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The Jewish Community Vienna (IKG) and the Restitution of Works of Art

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In 1999 the Jewish Community Vienna (in short: IKG for Israelitische Kultusgemeinde Wien) together with other Jewish organizations founded a special office dealing with restitution and compensation issues: the so-called "Anlaufstelle für jüdische NS-Verfolgte in und aus Österreich" (in English: "Holocaust Victims' Information and Support Center").

I will try to provide an insight into the work of the IKG and into our understanding of art restitution by commenting on a very well known international statement, the so-called "Washington Conference Principles on Nazi-confiscated Art". They were issued in 1998, only a couple of months after a public discussion on the restitution of artworks had started in Austria provoked by two scandals: the two Schiele-paintings that had been confiscated from the Leopold collection in New York and the artworks from the former Rothschild collection that had been retained at Austrian museums.

The so-called Washington Principles are an important achievement for various reasons, let me just point out two of them: They represent a minimum consensus of 44 countries (including Austria, Germany, the UK, the US and many others) by at the same time acknowledging the fact "that among participating nations there are differing legal systems and that countries act within the context of their own laws".

One of the weak points of the Washington Principles might be the term "Nazi-confiscated Art" itself as in many cases of dispossessed property confiscation by National Socialist authorities is not exactly what we are dealing with.

Under the National Socialist regime dispossession of all kinds of property including artworks took place within a wide range of techniques: from forced sales to simple robbery, from compulsory auctions under fiscal law to expropriation under laws on citizenship. All these techniques had something in common: in the end the Jewish owner had been deprived of his or her ownership that would have been untouched under normal conditions.

We know from several individual cases that the complexity of National Socialist deprivation can cause a big problem in the international context, but this is usually not the case in Austria. Austrian restitution laws have mostly been overcomplicated but as regards the "corpus delicti" of dispossession in its various kinds they have always been clear and simple. I only ask you to keep one thing in mind: talking about "Nazi-confiscated Art" one should always think about the broad variety of deprivation.

I will now briefly address each of the altogether **11 Washington Principles**.

The **1st principle** is the principle of identification.

One of the main tasks of the IKG being a member of the Austrian Commission of Provenance Research and the Viennese Restitution Commission is to convince museums and collections of the necessity of binding standards of provenance research. The IKG does that by continuously asking questions about the sources used by provenance researchers, about the methods applied to every single artwork and about the documentation of the results but also by providing know how and information to museums. It is still too early to decide whether these efforts of the IKG have been successful. In the end the question will be whether all museums and collections will indeed have been systematically checked.

The **2nd principle** is to provide access to relevant records and archives.

Since 1998 several new sources have become available to provenance researchers. But just because they are available does not necessarily mean that they can actually be used for routine provenance research. The IKG therefore has put a lot of efforts into electronically processing the data contained in historical card indexes, index books and files (for example the card index of the Vugesta at the Austrian State Archives, the inventory books of the photographs of seized artworks at the Federal Monuments Office, the card indexes and files of the First and the Second so-called Artistic and Cultural Settlement Act at the Financial Directorate Vienna and several other sources).

In 2000 we were able to locate a long forgotten part of our own archival holdings in Vienna, including some 500,000 pages of Holocaust relevant documents. Since then, we have worked hard to preserve, identify, rearrange, describe and microfilm this material together with the United States Holocaust Memorial Museum. We have already finished microfilming some additional 1.5 million pages of Holocaust relevant documents from another part of our archival holdings, stored in Jerusalem. Members of the Austrian Commission for Provenance Research, of the Austrian Historical Commission, of certain research projects and staff members of the National Fund and General Settlement Fund have been using these new IKG sources for years.

In summer 2007 we will for the first time be able to show an exhibition on the Archive of the Jewish Community Vienna at the Jewish Museum Vienna.

The **3rd principle** is to provide resources and personnel.

The IKG provides databases and technical support to provenance researchers at public museums and collections.

As a routine job we evaluate dossiers on every single case of art restitution in public museums and collections.

The IKG also provides manpower to countervail some of the weak points of the Austrian Art Restitution Law of 1998 and of related legal measures of the Austrian provinces. While the City of Vienna conducts tracing of heirs at its own initiative, the other public entities usually don't. In 2006 alone, the IKG was able to identify and locate 33 heirs in 16 restitution cases from federal museums and collections, 28 new cases were started.

As far as possible the IKG also provides assistance to claimants who request support from the IKG in individual cases of art restitution that are unusually complicated.

I will skip the **4th principle** and return to it later.

The **5th and the 6th principle** require to publicize information gathered during the identification process and to establish a central registry of such information.

To make it short: The IKG hopes that these two principles might be fulfilled by the database provided by the Austrian National Fund and by additional measures in connection with this database. This is why the IKG supports this project although we are not yet happy with certain details.

Let me now jump to the last, the **11th principle**, which encourages the signing nations of the Washington Principles to implement dispute resolution mechanisms for resolving ownership issues.

There are many reasons for criticizing the Austrian Art Restitution Law of 1998 but even severe criticism will have to admit that it is better to have such a law than to have none at all. Having none was exactly the situation we had until only a couple of years ago in all Austrian provinces but the province of Vienna. Having none is still the situation we have today in all Austrian cities and communities but the city of Vienna. As the Austrian Art Restitution Law only applies to federal property, all other public entities have to adopt their own mechanisms. The IKG tries hard to convince policy makers to do so and to support those policy makers who already decided to do so. In 2001 the IKG signed an agreement with all nine Austrian provinces obliging them to establish at least a legal base for the restitution of artworks. Apart from Tyrol, all Austrian provinces have implemented this agreement.

The **10th principle** requires commissions or other bodies addressing ownership issues to have a balanced membership. As a matter of fact we think that this is not the case with the so called “Beirat”, the advisory board established under the Austrian Art Restitution Law of 1998. This is why the IKG has criticized the composition of this body in publications and in political discussions and why we will continue our criticism.

The **7th, 8th, 9th and 4th principle** are all related to two questions:

- how to treat the aggrieved previous owners of dispossessed artworks and their heirs;
- how to deal with dispossessed artworks after they have been identified.

In Austria, as regards artworks in federal museums and collections and in museums of the city of Vienna, this is usually not a big issue. When everything works out fine the dispossessed artworks are identified and documented by provenance researchers in the museums, the responsible advisory board recommends to restitute them and the responsible minister or city councilman follows this recommendation; at least the city of Vienna also starts to search for the heirs of the former owner who usually do not even know about the existing restitution claim, informs them accordingly and has the artworks restituted.

Of course it is not always that easy and sometimes it is even very hard as the famous Bloch-Bauer case and the recent Alma Mahler-Werfel case might prove. Wherever things don't run smoothly the IKG will intervene. Nevertheless, the main principle of publicly owned artworks in Austria is that there is no necessity of filing a claim by the aggrieved persons.

When it comes to dispossessed artworks appearing on the Austrian and the international art markets the opposite is true. As there is no clear legal base for the restitution of privately owned artworks potential claimants have to rely on the moral standards of auction houses.

If auction houses truly want to avoid selling dispossessed artworks several precautions have to be taken: like

- asking the consignor about the provenance of an artwork,
- watching out for suspicious signs (for example names of previous owners, stamps, notes),
- requiring additional documentation on the provenance in certain cases,
- having provenance researchers actively check the available information.

Most importantly there has to be a consistent and reliable policy of how to deal with artworks that are suspected of being dispossessed property and how to treat claimants. This policy should at least meet the 7th, 8th, 9th and 4th of the Washington Principles.

According to the **7th principle** the former owners and their heirs “should be encouraged to come forward and make known their claims”. Taking this principle seriously what would be the worst thing to do for an auction house? To frighten potential claimants by supporting law suits of consignors or buyers against claimants.

Following the **8th principle** “steps should be taken expeditiously to achieve a just and fair solution”. Taking this principle seriously what would be the worst thing to do for an auction house? To side with consignors or buyers against the claimants.

According to the **4th principle** “consideration should be given to unavoidable gaps or ambiguities in the provenance in light of the passage of time and the circumstances of the Holocaust era”. Taking this principle seriously what would be the worst thing to do for an auction house? To use these gaps only in favour of the consignor.

(One should always keep in mind that the 3rd Austrian Restitution Law requested the shifting of the burden of proof for very good reasons).

It is widely known that the IKG has intervened several times at various auction houses to prevent the sale of dispossessed artworks. Of course we have no illusions. Even if an auction house does the best it can do, it will not be able to identify every single dispossessed artwork to come up for auction. We appreciate it if we are contacted in suspicious cases and asked for assistance and advice. Again and for the last time the same question: What would be the worst thing to do for an auction house regarding this matter? Trying to use the IKG as a tool to whitewash certain sales.

Washington Conference Principles on Nazi-Confiscated Art

[Released in connection with The Washington Conference on Holocaust Era Assets, Washington, DC, December 3, 1998]

In developing a consensus on non-binding principles to assist in resolving issues relating to Nazi-confiscated art, the Conference recognizes that among participating nations there are differing legal systems and that countries act within the context of their own laws.

1. Art that had been confiscated by the Nazis and not subsequently restituted should be identified.
2. Relevant records and archives should be open and accessible to researchers, in accordance with the guidelines of the International Council on Archives.
3. Resources and personnel should be made available to facilitate the identification of all art that had been confiscated by the Nazis and not subsequently restituted.
4. In establishing that a work of art had been confiscated by the Nazis and not subsequently restituted, consideration should be given to unavoidable gaps or ambiguities in the provenance in light of the passage of time and the circumstances of the Holocaust era.
5. Every effort should be made to publicize art that is found to have been confiscated by the Nazis and not subsequently restituted in order to locate its pre-War owners or their heirs.
6. Efforts should be made to establish a central registry of such information.
7. Pre-War owners and their heirs should be encouraged to come forward and make known their claims to art that was confiscated by the Nazis and not subsequently restituted.
8. If the pre-War owners of art that is found to have been confiscated by the Nazis and not subsequently restituted, or their heirs, can be identified, steps should be taken expeditiously to achieve a just and fair solution, recognizing this may vary according to the facts and circumstances surrounding a specific case.
9. If the pre-War owners of art that is found to have been confiscated by the Nazis, or their heirs, can not be identified, steps should be taken expeditiously to achieve a just and fair solution.
10. Commissions or other bodies established to identify art that was confiscated by the Nazis and to assist in addressing ownership issues should have a balanced membership.
11. Nations are encouraged to develop national processes to implement these principles, particularly as they relate to alternative dispute resolution mechanisms for resolving ownership issues.