks and real estate) and could have sold these without being forced to sell the "Berlin Street Scene" for economic reasons at the end of 1936/early 1937.
- Kirchner paintings were much sought after in the German Reich by Kirchner connoisseurs and enthusiasts, especially those who had sufficient financial means to afford them, such as the private collectors Lange, Henke, Jung, Budczies and Hagemann, the buyer of "Berlin Street Scene". Due to sales activities by the New York gallery owner Valentin, Kirchner was also very much in demand in the United States as of the Spring of 1937. If Hans Hess, or on his behalf his mother Thekla Hess, would have wished to sell this painting - for whatever reasons - they would have been able to sell it to the highest bidder, for example at a public auction in Germany, in Europe or even in the United States and would not have been restricted to sell the painting in Cologne via the KKV or its director, Klug.
- Assuming a sale was desired at the end of 1936 or the beginning of 1937, Thekla Hess would have preferred to sell the painting to an important museum or to a public collection first. Since 1933, when selling a work of art, she always first tried to sell it to a museum.

e) Procedural Requirements.

From a procedural point of view, the counter-proof, i.e. the refutation of the loss of assets having been caused by persecution, is dependent on proof beyond a doubt that the purchase price was adequate and was obtained by the seller, Thekla Hess, in full, without any deductions,

cf. Federal Administrative Court (BVerwG) decision of 04/30/2003, 8 C 9.02 with further evidentiary facts, reprinted in ZOV (magazine for open property issues) 2003, 266, 267.

It is procedurally admissible and, in applying the Allied restitution regulations, has been recognized by the Federal Administrative Court within the framework of the Property Act, that the loss of assets as a result of persecution can be refuted if indications clearly and without any doubt lead to conclusive evidence.

Cf. in principle, BVerwG decision of 06/24/2004, 7 C 20.03, in VIZ 2004, 486, 488, right column on the bottom, source cited in Huth expert opinion, page 25, with reference to ZOV 2004, 262 is not suitable because the evidentiary facts are not reflected in the ZOV. The decision is summarized in the ZOV.

In the decision of the Administrative Court of Dresden, reviewed by the Federal Administrative Court in an appellate proceeding, the cancellation of two mortgages in 1934 and 1936 as well as a declaration of assets dating from 1942, which does not list any outstanding purchase price, are cited as sufficient evidentiary facts, proving the receipt of part of the purchase price. In the opinion of the Federal Administrative Court, the fact that the mortgages were deleted provides prima facie evidence that the underlying receivables were paid. To that extent circumstantial evidence was recognized as being conclusive.

However, in this case no comparable circumstantial evidence, suitable for replacing conclusive evidence, can be determined. On the contrary, insurance values for comparable Kirchner paintings are far higher than RM 3,000, the alleged purchase price amount.

Evidence of "undiminished receipt" of the market price requires proof that the received amount was not reduced or diminished by discriminatory levies. In this case no facts, or evidence replacing facts, could be determined that prove undiminished receipt of the alleged RM 3,000 purchase price by Thekla Hess. The correspondence that was evaluated in this expert opinion evidences a sale through KKV or its director, Klug. If the purchase price was paid to the KKV and/or its director, Klug, this alone would not substantiate undiminished receipt of the purchase price by the seller, in this case, Thekla Hess.

6. The Compensation Settlement of 1961 Does Not Preclude the Painting's Return.

In the compensation settlement of 1961, Hans Hess was compensated for all his asset losses through the payment of a lump sum compensation of DM 75,000, the maximum amount permitted under the law. The settlement does not specify any concrete compensation pertaining to individual paintings, such as the "Berlin Street Scene". No explicit waiver of future claims was ever made, nor did he waive claims arising decades later on the basis of legal, or similar to legal, regulations.

According to the Joint Declaration of 12/14/1999, any reparation benefits provided in the past for lost artworks is to be credited or must be reimbursed if the artwork becomes subject to restitution. First of all, it is doubtful - because it is not quantifiable - whether in the compensation settlement of 1961 any compensation can be considered to have been earmarked specifically for the "Berlin Street Scene". Even if one was to read this into the 1961 compensation settlement, the financial compensation paid at the time (which, with regard to the "Berlin Street Scene" can only pertain to a fraction

of the then paid total compensation amount), would have to be reimbursed or credited in accordance with the Joint Declaration. Thus, the Joint Declaration clearly does not exclude the return of a work of art just because, within the framework of a compensation proceeding under the Compensation Act, compensation was paid in the form of a lump sum payment for lost assets without concrete specification of individual losses.

In the case at issue, no compensation was determined for the loss of the "Berlin Street Scene" painting based upon an expert opinion of its market value at the time, and no compensation was awarded for the loss of the painting under the Federal Restitution Act, nor was a lump sum compensation paid for it under the Compensation Act. It is therefore a fact that no monetary compensation, in terms of an exact value determined for the "Berlin Street Scene", was paid, either under the Federal Restitution Act or the Federal Compensation Act.

In addition, the Federal Administrative Court has taken a position on the "competitive relationship" theory regarding post-war compensation settlements and the view that such settlements included a final waiver of future claims. The Federal Administrative Court is of the opinion that restitution regulations issued decades later (in this case the Property Claims Act - *Vermögensgesetz*) do not prevent an injured party from asserting restitution claims now based on new grounds for such claims (there the Property Claims Act, here the Washington Principles/Joint Declaration) if in a compensation settlement that took place decades ago, such a party signed a - what was then considered - final settlement providing monetary compensation for the loss of assets. The Federal Administrative Court makes it clear that such a settlement arrived at many decades ago does not mean that the injured party waived all existing or future claims pertaining to injustices suffered. The renewed assertion of restitution claims - decades following the financial compensation awarded at that time - also does not constitute an abuse of law on the part of the injured party.

BVerwG decision of 05/27/1997, 7 C 67.97,
reprinted in ZOV 1997, page 351 et seq.

The Joint Declaration of 12/14/1999 clearly permits an assertion of claims even in cases in which the claimant had received monetary compensation in a compensation settlement decades ago based on reparation provisions. The Joint Declaration only recommends that the compensation paid earlier be credited or reimbursed. Since no concrete compensation payment could be determined for the "Berlin Street Scene" painting, reimbursement, at least of a fraction of the DM 75,000 compensation paid in 1961, was neither calculable nor actually possible.

7. No Need To Reimburse the 1980 Purchase Price.

In accordance with the Joint Declaration dated 12/14/1999 and the supplementary guidelines ("*Handreichung*") of February 2001 issued in connection therewith, an asset which has been determined to have been lost due to Nazi persecution has to be returned. In order to avoid double

compensation, the return may be made dependent on reimbursement of any compensation received by the rightful claimant in the past. According to these determinations the rightful claimant, Anita Halpin, would have had to reimburse no more than DM 75,000, the amount paid in the 1961 compensation settlement, and from that amount only the mathematically determined portion pertaining to the "Berlin Street Scene" painting.

Instead, the State of Berlin demanded that Ms. Halpin pay back the purchase price paid for the painting in 1980, i.e. DM 1.9 million (approximately 1 million Euro), which apparently happened. However, Ms. Halpin was not the recipient of the 1980 purchase price. Therefore she should not have had to reimburse the 1980 purchase price to the State of Berlin. According to the Principles of the Joint Declaration of 12/14/1999 and the supplemental guidelines of February 2001, the State of Berlin should not have requested Mrs. Halpin to reimburse the 1980 purchase price. The authors of this expert opinion are not aware of comparable circumstances in Germany, in which the party who is entitled to restitution reimbursed any purchase prices paid earlier by the party who is obligated to render the restitution. However, within the framework of negotiations about a "fair and just settlement" similar considerations may come into play in other pending proceedings. The fact remains that the actual reimbursement of the 1980 purchase price by Ms. Halpin exceeds the regulatory framework of the Joint Declaration and the supplementary guidelines of February 2001, in favor of the party obligated to retribute the painting, i.e. the State of Berlin. By reimbursing the State of Berlin for its payment of the 1980 purchase price, Ms. Halpin remedied any financial losses incurred by the State of Berlin.

Chapter 8

Conclusion.

I.

Summary of Factual Determinations.

- Until 01/30/1933 Hans Hess, owner of the Alfred Hess art collection, did not sell any works of art from the collection to third parties. Only a few individual pieces were transferred to members of the family.
- Not a single sale of works of art by Alfred Hess (who died on 12/24/1931) could be proven, in particular not for economic reasons.
- M. u. L. Hess Schuhfabrik AG, one of the largest companies of its kind in the German Reich, was still flourishing at least until 09/30/1930. Until that point in time the company was able to achieve the highest assets in its corporate history as well as net earnings of approximately RM 400,000.
- M. u. L. Hess Schuhfabrik AG was in financial difficulties for the first time as of October 1930 and then until the end of 1932, a circumstance that resulted in a capital reduction.
- Following the death of Alfred Hess on 12/24/1931, his son, Hans Hess, became the sole heir. No personal estate bankruptcy took place. No excess indebtedness of the estate could be established in any concrete and binding manner.
- On the basis of the still existing assets of the M. u. L. Hess Schuhfabrik, the Schuhfabrik Hess AG was founded in November 1933. Transferred assets amounted to approximately RM 450,000. An official company audit report, dated 11/28/1933, states that the equity was sufficient to pay off all liabilities.
- Already during the first fiscal year of the newly-established Schuhfabrik Hess AG, five-digit earnings could be achieved; sales and earnings increased every year.
- The "Villa Hess", Alfred's private villa, was sold in September 1932 to his uncle, Georg Hess. The claim for the transfer of the property does not result from any liabilities incurred as a result of the Great Depression, but from a purchase price claim for 500 shares in M. u. L. Hess Schuhfabrik, which Alfred Hess had obtained from his uncle Georg Hess in 1927, when the latter retired after 40 years of service to the company.
- No documents could be found that would show that, as of the end of 1932, Hans Hess:
 - still had personal liabilities to creditors of Alfred Hess,

- still had corporate liabilities for which he or, as the case may be, his father had assumed personal liability, or that
- other liabilities were asserted against the Alfred Hess estate assets.
- A court ordered creditor settlement proceeding took place for one month (4/13/1933 to 5/19/1933) in connection with the M. u. L. Hess Schuhfabrik AG as a result of its financial difficulties incurred as of 09/30/1930 due to the worldwide economic crisis. At no time did the company file for bankruptcy or was bankruptcy declared against the company. At the time it transferred its entire still existing assets to the newly established Schuhfabrik Hess AG in November of 1933, M. u. L. Hess Schuhfabrik was not "broke", but owned assets in the amount of about RM 450,000.
- Hans Hess' Berlin apartment had already been ransacked by the Nazis around January 30, 1933.
- For reasons of racial persecution, Hans Hess' employment contract with Ullstein Verlag was terminated effective as of the end of June 1933.
- Thereafter Hans Hess fled to Paris, and on to London at the end of 1936. Since his emigration he had to earn his subsistence with occasional jobs, without sufficient regular income.
- The most valuable part of the Hess collection, in particular paintings and watercolors, was sent to Switzerland in mid-1933 for exhibition purposes.
- Only a few pieces were sold in 1934 and 1935. Only after a considerable part of the collection, stored at the Kunsthaus Zurich, was sent back to Germany in late 1936 and March 1937 for storage at the Cologne Kunstverein - KKV - is there any evidence that more sales took place, arranged by the KKV and/or its director, Klug.
- Insurance values and purchase price offers for comparable Kirchner masterworks dating from his creative period up to 1914 show amounts ranging from 4,000, to 5,000 and 6,000, and even up to 15,000 RM.
- No historical document mentions the alleged purchase price (3,000 RM) for the "Berlin Street Scene". The so-called Hagemann list was only compiled in 1947 und does not mention any purchase price, but states the words "value: 3,000", without indicating any currency.
- No document mentions whether and in what amount Hagemann paid a purchase price for the "Berlin Street Scene". Correspondence at the time leads to the conclusion that at the end of 1936/early 1937 Hagemann acquired the "Berlin Street Scene" in Cologne from the KKV and/or its director, Klug, and was in possession of the painting since February 1937.

- Immediately following Thekla Hess' successful escape to London in early April 1939, when she was finally safe from direct persecution by German authorities, she thanked the director of the Kunsthaus Zurich for his help in saving part of the collection and regretted the fact that the artworks that remained in the German Reich were now lost for good.

II.

Legal Findings.

- As German Jews, Hans and Thekla Hess belonged to the group of persons collectively persecuted by the Nazi regime since 01/30/1933.
- Hans Hess was personally persecuted for racial reasons from the beginning, but in any case not later than in June 1933 when he lost his employment at Ullstein.
- The sale of the "Berlin Street Scene" did not occur as a consequence of the economic difficulties that had begun before 01/30/1933. These problems had been remedied by mid-1933.
- The sale occurred after Hans Hess lost his job at Ullstein due to Nazi persecution in June of 1933 and fled to France without any financial means. As a result of such persecution he lived in difficult economic circumstances.
- The actual personal and economic situation of Hans and Thekla Hess demonstrates that their assets were lost due to Nazi persecution, even without applying the legal presumption of Nazi persecution, as set forth in the Allied restitution provisions.
- In any case, the State of Berlin failed to meet any of the requirements for refuting the presumption of a loss due to persecution, mandated by the Allied restitution provisions. It was not proven:
 - that a purchase price that corresponded to the fair market price was agreed to, and
 - that an unreduced purchase price corresponding to the fair market value was transferred to Thekla Hess, and
 - that the sale of "Berlin Street Scene", at the end of 1936/early 1937 by Thekla Hess would have also happened at that time, at that location and under those conditions, in the absence of the Nazi regime.
- After WWII Hans Hess never received compensation for the loss of the "Berlin Street Scene" or any other works of art from the Hess collection. He was granted the maximum legally permitted lump sum compensation of DM 75,000 for the loss of all his assets, without specification of any individual assets.

- Hans Hess never made a declaration specifically renouncing the possibility of having artwork returned to him. This also includes the 1961 compensation settlement.
- The Joint Declaration of 12/14/1999, and the supplementary guidelines of February 2001, do not exclude the return of artworks which were already subject to compensation.
- In the "Berlin Street Scene" case, applying the Joint Declaration of 12/14/1999 and the supplementary guidelines of February 2001, the Berlin Senat, taking into consideration the established findings, made the only possible determination that the painting was lost due to Nazi persecution at the end of 1936/early 1937. Since the personal and economic circumstances of Thekla and Hans Hess proved that the loss of the "Berlin Street Scene" painting occurred due to Nazi persecution and, alternatively, since none of the three cumulatively required refutation conditions could be proven, the loss of the painting due to Nazi persecution remained conclusive.
- The payment of the 1980 purchase price of approximately 1 million Euro by the rightful claimant, Anita Halpin, should not have been required according to the express provisions in the Joint Declaration of 12/14/1999 and the supplementary guidelines of February 2001. Agreement on such a payment of damages by Anita Halpin, the rightful claimant, represents an exceptional practice, which so far has only occurred in this case to the benefit of the State of Berlin, which was obligated to return the painting.

¹ Kirchner, Schmidt-Rottluff, Nolde, Nay... Letters to the collector and art patron Carl Hagemann, published by Hans Delfs, Mario-Andreas von Lüttichau, Roland Scotti, 2004, Hatje Cantz Verlag; the following sources indicate the numbering of the letters in the book and the pertaining footnotes (FN)

² No. 487, FN 5

³ No. 495, 497, FN 5

⁴ No. 807

⁵ Cf. FN 3 and no. 573, 850, 1034

⁶ Regarding Budzgies, see no. 709, 731, 775, 850, 945, 1037

Re: Lange see no. 70

Re: Ernst Henke see no. 290, FN 1, Nr. 573

Re: Gustav Jung see no. 772, FN 7, Nr. 647, FN 1

⁷ No. 516

⁸ No. 547

⁹ No. 536, 573, 809, 850, 1037

¹⁰ Nos. 661, 679, 709, 795, 850, 945, 1034

¹¹ No. 731

¹² No. 709

¹³ No. 761

¹⁴ No. 775

-
- ¹⁵ No. 795
¹⁶ No. 798
¹⁷ No. 804
¹⁸ No. 807
¹⁹ No. 809
²⁰ No. 810
²¹ No. 816
²² No. 850
²³ No. 1034
²⁴ No. 1078
²⁵ No. 1037
²⁶ No. 1021
²⁷ Ute Haug: The Cologne Kunstverein under the National Socialists, Aachen 1998, section 2.2.9.1, Dr. Walter Klug
²⁸ Cf. FN 27
²⁹ No. 723