



Pseudo-legal methods of seizure

The art theft committed by National Socialists in Austria was part of the systematically conducted robbery of the Jewish population, but also part of the complex and racially justified policy of extermination[1]. Immediately after the Anschluss on March 12, 1938, the Gestapo (Secret State Police), the SS (Protection Squad) and NSDAP (National Socialist Party) members ransacked apartments and confiscated paintings, jewellery, carpets and other items, using previously compiled address lists to find their way.[2] Furnishings seized by the Gestapo were auctioned primarily through the Dorotheum auction house. In many cases, Jews attempting to finance their escape by quickly selling artwork were forced to accept offers by art dealers far below the objects' value.[3] Museums often purchased artwork from the possessions of Jewish collectors on whom the Central Office for the Protection of Monuments (Zentralstelle für Denkmalschutz)[4] had imposed an export embargo.

The National Socialist regime was intent on putting its actions, including the seizure of artwork, on a legal footing. The bureaucratic apparatus employed for the seizures consisted of National Socialist organisations. These organisations involved existing authorities and legal measures dating from the First Republic and the Corporate State, and they cooperated with art dealers, auction houses and other art experts. A number of decrees and laws legalized art theft. Due to the absence of clear regulations during the first weeks after the entry of German troops into Austria, numerous wild aryanizations and lootings were carried out at that time not just by NSDAP members and Gestapo agents, but also by policemen and Aryan neighbors. Thus numerous objects of value were irretrievably lost during the first days after the Anschluss.[5] In view of the extent of the wild aryanizations during the first weeks after the NS assumption of power, Josef Bürckel, who held, among other offices, Reich Commissioner for the Anschluss of Austria to the German Reich, felt obliged to call for order: It goes without saying that this approach is illegal and unacceptable. Only the public security agencies prescribed by law are authorised to perform searches and confiscate goods.[6]

On April 27, 1938, the Reich Ministry for the Interior passed the Decree for the Registration of Jewish Property.[7] Assets exceeding the total value of 5,000 Reichsmark had to be declared with the Property Registration Office. [8] Numerous Jewish people forced to flee abroad had to apply for permission for the removal of goods based on the declared assets. In order to retain objects of historical, artistic or cultural value[9] in the Third Reich, the National Socialist regime in Austria resorted to the Export Prohibition Law enacted in 1918 by the First Republic of Austria. [10] To assess the value of art objects, professional opinions had to be obtained from appraisal officers appointed by the Property Transactions Office. These expert opinions were submitted to the Central Office for the Protection of Monuments which decided on the export permit. From 1939, copies of the expert opinions were also distributed to the Customs Investigations Office and the Dorotheum auction house to prevent any attempt at by-passing the strict export regulations.[11] In addition, customs officers and representatives of the Central Office for the Protection of Monuments inspected removal goods which Jewish people forced into emigration wanted to take abroad. The strict export regulations forced many persecuted private persons to sell several works of art or whole collections at knockdown prices before emigrating.[12]

Another way of applying pressure to obtain artwork was through discriminating tax demands imposed on Jewish people. The National Emigration Tax[13] which had been introduced in Austria with the Anschluss was supplemented by the Jewish Property Levy[14] in November 1938. In order to settle these tax debts, around 25 percent of their assets had to be paid. It was impossible for most persons concerned to raise this amount which then resulted in the confiscation of their property.[15] For the most part, the disposal of these goods was handled by the Dorotheum auction house in Vienna.[16]

With the 11th Decree on the Reich Citizenship Law of November 25, 1941, Jewish people whose usual residence was abroad lost their German citizenship and had their assets confiscated as hostile to the state. National Socialist bureaucracy defined as residence abroad not only other countries, but also the deportation to concentration camps outside the Reich's borders.[17] It is indicative of the proportions of National Socialist art theft that there were 16,500 applications for export permits for artwork in the years 1938 and 1939 alone.[18]

[1] In: Loitfellner S, *NS-Kunstraub und Restitution in Österreich. Institutionen – Akteure – Nutznießer*, in: Verena Pawlowsky, Harald Wendelin (ed.), *Enteignete Kunst. Raub und Rückgabe. Österreich von 1938 bis heute*, Vienna, 2006, at 13 (quoted hereafter as: Loitfellner, *NS-Kunstraub und Restitution in Österreich*).

[2] Ibid, at 13.

[3] Ibid, at 14.

[4] In 1940, the Central Office for the Protection of Monuments was renamed to the Institute for the Preservation of Monuments. After the end of World War Two it became the present Federal Office for the Protection of Monuments (editor's note).

[5] See Anderl G, Blaschitz E, Loitfellner S, *Die Arierisierung von Mobilien und die Verwaltungsstelle für jüdisches Umzugsgut*, in: Clemens Jabloner et al. (ed.), *Arierisierung von Mobilien* (= publications of the Austrian Historical Commission, vol. 15), Vienna-Munich, 2004, at 33f.

[6] In: Ibid, at 37.

[7] Announcement by the Reich Governor in Austria proclaiming the Decree for the Registration of Jewish Property of April 26, 1938, Austrian Law Gazette No. 102/1938, April 27, 1938.

[8] Announcement by the Reich Governor in Austria regarding the transfer of authority according to the regulations on the declaration of Jewish property and on the formation of a Property Registration Office in the Ministry for Trade and Transport, Austrian Law Gazette No. 139/1938, May 18, 1938.

[9] Para. 1 of the Law of December 5, 1918 regarding the prohibition of export and sale of items of historical, artistic or cultural value, State Legal Gazette No. 1918/90, December 5, 1918.

[10] State Legal Gazette No. 1918/90, December 5, 1918, in the modified version of 1923: Federal Law Gazette No. 1923/80, December 25, 1923; See Loitfellner, *NS-Kunstraub und Restitution in Österreich* (qtd. note 1), at 14 and 246, note 2.

[11] Lillie S, *Was einmal war – Handbuch der enteigneten Kunstsammlungen Wiens*, Vienna, 2003, at 14 (quoted hereafter as: Lillie, *Was einmal war*).

[12] Loitfellner, *NS-Kunstraub und Restitution in Österreich*, at 14.

[13] The Weimar Republic introduced the National Emigration Tax on December 8, 1931 to counter capital flight abroad. Emigrants having at their disposal assets of more than 200,000 Reichsmark or an annual income of more than 20,000 Reichsmark had to relinquish one quarter of their assets to the state. From May 1934 this provision applied to assets of more than 50,000 Reichsmark or annual incomes of more than 10,000 Reichsmark. From September 1934 only 10 Reichsmark could be taken out of the country without permission. The National Emigration Tax was also introduced in Austria's territory by ordinance of April 14, 1938 (Austrian Law Gazette No. 94/1938).

[14] On Hermann Göring's initiative, the National Socialist regime introduced an atonement fee following the assassination of the German legation secretary Ernst Eduard vom Rath in Paris on November 7, 1938 for the hostile attitude of the Jewry towards the German people. Jewish people owning more than 5,000 Reichsmark had to pay a total of 20 percent of their assets to the tax authorities by August 15, 1939. From October 1939, 25 percent of the total assets had to be paid as the Jewish Property Levy in four instalments.

[15] Lillie, *Was einmal war*, at 14.

[16] Loitfellner, *NS-Kunstraub und Restitution in Österreich*, at 19.

[17] Brückler T, *Kunstwerke zwischen Kunstraub und Kunstbergung: 1938 – 1945*, in: Theodor Brückler (publ.), *Kunstraub, Kunstbergung und Restitution in Österreich 1938 bis heute*, Vienna-Cologne-Weimar, 1999, at 15.

[18] Lillie, *Was einmal war*, at 13.