

The Austrian legislation on art restitution after World War Two

On May 1, 1945 after the collapse of the NS regime, Austria passed the constitutional law on the restoration of law and order. As such, all laws and ordinances resolved during the National Socialist era, *which had been inconsistent with the existence of a free and independent Austrian state or with the basic principles of genuine democracy, or which had contradicted the sense of justice of the Austrian people or had contained ideology that had been typical of National Socialism [...] were to be rescinded*[1] The Registration Act of 1945 obliged any person holding aryanized assets, including artwork, to register them with Austrian authorities. Aggrieved owners and their representatives were also able to submit registrations.[2] The Annulment Act of May 15, 1946 declared null and void all legal transactions which had been entered into after the Anschluss and in the course of the political or economic penetration by the German Reich.[3] For the restitution of seized assets to the former owners, separate restitution laws were passed which served as a basis for the affected persons to assert their rights in court and with authorities.

Between 1946 and 1949 the Republic of Austria passed a total of seven restitution acts which dealt with the restitution of seized assets. The First[4] and Second[5] Restitution Acts were applicable to those seized works of art which were kept by the public administration or were in public ownership. In these cases, the Financial Directorates of each provincial state were the responsible authorities. The Third Restitution Act[6] was applicable to art objects which were held in private ownership.

The State Treaty of Vienna signed in 1955 regulated, amongst other matters, the restitution of assets expropriated during the NS regime: *To the extent that such measures have not been taken yet, Austria shall in all cases return [...] the stated property.*[7] In addition, Austria was obliged to transfer all assets which remained without heir or which were not claimed within half a year, to government departments or victim organizations *in order to use them for relief, support and rehabilitation of victims of persecution of the Axis Powers.*[8] In 1957 when the Receiving Organizations Act[9] was passed, Collection Points A[10] and B[11] were set up to facilitate execution of this task. These agencies were granted the right to assert claims to heirless property. Collection Point A dealt with the restitution of property of members of the Jewish denomination, while Collection Point B was responsible for applications of politically persecuted persons, but also of those Jewish persons who did not belong to the Jewish Community. During the period of January 1, 1958 to October 15, 1971, these organizations generated proceeds at the time of approximately 326 million Schilling from the disposal of unclaimed property. The proceeds were used to support among others the Jewish Community Vienna, Innsbruck, Salzburg, Linz and Graz as well as nursing homes in Austria and Israel.[12]

In 1966, objects of art whose original owner could neither be traced by the Central Art Collecting Point nor later by the Republic of Austria were stored in the rooms of a former Carthusian monastery, the Kartause Mauerbach in Lower Austria.[13] Following the initiative of the former head of the Documentation Center of the Federation of Jewish Persons Persecuted by the NS regime, Simon Wiesenthal (1908 - 2005)[14], the Austrian National Council resolved in 1969 the First Artistic and Cultural Assets Settlement Act[15]. The Act provided former owners with the possibility to reclaim works of art which were in the custody of the Federal Office for the Protection of Monuments and whose owner could not be identified until this time. The objects stored in Mauerbach were included in a list which was published in the daily Wiener Zeitung and was displayed in Austrian foreign missions. In doing so, the attempt was made to make these objects publicly known to the NS victims scattered around the world. Approximately 8,400 individual pieces, including approximately 2,000 artistic and cultural objects (paintings, sculptures, drawings etc.) were contained in this list. However, only 269 objects were restituted.[16]

In 1984, the US-American magazine ARTnews published an article which reported on Austria's handling of aryanized and unclaimed goods.[17] This referred to the objects still stored in Mauerbach. This article revived discussions in Austria about the restitution of art. In 1985, the Second Artistic and Cultural Assets Settlement Act[18] was passed after repeated suggestions of the Jewish Community and Jewish victims' organizations[19]. Again, an updated list of the Mauerbach collection was displayed for review globally in the foreign missions.[20] Artwork which could still not be restituted after this measure was transferred to the Jewish Community after all restitution proceedings in progress had been concluded.[21] On

October 29 and 30, 1996 the Viennese auction house Christie's auctioned these works in Vienna for the benefit of victims' organizations.[22]

[1] Constitutional law regarding the restoration of the law and order in Austria of May 1, 1945 (Transition of Legislation Act), State Law Gazette No. 6/1945.

[2] Law on the registration of aryanized and other property seized in connection with the assumption of power by the National Socialists of May 10, 1945, State Law Gazette No. 10/1945.

[3] Federal Law of May 15, 1946 concerning the annulment of legal transactions and other legal acts during the German occupation of Austria, Federal Law Gazette No. 106/1946.

[4] Federal Law of July 26, 1946 concerning the restitution of seized property at present administered by the Federal Government or the Provincial State Governments (First Restitution Act), Federal Law Gazette No. 156/1946.

[5] Federal Law of February 6, 1947 concerning the restitution of seized property at present held by the Republic of Austria (Second Restitution Act), Federal Law Gazette No. 53/1947

[6] Federal Law of February 6, 1947 concerning the annulment of property seizures (Third Restitution Act), Federal Law Gazette No. 54/1947.

[7] Article 26 (1) of the State Treaty regarding the Re-establishment of an Independent and Democratic Austria of May 15, 1955, Federal Law Gazette No. 152/1955.

[8] Article 26 (2) leg cit.

[9] Federal Law of March 13, 1957 on the creation of receiving organizations, Federal Law Gazette No. 73/1957.

[10] Para. 2 (1) of the Receiving Organizations Act assigned to Collection Point A all assets, legal rights and interests mentioned in Article 26 (2) of the State Treaty which belonged to persons who, on December 31, 1937, belonged to the Jewish denomination.

[11] Pursuant to para. 2 (2) Receiving Organizations Act Collection Point B dealt with all those claims to assets, rights and interests which other persons than those mentioned in para. 2 (2) of the Receiving Organizations Act could claim.

[12] Sailer G, *Rückbringung und Rückgabe: 1945-1966*, in: Theodor Brückler (publ.), *Kunstraub, Kunstbergung und Restitution in Österreich 1938 bis heute (Studien zu Denkmalschutz und Denkmalpflege, vol. XIX)*, Vienna-Cologne-Weimar 1999, at 36.

[13] Ibid, at 37f.

[14] Haslinger K, *Mauerbach und der lange Weg bis zur Auktion: 1969-1996*, in: Theodor Brückler (publ.), *Kunstraub, Kunstbergung und Restitution in Österreich 1938 bis heute (Studien zu Denkmalschutz und Denkmalpflege, vol. XIX)*, Vienna-Cologne-Weimar 1999, at 40 (quoted hereafter as: Haslinger, *Mauerbach*).

[15] Federal Law of June 27, 1969 concerning the settlement of ownership of works of art in the custody of the Federal Office for the Protection of Monuments, Federal Law Gazette No. 294/1969.

[16] Haslinger, *Mauerbach*, at 41f, and 44.

[17] Decker A, *A legacy of shame*, (1984) 83 ARTnews 55-76.

[18] Federal Law of December 13, 1985 concerning the release and disposal of formerly unclaimed works of art held by the Federal Government (Second Artistic and Cultural Settlement Act), Federal Law Gazette No. 2/1986.

[19] Haslinger, *Mauerbach*, at 46.

[20] Haslinger, *Mauerbach*, at 45f.

[21] Federal Law amending the Second Artistic and Cultural Assets Settlement Act, Federal Law Gazette No. 515/1995, August 4, 1995.

[22] Haslinger, *Mauerbach*, at 50ff; Auction catalogue Mauerbach – Items seized by the Nazis to be sold for the benefit of the victims of the Holocaust, October 29 and 30, 1996, Vienna, MAK- Austrian Museum of Applied Arts, Christie's.

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