

Art restitution in Austria

Legally regulated provenance research, heir research and
restitution from federal collections

Pia Schölnberger

Johann Baptist Reiter, *Die Gastwirtin (The Innkeeper) Barbara Meyer*, oil on canvas, 1836

1939 Acquisition by the Österreichische Galerie Belvedere at the Weinmüller auction house, Vienna, brought in by Robert Kauder, who was deprived of his subsistence after the "Aryanisation" of his company; accordingly, he tried to sell works of art successively at the Weinmüller auction house to cover his living expenses.



Robert and his wife Malvine Kauder had to move to a so-called "Jews' quarter" in the summer of 1940. On 15 October 1941, they were deported to the Litzmannstadt ghetto in the Generalgouvernement (today Łódź/Poland). Both died in the ghetto at an unknown date.

12 March 2024 Recommendation of the Art Restitution Advisory Board for restitution to the legal successors of Robert Kauder



The role of art restitution in Austria

- As the heir to the Habsburg monarchy, Austria has large art collections that date back to the monarchy and have been maintained by the state since 1918, today mostly administered by the federal museums.
- Jewish collectors/patrons were highly present and active in the interwar period; which made the art theft all the more possible for Nazi authorities after the "Anschluss" in March 1938
- Restitution of Nazi-confiscated art after 1945 took place in principle, but hesitantly, incompletely and burdened with countertrades
- Since 1998, Austria has had a unique legal system for the restitution of art: efforts by today's Austria to take responsibility for the injustice committed
- Provenance research as an "auxiliary science" underlying art restitution has now advanced to become a separate field of applied research in the field of contemporary history

Art Restitution Act 1998, Amendments 2009, 2023

Full title

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

Amendments

BGBl. I Nr. 117/2009 (NR: GP XXIV RV 238 AB 349 p. 40. BR: AB 8187 p. 777.)

BGBl. I Nr. 158/2023 (NR: GP XXVII AB 2302 S. 241. BR: 11340 AB 11351 S. 960.)

Art Restitution Act

- The Federal Act on the Restitution of Works of Art and Other Movable Cultural Property from Austrian Federal Museums and Collections and from Other Federal Property is today the most important legal source for the restitution of art from state holdings in Austria.
- Legally specific Austrian construction: As a "self-binding law", it is part of the private sector administration of the federal government within the meaning of Art 17 B-VG and can therefore only bind the administration, but cannot establish a claim for restitution.
- The Art Restitution Act authorises the Federal Minister of Finance on the one hand and the competent federal minister on the other to transfer objects from federal ownership to former owners or their legal successors.
- In doing so, the competent federal minister relies on the recommendations of the Art Restitution Advisory Board, which carries out the legal assessment of the facts presented by the Commission for Provenance Research.
- It has become common practice in recent years for institutions whose collections are not owned by the state to turn to the Advisory Board as well. In these cases the recommendation is made to the respective owner.

Art Restitution Advisory Board - Members

- one representative each from the Federal Ministry of Finance, the Federal Ministry of Arts, Culture, Civil Service and Sport, the Federal Ministry for Digital and Economic Affairs, the Federal Ministry of Justice, and the Federal Ministry of Defence
- one expert in the field of history and one expert in the field of art history nominated by the Austrian University Conference
- one representative of the State Financial Procurator's Office in an advisory capacity
- if the Advisory Board deliberates on the return of an object that does not fall under the responsibility of one of the above-mentioned federal ministries, one representative of the responsible federal ministry
- A substitute member must be appointed for each member; the Advisory Board may call in further experts and suitable persons to provide information

Commission for Provenance Research

- Composition: Management (BMKÖS), scientific coordination, provenance researchers in the federal collections; office of the Commission
- Tasks according to § 4 KRG in particular:
 - The presentation of the provenances of objects pursuant to § 1, insofar as these can form the basis of recommendations by the Art Restitution Advisory Board.
 - Research in the field of historical facts, insofar as these may be of significance for the determination of provenances and recommendations of the Art Restitution Advisory Board.
 - The collection, processing and documentation of the results of this research.

Commission for Provenance Research - Visibility of Research

- Dossiers are not published
- Advisory Board resolutions based on the dossiers are published on the Commission's [website](#) immediately after the end of the Advisory Board meeting
- Activity report on completed restitutions in the annual Restitution Report to be submitted to the National Council
- [Publication series](#)
- [Lexicon of Austrian Provenance Research](#)
- Database of provenance markings
- Member of the [Network](#) of European Restitution Committees on Nazi-Looted Art (newsletter)
- Numerous [projects](#), digital initiatives, co-operations

MEMBERS OF THE ADVISORY BOARD

DECISIONS

Alphabetical list of decisions

ART RESTITUTION ACT 1998/2009

FEDERAL LAWS 1946–1995

REGULATIONS FOR THE FEDERAL PROVINCES

RESTITUTION REPORTS



All	2023	2022	2021	2020	2019	2018	2017	2016	2015	2014	2013	2012	2011	2010	2009	2008
2007	2006	2005	2004	2003	2002	2001	2000	1999	1998							

DECISIONS

102ND ADVISORY BOARD MEETING ON JUNE 29, 2023

Rothschild Mahzor Codex Hebraicus 242 (2023-06-29)

Download

Rothschild Mahzor Codex Hebraicus 242 (2023-06-29) english

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ÖNB Objekte Anonymer Vorbesitz (2023-06-29)

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ÖNB Objekte Anonymer Vorbesitz (2023-06-29) english

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101ST ADVISORY BOARD MEETING ON MAY 15, 2023

Brill Livia and Otto (2023-05-15)

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Brill Livia und Otto, Dr. (2023-05-15) englisch

Download

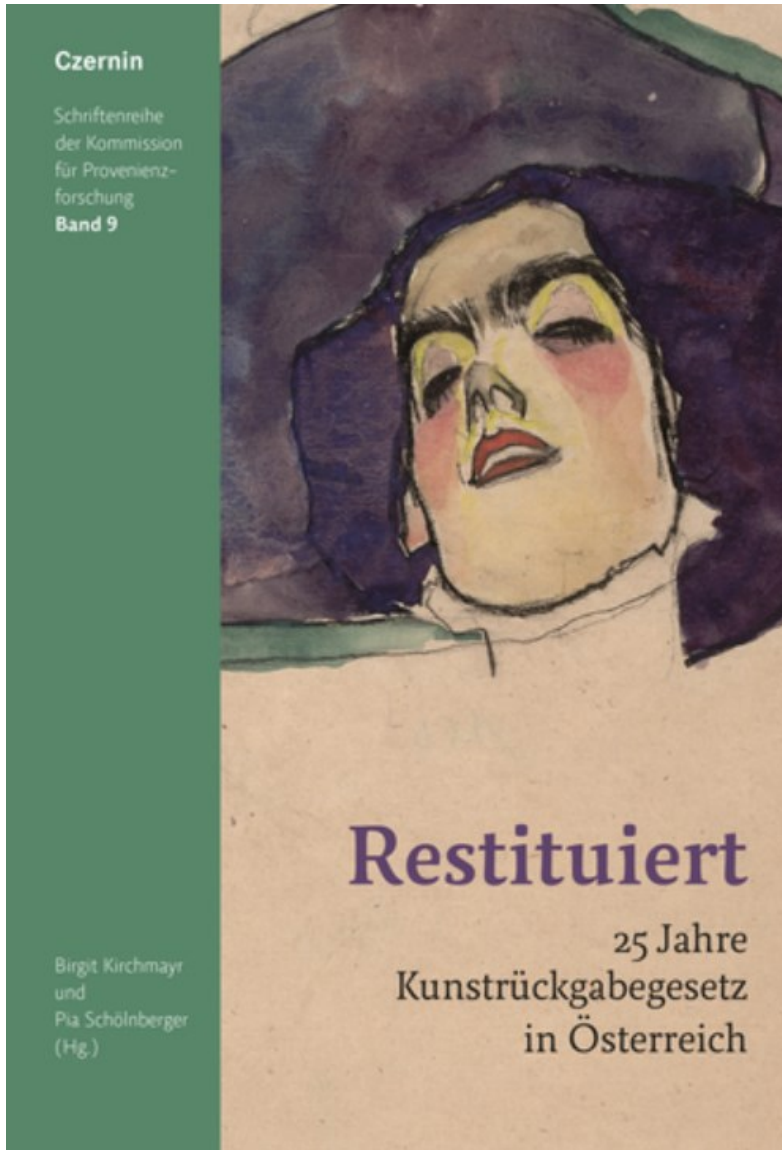
Mendelssohn Giulietta (2023-05-15)

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Mendelssohn Giulietta (2023-05-15) englisch

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<https://provenienzforschung.gv.at/en/empfehlungen-des-beirats/beschluesse>



LEXIKON DER ÖSTERREICHISCHEN PROVENIENZ- FORSCHUNG

[Articles](#) [Authors](#) [Keywords](#) [Abbreviations](#)

[Deutsch](#)
[English](#)

Lexicon of Austrian Provenance Research

The basic idea of the Lexikon der österreichischen Provenienzforschung is to bring together the findings which the members of the Commission for Provenance Research and further provenance researchers have been gathering since 1998 on the seizure of art and cultural property during National Socialism and on restitution practice in the post-war period. The focus is on persons and institutions that were active in Austria between 1930 and 1960 in the fields of museums, cultural policy, collections and the art trade. The Lexikon der österreichischen Provenienzforschung is not a static project, but is constantly being expanded and supplemented.

lexikon-provenienzforschung.org

www.provenienzforschung.gv.at

Art Restitution – Procedure

- The procedure is carried out ex officio
- On the basis of the historical facts determined by the Commission for Provenance Research, the Advisory Board makes a legal assessment, the legal consequences of which are generally limited to a rejection or approval of a transfer of ownership.
- The Advisory Board does not issue binding legal acts, but rather recommendations to the competent federal minister, who is authorised to make a decision at his or her own discretion.
- The Art Restitution Act does not create any legal claims; even if the legal requirements are met, the restitution of artworks cannot be enforced either in court or through administrative channels.
- Following the restitution decision, the parties entitled to restitution are identified and the object in question is transferred to them.
- Sometimes the material is not sufficient to reach a clear positive or negative recommendation. In these cases, the proceedings can be postponed.

Art Restitution Act - Requirements

- Items that were returned after 1945 but then became the property of the Republic of Austria in the course of proceedings under the Export Prohibition Act
- Objects that lawfully became the property of the Republic of Austria but were previously the subject of a legal transaction forced by Nazi persecution ("Aryanisation", flight, etc.).
- Objects which, although lawfully transferred to the ownership of the Federation, were the subject of a legal transaction enforced by the circumstances between 30 January 1933 and 8 May 1945 in a territory under the rule of the German Reich outside the territory of present-day Austria
- Objects that could not be returned following the conclusion of restitution proceedings and became the property of the Federal Government as "ownerless property".
- Objects that remain "heirless" are to be handed over to the National Fund for realisation



Glass object in the shape of a shrew.
Restituted by the Austrian Museum of Folk
Life and Folk Art to the heirs after Albert
Pollak 2021.

Art Restitution Act – Export Prohibition

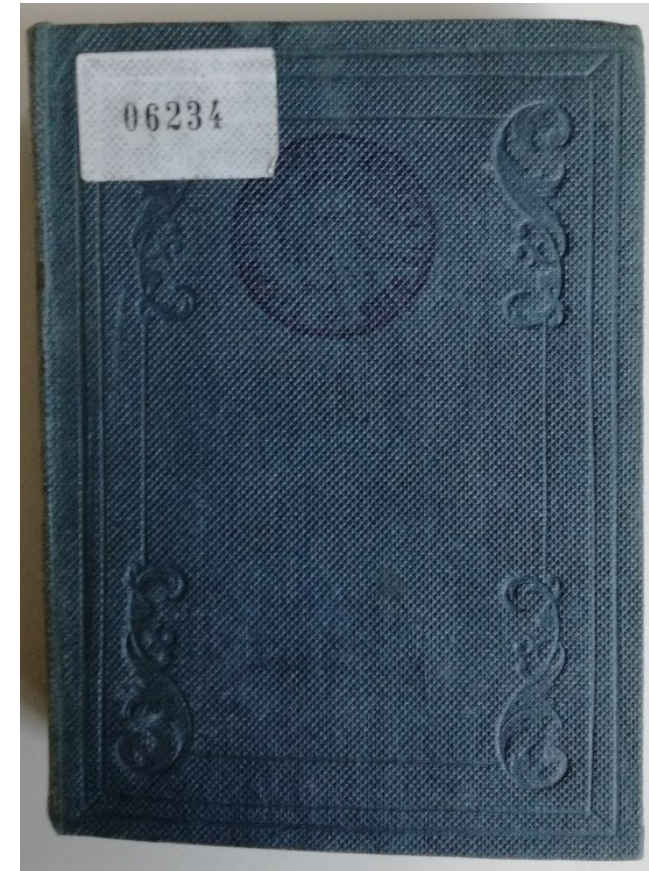
- Special feature: Restriction on ownership under the Export Prohibition Act (Act on the Prohibition of the Export and Sale of Objects of Historical, Artistic or Cultural Significance, StGBI. 90/1918), historically served to prevent the "sell-out" of Austrian cultural assets abroad
- After the transfer to the Austrian legal system in 1945, this provision was also used to issue export licences in return for "donations" to the federal government: i.e. after the return of art objects (for example by decision of the Restitution Commission), objects were retained on the basis of the Export Prohibition Act and transferred as property to Austrian federal museums.
- The KRG therefore contains provisions of the Monument Protection Act and the Export Prohibition Act as *leges fugitivae*: provisions of these laws do not apply for a period of 25 years after transfer of ownership

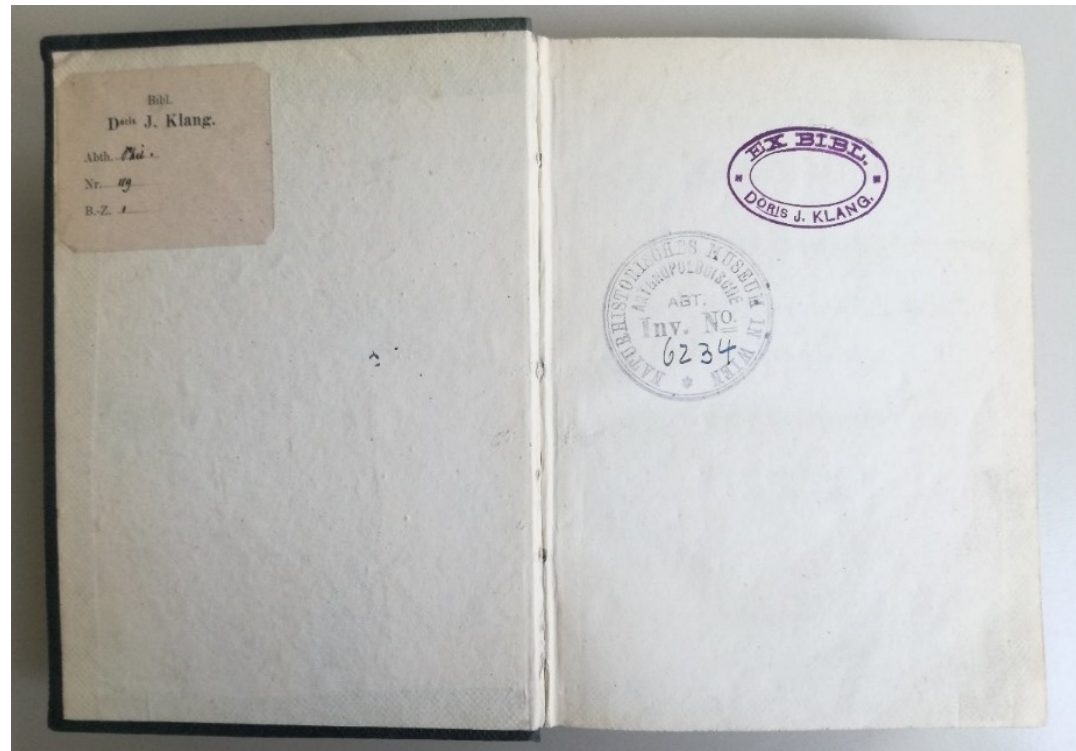
Albert Pollak Collection

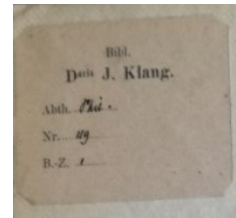
- Decision of 25 September 2020:
 - *There is no doubt that the heirs of Albert Pollak wanted to export all the objects returned from the Austrian Museum of Folklore, including the glass objects in question; this is clearly indicated by the handover to a forwarding agent. The causal link between the gratuitous dedication of the glass objects to the museum and the authorisation to export the rest of Albert Pollak's art collection is expressly recorded in the historical documents. The Advisory Board therefore comes to the conclusion that, if these glass objects were the property of the Federal Government, the offence under § 1 para. 1 subpara. 1 of the Art Restitution Act would be fulfilled.*
 - https://provenienzforschung.gv.at/beiratsbeschluesse/Pollak_Albert_2020-09-25_englisch.pdf

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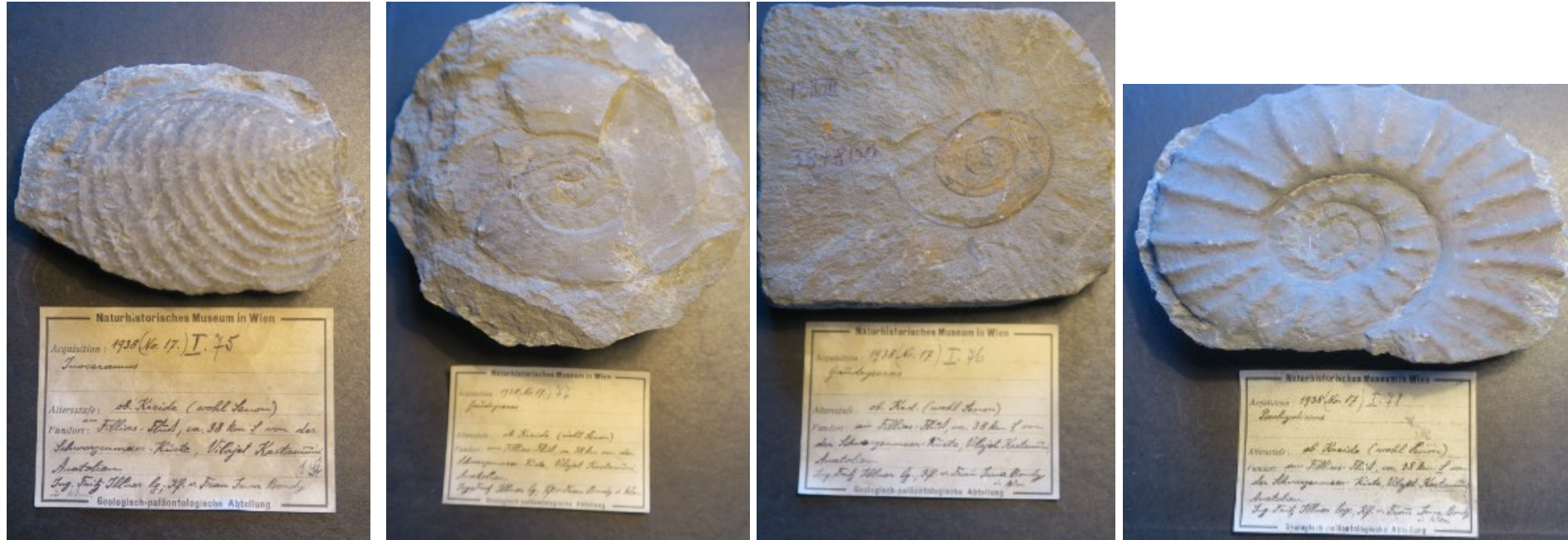
Heinrich Klang
1875-1954



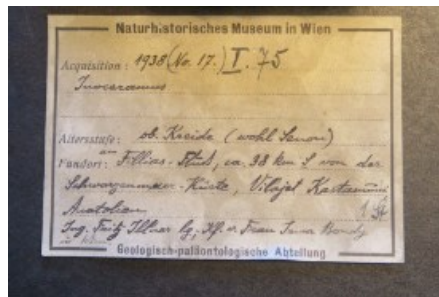
"In order to avoid finding myself in an impossible situation due to a sudden expulsion, I began to slowly liquidate my possessions. The hardest thing for me was probably the separation from my library, which my father had already started to collect [...]. In the end, over the course of three quarters of a year, I sold the furniture I had inherited from my parents and a considerable number of my books in response to adverts."

Heinrich Klang Library

- Resolution of the Art Restitution Advisory Board at its 94th meeting on 18 October 2019 on Heinrich Klang:
 - *Heinrich Klang was persecuted as a Jew by the Nazi regime. After all attempts to flee had failed, he began to sell his assets - including the library he had inherited from his father James Klang - "so as not to find himself in an impossible situation as a result of a sudden deportation". The two printed works in question were purchased by Alfred Wolf and his business partner Richard Riedmann. Both books to be assessed have the original provenance mark of the "Doris J. Klang" library and the respective subsequent purchase by the Natural History Museum Vienna from Alfred Wolf's antiquarian bookshop and export bookshop can be traced, among other things, on the basis of the entry book of the Zoological Libraries and an invoice available in the Anthropological Department. As the sales of the printed publications to Alfred Wolf's company are in any case void legal acts pursuant to Sec. 1 of the 1946 Annulment Act, the Advisory Board considers the facts of Sec. 1 (1) item 2 of the Art Restitution Act to be fulfilled.*
 - https://provenienzforschung.gv.at/beiratsbeschluesse/Klang_Heinrich_2019-10-18_englisch.pdf



Fossils from the Fritz Illner Collection





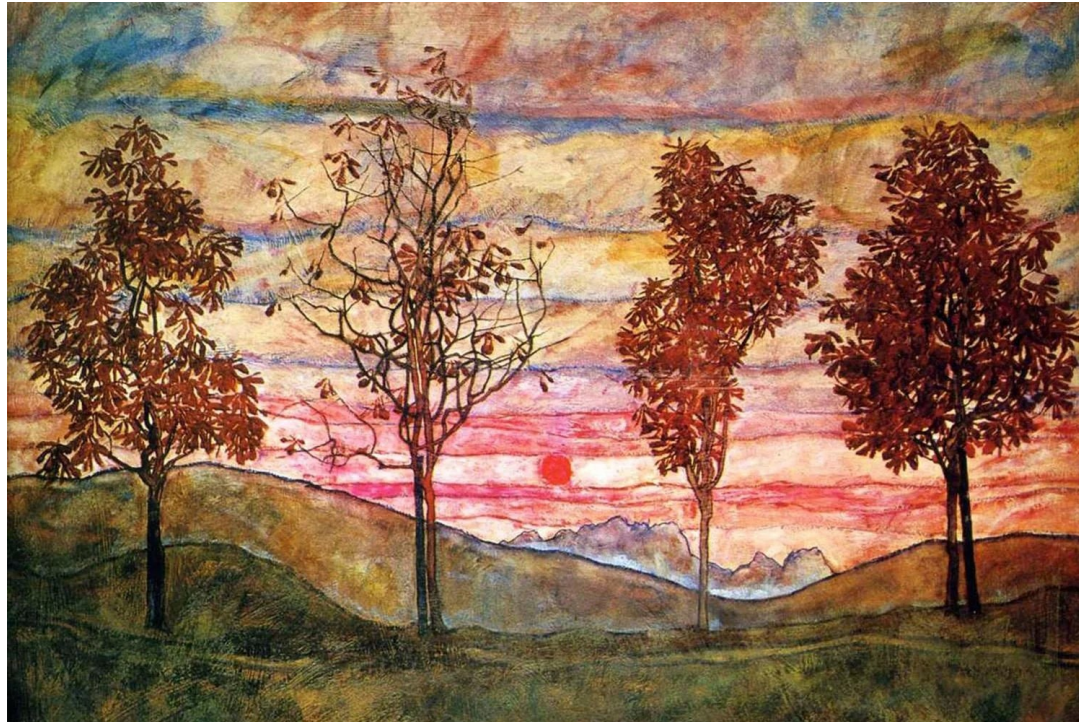
Nr.	1938	Gegenstand	Herkunft	Art der Erwerbung	Wert Sch g	Preis Sch g	An- merk- ung
13	April	18. Lieferung von Gesteinen mit fossilien (Kristallin d. West- tirols u. d. Zentral-Alpen Paläozoikum u. Mesozoikum d. Kalk-Alpen insbes. Gebiet von Katterberg bei Wien) samt 6 Kl. Weichholzkasten (siehe Arb. Zw. Nr. 658-663)	von Georg Rosenberg Wien XI. Mödlinger Hauptstr. 43	Gesch.			April 1938. II. 1-63
14	April	23. Lamellaptychus heurichi (Opp.) Tithon (- Meskom?) Glarauer Steinbruch am Girsenberg ob. St. Beil, Wien, XIII. (Kautsky 1908)	Frau Käthe Rautsky Wien XIII. Fernweg. 13	Gesch.			1938 I. 71
15	Mai	7. "Kernit" aus dem Tallager von Mamer bei Barstow Liv- California (5 St.) mit 1 Schmelz von Mamer gegenw. West Valley, California. (2 Quartäre)	Robert G. Schaller Wien	Gesch.			1938 I. 72- 74
16	8. VI.	Konstruktion a. d. Juraklippe auf der Huttenhöhe in Mauer bei Wien	Käthe Schaller	Gesch.			
17	13. VI.	11. Kreide (J. St. 1. Tr. 1. Tr. 1. Tr.) von Follis im Gebiet Karta. nuni, Swadlow (coll. Aug. 1918 Illner); ferner ein roter Kalkstein von dort.	Frau Bondy	Kf	RM	RM 20	1938 I. 75-78

Fritz Illner Collection

- *"You are requested to collect the amount of RM 20 for the fossils purchased from Fritz Illner [...]." "Mrs Irma Bondy, VI Mariahilferstr. 51 for Ing. Fritz Illner" Based on this information, the Advisory Board can prove that Irma Bondy acted on behalf of Fritz Illner at the sale in June 1938 - she sold the four geological-palaeontological objects on behalf of her brother-in-law. The agreement for this sale was either explicit or Irma Bondy was at least acting on behalf of her brother-in-law. The latter would probably have given his tacit or implied consent.*
- *The sale of the properties is obviously linked to Irma Bondy's flight to France together with the owner's daughters as a result of persecution. In the opinion of the Advisory Board, there can therefore be no doubt that this sale, which took place in Vienna in accordance with the 1946 Annulment Act, took place in the course of the political or economic penetration of Austria by the German Reich. The Advisory Board therefore comes to the conclusion that the sale of Irma Bondy's objects in question is to be assessed as a void legal transaction and therefore the offence pursuant to § 1 para. 1 subpara. 2 of the Art Restitution Act is fulfilled.*
- [http://www.provenienzforschung.gv.at/beiratsbeschluesse/Illner Fritz 2019-10-18.pdf](http://www.provenienzforschung.gv.at/beiratsbeschluesse/Illner_Fritz_2019-10-18.pdf)



Egon Schiele, *Four Trees*, 1917 Restituted to the heirs of Josef Morgenstern in 2020



Music room of Josef and Alice Morgenstern's flat with the painting *Four Trees*, published in "Innendekoration" in 1924

Saul Juer Collection

- Decision of 29 November 2022:
 - *In the period from the loss of his income due to Nazi persecution until a few months before his forced resettlement and deportation, Saul Juer sold numerous objects from his diverse collection [...]. The acquisitions of the 572 objects are therefore to be assessed as null and void legal transactions within the meaning of § 1 of the Nullity Act; this is also independent of the question of whether the purchase price received was appropriate or whether Saul Juer initiated the legal transactions himself. As these objects are now owned by the federal government, the facts of § 1 para. 1 no. 2 of the Art Restitution Act are fulfilled, which is why the Federal Minister of Defence is to be recommended to transfer ownership in accordance with the ruling.*
 - https://provenienzforschung.gv.at/beiratsbeschluesse/Juer_Saul_2022-11-29.pdf

Coloured lithograph: "Omer Pasha at the Battle of
Oltenizza", undated, published by Mathias Trentsensky
(1790-1868), from the Saul Juer Collection
(recommended for restitution in 2022)



Restitution of objects from the Juer Collection from the
Museum of Military History Vienna to Saul Juer's
grandson, March 2024



Conclusion: From provenance research to restitution

- Proactive research by provenance researchers commissioned by the Commission for Provenance Research in the federal collections
- Preparation of a dossier in the event of suspicion within the meaning of the Art Restitution Act (or in the event of a specific restitution claim)
- Submission of the dossier to the Art Restitution Advisory Board; decision of the Advisory Board = recommendation to the Federal Minister
- Decision by the Federal Minister
- Search for legal successors by the Commission for Provenance Research according to inheritance law; confirmation by the State Financial Procurator's Office
- Handover of the object

Figures

- Since 1998 the Art Restitution Advisory Board has passed over 400 resolutions in 104 sessions, in which more than 15,800 individual objects have been recommended for transfer to the former owners or their legal successors.
- These include paintings, drawings, prints, sculptures, objects of applied art, ethnographic, ethnological, technical, natural history objects, coins and medals.
- In addition, there are more than 52,000 books, autographs and manuscripts, whose acquisition from a persecution context could also be proven.

