

# REPORT AND RECOMMENDATION

OF THE ROUND TABLE

for the attention of

THE CITY OF ZURICH  
THE CANTON OF ZURICH  
THE KUNSTHAUS ZÜRICH

concerning

AN EVALUATION OF THE PROVENANCE RESEARCH CONDUCTED TO DATE INTO  
THE EMIL BÜHRLE COLLECTION

compiled by

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## **I. BACKGROUND AND PROCEDURE**

### **1. Background and task**

1 The works from the Bührle Collection have been displayed in the new Chipperfield building of the Kunsthaus Zürich since October 2021. The loan has focused widespread attention on the political and scientific debates which had already been ongoing for some years, concerning the works' provenance and the provenance research carried out by the Bührle Foundation.

2 On 20 February 2022, the Bührle Foundation and the Kunsthaus (Zürcher Kunstgesellschaft) signed a new loan agreement (media release from the Bührle Foundation and the Kunsthaus dated 24 February 2022). Under this agreement, the Kunsthaus can decide not to display works that are claimed by third parties if "such claims, having been assessed by the expert at the Kunsthaus Zürich responsible for provenance matters and after hearing the views of the Foundation, prove to be substantiated, and plausible on the basis of historical source material" (Agreement of 22 February 2022, clause 4d).

3 In its resolution no. 201/2022 of 9 March 2022, the Zurich City Council adopted the new subsidy agreement for approval by the City Parliament (culture, complete revision of the subsidy agreement between the City of Zurich and the Zürcher Kunstgesellschaft, ZKG). Under this agreement, the Kunsthaus will not display any works on long-term loan where there are substantiated indications of "cultural property confiscated as a result of Nazi persecution" (Agreement, clause 7 para. 1). The agreement also provides that the "provenance research conducted to date by the Foundation E.G. Bührle Collection itself or on its behalf, and the appraisal thereof, are to be evaluated" (Agreement, clause 8 para. 2 sentence 1). "The independence of this evaluation and its scientific quality are to be ensured" (Agreement, clause 8 para. 2 sentence 2). Approval of the subsidy agreement is currently pending with the City Parliament.

4 At the end of August 2022, the City and Canton of Zurich, along with the Zürcher Kunstgesellschaft (hereinafter referred to as the "Commissioning Bodies") instructed the undersigned ("Delegate") to organise a Round Table to make preparations for this evaluation (media release from the Commissioning Bodies dated 29 August 2022). Together with the media release, the Commissioning Bodies published the concept for reviewing the Foundation E. G. Bührle Collection's provenance research dated 24 August 2022 (hereinafter referred to as the "Concept"). The Round Table is intended to secure the "involvement of relevant (including critical) voices" (media

release dated 29 August 2022). It should, with the greatest possible consensus, formulate the precise content of the mandate (see point 14 ff below) and propose experts to carry it out (see point 23 ff below).

## 2. Composition and working method of the Round Table

5 There are no prescribed procedural rules for the Round Table and the way in which it operates. The Commissioning Bodies did not make any stipulations. They wish, as far as possible, to achieve a consensus (Concept, p. 9). Relevant (including critical) voices were to be involved (media release dated 29 August 2022). The members of the Round Table should be “representatives of organised interests connected to the review of the Bührle Foundation’s provenance research” (Concept, p. 8). Specialist expertise is desirable (Concept, p. 8). The Commissioning Bodies did “not take part in the Round Table, owing to their role as Commissioning Bodies and their subsequent responsibility for implementing recommendations” (Concept, p. 8).

6 On the basis of these stipulations, the undersigned contacted associations and interest groups that had either commented on the Bührle Collection or, on account of their function, were concerned with issues of provenance research. It was left to those organisations to decide for themselves whether they wished to have one or two representatives on the Round Table. At the request of its members, the Round Table was also joined at its first meeting on 19 September 2022 by Mr Erich Keller. Owing to time constraints and the size of the Round Table, it was decided not to invite further individuals. In accordance with the stipulations, the Commissioning Bodies were not represented. In line with an agreement between the undersigned and the Bührle Foundation, the latter did not attend the meetings. Likewise, individuals and associations that had asserted claims against the Foundation were not represented on the Round Table.

7 The members of the Round Table were therefore as follows (in alphabetical order):

<p>Valérie Arato (Swiss Federation of Jewish Communities), Tobia Bezzola (ICOM Switzerland), Konrad Bitterli (Association of Swiss Art Museums), Thomas Buomberger (IG Transparenz), Yves Fischer (Federal Office of Culture), Moritz Hany (Assistant Delegate), Tanja Hetzer (former member of the Independent Commission of Experts Switzerland – Second World War), Erich Keller, Markus Knauss (IG Transparenz), Jacques Lande (Israelitische Cultusgemeinde Zürich), Ralph Lewin (Swiss Federation of Jewish Communities), Tessa Rosebrock (Schweizerischer Arbeitskreis Provenienzforschung), Esther Tisa Francini (Schweizerischer Arbeitskreis</p>
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Provenienzforschung), Felix Uhlmann (Delegate of the Commissioning Bodies), Benno Widmer (Federal Office of Culture)

- 8 The main procedural issues were resolved at the first meeting on 19 September 2022. The members agreed to maintain silence for the duration of the procedure. Communication was to be via the Delegate, if need be after a discussion regarding informing the public at the end of the meetings. The process was also to be transparent, however. For this reason, the summary minutes of the Round Table will be available to the public after the mandate is issued. This report will also be published.
- 9 Questions of partiality were also addressed at the first meeting. With a Round Table at which interest groups are represented, the benchmark cannot be the same as later for the mandatee. The Round Table asks questions, but does not answer them itself. This means that there is no actual rule requiring members to recuse themselves. However, all members (including the Delegate) disclosed their connections to the Commissioning Bodies and the Bührlé Foundation.
- 10 At their request, the members were paid an attendance fee of CHF 200 per meeting, plus expenses. Three to four meetings were scheduled before the end of 2022. The undersigned provided information between each meeting by e-mail. This also applied to the next procedural steps in each case.
- 11 In all, the Round Table held four meetings up to mid-December 2022. It constituted itself at the first meeting on 19 September 2022 and, in addition to resolving procedural issues, established an initial overview of the current situation. At the second meeting on 24 October 2022, it discussed the main outline of the mandate and the selection of individuals to be put forward. At the third meeting on 15 November 2022, it interviewed eight potential candidates. At the fourth meeting on 16 December 2022, the Round Table largely finalised the proposals to be submitted to the Commissioning Bodies.
- 12 The Bührlé Foundation and the Kunsthaus were notified of the probable outcome at the beginning of December, and initial, informal feedback flowed into the meeting on 16 December. The concluding exchange among members after the 16 December meeting took place via e-mail. A draft of this report was submitted to the members of the Round Table at the end of 2022. The section that follows details the Round Table's discussions with regard to the mandate description (see clause 14 ff below) and the selection of mandatees (see clause 23 ff below).
- 13 The undersigned found the Round Table discussions very constructive and informative, and wishes at this point to express his gratitude to the members.

## II. DESCRIPTION OF THE MANDATE

### 1. Background and considerations of the Round Table

14 The Commissioning Bodies described the mandate from their perspective as follows (Concept, p. 3):

*“The review will in particular pursue the following three objectives*

- **Quality of the Bührle Foundation’s provenance research:** *The City and Canton of Zurich and the ZKG (Commissioning Bodies) wish to obtain clarification from an independent source regarding the quality of the Bührle Foundation’s provenance research, measured against international standards of provenance research. The aim is to establish to what extent the Bührle Foundation’s provenance research is in line with the current, international state of the art.*
- **Meaningfulness of the appraisals / categorisations of the artworks:** *The external review should also assess the extent to which the appraisals and categorisations of the artworks conducted as part of the Bührle Foundation’s provenance research can be regarded as valid and robust. The aim is to establish whether the currently available appraisals of the artworks can provide a reliable framework for the Kunsthaus’s handling of those artworks. The review will be conducted on a selective basis. This means that not all of the artworks will be investigated as part of the review, but the methodology and quality of the work and the categorisation of all artworks will. Depending on the outcome of this review, recommendations are to be made for further actions in subsequent stages, and in particular, recommendations as to artworks whose provenance needs to be investigated in greater depth, and the reasons for this.*
- **Recommendations to the ZKG:** *Depending on the outcome of the review, recommendations are to be made to the ZKG under Article 8d of the new subsidy agreement. In particular, the subsidy agreement stipulates that the Kunsthaus will not exhibit any works where there are substantiated indications of cultural property confiscated as a result of Nazi persecution within the meaning of the Terezin Declaration. Additionally, as stated above, recommendations are to be made regarding any further action required.”*

15 The Round Table discussed the description provided by the Commissioning Bodies at its first meeting on 19 September 2022. It acknowledged that the Commissioning Bodies had undertaken to comply with the Washington Principles and the Terezin Declaration. The Round Table incorporated the Commissioning Bodies’ description into the preamble of the mandate description, making such changes as were necessary.

16 Two issues clearly emerge from the Commissioning Bodies’ description, namely, whether “the Bührle Foundation’s provenance research is in line with the current, international state of the art”, and whether there are “substantiated indications of cultural property confiscated as a result of Nazi persecution”. The concluding sentence stating that “recommendations are to be made regarding any further action required” is more open.

- 17 In the discussions within the Round Table and with potential mandatees, differing views emerged as to whether, and to what extent, a general standard (state of the art) applies within provenance research. For this reason, the Round Table formulated the question of a standard in specific detail (sources, methodology, correctness, context) in a first section of the mandate description, but at the same time explicitly posed the question of a standard to the mandatee(s). When addressing these questions, due account is to be taken of the passage of time. The Bührle Foundation's provenance research was carried out at various periods. The research is to be reviewed selectively on the basis of the standards applying at the time it was conducted and those that apply today. This first section also poses the question whether or not an institution should conduct provenance research itself, as well as the question of collaboration within the mandate.
- 18 One of the most difficult issues within this mandate concerns the demarcation line between historically objective and normative statements. It touches on the concept of provenance research and its limits. One example of this is in classification, where aspects that at least in part constitute value judgements are involved. For this reason, this issue is raised in the second part of the mandate description. This also takes up the Kunsthaus's central demand that no works should be displayed where there are substantiated indications of cultural property confiscated as a result of Nazi persecution. In this regard, the Commissioning Bodies refer to the Terezin Declaration (Concept, p. 3). Its applicability is uncontested. Other legal sources are less apparent and their possible applicability must be analyzed and decided by the mandate(s). It is important that value judgements be reliably supported and justified from a normative perspective. It should be borne in mind here that the settlement of actual claims cannot be part of the mandate, because the Bührle Foundation is ultimately the owner of the works (Concept, p. 3 f.).
- 19 A third section contains a kind of outlook and recommendations. This is contained in the Commissioning Bodies' mandate description: "The results of the external review should enable conclusions to be drawn regarding how the Kunsthaus is to deal with the loans from the Bührle Foundation, in particular artworks whose provenance is unclear, as well as the Kunsthaus's own provenance research, especially with a view to further long-term loans" (Concept, p. 4; see also Concept, p. 3: "... recommendations regarding any further action required..."). In particular, the Round Table regards the presentation of the results as relevant, having regard to the fact that the Kunsthaus Zürich is itself active in this matter and can be expected to remain so. The investigation may result in a need for further research, which should be appropriately outlined to the Commissioning Bodies. Like the Commissioning Bodies, the

Round Table feels that an open question regarding further recommendations makes sense.

20 The actual conclusion of the mandate is a matter for the Commissioning Bodies. In terms of content, the mandate should be guided by the issues raised by the Round Table, but without thereby unnecessarily constraining the work of the mandate(s). The Round Table cannot of itself influence the framework conditions for the mandate, but it appears sensible to sketch out ideas regarding this. It should be self-evident that the investigation should take as its starting point the Bührle Foundation's research to date, and that that research should be available to the mandatee(s); and that the questions posed can only be answered on the basis of interdisciplinary knowledge. The Round Table discussed the required disciplines on a number of occasions, including when selecting the potential mandatees. Historical knowledge and experience in dealing with provenance issues appear indispensable; a knowledge of law for issues of value judgement is at least desirable.

21 According to the Commissioning Bodies' description, the Bührle Foundation is merely to be informed of the results of the mandate: "The Commissioning Bodies will notify the Bührle Foundation of the results of the external review" (Concept, p. 4). The Round Table takes the view that it is entirely reasonable for the individuals involved in Bührle provenance research to date to be involved in the mandate. The mandatee(s) is/are to have some leeway in this matter. At the discretion of the mandate(s), further individuals and groups (representatives of victims) may also be interviewed. It is important that any involvement of third parties be correctly documented.

22 The Round Table has not made any comments on funding, though it has addressed the issue with the potential mandatees (see point 48 below). With regard to the precise procedure for the mandate, the Round Table is of the view that it would make sense for discussions to take place between the Commissioning Bodies and the mandatee(s). This relates to a question that the Round Table discussed a number of times, namely: how can reliable statements be made about a collection of some 200 works within the space of a year? The Commissioning Bodies are also working on the assumption that the investigation must be "selective" (Concept, p. 3). The potential mandatees voiced widely varying opinions on this issue, and the members of the Round Table were unable to identify an ideal course of action. Ultimately, the objective must be comprehensive research. The Round Table expects appraisals in particular of the works previously owned by Jewish people. For the time being, how-



ever, a selection is to be expected which can sensibly be proposed to the mandatee(s) following an initial comprehensive inspection of the existing provenance research. The Round Table does not wish to constrain the specific procedure improperly. The questions regarding the standard for provenance research are formulated in such a way as to allow for statements on both individual works and the collection as a whole. The aim must be to arrive at robust statements, even if further research may be necessary.

## 2. Recommendation

The Round Table recommends to the Commissioning Bodies that they issue a mandate regarding the research into the provenance of the works in the Bührle Collection in accordance with the following description:

### **Mandate to review the Bührle provenance research**

*The City and Canton of Zurich and the Zürcher Kunstgesellschaft (Commissioning Bodies) wish to obtain an evaluation of the existing research into the provenance of the works in the Bührle Collection. The evaluation should be independent and meet the highest scientific standards. The aim of the evaluation is to establish whether the provenance research conducted to date is in line with the international state of the art and constitutes a reliable foundation for the Kunsthaus Zürich to decide on further action to be taken in respect of individual works, and on additional provenance research work. It is also intended that the project should yield recommendations regarding such decisions. The goal is to ensure that no works are shown at the Kunsthaus where there are substantiated indications that they are cultural property confiscated as a result of Nazi persecution. The Washington Principles require every effort to be made to return cultural property confiscated as a result of Nazi persecution to its previous owners or their heirs, or to find another just and fair solution.*

#### **I. Content of the mandate**

The review of the Bührle provenance research should cover the following points and answer the following questions:

##### **1. Review of the existing research**

*Sources:* Have all the authoritative sources been included and evaluated correctly (overall or with respect to individual works)? Are the source materials sufficient to allow reliable statements to be made about the Bührle Collection? What other sources (e.g. from art dealers, the Bührle family private archive) may also need to be consulted, and how could this take place?

*Methodology:* How do you assess the methodology used to compile the historical information in the Bührle provenance research? Were the sources evaluated completely and in accordance with generally recognised methods (overall or with respect to individual works)?

*Correctness:* Is the historical information in the Bührle provenance research correct? Can any statements be made regarding the correctness of the information overall or with respect to individual works?

*Context:* Have the history of the previous Jewish owners and the historical context of the transactions been adequately appraised, and have the relevant documents been incorporated completely, and in a methodologically and factually correct way (overall or with respect to individual works)?

*Standards:* What standards of national and international provenance research exist? How have they changed over time? Does the Bührle provenance research meet those standards (overall or with respect to individual works), having regard in each case to the time at which the research was carried out and by present-day standards? Appropriate account should be taken of this perspective with regard to the preceding questions as well.

*Responsibility:* What is your assessment of the fact that staff of the Bührle Foundation carried out their “own” provenance research (issue of partiality)? How do you assess the independence of the researchers commissioned by the Bührle Foundation (and their results)?

*Collaboration with the mandatee(s):* Did the Bührle Foundation and the Kunsthaus Zürich make available to you the documents you needed to fulfil this mandate? Do you have any further comments on the collaboration?

## **2. Assessment**

*Classification:* What is your assessment of the classification undertaken in the Bührle provenance research, with regard to both the classification itself and the categorisation of individual works?

*Cultural property confiscated as a result of Nazi persecution:* Have you identified substantiated indications that there are works in the collection which may constitute cultural property confiscated as a result of Nazi persecution? If so, disclose the normative basis you used to arrive at this conclusion (civil law, Washington Principles, follow-up declarations, German Guidelines [“Handreichung”], etc.) and explain the choice as well as the reasons for any categorisation as cultural property possibly confiscated as a result of Nazi persecution. Does your assessment change depending on whether or not you disregard a certain basis? What is the importance of individual aspects of the Washington Principles (burden of proof, period and geographical scope of validity, etc.) in your assessment? Answer the question with particular reference to the works previously owned by Jewish people.

### 3. Presentation of results and further work

*Presentation of the results:* Can you make any comments on the way in which the results of the provenance research are presented by the Bührle Foundation and the Kunsthaus Zürich?

*Further work:* If you have identified gaps and omissions when reviewing the existing research (point I.1): can you, within the scope of this mandate, make any recommendations for remedying those gaps and omissions (resources required, time horizon, people), insofar as you are not able to remedy them yourself within the scope of the mandate?

*Outlook and solutions:* Do you have any further comments? Are there any other questions that need to be answered, and if so, what procedure do you recommend, if you are not able to answer the questions directly yourself? What aspects in particular should further provenance research pay attention to? Do you have any further recommendations regarding the procedure?

## II. Framework for the mandate

- The investigation should take as its starting point the Bührle Foundation research to date. The members expect the research to date to be made available to the mandatee(s) (which the Bührle Foundation has agreed to do).
- The questions must be answered on the basis of interdisciplinary knowledge. The names of the individuals involved are to be disclosed.
- If the mandate is issued in early 2023, the Commissioning Bodies expect to see the results in the first half of 2024. The Round Table proposes that the Commissioning Bodies and the Round Table (and, at the mandatee's discretion, the public) be informed of the interim results in autumn 2023. This applies in particular to the review of the existing research (point I.1). In the other areas, initial findings and main thrusts should be outlined. The mandatee(s) has/have the option to agree a different procedure with the Commissioning Bodies. A swifter process is expressly welcomed.
- The budget is to be agreed between the mandatee(s) and the Commissioning Bodies.
- The individuals involved in Bührle provenance research to date are to be included in work on the mandate. At the mandatee's discretion, further individuals and groups (representatives of victims) are also to be interviewed. Exchanges with third parties are to be documented appropriately.

### III. SELECTION OF MANDATEES

#### 1. Procedure

23 The Round Table has no decision-making powers as such, but instead issues a recommendation. Under the terms of the mandate, a consensus is to be established: “A consensus [...] is central to the acceptance of the designated experts and their work – both among the interested parties and beyond” (Concept, p. 9). A period of three to four months was planned for the entire Round Table procedure – less than is customary for academic appointment procedures, for example.

24 The aim was to arrive at a procedure that is open in terms of outcomes, discursive and transparent. The Delegate outlined each of the planned stages of the procedure by e-mail and at the meetings; points of contention were discussed. None of the members raised fundamental objections to the procedure.

#### 2. Meetings on 19 September 2022 and 24 October 2022

25 The Round Table agreed on the key elements of the procedure and the further meeting dates at its first meeting on 19 September 2022. All the members put forward the names of potential mandatees for the second meeting on 24 October 2022, although it was also possible to propose individuals during the meeting itself. According to the Round Table media release of 22 September 2022, it was also possible for interested parties to approach the Round Table directly.

26 At the meeting on 24 October 2022 and in follow-up discussions conducted by the Delegate, this longer list was reduced to approximately 10 individuals who had a sufficient prospect of achieving consensus support from the Round Table. Of those approached, one was unavailable owing to other commitments and a second declined on the grounds of possible conflicts of interest.

#### 3. Interviews on 15 November 2022

27 On 15 November 2022, all eight possible mandatees were able to take part via Zoom. Their profiles covered the fields of provenance research, the historical sciences and law, with some having a track record in more than one area.

28 The Delegate had spoken at length with all the potential mandatees prior to this event. He asked them to respond to the following questions at the meeting on 15 November 2022:

- a. What is your assessment of the draft mandate description? Which issue is central to the research in your view?

- b. What knowledge does a mandate of this kind require? Which of those capabilities do you yourself possess? Which do you not have, and how would you fill the gaps (employees, third parties, other experts on the same level)?
- c. What is your assessment of the Commissioning Bodies' timeline? What costs do you believe will be involved?
- d. Are you now or have you previously been in a close relationship with the Bührle Foundation, the Kunsthaus Zürich or Laurie Stein? Do you see any other grounds for potential conflicts of interest?

The potential mandatees generally spoke for 10–15 minutes. The members of the Round Table then asked questions.

29 There was no time for in-depth discussions among the members of the Round Table following the interviews. For this reason, the Delegate asked the members to comment orally or in writing on three questions: a.) who, in their view, would be the best possible choice if the mandatees could be chosen freely (number of mandatee(s) and name(s); b.) which individuals (between 3 and 5) they considered most suitable, irrespective of the composition; and c.) which candidate(s) should not be considered for the mandate.

30 Members of the Round Table offered a positive assessment of the interviews. All those who were interviewed had prepared meticulously and offered the Round Table valuable advice concerning the mandate; for this reason, the Round Table also did not deem it necessary to interview further experts. With regard to the shortlist, three of the potential mandatees were clearly rated better than the others interviewed by the Round Table. No member of the Round Table voiced a fundamental objection to any of these three individuals. On the basis of this, the Delegate held further in-depth conversations with those three.

#### 4. Meeting on 16 December 2022

31 At the meeting on 16 December 2022, all members were once again requested to comment individually on both the individuals on the shortlist and a potential composition. Proposals for a team and for a single individual were both discussed. The Commissioning Bodies' concept offers no guidance on this latter issue: "Preparations will in particular involve defining the mandate to review the Bührle Foundation provenance research and identifying the expert, or group of experts, to carry out the mandate. In what follows, the term "experts" is used, but is to be understood as also including a single individual" (Concept, p. 4).

32 A clear majority of the Round Table preferred a single individual, in order to avoid the time-consuming processes of reaching agreement among a group of people. Collaboration was viewed as potentially difficult because those on the shortlist were drawn from different disciplines; though a minority actually viewed this as an advantage. The Round Table was unanimous in believing that a single individual would also have to work across disciplines and make use of specialist expertise. The relatively tight schedule was another argument for mandating a single individual.

33 A clear majority came out in favour of Raphael Gross. Almost all the members agreed with the recommendation that the mandate should go to him as a single person.

## 5. Recommendation

34 The Round Table recommends that the Commissioning Bodies instruct Raphael Gross to conduct an independent evaluation of the provenance research conducted to date into the Emil Bührle Collection. Raphael Gross meets the specialist and personal requirements for successfully completing this challenging task within the desired timeframe.

35 Raphael Gross was born in Zurich on 25 December 1966. He attended primary and secondary school in Zurich and studied general history, philosophy and literature in Zurich, Berlin, Bielefeld and Cambridge. He obtained his doctorate from the University of Essen in May 1997 with a dissertation entitled “Carl Schmitt und die Juden. Strukturen einer deutschen Rechtslehre” (“Carl Schmitt and the Jews. The ‘Jewish Question’, the Holocaust and German Legal Theory”). Subsequently, Raphael Gross spent five years researching and teaching in the UK.

36 In his publication “Eine Welt, die ihre Wirklichkeit verloren hatte...” (“A World that had Lost its Reality...”, Limmat Verlag), a collection of interviews with Holocaust survivors in Switzerland, he examines the persecution of Jews. The book juxtaposed the political history of the treatment of dormant assets with the personal life stories of survivors. Its publication coincided with the appointment of the Independent Commission of Experts Switzerland – Second World War (Bergier Commission).

37 From 2006 to 2015, Raphael Gross was Director of the Jewish Museum in Frankfurt am Main. He has been President of the Deutsches Historisches Museum Foundation since 2017. The Foundation employs some 220 people and welcomes approximately 800,000 visitors per year. In these functions, Raphael Gross has been responsible for planning and organising numerous exhibitions, including “Looting and Restitution” and “1938: Art, Artists, Politics”. At the Deutsches Historisches Museum,

Raphael Gross recently initiated and enabled the return of the Stone Cross of Cape Cross to the Republic of Namibia. During his term of office, two new posts have been created to work exclusively on provenance issues.

38 Raphael Gross has played a key role in many restitution proceedings. Since 2016 he has also been a member of the German Advisory Commission on the return of cultural property seized as a result of Nazi persecution, especially Jewish property. This body was established in 2003 by the Federation, Länder and national associations of local authorities to mediate in case of disputes over the restitution of Nazi-confiscated cultural property. It works on the basis of the Washington Principles and follow-up declarations.

39 The Round Table sees Raphael Gross's willingness to take on the mandate as the best possible solution. His *empathy for the fate of the persecuted* is a thread running right through his biography. Raphael Gross enjoys the confidence of all the organisations and individuals represented on the Round Table that have criticised the Kunsthaus Zürich and the Bührlé Foundation. He represents balanced positions.

40 Moreover, Raphael Gross's career reveals a strong *scientific background* up to the rank of professor. The ability to think critically but impartially is an inherent part of scientific work. Strong analytical thought is a necessity. Raphael Gross unquestionably possesses these characteristics, and the Round Table was convinced of this in the interview, as was the Delegate through direct interaction with him.

41 Raphael Gross is Swiss and has close ties to Switzerland. However, he has spent a number of years in the UK and now works in Germany. He has a proven *international* track record and network, and is also conversant with *the situation in Switzerland*.

42 Raphael Gross has studied in depth the very issues that form the subject of the planned mandate. He is familiar with the challenges of *dealing with cultural property possibly confiscated as a result of Nazi persecution*, from the perspectives of both a neutral third party (Advisory Commission on the return of cultural property seized as a result of Nazi persecution), and an institution affected (Deutsches Historisches Museum). He is familiar with a range of viewpoints, and in particular that of an institution confronted with restitution claims.

43 The discussions within the Round Table clearly demonstrate that provenance research requires a wide range of disciplines. Raphael Gross thinks in an *interdisciplinary* manner, as his dissertation on Carl Schmitt at the interface of history and law demonstrates. He also leads an interdisciplinary team at the Deutsches Historisches

Museum. The Round Table is confident that Raphael Gross will involve suitable experts in the mandate.

- 44 His management function at the Deutsches Historisches Museum is also important because the mandate requires high-level *organisational and communication skills* from the person responsible. In this respect too, the Round Table believes that Raphael Gross is an excellent choice.



#### **IV. NEXT STEPS**

##### **1. Issuing and conduct of the mandate**

45 The Commissioning Bodies will take receipt of this report and, based on it, issue the mandate to review the Bührle Foundation provenance research (Concept, p. 8). The Delegate's report should also comment on the time required, budget and framework for the conduct of the main phase (Concept, p. 9).

46 According to the timeline, the mandate is to last approximately one year, plus any translations and acknowledgement by the Round Table (Concept, p. 7). The Round Table considers this timeline to be realistic, especially after interviewing potential mandatees. It is clear that it will not be possible to investigate the provenance research for the entire collection, but in all probability, it should be possible to make some initial, robust statements.

47 In discussions with the Delegate, Raphael Gross put forward for debate the idea of a shorter initial investigation period. From the perspective of the Round Table, earlier results would of course be desirable, if this can be achieved without compromising the scientific quality of the work. It will make sense to leave the task of negotiating this point to the Commissioning Bodies and Raphael Gross.

48 The costs of the mandate were not defined in advance by the Commissioning Bodies (Concept, p. 11). The potential mandatees were asked by the Round Table to provide an initial cost estimate at their interview (see point 28 above), but owing to various unresolved parameters, it proved almost impossible to do so reliably. The Round Table put forward a figure of around CHF 500,000 – without prejudice in every respect, as the Round Table has no powers in respect of expenditures – in order to be able to provide the Commissioning Bodies with initial reliable information. To the extent that the potential mandatees commented on the issue, they did not consider the figure to be obviously too high or too low. The Round Table does not wish to prescribe any figure for costs, as this primarily concerns the relationship between the mandatee and the Commissioning Bodies and is dependent on other political decisions in the City and Canton. The Delegate asked Raphael Gross for a cost estimate as a precautionary measure. It is possible that a cost estimate can only be made after an initial inspection of the Bührle archive.

## **2. Role of the Round Table**

49 The results of the review of the Bührle Foundation provenance research will be received by the Delegate, who will then forward them to the Round Table for acknowledgement. This acknowledgement “will comprise a discussion and an assessment of whether the mandate issued has been fulfilled” (Concept, p. 10).

50 The Round Table is therefore not – and this has to some extent been misunderstood by the public – a kind of “supreme expert body” appraising the mandatee’s work. The Round Table will assess whether the questions posed have been answered. This will serve to legitimise the results, but is not a review of the content of the results themselves.

51 The Delegate will continue to be involved in the review process, but will not answer the questions himself. His role is to liaise between the mandatee and the Commissioning Bodies and assist with external communication (Concept, p. 10). If substantial difficulties arise within the mandate, it may make sense to involve the Round Table in resolving contentious issues (e.g. lack of clarity regarding a question posed). Where feasible, the Delegate will also update the Round Table on the status of work, naturally in consultation with the mandatee and, where necessary, also with the Commissioning Bodies.

## **3. Communication and public relations**

52 The Round Table’s procedure is to be as transparent as possible. The summary minutes will be available to the general public for inspection (minutes of the meeting of 24 September 2022, point III.1). This report will also be published. It will make sense to do this in parallel with the announcement of the mandate, since this signals the conclusion of an important step in the procedure. If the mandate issuing process takes longer, consideration should be given to providing information in advance.

53 A cautious approach should be adopted where confidential information about individuals and positions is concerned. This is especially true with regard to the names of the potential mandatees. Caution should also be exercised with regard to the votes of individual members of the Round Table, since otherwise it would have been virtually impossible to conduct a free dialogue.

- 54 It is desirable for the mandatee to provide appropriate information about his/her research process (e.g. via a public event) in order to explain the methodology, procedure and objectives.

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