



The donations to Austrian museums

In the course of the Second Republic's policy of restitution, donations were made under pressure to Austrian museums and collections during the post-war period. Artwork which was restituted to a person living abroad who intended to transport it abroad was subject to the Export Prohibition Law of 1918.[1] The granting of the export permit for the restituted collections was in many cases conditional upon the donation of individual prominent pieces to Austrian museums. This method allowed for restituted artwork to be returned into Federal possession.[2] Such donations took place in the cases of the collections of Rothschild[3], Gutmann, Lederer and Bondy.

The Export Prohibition Law which served as a legal basis for these donations was created as early as 1918 just after the collapse of the Austrian-Hungarian monarchy. On account of the economic circumstances affecting many art collectors and owners during the post-war period, many of them attempted to transport abroad individual pieces or entire collections and, if necessary, sell them. For this reason the First Republic (in existence for a few months only) issued the Law concerning the prohibition of export and sale of objects of historical, artistic or cultural value[4] on December 5, 1918. The Office of State or alternatively the Federal Office for the Protection of Monuments[5] was assigned the discretionary competence regarding the granting of export prohibitions. By 1938 the office was named Central Department for Monument Protection and from 1940 to 1945 Institute for the Preservation of Monuments. Since 1945, it has operated again under the title Federal Office for the Protection of Monuments. During the NS rule in Austria from 1938 to 1945 the office for preservation of monuments imposed an export embargo on several works of art pursuant to the Export Prohibition Law. The persecuted owners were therefore forced to either sell their embargoed works on the domestic market below their value prior to emigrating or release them to a museum as a donation.[6] After the end of the NS regime the reestablished Federal Office for the Protection of Monuments applied the Export Prohibition Law also to those persons who, after 1945, had gained possession of their seized artwork on the basis of the restitution laws.

With the resolution of the Art Restitution Law of 1998, the Republic of Austria created the legal conditions for restitution to owners or legal successors of those works of art which were the subject of restitutions to their former owners or legal successors by death and which were transferred free of charge after May 8, 1945 in the course of subsequent proceedings pursuant to the Federal Law concerning the prohibition of export of objects of historical, artistic or cultural value, State Legal Gazette No. 90/1918, into the ownership of the Federal State and still remain in this ownership.[7] As was previously the case with the Second Artistic and Cultural Assets Settlement Act of 1985[8], the renewed application of the Export Prohibition Law was expressly excluded. Pursuant to the Art Restitution Law of 1998, artwork which has been restituted is not subject to the stipulations of the Export Prohibition Law for the duration of 25 years from the effective date of that Law.[9]

[1] Law of December 5, 1918 concerning the prohibition of export and sale of objects of historical, artistic or cultural value (Export Prohibition Law), principal version State Legal Gazette No. 90/1918.

[2] Loitfellner S, *NS-Kunstraub und Restitution in Österreich. Institutionen – Akteure – Nutznießer*, in: Verena Pawlowsky, Harald Wendelin (publ.), *Enteignete Kunst. Raub und Rückgabe. Österreich von 1938 bis heute*, Vienna 2006, at 22 (quoted hereafter as: Loitfellner, *NS-Kunstraub und Restitution in Österreich*).

[3] Louis Rothschild and the heirs of Alphons Rothschild attempted to export their restituted art collections out of Austria after 1945. The negotiations regarding the export permit for parts of the collection were protracted and resulted in donations of at least 225 works of art to Austrian Federal and provincial museums. Moreover, according to a 1998 breakdown prepared by the Federal Office for the Protection of Monuments, 71 works of art of former collections of the Rothschilds were on loan to the Museum of Art History and a further eight to the Austrian Gallery. See Trenkler T, *Der Fall Rothschild*, Vienna 1999, at 20.

[4] Ibid, note 1.

[5] Para. 4b (1) Export Prohibition Law in the version of Federal Law Gazette No. 80/1923.

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

[7] Para. 1 (1) of the 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.

[8] Para. 4 (5) Federal Law of December 13, 1985 concerning the release and disposal of formerly unclaimed artistic or cultural objects held by the Federal Government (Second Artistic and Cultural Assets Settlement Act), Federal Law Gazette No. 2/1986.

[9] Para. 4 Art Restitution Law.