



The Art Restitution Law of 1998

The New York district attorney confiscated two of Egon Schiele's paintings, namely *Bildnis Wally* and *Tote Stadt III* in New York in the beginning of January 1998. From the end of 1997 to the beginning of 1998, these works were part of a special visiting exhibition of the Leopold Museum Vienna in the Museum of Modern Art in New York. A few days before the end of the exhibition, the New York Times had expressed the suspicion that some of the exhibited works had been seized during the NS rule in Austria. This led to the confiscation by the New York district attorney.[1] Schiele's *Tote Stadt III* had been in the possession of the Viennese cabaret artist, Fritz Grünbaum, until 1938. He died in the concentration camp in Dachau. In 1998 the heirs of Mathilda Lukacz, the sister-in-law of Grünbaum, claimed this painting.[2] The painting *Bildnis Wally* had been extorted by art dealer Friedrich Welz of Salzburg from the owner of the Gallery Würthle in Vienna, Lea Bondy Jaray, during the NS rule. After the war this painting was mistakenly restituted to the heirs of the collector Heinrich Rieger.[3]

Only a few days after the confiscations in New York, the Federal Ministry for Education and Cultural Affairs at the time issued instructions to systematically examine the archives of the federal museums and collections as well as those of the Federal Office for the Protection of Monuments with a view to discover acquisitions made during the time of National Socialism and during the post-war period.[4] On December 4, 1998 the National Council resolved the Federal Law on the Restitution of Art Objects from Austrian Federal Museums and Collections (Art Restitution Law).[5] Eleven years later, the scope of application of the Art Restitution Law was extended by an amendment (Federal Law Gazette I no. 117/2009 of 23 November 2009) and adjusted to conform with the years of experience gained in the field of provenance research. In addition to art objects, the extended provisions of the amended Art Restitution Law now comprise other moveable cultural objects. Furthermore, not only is the provenance of the holdings of Federal museums and collections to be examined and their restitution decided on but also those holdings otherwise directly owned by the Federation. The amendment also stipulates the territorial and temporal extension of the acquisitions to be examined, as now objects which were seized on the entire territory of the German Reich between 1933 and 1945 are to be restituted.

In April 1999 the City of Vienna issued a similar regulation on the restitution of seized objects of art similar to the Art Restitution Act of 1998.[6] Since then all provincial states have created legal bases for the restitution of seized works of art.

The Commission for Provenance Research established with the Federal Ministry for Education, the Arts and Culture is in charge of the coordination of the examination of acquisitions made by the federal museums and collections during the time of National Socialism and during the post-war period. Its tasks include the portrayal of the provenance of objects which could be subjects of recommendations by the Advisory Board, researching historical facts which are relevant to the decisions of the Advisory Board and the collection, processing and recording of the results of this research.[7] The staff of the Commission for Provenance Research compiles reports for each art or cultural object that is to be examined in cooperation with the commissioner for provenance research of each museum. On the basis of these reports, the Art Restitution Advisory Board established with the Federal Ministry for Education, the Arts and Culture issues recommendations to the competent Federal Ministers.[8] The decision regarding the transfer of ownership of the artwork lies with the Federal Minister who is in charge of the department responsible for the concerned holdings.[9] The restitution of five paintings of Gustav Klimt[10] held at the Belvedere in 2006 represents an exception. Since the Art Restitution Advisory Board had originally not made a recommendation for the restitution of these works, the question of restitution was affirmatively ruled by arbitral award.[11]

In 1999 the Municipal Council of the City of Vienna issued a decision for the restitution of art which followed the Art Restitution Law of the federal government. Since 1998 the ownership of several thousand pieces of art held by the federal government has been transferred back. More than 32,000 books alone could be restituted to their original owners or their heirs from the National Library. The examinations of the provenance researchers in the museums and collections as well as the tracing of heirs has, however, not been concluded. Works of art which cannot be restituted to their original owners or

their legal successors by death and are, therefore, transferred to the National Fund of the Republic of Austria for Victims of National Socialism, must be disposed of for the benefit of persons persecuted by the NS regime.[12] This occurred for the first time when the Advisory Board, with its decision of 11 September 2009, recommended the transfer to the National Fund of over 8,000 "ownerless" publications, the previous owners of which could not be identified as they had come into the possession of the Austrian National Library via the Gestapo without any traceable clues.

To make sensible use of the time until the disposal of heirless pieces which have been transferred to the Fund, the National Fund has maintained since October 2006 an Art Database on the internet. The database shall provide the opportunity to search centrally and globally for possible expropriated objects of art. Former owners and their heirs shall be provided with the opportunity to reclaim artwork prior to its disposal.

[1] Tote Stadt III was released a few months after the confiscation. The painting *Bildnis Wally* was confiscated in the USA for alleged import of stolen goods. These proceedings are still in progress; see www.leopoldmuseum.org, March 6, 2007.

[2] Lillie S, *Was einmal war. Handbuch der enteigneten Kunstsammlungen Wiens*, Vienna 2003, at 429f; Lillie S, *Die Tote Stadt. Das ungeklärte Schicksal der Kunstsammlung Fritz Grünbaum*, in: Exhibition catalogue *Grüß mich Gott! Fritz Grünbaum 1880-1941. Eine Biographie*, Vienna, 2005, at 147-160.

[3] Kerschbaumer G, *Meister des Verwirrens. Die Geschäfte des Kunsthändlers Friedrich Welz*, Vienna, 2000, at 110 and at 130-135.

[4] Stenographic protocol of the National Council, legislative period XX, 1464 d.B., at 1.

[5] Federal Law on the restitution of art objects from Austrian federal museums and collections (Art Restitution Law), Federal Law Gazette I No. 181/1998, December 4, 1998.

[6] Municipal Council Decision of the Capital City of Vienna dated April 29, 1999 (Official Gazette of the City of Vienna No. 30/1999) regarding the Restitution of Works of Art and Cultural Objects from Museums, Libraries, Archives, Collections and Other Collections of the City of Vienna (abbreviated as: Vienna Council Resolution on Art Restitution of 1999).

[7] Para. 4a of the Art Restitution Law.

[8] Para. 3 of the Art Restitution Law.

[9] Pursuant to para. 2 of the Art Restitution Law the Federal Minister for Education, the Arts and Culture, the Federal Minister of Economics, Family and Youth and the Federal Minister of National Defense and Sport or the otherwise competent member of the Federal Government are given the authorization for restitution (concerns objects "otherwise directly owned by the Federation" cited in para. 1 (1)). According to para. 2 of the Viennese Municipal Council Decision regarding the restitution of art of 1999 the responsibility for restitution lies with the city's administration.

[10] Adele Bloch-Bauer I, 1907; Adele Bloch-Bauer II, 1912; Apfelbaum I, um 1912; Häuser in Unterach am Attersee, 1916; Buchenwald (Birkenwald), 1903.

[11] See web.archive.org/web/20060214073506/http://www.adele.at/Schiedsspruch/Schiedsspruch.pdf.

[12] Para. 2 (1) No. 2 of the Art Restitution Law in connection with para. 2a of the National Fund Law.