

## The Austrian Art Restitution Law

### - Institutions and Functioning –

On the basis of a law enacted in 1998 and amended in 2009 (“Art Restitution Law” – Kunstrückgabegesetz), Austria set up the following system to effectuate the restitution of Nazi looted art and implement the Washington principles<sup>1</sup>:

#### Scope of Application:

- All art objects and moveable cultural objects held in the collections of Austrian Federal museums or otherwise directly owned by the Austrian Federation
- Not applicable to state or municipal institutions, but in 1999, the City of Vienna issued a similar regulation on restitution and since then all states of the Austrian Federation have created similar legal bases for the restitution of Nazi looted works of art from public collections
- The looting may have taken place in Austria after the occupation of Austria by Germany, or in any other area within the domain of the German Reich between Jan. 30, 1933 and May 8, 1945.

#### Approach:

- **The Act authorizes all Federal Ministers in whose realm looted objects may be found to restitute them to the former owners or their heirs; this applies to objects**
  - that were looted by the Nazis and became the property of the Austrian state because they could not be restituted in the course of the Austrian restitution processes,
  - that were looted by the Nazis and restituted by Austria after the war, but which the owners had to leave in order to be allowed to export other works of art, and
  - that had been looted and were purchased by museums in good faith after the war.
- **The Act establishes the Restitution Commission which is charged with systematically researching public collections in order to verify the provenances of objects which might be subject to restitution.**

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<sup>1</sup> The trigger for the enactment of the Law was the confiscation of two paintings by Egon Schiele in New York in January 1998.

- In addition to doing specific provenance research, the Restitution Commission does general historical research in the context of Nazi looting and restitution; it is also charged with the collection and publication of the research.
- The Restitution Commission prepares “dossiers” regarding individual cases or groups of cases and submits them to the Advisory Board. Starting in 2010 the “dossiers” are published on the website of the Ministry for Culture (<http://www.bmukk.gv.at/kultur/rest/index.xml>).
- **The Act establishes an Advisory Board consisting of representatives of the Federal Ministries involved and an academic expert (currently headed by the President of the Federal Administrative Tribunal)**
  - The Advisory Board issues recommendations to the Federal Ministers in whose responsibility the relevant objects are.
  - So far, the recommendations have always been followed by the relevant Ministries.
  - Between 1998 and 2008, the Advisory Board issued approx. 220 recommendations on the basis of which approx. 10.000 items were restituted.
  - Advisory recommendations elaborate on the background and the reasons for the recommendation, they are published on the internet (<http://www.bmukk.gv.at/kultur/rest/index.xml> and <http://www.provenienzforschung.gv.at/index.aspx?ID=24&LID=1>).
- **Unknown Heirs:** If the Restitution Commission (typically with the assistance of the Vienna *Israelitische Kultusgemeinde*) cannot identify the heirs, the objects are transferred to the Austrian National Fund for Victims of National Socialism. The National Fund
  - maintains a data base of “heirless art” (<http://www.kunstrestitution.at>) in cooperation with the other institutions involved in art restitution,
  - if no heir can be found, the National Fund sells heirless objects (sometimes to the museums where they were found) or auctions them; the proceeds are used for the victims of Nazi persecution.

### Observations:

- **Public Institutions only.** The Austrian Art Restitution Act is limited to public (Federal) institutions and not applicable to private collections, notably the Leopold Foundation, which, however, has agreed under public pressure to allow

independent provenance research, the results of which are also published (<http://www.bmukk.gv.at/kultur/rest/dossiersbeschluesse.xml>).

- **No Claims Procedure.** The Act explicitly does not establish individual legal claims for restitution, but only authorizes restitution by the owners of looted art, which, with the right public pressure, results in a moral quasi-obligation.
- **Publicity of Research and Recommendations.** The research (“dossiers”) of the Provenance Commission and the recommendations of the Advisory Council are publicized (even though critics point out data protection issues), and the recommendations elaborate on the reasoning by the Council.

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