

An Introduction to the Washington Conference Principles on Nazi-Confiscated Art

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Day 2

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MIAMILAW
UNIVERSITY OF MIAMI SCHOOL OF LAW



**University of
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Introduction

<p>Session 2</p> <p>Tuesday, Jan. 23, 2024 12:30-1:50pm (80 minutes)</p>	<p>The Washington Principles on the Crossroad of Law and Ethics</p> <p>Description: The Washington Principles declare themselves as non-binding. Still, they may play a role in legal proceedings and if they are applied independently from a legal order before a committee, attention must be given to the questions if and to what extent the principles should be translated into a legal rationale. The Washington Principles are often supplemented to various degrees by national legislation.</p> <p>Reading:</p> <ul style="list-style-type: none">- Washington Conference Principles on Nazi-Confiscated Art, Released in connection with the Washington Conference on Holocaust-Era Assets, Washington D.C. (December 3, 1998).- Terezin Declaration on Holocaust Era Assets and Related Issues, Terezin (June 30, 2009).- Austrian Statutory Regulation concerning the Art Restitution Law as amended on 25 January 2011 (Federal Law on the Restitution of Works of Art and Other Movable Cultural Assets from Austrian Federal Museums and Collections and Other Federal Property (Art Restitution Law – KRG) (NR: GP XX RV 1390 AB 1464 S. 146. BR: AB 5802 p. 646.) StF: BGBl. I Nr. 181/1998)
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I. Austrian Art Restitution Law

1. Scope

Complete Statutory Regulation concerning the Art Restitution Law as amended on 25 January 2011

Objects liable to restitution

- 2a. that legally became the property of the State but that had been the object of a legal transaction or legal act under § 1 of the Federal Law on the Declaration of Annulment of Legal Transactions and Other Legal Acts Occurring During the German Occupation of Austria (BGBl. No. 106/1946) between 30 January 1933 and 8 May 1945 in a territory of the German Reich outside the present Republic of Austria, that was comparable with legal transactions or legal acts taking place during the German occupation of Austria and are still State property;

Objects of the States (Länder)? Private Parties?

I. Austrian Art Restitution Law

1. Scope

BUNDESGESETZBLATT

FÜR DIE REPUBLIK ÖSTERREICH

Jahrgang 1946

Ausgegeben am 30. Juli 1946

34. Stück

106. Bundesgesetz: Nichtigerklärung von Rechtsgeschäften und sonstigen Rechtshandlungen, die während der deutschen Besetzung Österreichs erfolgt sind.
107. Bundesgesetz: Vermögensteuernovelle 1946.

Der Nationalrat hat beschlossen:

§ 1. Entgeltliche und unentgeltliche Rechtsgeschäfte und sonstige Rechtshandlungen während der deutschen Besetzung Österreichs sind null und nichtig, wenn sie im Zuge seiner durch das Deutsche Reich erfolgten politischen oder wirtschaftlichen Durchdringung vorgenommen worden sind, um natürlichen oder juristischen Personen Vermögensschaften oder Vermögensrechte zu entziehen, die ihnen am 13. März 1938 zustanden sind.

... German occupation with the aim of the political and economic penetration of Austria expropriating existing rights as of March 13, 1938 ...

I. Austrian Art Restitution Law

2. Competence

Transfer of title

(2) The specified Federal Ministers shall consult the committee established under § 3 before the transfer of title. The provisions of this Federal Law do not establish a claim to transfer.

Legal Protection? Party of the Proceedings?

I. Austrian Art Restitution Law

3. Committee

(2) Members of the committee shall be:

«Balanced Membership»?

(4) The committee shall make its recommendations on the basis of reports by the Commission for Provenance Research of the Federal Ministry of Education, Art and Culture. It may also consult other experts and suitable persons to provide information.

Competences?

I. Austrian Art Restitution Law

4. Provenance Research

Commission for Provenance Research

§ 4a. The Commission for Provenance Research shall be established within the Federal Ministry of Education, Art and Culture. It shall act exclusively by order of the Federal Minister of Education, Art and Culture. Its tasks shall include in particular:

1. the description of the provenance of objects designated in § 1 in so far as it can form the basis for recommendations by the committee indicated in § 3;
2. research into the historical circumstances, in so far as this could be of significance for determining the provenance and for recommendations by the committee;
3. the collection, processing and archiving of the results of this research.

Function?

II. Other Approaches

1. Changing the Law?

HOLOCAUST EXPROPRIATED ART RECOVERY ACT OF 2016

SEC. 5. STATUTE OF LIMITATIONS.

Deadline.

(a) IN GENERAL.—Notwithstanding any other provision of Federal or State law or any defense at law relating to the passage of time, and except as otherwise provided in this section, a civil claim or cause of action against a defendant to recover any artwork or other property that was lost during the covered period because of Nazi persecution may be commenced not later than 6 years after the actual discovery by the claimant or the agent of the claimant of—

(1) the identity and location of the artwork or other property; and

(2) a possessory interest of the claimant in the artwork or other property.

II. Other Approaches

2. Defining «just and fair»?

NL Terms of Reference as updated in 2016.

15. For this purpose the Panel shall:

[...]

- (c) examine and determine the circumstances in which the claimant was deprived of the object, whether by theft, forced sale, sale at an undervalue, or otherwise;
- (d) evaluate, on the balance of probability, the validity of the claimant's original title to the object, recognising the difficulties of proving such title after the destruction of the Second World War and the Holocaust and the duration of the period which has elapsed since the claimant lost possession of the object;
- (e) give due weight to the moral strength of the claimant's case;
- (f) evaluate, on the balance of probability, the validity of the institution's title to the object;

[...]

16. The Panel will only consider whether any particular moral obligation rests on the institution if it finds it is necessary to do so to enable it to arrive at a fair and just recommendation. For that purpose, the Panel shall take into account any relevant consideration (including the circumstances of its acquisition of the object and its knowledge at that time of the object's provenance).

II. Other Approaches

3. Define the Procedure?

German culture minister implements changes to ease restitution of Nazi-looted art

Without the states' approval, Roth cannot enforce a rule allowing claimants to take their case to the panel without the consent of the current holder. But from January, any museum that refuses to go to the panel will be ineligible for federal government funding.

The Art Newspaper, Catherine Hickley, January 3 2024

II. Other Approaches

4. Reconciliation (and Competencies)?

Décret n° 2009-619 du 6 juin 2009 article 1 : Les dispositions réglementaires instituant les commissions administratives à caractère consultatif dont la liste est annexée au présent décret sont prorogées pour une durée de cinq ans (Commission pour l'indemnisation des victimes de spoliations intervenues du fait des législations antisémites en vigueur pendant l'Occupation).

Décret n° 2014-555 du 28 mai 2014 : La Commission pour l'indemnisation des victimes de spoliations intervenues du fait des législations antisémites en vigueur pendant l'Occupation est prorogée jusqu'au 1er juin 2019.

Décret n° 2019-409 du 3 mai 2019 : La Commission pour l'indemnisation des victimes de spoliations intervenues du fait des législations antisémites en vigueur pendant l'Occupation est renouvelée pour une durée de cinq ans à compter de l'entrée en vigueur dudit décret (1er juin 2019).

II. Other Approaches

4. Reconciliation (and Competencies)?

Art. 2

La commission s'efforce de parvenir à une conciliation entre les personnes intéressées.

En cas d'échec de la conciliation, elle peut émettre toutes recommandations qui lui paraîtraient utiles.

(The commission strives to achieve conciliation between interested parties. In the event of failure of conciliation, it may issue any recommendations that it considers useful.)

II. Other Approaches

5. Leave it to Private Initiative?

Sotheby's

Sotheby's is committed to the resolution of problems that can arise in respect of works of art that may have been displaced between 1933 and 1945 but not subsequently returned to their original owners.

Since its founding in 1997, Sotheby's Restitution Department has been dedicated to the ongoing identification of such objects and works in tandem with department specialists to research and thoroughly review the provenance of any work of art offered for sale. We give consignors and buyers the peace of mind of knowing that all works of art sold through Sotheby's are vetted by our team of experts. Should a painting come to market that has questionable provenance, we work discreetly with clients to find appropriate solutions, which may involve orchestrating a mutually-acceptable settlement between the current holder and the heirs of the former owner.

(<https://www.sothebys.com/en/about/services/art-restitution>)

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II. Other Approaches

6. Expand to all Historical Injustices?

Verordnung **444.21**
über die unabhängige Kommission für historisch belastetes
Kulturerbe
(VUKBK)

vom 22. November 2023 (Stand am 1. Januar 2024)

(Swiss) Ordinance on the Independent Commission for Historically Charged Cultural Heritage of November 22, 2023