

# Art justice restored: The restitution of Egon Schiele's "Four Trees"

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Art has always been an asset of cultural, religious and social relevance. Hence, since the beginning of history, it has been looted, stolen and kept secret. Its restitution however is an emergence of the post-World War II world.

The establishment of art restitution in Austria resulted mainly from the times of National Socialism between 1938 and 1945. With its rise in Germany in the 1930s, one of the largest art thefts in world's history<sup>1</sup> began and Austria did not remain unaffected by it.

Aiming to correct past injustices and provide closure to individuals affected by art theft and expropriation, Austria has been trying to identify and return stolen heritage goods to their owners and their legal successors since the end of World War II, and especially since the passing of the Art Restitution Act (ARA)<sup>2</sup> later in 1998.<sup>3</sup>

In light of the case "Four Trees", this article will examine and exemplify how Austria's restitution laws navigate complex questions of ownership, legal transactions during Nazi-era persecutions, and post-war legislative amendments. It will illustrate the evolution and limitations of Austrian art restitution laws.

## The case "Four Trees"

Today Egon Schiele is celebrated as one of Austria's most remarkable painters, whose work profoundly influenced the nation's cultural landscape. His art often weaves compelling narratives, delves into hidden depths of meaning or explores poignant social themes. The centrepiece of our case, his painting "Four Trees" is a landscape masterpiece, and while the painting itself may not narrate an extraordinary tale, it is surrounded by an intriguing and unusual story that enhances its allure. It belonged to a handful of different people and the Austrian state until it finally found its way back to its legal owners almost a century after being separated from them.<sup>45</sup>

The painting "Four Trees" was created by Egon Schiele in 1917<sup>6</sup> and purchased by the art dealer Paul Wengraf directly from the painter in the same year. Dr. Joseph Morgenstern, a wealthy businessman

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<sup>1</sup> Anne Rothfeld, Nazi Looted Art: The Holocaust Records Preservation Project,

<https://www.archives.gov/publications/prologue/2002/summer/nazi-looted-art-1> (accessed 12.01.2023)

<sup>2</sup> Art Restitution Law, Kunstrückgabegesetz BGBl. I No. 181/1998 (NR: GP XX RV 1390 AB 1464 p. 146. BR: AB 5802 p. 646) idF BGBl. I Nr. 158/2023

<sup>3</sup> Amanda Buonaiuto, From Stolen Heritage to Restitution: The Story Behind Looted Art,

<https://itsartlaw.org/2024/05/06/from-stolen-heritage-to-restitution-the-story-behind-looted-art/>

(accessed 11.11.2024)

<sup>4</sup> Leopold Museum, Egon Schiele Collection <https://www.leopoldmuseum.org/de/sammlung/egon-schiele> (accessed 09.01.2023)

<sup>5</sup> The Cult of Egon Schiele Persists Today, Artsy, <https://www.artsy.net/article/artsy-editorial-cult-egon-schiele-persists-today> (accessed 9.01.2023)

<sup>6</sup> Wikimedia Commons, File: Egon Schiele, [https://commons.wikimedia.org/wiki/File:Egon\\_Schiele\\_094.jpg](https://commons.wikimedia.org/wiki/File:Egon_Schiele_094.jpg) (accessed 12.01.2023)

of Jewish decent, later bought it from the Viennese art dealer Gustav Nebehay in 1924.<sup>78</sup> In the same year, a photo of his and his wife's apartment, designed by Otto Bauer,<sup>9</sup> a famous Viennese architect and designer, appeared in the magazine "Innendekoration", where "Four Trees" was visible and displayed above the fireplace in the apartment. Furthermore, Dr Joseph Morgenstern was listed in Otto Nirenstein's 1930 Schiele catalogue<sup>10</sup> as the owner of the picture.<sup>111213</sup>

After Austria's annexation to the German Reich in 1938, the Morgensterns were forced to flee due to their Jewish heritage, entrusting "Four Trees" to lawyer Robert Röhrl for safekeeping. With no heirs, they granted him the power of attorney. Morgenstern was later captured in Belgium, deported to Auschwitz in 1942, and murdered, while his wife lived in poverty in Brussels until her death in 1970.<sup>14</sup> After the war, Röhrl was commissioned to represent Josef Morgenstern in proceedings after he was declared dead. In 1959 and 1960, she filed two claims under the "War and Persecution Compensation Act"<sup>15</sup>, detailing her persecution, financial struggles, and losses, including household items from their apartment in Vienna, for which she received a maximum compensation of ATS 10,500 for the loss of her entire furnishings in the apartment. The loss of "Four Trees" however was never covered by the Act.<sup>16</sup> In the meantime the painting was in Röhrl's possession, as he was supposed to merely keep it safe. The next known transfer of ownership according to accession documents from the archives of the Austrian Gallery Belvedere, file no. 245/1943<sup>17</sup> happened in 1943 when "Belvedere" purchased the painting from the art shop "L.T. Neumann" in 1943.<sup>18</sup> It is unknown when or how "Four Trees" was acquired by "L.T. Neumann", but it can be assumed that R. Röhrl sold it to the art shop with no legal right to do so, because he never acquired ownership. Ultimately, the painting belonged to "Belvedere" until 2020. In 2018, Belvedere received seven undated photographs of Morgenstern's apartment, where "Four Trees" can be seen hanging above the fireplace. These photos confirmed the statements that the painting did indeed belong to Dr Morgenstern and provided the needed piece of evidence to

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<sup>7</sup> Art Restitution Advisory Board, Decision of Commission for Provenance Research "Egon Schiele, Four Trees/ Autumn Allée IN 3917, 06.03.2020, <https://provenienzforschung.gv.at/en/> (accessed 11.11.2024)

<sup>8</sup> Egon Schiele, Four Trees and a restitution case/Egon Schiele, Vier Bäume und ein Restitutionsfall, Der Standard, <https://www.derstandard.at/story/2000115293502/egon-schiele-vier-baeume-und-ein-restitutionsfall> (accessed 09.01.2023)

<sup>9</sup> Centre of architecture Vienna, Architekturzentrum Wien, Otto Bauer Biographical Entry, <https://www.architektenlexikon.at/de/23.htm> (accessed 09.12.2024)

<sup>10</sup> Otto Kallir, Egon Schiele. Oeuvre-Catalogue of paintings/Oeuvre-Katalog der Gemälde. Mit Beiträgen von Otto Benesch und Thomas M. Messer

<sup>11</sup> Monika Mayer, Egon Schiele und das Belvedere: An Attempt at a History of Collection and Reception, Versuch einer Sammlungs- und Rezeptionsgeschichte 1912–2003, („Vier Bäume“ aufgelistet unter Nummer 164) [https://www.vr-elibrary.de/doi/pdf/10.7767/boehlau.9783205793564.299?utm\\_source](https://www.vr-elibrary.de/doi/pdf/10.7767/boehlau.9783205793564.299?utm_source) (accessed 28.01.2024)

<sup>12</sup> Volkskundemuseum Wien, *Publikationen Leopold Museum Provenance Research* <https://vgprovenienzforschung.volkskundemuseum.at/de/leopold-museum/publikationen/> (accessed 09.12.2024)

<sup>13</sup> Art Restitution Advisory Board, Decision of Commission for Provenance Research "Egon Schiele, Four Trees/ Autumn Allée IN 3917, 06.03.2020, [provenienzforschung.gv.at](https://provenienzforschung.gv.at) (accessed 11.11.2024)

<sup>14</sup> Art Restitution Advisory Board, Decision of Commission for Provenance Research "Egon Schiele, Four Trees/ Autumn Allée IN 3917, 06.03.2020, [provenienzforschung.gv.at](https://provenienzforschung.gv.at) (accessed 11.11.2024)

<sup>15</sup> Art Restitution Advisory Board, Decision of Commission for Provenance Research "Egon Schiele, Four Trees/ Autumn Allée IN 3917, 06.03.2020, [provenienzforschung.gv.at](https://provenienzforschung.gv.at) (accessed 11.11.2024)

<sup>16</sup> Art and Prosecution Compensation Act, Kriegs- und Verfolgungssachschädengesetz, BGBl. Nr. 127/1958

<sup>17</sup> Digital library Belvedere, Digitale Bibliothek Belvedere <https://digitale-bibliothek.belvedere.at/viewer/image/1656421661261/52/> (accessed 09.12.2024)

<sup>18</sup> Art Restitution Advisory Board, Decision of Commission for Provenance Research "Egon Schiele, Four Trees/ Autumn Allée IN 3917, 06.03.2020, <https://provenienzforschung.gv.at/en/> (accessed 11.11.2024)

affirm the claimed ownership.<sup>19</sup> Pursuantly, “Four Trees” was returned to Morgenstern’s legal successors.

Based on all these facts, the Advisory Board<sup>2021</sup>, which counsels the Federal Minister of Finance<sup>22</sup> on restitutions of looted art according to Section 2 of the ARA<sup>23</sup>, decided that according to Section 1(1)2 of the Act<sup>24</sup>, objects that became property of the state but had previously been an object of a legal transaction or legal act under Section 1 of the Annulment Act<sup>25</sup>, which declared all legal transactions during the German occupation between 1938 and 1945 in Austria invalid, may be returned to their original owners or legal successors.<sup>26</sup> Since the Morgensterns were persecuted by the NS regime and had entrusted the Schiele to the lawyer Röhrl and had granted him full power of attorney, it may be assumed that the loss of title was due to an instruction given by him. All other prerequisites for the restitution were fulfilled.<sup>27</sup> Therefore, the Board confirmed that “Four Trees” did in fact belong to Josef Morgenstern from 1924 until at least after the annexation in 1938. Hence, it was decided that the conditions of Section 1(1) 2 of the ARA were met and the legal successors of Morgenstern acquired ownership in 2020.

By examining the case and considering the current legal framework for the restitution of art objects under Austrian law, the “Four Trees” case serves as an illustrative example of how following legal questions are resolved according to ARA<sup>28</sup>.

### **How does the Art Restitution Act address the issue of Nazi-era forced sales or confiscations and what objects are eligible for restitution under the Act? What was the case for “Four Trees”?**

A restitution of a seized work of art can be granted to their rightful owners if it is placed in an Austrian federal museum, in collections, or other federal property, and if at least one of four conditions is met:<sup>29</sup>

- 1) The objects were previously returned to their original owners or their heirs or should have been returned under prior laws. After 8 May 1945, the items were transferred to federal ownership without compensation under the Federal Act on the Prohibition of the Export<sup>30</sup> of items of historical, artistic, or cultural significance and remain in federal ownership.

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<sup>19</sup> Art Restitution Advisory Board, 06.03.2020, [provenienzforschung.gv.at](https://provenienzforschung.gv.at) (accessed 11.11.2024)

<sup>20</sup> Provenance Research and Restitution in the Austrian Federal Collection, Federal Laws 1946-1995, <https://provenienzforschung.gv.at/en/empfehlungen-des-beirats/> (accessed 09.12.2024)

<sup>21</sup> Art Restitution Act, Kunstrückgabegesetz BGBl. I No. 181/1998 (NR: GP XX RV 1390 AB 1464 p. 146. BR: AB 5802 p. 646) idF BGBl. I Nr. 158/2023 §3

<sup>22</sup> Art Restitution Act, Kunstrückgabegesetz BGBl. I No. 181/1998 idF BGBl. I Nr. 158/2023 §2

<sup>23</sup> Art Restitution Act, Kunstrückgabegesetz BGBl. I No. 181/1998 idF BGBl. I Nr. 158/2023 §2

<sup>24</sup> Art Restitution Act, Kunstrückgabegesetz BGBl. I No. 181/1998 idF BGBl. I Nr. 158/2023 §1

<sup>25</sup> Annulment Act, Nichtigkeitsgesetz [BGBl. Nr. 106/1946](https://www.ris.bka.gv.at/DocView.do?doc=106/1946)

<sup>26</sup> Art Restitution Act; Kunstrückgabegesetz BGBl. I No. 181/1998 (NR: GP XX RV 1390 AB 1464 p. 146. BR: AB 5802 p. 646) idF BGBl. I Nr. 158/2023

<sup>27</sup> Art Restitution Advisory Board, Decision of Commission for Provenance Research “Egon Schiele, Four Trees/ Autumn Allée IN 3917, 06.03.2020, [provenienzforschung.gv.at](https://provenienzforschung.gv.at) (at 11.11.2024)

<sup>28</sup> Art Restitution Act, Kunstrückgabegesetz BGBl. I No. 181/1998 (NR: GP XX RV 1390 AB 1464 p. 146. BR: AB 5802 p. 646) idF BGBl. I Nr. 158/2023 §3

<sup>29</sup> Art Restitution Act, Kunstrückgabegesetz BGBl. I No. 181/1998 (NR: GP XX RV 1390 AB 1464 p. 146. BR: AB 5802 p. 646) idF BGBl. I Nr. 158/2023

<sup>30</sup> Federal Law on the Prohibition of the Export of Objects of Historical, Artistic or Cultural Significance, Penal Code Gazette (StGBL.) No. 90/1918,

- 2) The items legally became property of the State and are still in its ownership but were previously an object of a legal transaction or a legal act under Section 1 of the Annulment Act<sup>31</sup> and are still in ownership of the state.
- 3) The art objects legally became property of the State between 30 January 1933 and 8 May 1945. The act extends its reach to include comparable transactions that took place within the territory of the German Reich, outside the present-day borders of the Republic of Austria, mirroring the conditions of the German occupation of Austria. This transaction must have been comparable to the legal transactions or legal acts that took place during the German occupation of Austria. The items are still in State property.
- 4) The ARA also addresses art objects that could not be returned to their original owners or their heirs after the conclusion of restitution proceedings. These objects were transferred to the Federal State as unclaimed property and remain under its ownership.

The ARA<sup>32</sup> authorizes the Federal Minister of Finance to return these items to their original owners or their legal heirs free of charge.

“Four Trees” was clearly eligible under the second condition, as stated in the first paragraph, as it became a property of Austria after being an object of a legal transaction under the Annulment Act<sup>33</sup>. Its ownership was transferred in 1943, hence still during the German occupation and it was done under circumstances that resulted from NS activity in Austria, namely the Jewish persecution.

#### **Austrian legislation on art restitution between 1945 and 1998**

According to the Moscow Declaration<sup>34</sup>, which was the initial document that viewed Austria as a victim of the NS-Regime, Austria was not considered responsible for any illegal acts that took place in its own territory during the occupation by the German Reich from 1938 to 1945. The justification of the so-called “victim thesis”<sup>35</sup> is that when a country is not considered independent and in charge of its own legislation, it can also not be held responsible for illegal acts that happen in its territory, which was the case for Austria. It was only after the end of World War II in 1945 that Austria regained its independence and legislative freedom. All of this is of utmost importance when it comes to restitution laws, because it led to the Annulment Act<sup>36</sup>, according to which in which Austrian citizens were not able to file claims against their own country for violating and exploiting their rights, nor were they able to sue the state in front of any domestic court since all legal acts and transactions that took place between 1938 and 1945 in Austrian territory and also passed by Austrian authorities were annulled.

First, Austria passed the Constitutional Law on Restoration of Law and Order.<sup>37</sup> This legislation repeals all laws and regulations enacted after 1933 in Art. 2 as well as all individual provisions in such legal

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<sup>31</sup> Annulment Act, Nichtigkeitsgesetz [BGBl. Nr. 106/1946](#)

<sup>32</sup> Art Restitution Act; Kunstrückgabegesetz BGBl. I No. 181/1998 (NR: GP XX RV 1390 AB 1464 p. 146. BR: AB 5802 p. 646) idF BGBl. I Nr. 158/2023

<sup>33</sup> Annulment Act, Nichtigkeitsgesetz [BGBl. Nr. 106/1946](#)

<sup>34</sup> Moscow Declaration, The Department of State Bulletin. Dir. of publ. Department of State. Volume IX, 1943. Washington: US Government Printing Office, Tripartite Declaration on Austria (1 November 1943), p. 310., cvce.eu (accessed 5.12.2024)

<sup>35</sup> Wikipedia: "Austria victim theory," Wikipedia, last modified January 17, 2025, [https://en.wikipedia.org/wiki/Austria\\_victim\\_theory](https://en.wikipedia.org/wiki/Austria_victim_theory).

<sup>36</sup> Annulment Act, Nichtigkeitsgesetz [BGBl. Nr. 106/1946](#)

<sup>37</sup> Constitutional Law on Restoration of Law and Order, Verfassungsgesetz 1945 [StGBI Nr. 6/1945](#) [https://www.ris.bka.gv.at/Dokumente/BgblPdf/1945\\_4\\_0/1945\\_4\\_0.pdf](https://www.ris.bka.gv.at/Dokumente/BgblPdf/1945_4_0/1945_4_0.pdf) (accessed 28.01.2025)

writings that are in conflict with the existence of a free and sovereign Austrian state or with the principles of genuine democracy in Art.3 of the Act.<sup>38</sup> Later, the Annulment Act of 15 May 1946<sup>39</sup> declared all legal transactions made after the annexation and during the NS regime exerted by the German Reich invalid.

Between 1946 and 1949, seven restitution acts<sup>40</sup> were enacted to grant legal owners, whose rights were violated, the possibility to get confiscated assets back, providing a legal basis for those affected to assert their rights in court and before the authorities.<sup>41</sup>

The First<sup>42</sup> and the Second<sup>43</sup> Restitution Acts are the ones relevant to the “Four Trees” case as they were dealing with illegally seized artworks kept in public ownership or by public administration. The First Act<sup>44</sup> only covered the portion of confiscated assets that had been taken through governmental actions and were currently in state possession. The Second Act<sup>45</sup> regulated the return of confiscated assets that had been transferred to the Republic under now repealed laws. The Third Act<sup>46</sup> dealt with art objects held in private ownership. The fourth to seventh<sup>47 48 49 50</sup> restitution laws regulated the return of assets to legal entities, industrial property rights, company names, and unfulfilled claims from employment relationships.

“Four Trees” became property of the state because its original owner, Dr Morgenstern was persecuted as a Jew, was forced to flee the country and had to entrust the painting with the lawyer Robert Röhl, who later probably sold the picture without having the right to do so, as he did not own it, but simply

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<sup>38</sup> Constitutional Law on Restoration of Law and Order, Verfassungsgesetz 1945 StGBI Nr. 6/1945 (Art. 1

<sup>39</sup> Annulment Act, Nichtigkeitsgesetz BGBl. Nr. 106/1946

<sup>40</sup> Commission for Provenance Research, Kommission für Provenienzforschung. "Recommendations of the Advisory Board: Restitution Laws. <https://provenienzforschung.gv.at/en/empfehlungen-des-beirats/rueckstellungsgesetze/>

<sup>41</sup> Bimlinger, 1946: Rückstellungsgesetze, Erste Regelung zum Umgang mit dem geraubten Vermögen von NS-Opfern, hdgoe.at (accessed 5.12.2024)

<sup>42</sup> First Restitution Law, Bundesgesetz vom 26. Juli 1946 über die Rückstellung entzogener Vermögen, die sich in Verwaltung des Bundes oder der Bundesländer befinden (Erstes Rückstellungsgesetz), BGBl 156/1946

<sup>43</sup> Bundesgesetz vom 6. Februar 1947, BGBl 53/1947

<sup>44</sup> Commission for Provenance Research, Kommission für Provenienzforschung. "Recommendations of the Advisory Board: Restitution Laws. <https://www.provenienzforschung.gv.at/wpcontent/uploads/2014/04/ErstesRueckstellungsgesetz.pdf> (accessed 12.01.2025)

<sup>45</sup> Commission for Provenance Research, Kommission für Provenienzforschung. "Recommendations of the Advisory Board: Restitution Laws. <https://www.provenienzforschung.gv.at/wpcontent/uploads/2014/04/ZweitesRueckstellungsgesetz.pdf> (accessed 12.01.2025)

<sup>46</sup> Federal Law of February 6, 1947, on the Nullity of Property Seizures, Bundesgesetz vom 6. Februar 1947 über die Nichtigkeit von Vermögensentziehungen (Drittes Rückstellungsgesetz), BGBl 54/1947

<sup>47</sup> Commission for Provenance Research, Kommission für Provenienzforschung. "Recommendations of the Advisory Board: 4<sup>th</sup> Restitution Law 1949 <https://www.provenienzforschung.gv.at/wp-content/uploads/2014/04/ViertesRueckstellungsgesetz.pdf> (accessed 10.01.2025)

<sup>48</sup> Commission for Provenance Research, Kommission für Provenienzforschung: 5<sup>th</sup> Restitution Law 1949 <https://www.provenienzforschung.gv.at/wp-content/uploads/2014/04/F%C3%BCnftes.pdf> (accessed 10.01.2025)

<sup>49</sup> Commission for Provenance Research, Kommission für Provenienzforschung: 6<sup>th</sup> Restitution Law 1949 <https://www.provenienzforschung.gv.at/wpcontent/uploads/2014/04/SechstesRueckstellungsgesetz.pdf> (accessed 10.01.2025)

<sup>50</sup> Commission for Provenance Research, Kommission für Provenienzforschung: 7<sup>th</sup> Restitution Law 1949 <https://www.provenienzforschung.gv.at/wp-content/uploads/2014/04/SiebtesRueckstellungsgesetz.pdf> (accessed 10.01.2025)

had to safekeep it. Thus "Four Trees" found itself in possession of the Austrian state for the next 80 years.

### **Private restitution in Austria**

To this very day, there is no Austrian law that allows affected persons to claim restitution from private parties who are in possession of seized works of art. Owners who can prove that they or their ancestors acquired ownership of an originally illegally seized art object in good faith according to are on the safe side of the law, meaning that their claim of ownership cannot get undermined, as long as they can prove that they have acquired the object either in a public auction, from a business operator in his ordinary course of trade or from someone to whom the previous owner had entrusted the object in good faith<sup>51</sup>. In such cases, the lawful and bona fide possessor acquires ownership legally and the original owner's claim for damages against their trustee or other parties remains unaffected.

This legal situation raises the ethical question whether it is unjust to not be able to claim back illegally seized property that once belonged to your family from private owners or whether it is justified that no one should be able to attack your private property if you can prove its rightful acquisition.

### **Conclusion**

The restitution of Egon Schiele's "Four Trees" illustrates Austria's commitment to addressing the injustices of Nazi-era art theft. Created in 1917, the painting was owned by Dr Joseph Morgenstern before it was lost due to his forced flight and eventual death in the Holocaust. Despite restitution laws enacted post-World War II, the painting remained in the Belvedere Museum until 2020, as earlier claims failed to meet evolving legal standards. The Art Restitution Act of 1998 provided a robust framework for returning stolen art, culminating in the painting's rightful return to Morgenstern's heirs after new evidence emerged. This case underscores the complexities of art restitution, highlighting the intersection of legal, ethical, and historical considerations in reclaiming cultural heritage. Furthermore, it can be stated that "Four Trees" represents one of many cases that served justice to the rightful owners who fell victims to the NS Regime. The Art Restitution Act has enabled hundreds of families to feel a long-lost connection to their family members who were heavily mistreated by society and law during World War II. While Austrian laws now facilitate the restitution of state-held art, the absence of comparable mechanisms for private collections remains a point of ethical debate.

### **VALC Tip**

If you're passionate about Austrian art and eager to explore more of Egon Schiele's works, we highly recommend visiting the exhibition "Birth of Modernism" at the Leopold Museum in Vienna. This captivating showcase immerses visitors in the vibrant world of Viennese art from the 1900s, offering a unique opportunity to delve into the cultural and artistic movements that shaped modernism. Don't miss this chance to witness the brilliance of Schiele and his contemporaries in one of Vienna's most renowned art institutions!

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<sup>51</sup> <https://www.jusline.at/gesetz/abgb/paragraf/367> (accessed 12.01.2025)