

Binding opinion Kunsthaus A.S. Drey / Rotterdam City Council

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Report number: RC 3.186

Advice type: Binding opinion

Advice date: 18 September 2023

Period of loss of ownership: 1933-1940

Original owner: Art gallery

Location of loss of ownership: Outside the Netherlands

Byzantine ivory relief entitled *Hodegetria* or *Virgin and Child*



Summary of Binding opinion

The Restitutions Committee has assessed an application for restitution of a Byzantine ivory relief entitled *Hodegetria* or *Virgin and Child* (maker unknown), which is currently held by Rotterdam City Council and is in the collection of Museum Boijmans Van Beuningen. Research by the Expert Centre Restitution (ECR) has shown that this artwork came from the collection of the A.S. Drey art gallery in Munich, which until 1936 was in the hands of the German-Jewish Drey family. It has become sufficiently plausible that possession of the work was lost involuntarily due to circumstances directly connected with the Nazi regime.

The art gallery Kunsthaus A.S. Drey, which was founded in 1837, was a renowned family business, with subsidiaries in Paris, New York, London, Brussels and The Hague. The takeover of power by Hitler in 1933 put an end to a long period of growth. The clients stayed away, and the proceeds dropped sharply. The partners – a son and four grandsons of the founder Aron Siegfried Drey – felt it necessary to sell their large shop and adjoining residence in the centre of Munich and were confronted by disproportionate tax measures that were aimed at Jewish people. The business was furthermore accused of tax fraud on the basis of a dubious investigation. Burdened by the threat of a criminal prosecution and the realization that otherwise leaving Germany would not be possible, in February 1936 partner Siegfried Drey signed a declaration of submission, which meant that the sums being demanded became collectable immediately. A few moments later he had a heart attack in a taxi, collapsed and died. In order to be able to pay the ‘tax debt’ and penalties, the firm sold the lion’s share of its trading stock, including the ivory relief *Hodegetria* or *Virgin and Child*, at the Paul Graupe auction house. The art gallery was Aryanized at the end of 1936, and around the same time the partners were able to get out of Germany. In the late nineteen-thirties the ivory relief was in Amsterdam in the Goudstikker gallery, which sold it to the industrialist D.G. van Beuningen. After his death, in 1958 it was acquired by Rotterdam City Council for placement in Museum Boijmans Van Beuningen.

Since Museum Boijmans Van Beuningen, on behalf of Rotterdam City Council, waived the right to invoke good faith in regard to the provenance of the artwork when purchasing it, the Committee did not subsequently conduct research in this regard. The Committee advised the City Council to reconstitute the artwork *Hodegetria* or *Virgin and Child* to the legal successors of the partners of the A.S. Drey gallery.

Binding opinion regarding Kunsthaus A.S. Drey / Rotterdam City Council

Date binding opinion: 18 September 2023

Binding opinion

regarding the restitution application by, on the one hand

AA, BB, CC, DD, EE, FF and GG, represented by Dr Imke Gielen, lawyer of Berlin (Germany); (hereinafter referred to as the Applicants),

and on the other hand

Rotterdam City Council (hereinafter referred to as the City Council), represented by HH, Director of Museum Boijmans Van Beuningen,

issued by the Advisory Committee on the Assessment of Restitution Applications for Items of Cultural Value and the Second World War in The Hague (the Restitutions Committee, hereinafter referred to as the Committee).

1. The application

The restitution application concerns a Byzantine ivory relief entitled *Hodegetria* or *Virgin and Child*, which is dated to the tenth century (hereinafter also referred to as the artwork). Its maker is not known. The artwork was purchased in 1958 by the City Council from the Van Beuningen heirs for the collection of current Museum Boijmans Van Beuningen (hereinafter also referred to as the Museum).

The Applicants contend that the artwork belonged to the collection of the former art gallery A.S. Drey, an *offene Handelsgesellschaft* (OHG, general partnership). At the beginning of the nineteen-thirties the firm had as partners Siegfried Drey, his sons Paul and Franz Drey, and his nephews Fritz and Ludwig Stern. The work ceased to be part of the firm's assets allegedly as the result of a forced sale. As heirs of the original owners of the art gallery, the Applicants claim restitution of the artwork on the grounds of their contention that there was involuntary loss of possession as a result of circumstances directly associated with the Nazi regime.

In letters of 23 July and 26 August 2020 the City Council and the Applicants (hereinafter referred to as the parties) requested the Committee to issue a binding opinion. By signing the letter, the parties declared that they accepted the Committee's regulations applicable at the time for dealing with the request (approved on 3 December 2007; most recently amended on 28 January 2019) and considered the opinion to be issued by the Committee as binding.

2. The Procedure and the Applicable Assessment Framework

In a letter of 22 September 2020, the Committee stated that it would take the request under consideration on the grounds of the regulations as approved on 28 January 2019. A new Decree Establishing the Restitutions Committee came into force on 22 April 2021 together with a new assessment framework to be applied by the Committee. At the same time, so did new regulations that no longer contain an assessment framework for the Committee to use. The parties agreed that the new Decree Establishing the Restitutions Committee and the new regulations are applicable.

The Committee took note of all the documents submitted by the parties. It forwarded to the other party copies of all documents. The Committee furthermore submitted research issues to the Restitution of Items of Cultural Value and the Second World War Expert Centre of the NIOD Institute for War, Holocaust and Genocide Studies (hereinafter referred to as the ECR). The findings of the investigation were recorded in an overview of the facts. The ECR conducted some of the research into the facts during the COVID-19 pandemic (January 2020 to March 2022). The delay in completing their overview of the facts was due in part to this.

Identity of the parties

It follows from the certificates of inheritance that were submitted that Applicants AA, BB, CC, DD, EE, FF and GG are the heirs of Siegfried Drey, Paul Drey, Franz Drey, Fritz Stern and Ludwig Stern; the five partners of the Kunsthaus A.S. Drey, which was Aryanized in 1936. The Applicants had themselves represented during the procedure by Dr Imke Gielen, lawyer (*Rechtsanwalt*) of Berlin, Germany. Until January 2023 XX, lawyer with Gemeente Advocaten Rotterdam, represented Rotterdam City Council in the procedure pursuant to the Rotterdam Collection management agreement. Since January 2023, Rotterdam City Council has been represented by HH, Director of Museum Boijmans Van Beuningen,

Chronological overview of the committee's actions and the responses to them

- In letters of 17 July 2020 and 26 August 2020 respectively Rotterdam City Council and Imke Gielen on behalf of the heirs of the partners in the A.S. Drey art gallery requested an investigation and a binding opinion with regard to the ivory relief.
- The parties provided further information about the request for a binding opinion, including supporting documentation, in letters of 29 October, 16 November and 17 November 2020.
- On 24 November 2020 the Applicants gave a further response to the City Council's comment of 17 November 2020.
- On 21 December 2020 the Committee asked the ECR to launch an investigation into the facts.
- In letters of 4 May 2021 and 9 June 2021 respectively the Applicants and the City Council consented to application of the assessment framework accompanying the Decree Establishing the Restitutions Committee of 15 April 2021 (hereinafter referred to as the assessment framework). The assessment framework is in the Appendix to the Decree Establishing the Restitutions Committee.
- The results of the investigation were recorded in a draft report and sent by the ECR to the parties on 21 December 2022 for additional information and/or comments. The Museum, on behalf of the City Council, responded on 19 January 2023 and the Applicants on 13 February and 21 March 2023. The ECR amended the draft report on the basis of the responses.
- The final report was adopted on 27 March 2023. The final report was sent to the parties on 4 April 2023.

- The Applicants responded to the final report on 2 May 2023 and the Museum, on behalf of the City Council, on 14 June 2023.
- On 4 April 2023 the Committee asked whether the parties needed a hearing and both parties stated that they had no need for a hearing at this stage.
- In an e-mail of 3 July 2023, the Museum, on behalf of the City Council, notified the Committee that it waived the right to invoke good faith.
- On 31 July 2023 the Committee sent its draft binding opinion to the parties.
- The Museum, on behalf of the City Council, responded in an e-mail of 21 August 2023 with comments on a few typographical errors. The Applicants stated in an e-mail dated 31 August 2023 that they did not have any comments and also that they saw no need for a hearing.

3. Establishing the Facts

The Committee establishes the following facts on the grounds of the literature and archival research conducted by the ECR that involved bodies and individuals in the Netherlands, Germany and the United States.

Kunsthaus A.S. Drey

Kunsthaus A.S. Drey was established in 1837 by Aron Siegfried Drey (1813-1891). The firm was based initially in Würzburg and from 1854 in Munich, the capital of Bavaria, where it developed into a prestigious art gallery and succeeded in acquiring the status of purveyor to the Bavarian royal house. After Drey's son Siegfried (1859-1936) and son-in-law Adolf Stern (1882-1932) had taken over management of the firm, they opened branches Paris, New York, London, Brussels and The Hague. The firm focussed primarily on classical art. In 1912 in Munich the *Antiquitätenhaus*, designed by Gabriel von Seidl, was opened at Maximiliansplatz 7, currently Max-Joseph-Straße 2. It served as the Drey family residence and as the firm's head office.

After the death of Adolf Stern in 1932, his sons Fritz Stern (1888-1970) and Ludwig Stern (1882-1939) together with Siegfried's sons Paul Drey (1884-1953) and Franz Drey (1886-1952) became partners in the firm. Siegfried Drey owned 26.5%, Paul and Franz Drey 19.25% each and Fritz and Ludwig Stern 17.5% each. Siegfried Drey managed the art business as a whole. In 1910 he had been appointed a *Kommerzienrat* (Counsellor of Commerce) – a German honorary title for people who had distinguished themselves in economic matters – and in 1926 he was promoted to *Geheime Kommerzienrat* (Privy Counsellor of Commerce). He was also a commercial court judge and the first chair of the *Verband des Deutschen Kunst- und Antiquitätenhandels e.V* (German Art and Antiques Trade Association)

After the assumption of power by the Nazis

After the National Socialists came to power in 1933, attempts were made initially to continue running the art business as before. According to Paul Drey, his father believed that the firm was sufficiently important to the German economy that the country's new leadership would not take any chances with its continued existence. From 1933, however, the firm's profits dropped significantly. Jewish entrepreneurs had to contend with serious threats and vandalism. A national boycott of Jewish businesses, doctors and lawyers started on 1 April 1933. It was organized by the *Zentral-Komitee zur Abwehr der jüdischen Greuel- und Boykotthetze* (Central Committee for the Prevention of Jewish Atrocities and Incitement to Boycott), headed by the fiercely anti-Semitic Julius Streicher. The historian Angela Toussaint wrote about the A.S. Drey gallery as follows: '*In the museum-style rooms, where a large number of art-loving customers used to come and go, it became noticeably quieter. Turnover fell dramatically.*'

In order to solve their financial problems, on 1 July 1935 the family sold the *Antiquitätenhaus* for 1.3 million reichsmarks to the *Industrie- und Handelskammer für München und Oberbayern* (Chamber of Industry and Commerce for Munich and Upper Bavaria). According to researcher Eva Moser, the Drey family stated after the war that the negotiations had been conducted fairly. It was stated in the contract of sale that the firm of A.S. Drey was entitled to continue renting the *Antiquitätenhaus* until 30 June 1940.

Tax assessment by Regierungsrat (government councillor) Josef Schwarz in 1936

The sale of the *Antiquitätenhaus* provided barely any relief. In that same year of 1935 the tax inspector *Regierungsrat* (government councillor) Josef Schwarz investigated the firm's tax and foreign exchange returns. According to a 1954 statement by Fritz Stern and the heirs of the other partners, the inspector was notorious 'for his brutality against Jews'. Ludwig Schmauser, the inspector who had dealt with the returns of A.S. Drey previously, was to state in 1948 that Schwarz had told him that he had found nothing incriminating during the investigation. But Schwarz told the partners that a total of 608,796 reichsmarks of undeclared profits had been found in the accounts covering the years 1925 to 1934. According to the aforementioned statement by Fritz Stern, on 8 February 1936 government councillor Schwarz summoned the partners Siegfried Drey and Ludwig Stern to his office. During this meeting Schwarz supposedly announced that the five partners owed 217,599.75 reichsmarks in tax on the 608,796 reichsmarks of undeclared profits that had been 'discovered' plus 90,000 reichsmarks in penalties. For the 1935 financial year the partners were furthermore assessed for 240,000 reichsmarks in profits tax, whereas according to the partners themselves there had been a loss in that year. According to Schwarz there was therefore a grand total of 547,599.70 reichsmarks in unpaid debts and penalties. He asked Siegfried Drey and Ludwig Stern to sign a *Unterwerfungserklärung* (declaration of submission), which meant that the outstanding sums according to him would become collectable immediately. Schwarz allegedly threatened to hand the case over to the public prosecutor if they did not sign. Siegfried Drey signed and died on the way home, in a taxi, from a heart attack.

Tax inspector Ludwig Schmauser testified in 1948 that *'with full conviction and based on what I know, I want to say that the firm of A.S. Drey and Privy Counsellor of Commerce Drey always fulfilled his tax obligations and those of his family in the most impeccable manner by declaring and paying.'* Schmauser, who had checked the returns of the firm of Drey until Schwarz started handling this file, called Schwarz a 'very harsh financial official' and concluded that the discussion with Schwarz at the beginning of 1936 had cost Drey his life. He deemed it out of the question that Schwarz's threat to institute criminal proceedings against the art gallery was justified.

The firm's lawyer, Professor Carl Boettcher, also stated on 26 August 1953 that the declaration of submission was clearly signed under pressure. Boettcher represented the firm of Drey in the nineteen-thirties in regard to dealings with the tax authorities, including during the investigation by inspector Schwarz. In his opinion the weak legal position of the Jewish partners in respect of the state was not the only issue. The family's wish to speedily emigrate also played a role. That emigration could never have gone ahead without the consent of the tax authorities.

Sale of the trading stock at Paul Graupe

In order to be able to pay the 'tax debt' and penalties, the firm of A.S. Drey sold the lion's of its trading stock at auction – hundreds of paintings, drawings, sculptures, pieces of furniture, tapestries and other objects – on 17 and 18 June 1936 at Paul Graupe in Berlin. This auction house was well known for its *Judenauktionen* (Jewish auctions): sales of objects by Jewish owners who felt they were forced by Nazi repression to put their art holdings up for auction. A letter from the president of the *Reichskammer der bildenden Künste* (Reich Chamber of Fine Arts) to the Minister of the Interior Wilhelm Frick of 22 May 1936 confirms that this sale was held in order to be able to pay the tax assessment imposed by inspector Schwarz. According to the letter the *'Jewish art dealer Drey'* had his entire stock of artworks go under the hammer *'in order to be able to pay a tax debt of 300,000 reichsmarks to the Munich tax office'*. According to a 1954 application for compensation by the (heirs of the) partners, the total proceeds of the sale amounted to 400,872 reichsmarks; over 800,000 reichsmarks less than the combined cost of purchasing the auctioned objects, which the applicants at the time estimated at 1,257,559 reichsmarks. The actual loss was much higher still because the application was based on the purchase prices paid by the firm of A.S. Drey rather than the *'estimated retail value for private sale instead of auction'*.

Aryanization of Kunsthaus A.S. Drey and the flight of the partners

After the lion's share of the trading stock had been sold at auction, the partners considered themselves forced to sell the business to a non-Jewish owner, which would Aryanize the firm. At the end of 1936 Bornheim took over the remaining trading stock, which was recorded in the books as having a value of 264,787 reichsmarks, for 180,831.17 reichsmarks. He purchased the rest of the inventory, including the trading house's library, for one reichsmark.

Together with the combined positive bank balances, which added up to 90,490 reichsmarks, the total agreed purchase price was 271,322.17 reichsmarks. This amount was not paid in cash, however, but settled by having Bornheim's newly established *Galerie für alte Kunst GmbH (vorm. A.S. Drey)* take over liabilities of A.S. Drey in an equal amount. Most of these liabilities were outstanding debts of the main branch of A.S. Drey in Munich with its subsidiaries in The Hague and New York. These debts were only partially taken over and not in guilders and dollars, which they were listed in in the books, but in reichsmarks. It was furthermore stipulated in the purchase contract that these debts would not be collectable until 1 October 1941, and thereafter only in five equal annual instalments. According to documentation relating to the post-war application for restitution of the firm, these stipulations gave the subsidiaries such major financial problems that they also had to be liquidated. It indeed emerges from the trading records of A.S. Drey & Co. in The Hague that this subsidiary went out of business on 8 August 1939.

In 1936 and 1939 the partners of A.S. Drey succeeded in fleeing Germany. They also had to pay large sums of money to do that. The Nazis used the *Reichsfluchtsteuer* (Reich capital flight tax), which had been introduced in 1931 to combat the flight of capital from Germany after the stock market crash of 1929, to dispossess Jews who wanted to emigrate of property. It emerges from the money awarded in restitution after the war that, between them, the partners paid 155,964.79 reichsmarks in tax for their emigration. In 1938 the authorities furthermore imposed *Judenvermögensabgabe* (levy on registered Jewish assets) on the partners' assets still present in Germany.

The relief *Hodegetria* or *Virgin and Child*

The earliest known owner of the ivory relief *Hodegetria* or *Virgin and Child* was the Russian art collector Count Grigori Sergejevitsj Stroganov (1829-1910). The object was part of the art collection he kept in his house in Rome. After Stroganov's death the work came into the possession of his daughter Maria Grigorjevna Stroganova and subsequently his two grandchildren Vladimir Aleksejevitsj Sjtsjebatov and Aleksandra Aleksejevna Sjtsjebatov.

The collection of the late Count Stroganov in Rome remained largely intact until 1920. The situation changed in that year because Maria Grigorjevna Stroganova and her children Vladimir and Aleksandra were murdered by Bolsheviks at their country estate in Nemyriv (the present-day Ukraine). Only Vladimir's wife, Jelena Petrovna Stolypina, was able to flee Russia with her children and reach Rome at the end of 1920. Jelena Petrovna remarried in 1923 to Prince Vadim Grigorjevitsj Volkonski. At around the same time she sold the Stroganov Collection, including the claimed artwork.

The artwork's provenance after its sale by Count Stroganov's heirs is not entirely clear. There are indications that it was sold to the Duveen Brothers, a well-known art gallery with branches in London, Paris, New York and elsewhere. According to the 1936 Paul Graupe

sale catalogue, the relief was at one time also part of the collection of a 'Burns' in London; probably a reference to the Anglo-American businessman and art collector Walter Spencer Morgan Burns. It is known that this Burns was a collector of Byzantine ivory.

Purchase of the relief by A.S. Drey and loss of possession

Little is known about the acquisition of the object by the firm of Drey. In the context of an application for compensation submitted to the German authorities in 1954, Paul Drey's secretary Emilie Fleischmann drew up a list of the objects that went under the hammer in 1936 at Paul Graupe. It is stated on this list that the A.S. Drey art gallery acquired the claimed ivory relief in 1928 for 30,000 reichsmarks. It is possible that this had been held by Walter Spencer Morgan Burns. Correspondence that was found reveals that Drey and Morgan Burns traded Byzantine art with one another from time to time.

In 1931 the ivory relief was mentioned in a letter from the American art collector Royall Tyler, who wrote to an acquaintance: '*Drey also showed me a photograph of an ivory, a standing Virgin and Child under a canopy, XI° or XII° Century, from the Stroganoff collection, for which he wants \$15.000.*' Tyler's mention of 'Drey' referred to the partner Paul Drey, who had shown him the photograph in Paris. In that same year, 1931, the artwork was on view in the exhibition organized by Tyler entitled *Exposition internationale d'art byzantin* in the Musée des Arts Décoratifs in Paris. In 1934 the relief was included as number 142 and plate LI in the second volume of *Die byzantinischen Elfenbeinskulpturen des X.-XIII. Jahrhunderts* by Adolf Goldschmidt and Kurt Weitzmann.

As described above, the lion's share of the firm of A.S. Drey's trading stock in Germany, including the ivory relief, was sold at auction on 17 and 18 June 1936 at Paul Graupe in Berlin. In the catalogue the relief was included in the '*Sculpture*' section under lot number 96. The firm had valued it at 12,000 reichsmarks, but it was sold to an unknown buyer for 4,800 reichsmarks. The day after the sale the magazine *Pantheon. Monatsschrift für Freunde und Sammler der Kunst* reported the low price: '*The Byzantine ivory only fetched 4,800 reichmarks.*'

Just under two years later the relief was in the trading stock of Jacques Goudstikker. It is not possible to deduce from the surviving archive documents of Goudstikker's firm in the Amsterdam City Archives and the National Archive in The Hague from whom and when Goudstikker purchased the object.

In 1939 Goudstikker sold the object to the Dutch industrialist and collector D.G. van Beuningen. A purchases notebook of Van Beuningen's mentions the object with the year 1939 and the description '1 ivoren Madonna Xle eeuw ex coll Stroganoff Goudst.' ['1 ivory Madonna 11th century ex coll Stroganoff Goudst.']. In 1958 the Van Beuningen Collection, including the relief, was acquired by Rotterdam City Council for placement in Museum Boijmans – since then called Museum Boijmans Van Beuningen.

After the war: restitution and various claims

On 8 December 1948 Paul Drey asked the allied authorities, also on behalf of the (heirs of the) other partners, for restitution of the firm Aryanized by Bornheim. This request resulted on 4 August 1949 in a settlement that '*only made good a small part of the losses caused by the forced sale*' – as the (heirs of the) partners stated a few years later. Under the settlement they were given the remaining possessions of the firm Aryanized by Bornheim.

The (heirs of the) partners furthermore submitted applications for restitution of and compensation for private assets in the context of the *Bundesrückerstattungsgesetz* (BRüG, Federal Restitution Law). Neither the claimed ivory relief nor any other object that was sold at auction in 1936 is referred to in the BrüG files. In 1954 Fritz Stern and the heirs of the other three partners moreover submitted individual applications for compensation in the context of the *Bundesentschädigungsgesetz* (BEG, German Federal Restitution Law). Compensation for the losses at the Graupe auction was part of these requests, which set the total damage sustained by the firm at over 1.4 million reichsmarks. On 27 March 1958 the general partnership A.S. Drey, which was in the process of liquidation, also submitted a request for compensation by invoking the BEG. This was done because on the basis of this act, only the firm could submit a claim for losses as a result of the sale; not the (heirs of the) partners personally. However, compensation could only be paid if restitution of the auctioned objects had proved to be impossible, and therefore there was an investigation into who had purchased the auctioned objects in 1936. This investigation did not unearth any information. An outline agreement was drawn up during a discussion on 27 July 1961 between the Free State of Bavaria and the (heirs of the) partners. Among other things the agreement stipulated that the firm of A.S. Drey, which was in the process of liquidation, would receive 75,000 deutschmarks for the loss sustained through the auction; the maximum amount of compensation allowed under the BEG. In the agreement, which was officially signed on 22 September 1961, it was also stated that any further claims by the firm of A.S. Drey in the context of the BEG were settled as part of the agreement.

In letter of 29 October 2020, Dr Imke Gielen – the Applicants' lawyer – stated that this compensation did not compensate for individual objects: '*The compensation sum represented an overall payment for the entire loss and cannot be broken down for individual objects.*' Apart from that, the Committee notes that if the compensation paid had related to individual artworks, the amount paid per object would have been extremely modest. It therefore takes the view that the compensation paid by Germany should be disregarded. It has also emerged that there was no other post-war compensation for the loss of the artwork or more generally compensation for the actual losses sustained by the partners in Kunsthaus A.S. Drey as a result of measures taken by the Nazis.

4. Substantive Assessment of the Application

The Committee has established that the requirements in section 1 a to e of the assessment framework have been met and that the application is therefore eligible for substantive handling.

The Museum, on behalf of the City Council, let it be known that it waived the right to invoke good faith, and therefore the substantive assessment of the restitution application will remain limited to sections 2 and 3 of the assessment framework.

Pursuant to section 2 of the assessment framework, the Committee must assess whether it is highly plausible that the artwork was the property of Kunsthaus A.S. Drey, and on the grounds of section 3 whether it is sufficiently plausible that this gallery lost possession of the work involuntarily as a result of circumstances directly related to the Nazi regime. To this end the Committee finds as follows:

Ownership requirements (section 2 of the assessment framework)

No contemporaneous sources were found relating to the purchase of the artwork by the firm of A.S. Drey. However, a few years after the war Paul Drey's secretary Emilie Fleischmann, in the context of a request for compensation, drew up a list of the objects that went under the hammer in 1936 at Paul Graupe. The claimed ivory relief is on that list, which gives 1928 as the year of purchase and a purchase price of 30,000 reichsmarks. In 1931 the art collector Royall Tyler referred to the object in a letter and said that Paul Drey had offered him the work for 15,000 dollars.

On 17 and 18 June 1936 Kunsthaus A.S. Drey had the relief sold at auction at Paul Graupe in Berlin, together with the lion's share of the trading stock in Germany. The sale catalogue included the relief in the '*Sculpture*' chapter under lot number 96. The object was sold for 4,800 reichsmarks to an unknown buyer, and surfaced a few years later in the Netherlands at the Goudstikker gallery. Via the industrialist and patron D.G. van Beuningen, the artwork ended up after his death in the present Museum Boijmans Van Beuningen.

On the grounds of this information from the investigation, the Committee has come to the conclusion that it is highly likely that the artwork came from the trading stock of Kunsthaus A.S. Drey. This means that the ownership requirement of section 2 of the assessment framework has been met.

The consequence of this is that the Committee now has to evaluate whether, with regard to the artwork, there was involuntary loss of possession as a result of circumstances directly associated with the Nazi regime.

Involuntary loss of possession (section 3 of the assessment framework)

Now that it has been established that the five partners of Kunsthaus A.S. Drey were of Jewish descent and that the art gallery lost possession of the artwork after 1933 in Germany, on the grounds of section 3 of the assessment framework, criterion 3.2 (art dealer who belonged to a persecuted population group) involuntary loss of possession must be assumed if there are indications that make this involuntary loss of possession sufficiently plausible.

Since its establishment in 1837, the A.S. Drey art gallery developed into a large and renowned family business, with branches in several different foreign cities in addition to the *Antiquitätenhaus* in Munich. The takeover of power by Hitler in 1933 put an end to a long period of growth for the firm, which at that time was being run by Siegfried Drey, Paul Drey, Franz Drey, Fritz Stern and Ludwig Stern – a son and four grandsons of the founder Aron Siegfried Drey respectively. The clients stayed away, and the proceeds dropped sharply. The partners were confronted by disproportionate tax measures that were aimed at Jewish people and felt it necessary to sell the large *Antiquitätenhaus*. The business was furthermore accused of tax fraud on the basis of a dubious investigation. Burdened by the threat of a criminal prosecution and the realization that otherwise leaving Germany would not be possible, in February 1936 partner Siegfried Drey signed a declaration of submission, which meant that the sums being demanded became collectable immediately. A few moments later he had a heart attack in a taxi, collapsed and died. In order to be able to pay the 'tax debt' and penalties, the firm sold the lion's share of its trading stock, including the ivory relief, at auction in June 1936 at Paul Graupe in Berlin. Later that year the firm of A.S. Drey was sold and Aryanized. The partners living in Germany succeeded in leaving the country in 1936 and 1939.

On the basis of the above facts and circumstances, the Committee takes the view that the sale of the artwork *Hodegetria* or *Virgin and Child* by Kunsthaus A.S. Drey in 1936 was involuntary; the result of circumstances directly connected with the Nazi regime.

Conclusion with regard to the restitution application

The Committee concludes that it is highly plausible that the ivory relief *Hodegetria* or *Virgin and Child* (maker unknown, dated 900-1000), which is presently in Museum Boijmans Van Beuningen under inventory number BEK 1130 di. (OK)., came from the trading stock of Kunsthaus A.S. Drey, and that it is sufficiently plausible that this artwork was lost in 1936 involuntarily as a result of circumstances directly related to the Nazi regime.

Since the Museum, on behalf of Rotterdam City Council, has stated that it waives the right to invoke good faith in regard to the provenance of the artwork when purchasing it, the Committee has not conducted research in this regard.

In view of sections 2 and 3 of the assessment framework (criterion 3.2 and part 3 at the end of section 3), the upshot of all this is that the Committee will recommend that the artwork should be restituted to the Applicants.

5. Binding opinion

The Restitutions Committee advises Rotterdam City Council to restitute the ivory relief *Hodegetria* or *Virgin and Child* (artist unknown), which is in Museum Boijmans Van Beuningen, to the Applicants listed in 2.

This binding opinion was issued on 18 September 2023 by D. Oostinga (Vice-Chair), J.F. Cohen, S.G. Cohen-Willner, J.H. van Kreveld and C.C. Wesselink, and signed by the Vice-Chair and the Deputy Secretary.

(D. Oostinga, Vice-Chair)

(N.L.E.M. Bynoe, Deputy Secretary)

Relevant press release

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Byzantine ivory relief returns to heirs of partners Kunsthaus A.S. Drey

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