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DOI: 10.26881/gsm.2020.18.05

## The Klimt row: Analysis of property restitution laws based on the Austrian Klimt Bloch-Bauer case

### 1. Introduction

Gustav Klimt's golden portraits have been admired by vast audiences around the globe for over a hundred years. The Austrian artist worked at the turn of the 19<sup>th</sup> and 20<sup>th</sup> centuries<sup>1</sup> and was the founder and main representative of the Vienna Secession. While his paintings and graphics displayed mastery in many forms and techniques, the style that brought him fame was the golden phase. His most recognisable piece is "The Kiss", created between 1907 and 1908.<sup>2</sup> Another painting, the "Portrait of Adele Bloch-Bauer I", also known as "The Lady in Gold" or "Austrian Mona Lisa", created at a similar time, today attracts attention of art enthusiasts and legal community alike: the topic of this article is an outline of the dispute between Republic of Austria and Maria Altmann *née* Bloch.

The painting, along with a large part of the Bloch-Bauer property, was stolen by the Nazis after the occupation of Austria in 1938.<sup>3</sup> Mrs. Bloch-Bauer did not live to see this event as she died in 1925, asking her husband in her will to donate Klimt's paintings to the Vienna Belvedere Museum, but only after his death. Ferdinand Bloch-Bauer, fleeing the Holocaust and persecution, settled in Switzerland, where he died in 1945.<sup>4</sup> These paintings by Klimt were hung in Belvedere during the war, and they remained there until Maria Altmann, Ferdinand Bloch-Bauer's heir, demanded their return.

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<sup>1</sup> N. Harris, *The life and works of Gustav Klimt*, Parragon Publishing, New York 1994, p. 12.

<sup>2</sup> "The Kiss by Gustav Klimt", 8 November 2007, <https://www.belvedere.at/en/kiss-gustav-klimt> (accessed: 17.10.2020).

<sup>3</sup> Bundesverfassungsgesetz über die Wiedervereinigung Österreichs mit dem Deutschen Reich, 1938, Vienna, <http://alex.onb.ac.at/cgi-content/alex?apm=0&aid=bgl&datum=19380004&seite=00000259&size=45> (accessed: 20.11.2020).

<sup>4</sup> A.-M. O'Connor, *The Lady in Gold: The extraordinary Tale of Gustav Klimt's Masterpiece, Bloch-Bauer*, Bantam Books, New York 2012, p. 199.

The ensuing case is at the crossroads of two different branches of Austrian law, i.e. inheritance and restitution law. The issues at play included the validity of the will and, in consequence, determining to whom the portrait of Adele Bloch-Bauer should belong; on the other – the process of recovering works of art stolen by the Nazis. However, the context of national law is not the only important factor. The restitution case touches upon international and United States' law, which makes the matter so much more interesting. The aim of this article is to present this case and show how many branches of law can intertwine in the over one-hundred-year history of one painting. Furthermore, my work summarizes the topic and adds the more recent development of the case, as many analyses written by other researchers were written before the year 2015.

## 2. Literature review

Due to the media coverage and international character of this case the Bloch-Bauer story has *de facto* become one of the best known and most frequently quoted cases of recovery of works of art stolen by the Nazis. The legal battle had lasted almost ten years, and most of the art law specialists were well aware of it, especially in Austria. The present outline shall recount this dispute from two perspectives – as a national issue and as an international issue. First of all, I will present the problem from the Austrian side, based on the judgments of the courts, the Austrian civil code, and the studies of prominent law professors, e.g., Rudolf Welsch and Christian Rabl, who present the legal issues of Klimt's paintings at the Belvedere Museum in Vienna. I would like to focus on the controversial 1998 law on the return to the rightful owners of works of art from Austrian museums (Das Bundesgesetz über die Rückgabe von Kunstgegenständen aus Österreichischen Bundesmuseen und Sammlungen BGBl. I Nr. 181/1998; hereinafter: Austrian Restitution Act of 1998), on seven other acts of 1946–1949 – *Rückstellungsgesetze* (e.g. Bundesgesetz vom 26. Juli 1946 über die Rückstellung entzogener Vermögen, die sich in Verwaltung des Bundes oder der Bundesländer befinden – the 1<sup>st</sup> Rückstellungsgesetz, Bundesgesetz vom 6. Februar 1947 über die Nichtigkeit von Vermögensentziehungen – the 3<sup>rd</sup> Rückstellungsgesetz) and others, finally – articles by the investigative journalist Hubertus Czernin. Secondly, I will use American interpretations of the matter, because the final act of the legal drama took place in the United States. At the US stage the matter became international and even political, and it ceased to concern Austrian law only. An important source of information are the judgments of American courts, including the Supreme Court (*Republic of Austria v. Altmann*, 541 U.S. 677, 2004), which allowed Ms. Altmann to complete the restitution process of works of art belonging to her and her family.

The wide media coverage of the case was an inspiration for the books *The Lady in Gold: The Extraordinary Tale of Gustav Klimt's Masterpiece* by Anne-Marie O'Connor, documentary films such as "Art of the Heist: Lady in Gold" (2006) and even a Hollywood feature film – "Woman in Gold" (2015). References to the works of popular culture are useful: the issue has not only a legal but also historical, sociological and political aspects, including in the mainstream discourse.

### 3. Historical outline

In 1899 Adele Bauer married Ferdinand Bloch, an older Czech-Austrian sugar refiner, who took the shared surname Bloch-Bauer after their marriage.<sup>5</sup> Just like Adele's sister Therese and her husband Gustav (Ferdinand's brother), Adele and her husband were famous members of the Viennese *fin de siècle*, and the upper crust of the First Republic of Austria. Therese and Gustav were Maria Altmann's parents. Both, Ferdinand and his wife, were great connoisseurs of art and were friends with Gustav Klimt. In 1907 Klimt painted a portrait of Adele, the painting that almost a century later shook Austria and the whole legal world.

In 1925, Adele died of meningitis.<sup>6</sup> In her will, she asked her husband to donate Klimt's works to the National Belvedere Gallery in Vienna after his death. In 1936 Ferdinand donated Klimt's "Kammer Castle on the Attersee III" to the Belvedere.<sup>7</sup>

After the Nazis took control of the country, Ferdinand Bloch-Bauer was forced to flee Austria in 1938 and leave his property, which had been confiscated in a tax procedure in 1941.<sup>8</sup> The seized portrait of Mrs. Bloch-Bauer was sent to Belvedere at that time, and apparently, it was there that she received the nickname of the "The Lady in Gold", standing for the attempt to conceal the woman's Jewish descent.<sup>9</sup>

In November 1945, a few months after the end of World War II, Ferdinand Bloch-Bauer passed away in Zurich. As he did not have any descendants (his wife had two miscarriages<sup>10</sup>), he bequeathed all his property to his nephew and two nieces – one of them was Maria Altmann. His last will did not mention the paintings that Ferdinand consid-

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<sup>5</sup> Ibid., p. 66.

<sup>6</sup> "Adele Und Ferdinand Bloch-Bauer", *Adele Und Ferdinand Bloch-Bauer – Wien Geschichte Wiki*, 2019, [www.geschichtewiki.wien.gv.at/Adele\\_und\\_Ferdinand\\_Bloch-Bauer](http://www.geschichtewiki.wien.gv.at/Adele_und_Ferdinand_Bloch-Bauer) (accessed: 29.11.2020).

<sup>7</sup> Ch. Rabl, R. Welser, *Der Fall Klimt/Bloch-Bauer – Die rechtliche Problematik der Klimt-Bilder im Belvedere*, Manz Verlag, Wien 2005, p. 14.

<sup>8</sup> Supreme Court of the United States, *Republic of Austria v. Altmann*, 541 U.S. 677 (2004), Opinion of the Court, p. 3.

<sup>9</sup> A.-M. O'Connor, *The Lady in Gold...*, p. 152.

<sup>10</sup> Ibid., p. 44.

ered to be lost forever, and it generally affirmed that all his belongings should be given to his brother's children. It is noteworthy that even before his death, Mr. Bloch-Bauer believed that Klimt's paintings – including “Portrait of Adele Bloch Bauer I” – belonged to him, as it was he who commissioned them and not his wife. Nevertheless, after the war, the Austrian government recognised the will of Adele Bloch-Bauer as binding and declared the painting to be property of the state.<sup>11</sup>

In 1946, a law was published which stated that all legal acts enacted between 1938 and 1945 were considered illegal and invalid.<sup>12</sup> This act gave the first hope and a chance to recover the stolen property. In the years 1948–1949 the Bloch-Bauer family tried, with the help of lawyer Dr. Rinesh, to move their goods to the United States. However, the Republic of Austria forced Dr. Rinesh to hand over paintings that were already in Austria's possession, including the portrait of Adele, in exchange for permission to export the rest of the family's belongings.<sup>13</sup>

This *status quo* lasted until 1998. It was then that allegations began to appear that the works in Austrian museums were held there illegally. In response, Austria opened the state archives and allowed research to be conducted on this matter.<sup>14</sup> This is how the Austrian investigative journalist Hubertus Czernin found documents proving that the property of Ferdinand Bloch-Bauer had not been donated to the museum by his will and that the museum authorities knew that some of their collections had not been legally obtained.<sup>15</sup> In the same year, Austria decided to allow the restitution of those goods, which, according to the 1946 law, had to be donated to the state in order to obtain permission to export others abroad. In addition, a “restitution commission” was established to assess the claims and their possible acceptance or refusal.<sup>16</sup>

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<sup>11</sup> Supreme Court of the United States, *Republic of Austria v. Altmann*, 541 U.S. 677 (2004), Opinion of the Court, p. 4.

<sup>12</sup> Bundesgesetz vom 15. Mai 1946 über die Nichtigerklärung von Rechtsgeschäften und sonstigen Rechtshandlungen, die während der deutschen Besetzung Österreichs erfolgt sind (BGBl. Nr. 106/1946), <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20001639> (accessed: 15.10.2020).

<sup>13</sup> Supreme Court of the United States, *Republic of Austria v. Altmann*, 541 U.S. 677 (2004), Opinion of the Court, p. 4.

<sup>14</sup> Bundesgesetz über die Rückgabe von Kunstgegenständen und sonstigem beweglichem Kulturgut aus den österreichischen Bundesmuseen und Sammlungen und aus dem sonstigen Bundes Eigentum (Kunstrückgabegesetz – KRG), (BGBl. I Nr. 117/2009), <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10010094> (accessed: 20.10.2020).

<sup>15</sup> Supreme Court of the United States, *Republic of Austria v. Altmann*, 541 U.S. 677 (2004), Opinion of the Court, p. 5.

<sup>16</sup> Ministry for Arts, Culture, Civil Service and Sport of Austria, “Restitution”, *Bundesministerium Für Kunst, Kultur, Öffentlichen Dienst Und Sport – Startseite*, [www.bmkoes.gv.at/Kunst-und-Kultur/restitution.html](http://www.bmkoes.gv.at/Kunst-und-Kultur/restitution.html) (accessed: 25.11.2020).

#### 4. *Maria Altmann v. Austria*, 1998–2006

After the occupation of Austria in 1938 by Nazi Germany, Maria Altmann left Austria and settled in California. In 1945 she obtained American citizenship.<sup>17</sup> After the adoption of the Austrian Restitution Act in 1998, Maria Altmann, as one of the heirs of her uncle Ferdinand Bloch-Bauer, on the basis of the above-mentioned restitution act, sought to recover her family's works of art, i.e. "Adele Bloch-Bauer II", "Apfelbaum I", "Buchenwald", "Häuser in Unterach am Attersee", "Amalie Zuckermandl", and, of course "Adele Bloch-Bauer I"<sup>18</sup> – the pearl in the crown of the collection. With the help of a lawyer and a friend of the family, Mr. E. Randol Schoenberg, Maria Altmann applied to the aforementioned restitution commission, which in 1999 rejected her application.<sup>19</sup> The reasons for the decision invoked the will of Adele Bloch-Bauer from 1923, in which she asked her husband to donate her paintings to the Belvedere National Gallery.<sup>20</sup> However, the commission has proposed to give back a dozen or so Klimt's drawings and other items that were stolen from the Altmann home during the war.<sup>21</sup>

Ms. Altmann did not agree with the Austrians' reasoning. She argued that uncle Ferdinand paid for the portrait of her aunt, which made him the owner of the painting, and in consequence Adele Bloch-Bauer did not have the right to dispose of her husband's property in her will.<sup>22</sup> Unfortunately, the legal status of the paintings was very difficult to establish, as it is not entirely clear to whom the portrait actually belonged. After the refusal, Maria Altmann decided to state her claim before the Austrian courts, but she had to withdraw the suit because the cost of initiating the proceedings was 1.2% of the assessed value of the items,<sup>23</sup> which would amount to a payment of over a million EUR. Mrs. Altmann, as the owner of a small boutique in California, did not have such resources. The plaintiff proposed to settle the matter out of court in arbitration, but the Republic of Austria did not consent to it.<sup>24</sup>

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<sup>17</sup> B. Hess, "Altmann v. Austria Ein transatlantischer Rechtsstreit um ein weltberühmtes Gemälde Gustav Klimts im Wiener Belvedere", *Kunstrechtsspiegel* 2007, vol. 2, p. 44.

<sup>18</sup> Ch. Rabl, R. Welser, *Der Fall Klimt/Bloch-Bauer...*, p. 21.

<sup>19</sup> G. Huber, "Die Goldene Adele Restitution von Kunstgegenständen in Österreich Adele, The Lady in Gold Austria: The Restitution of works of art", *Milionart Kaleidoscope* 2017, vol. 3, p. 34.

<sup>20</sup> "Bloch-Bauer's Testament", *Der Standard*, 31 March 2008, [www.derstandard.at/story/2306397/bloch-bauers-testament](http://www.derstandard.at/story/2306397/bloch-bauers-testament) (accessed: 29.11.2020).

<sup>21</sup> Supreme Court of the United States *Republic of Austria v. Altmann*, 541 U.S. 677 (2004), Opinion of the Court, p. 5.

<sup>22</sup> A.-M. O'Connor, *The Lady in Gold...*, p. 264.

<sup>23</sup> "Art of the Heist: Lady in Gold", dir. N. Janes (2006).

<sup>24</sup> *Ibid.*

Due to difficulties in financing court proceedings in Austria and the Austrian courts' unwillingness to cooperate, Maria Altmann and her lawyer E. Randol Schoenberg decided to seek justice in the United States. In 1999, a lawsuit against the Republic of Austria and the Belvedere Gallery was brought to a federal court in the central district of California (Los Angeles).<sup>25</sup> Suing a sovereign state – in this case, Austria – in the USA was possible for several reasons, as it violated: Austrian law, California state law and international law.

The first instance court, namely the Federal Central District Court in Los Angeles, granted the plaintiff's request under Section 2 of the Foreign Sovereign Immunities Act of 1976 (hereinafter: 1976 FSIA), which confers jurisdiction on federal district courts to hear civil lawsuits against foreign states.<sup>26</sup>

Ms. Altmann's main claims were as follows: under the Austrian Restitution Act of 1998 the portrait of Adele Bloch-Bauer and other works should be returned to their rightful owners, in this case to the heirs of Ferdinand Bloch-Bauer – including to Maria Altmann and her siblings. "The second claim is for replevin, possibly under California law. Other claims pertained, *inter alia*, 'seeking damages for expropriation and conversion' (fourth cause of action), and seeking damages for violation of international law, as the paintings were stolen during the Nazi occupation of Austria, and the compensation to the claimant for unlawfully benefitting from using her property (fifth course of action)".<sup>27</sup> This argument is important because it was one of the main grounds for initiating the case in the USA. The Republic of Austria and the Belvedere Gallery benefited from the commercial sale of images of Klimt's paintings (books, reproductions, gadgets), including the said portrait of Maria Altmann's Aunt in the United States.<sup>28</sup>

To counter the claimant's suit, Austria sought to dismiss the case on the basis of, *inter alia*, lack of jurisdiction, lack of a suitable place and the *forum non conveniens* doctrine. Their main goal was to prove that a case concerning a sovereign state should not be brought before the courts of another country.<sup>29</sup> On the basis of the principle of international law *acta iure imperii*, sovereign states enjoy immunity from foreign courts,

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<sup>25</sup> United States District Court, C.D. California: *Altmann v. Republic of Austria*, 142 F. Supp. 2d 1187 (2001), 9 May 2001, *Maria V. Altmann, Plaintiff v. Republic of Austria, et al. Defendants*, <https://law.justia.com/cases/federal/district-courts/FSupp2/142/1187/2346850/> (accessed: 20.11.2020).

<sup>26</sup> <https://web.archive.org/web/20150627110441/http://usun.state.gov/documents/organization/218088.pdf> (accessed: 20.11.2020).

<sup>27</sup> Supreme Court of the United States, *Republic of Austria v. Altmann*, 541 U.S. 677 (2004), Opinion of the Court, p. 6.

<sup>28</sup> "Art of the Heist..."

<sup>29</sup> Supreme Court of the United States, *Republic of Austria v. Altmann*, 541 U.S. 677 (2004), Syllabus, p. 1.

as sanctioned in Article 1(2) of the Charter of the United Nations, signed on 26 June 1945 in San Francisco.

In 2000, the Federal District Court rejected the defendants' claims.<sup>30</sup> The Court of Appeal upheld the judgment of the court of the first instance.<sup>31</sup> In 2004, the case was brought before the US Supreme Court.<sup>32</sup> The focus of the Supreme Court was to determine whether the 1976 FSIA could be applied to a case in which key facts occurred before the enactment of the law in question. The Republic of Austria was of the opinion that its immunity continued because, at the time of the initiation of the case and the first post-World War II restitution claims, Austria enjoyed complete immunity as a sovereign state and that the 1976 FSIA was not retroactive. The US Supreme Court ruled in the *Republic of Austria v. Altmann* case that the FSIA applies to facts prior to 1976, and exceptionally in the case of Mrs. Altmann, it may act retroactively.<sup>33</sup> In this way, the case could go back to the court in California, where it could be decided on the merits, with Austria's immunity overruled.

In fear of the costs, length of the proceedings and possible defeat in the courtroom, in 2005 the Republic of Austria agreed to arbitration.<sup>34</sup> The parties decided to appoint three Austrian arbitrators to assess who owned the paintings and whether the Austrian Restitution Act of 1998 was applicable in this case or not. Their decision was to be made on the basis of the evidence presented by the parties, be final and without the possibility of further appeal. The Republic of Austria was ordered to pay the entire costs of the proceedings.<sup>35</sup>

In 2006, the final decision was made, on the basis of which Austria was obliged to return to Mrs. Maria Altmann six paintings by Gustav Klimt, including the one most important for the claimant – the portrait of her aunt Adele Bloch-Bauer.<sup>36</sup>

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<sup>30</sup> US District Court for the Central District of California – 142 F. Supp. 2d 1187 (C.D. Cal. 2001), 9 May 2001, *Maria V. Altmann, Plaintiff v. Republic of Austria, et al. Defendants*.

<sup>31</sup> Supreme Court of the United States of America, (03-13) 541 U.S. 677 (2004) 327 F.3d 1246, *Republic of Austria v. Altmann*, <https://www.law.cornell.edu/supct/html/03-13.ZO.html> (accessed: 20.11.2020).

<sup>32</sup> United States Court of Appeals for the Ninth Circuit, Nos. 01-56003, 01-56398, *Maria V. Altmann, an individual, Plaintiff-Appellee, v. Republic of Austria, a foreign state; and the Austrian Gallery, an agency of the Republic of Austria, Defendants-Appellants*, 12 December 2002, <https://caselaw.findlaw.com/us-9th-circuit/1464064.html> (accessed: 20.11.2020).

<sup>33</sup> Supreme Court of the United States, *Republic of Austria v. Altmann*, 541 U.S. 677 (2004), Syllabus, p. 1.

<sup>34</sup> A.-M. O'Connor, *The Lady in Gold...*, p. 250.

<sup>35</sup> Arbitral Award – 5 Klimt paintings *Maria V. Altmann and others v. Republic of Austria*, 15 January 2004, <https://plone.unige.ch/art-adr/cases-affaires/6-klimt-paintings-2013-maria-altmann-and-austria/arbitral-award-5-klimt-paintings-maria-v-altmann-and-others-v-republic-of-austria-15-january-2004/view> (accessed: 29.11.2020)

<sup>36</sup> A.-M. O'Connor, *The Lady in Gold...*, p. 252.

After the paintings were moved to the United States, Maria Altmann decided to place them in the Los Angeles County Museum of Art. Then the paintings went to auctions, where they were sold for over 300 million EUR. The sum went to, among others, lawyer E. Ronald Schoenberg and the heirs of Ferdinand Bloch-Bauer – Maria Altmann and her family. The portrait of Adele Bloch-Bauer went to the Neue Gallerie in New York, its owner, Ronald Lauder, paid a record 120 million USD for the work of Klimt.<sup>37</sup>

## 5. Assessment

The portrait of Adele Bloch-Bauer left the Austrian soil almost fifteen years ago, but the loss of the “Lady in Gold” remains an open wound in the heart of the country to this day. However, it cannot be ignored that the Republic of Austria could have avoided an international scandal and a lengthy, costly trial. Maria Altmann wanted the painting to stay in her homeland from the very beginning, but the Austrians were not interested in settling the matter amicably.<sup>38</sup>

After the discovery in the 1990s of irregularities related to the legal status of some of the works in Vienna’s Belvedere gallery that were acquired during the Nazi rule, Austria’s offensive attitude began to arouse much controversy.<sup>39</sup> The years 1938–1945 remain a taboo subject to this day, yet most often we hear that the Austrians consider themselves the first victims of the Nazi regime. In March 1938 Austria became part of the Third Reich; the annexation (*Anschluss*)<sup>40</sup> was a violation of Article 80 of the Treaty of Versailles, signed in Paris on 28 June 1919, and one of its conditions was the prohibition of Germany and Austria from merging into one state.

It is worth noting, however, that after their defeat in the First World War, it was justified for the denizens of the former Austrian Empire to feel somewhat uneasy. By 1918, the area of Austro-Hungary was over 675,000 km<sup>2</sup>,<sup>41</sup> whereas after the Treaty of Saint-Germain-en-Laye it had shrunk to about 80,000 km<sup>2</sup>,<sup>42</sup> just 12 percent of the original size. The lands left to Austria were mainly mountainous, difficult to access, and economically

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<sup>37</sup> C. Vogel, “Lauder Pays \$135 Million, a Record, for a Klimt Portrait”, *The New York Times*, 19 June 2006, [www.nytimes.com/2006/06/19/arts/design/19klim.html](http://www.nytimes.com/2006/06/19/arts/design/19klim.html) (accessed: 29.11.2020).

<sup>38</sup> “Art of the Heist...”

<sup>39</sup> A.-M. O’Connor, *The Lady in Gold...*, p. 224.

<sup>40</sup> Bundesverfassungsgesetz über die Wiedervereinigung Österreichs mit dem Deutschen Reich, Wien, 13.03.1938, Wien 1938, <http://alex.onb.ac.at/cgi-content/alex?aid=glo&datum=1938&size=45&page=74> (accessed: 20.11.2020).

<sup>41</sup> S.R. Williamson, *Austria-Hungary and the Origins of the First World War*, Macmillan Education, New York 1991, p. 4.

<sup>42</sup> *Ibid.*



unattractive. The country, created from the remnants of the former European power, plunged into poverty, and its inhabitants, frustrated, began to manifest their will to change. The charisma of Adolf Hitler, an Austrian by birth, his rhetoric about injustices of the First World War, and accusations against Jews for causing an economic collapse in both Germany and Austria began to appeal not only to Germans but also to many desperate Austrians. Hence the growing support of the NSDAP party in Austria and the enthusiasm to join the Third Reich. It is very difficult to judge whether the Austrians were the first victims of National Socialist ideology or whether they were complicit.

Before the Second World War, Austria was inhabited by about 210,000 Jews, 180,000 of whom living in Vienna,<sup>43</sup> including Maria Altmann and her family. Austria was inhabited by people of diverse nationalities, religions, and sexual preferences. Are they all guilty of the atrocities of those times? For years, the Altmann family has treated Vienna and Austria as their home. The state is not only a form of organisation of society but also people, non-homogenous in their nature. In all fairness, Austria, like almost everything in the world, is neither black nor white: it comes in shades of grey, it is both an executioner and a victim. After the end of the war in May 1945 and the creation of the independent Republic of Austria, the time has come to settle accounts with the past.

*Anschluss* was declared illegal on 8 May 1945, the NSDAP was outlawed<sup>44</sup> and its surviving members had to be officially registered. Special courts have been set up to prosecute National Socialists. Under the 1947 law, more than half a million party members were found directly or indirectly guilty of the crimes of the Second World War.<sup>45</sup> In over 13,000 court cases, only about 10% of the defendants were convicted and about 40 death sentences were handed down.<sup>46</sup> In the following years the death penalty was abolished (1950),<sup>47</sup> and so was the penalty of property forfeiture (1957);<sup>48</sup> many amnesties have been granted as well. The settlement for Nazi crimes was incomparably small given the number of the regime's victims.

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<sup>43</sup> Technische Universität Berlin. "Flucht Und Vertreibung Der Juden Aus Österreich", *Konferenz Von Évian – Online-Ausstellung*, 2018, <https://evian1938.de/fluchtlingskrise-1938/flucht-und-vertreibung-der-juden-aus-oesterreich/> (accessed: 20.11.2020).

<sup>44</sup> Verbotsgesetz, Wien 1947, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnормen&Gesetzesnummer=10000207> (accessed: 20.11.2020).

<sup>45</sup> Th. Olechowski, *Rechtsgeschichte Einführung in die historischen Grundlagen des Rechts*, Wien 2016, p. 120.

<sup>46</sup> Ibid.

<sup>47</sup> "Hintergrund: Die Todesstrafe in Österreich", *Die Presse*, 5 September 2013, <https://www.diepresse.com/1449145/hintergrund-die-todesstrafe-in-osterreich> (accessed: 11.10.2020).

<sup>48</sup> Bundesverfassungsgesetz vom 14. März 1957, womit Bestimmungen des Nationalsozialistengesetzes, BGBl. Nr. 25/1947, abgeändert oder aufgehoben werden (NSAmnestie Wien 1957), [https://www.ris.bka.gv.at/Dokumente/BgblPdf/1957\\_82\\_0/1957\\_82\\_0.pdf](https://www.ris.bka.gv.at/Dokumente/BgblPdf/1957_82_0/1957_82_0.pdf) (accessed: 20.11.2020).

It is not possible to quantify all property seized from Nazi victims in Austria and Europe. Unfortunately, the newly formed government of 1945 did not want to take responsibility for the prior Nazi persecution and did not feel obliged to pay compensation to the victims and their heirs, hiding behind the so-called *Opferthese*: according to this concept, Austria was not complicit, but herself became a victim of National Socialism.<sup>49</sup> It should be kept in mind, however, that the reluctance to restitution resulted mainly from the catastrophic state of the economy of a country ravaged by two world wars. It is believed that, unfortunately, the impoverishment was not the only cause; another crucial factor was anti-Semitism, rooted in history, and at that time extremely intense. It is worth to note that as early as in the Declaration on Austria signed during The Moscow Conference on 30 October 1943 in Moscow, the Allies had recognised the incorporation of Austria into the Third Reich as illegal.<sup>50</sup> *Anschluss* was forced by the Nazis using military power. Under international law, the Republic of Austria was indeed acknowledged as a victim of totalitarian Germany.

The return of the seized property was possible only *via* natural restitution and only if the property still existed. What is more, only the persecuted persons concerned and their heirs had the right to recover the property.<sup>51</sup> The mechanism was designed as a civil court case under the Restitution Acts (*Rückstellungsgesetze* – mentioned in the literature review). On a side note, the adoption of these laws was related to the pressure of the Allies occupying Austria.<sup>52</sup>

In just two days after the capitulation of the Third Reich, the law created by the provisional government obliged the owners of lost property to register it.<sup>53</sup> Each current possessor of the property was bound (on the basis of *ius ad rem*) to return it to the rightful owner, or, if it was sold, to pay damages amounting to the entire price of purchase. More than 60,000 proceedings were conducted under the post-war restitution laws,<sup>54</sup> but in many cases it was not possible to recover the property. The process itself was not easy, which was largely due to a large number of laws and their inconsistency. Many people, including Maria Altmann and her relatives, left Austria. Not only Austria did not allow an easy return to their homeland, but it also left them without any legal

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<sup>49</sup> Th. Olechowski, *Rechtsgeschichte Einführung...*, p. 232.

<sup>50</sup> Moscow Declaration, 1943, <https://avalon.law.yale.edu/wwii/moscow.asp> (accessed: 20.11.2020).

<sup>51</sup> Th. Olechowski, *Rechtsgeschichte Einführung...*, p. 233.

<sup>52</sup> Staatsvertrag betreffend die Wiederherstellung eines unabhängigen und demokratischen Österreich, Wien 1955, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000265> (accessed: 20.11.2020).

<sup>53</sup> Gesetz über die Bestellung von öffentlichen Verwaltern und öffentlichen Aufsichtspersonen vom 10 Mai 1945. [https://www.ris.bka.gv.at/Dokumente/BgblPdf/1945\\_10\\_0/1945\\_10\\_0.pdf](https://www.ris.bka.gv.at/Dokumente/BgblPdf/1945_10_0/1945_10_0.pdf) (accessed: 20.11.2020).

<sup>54</sup> Th. Olechowski, *Rechtsgeschichte Einführung...*, p. 233.

assistance and they were forced to find their rights in complex trials on their own.<sup>55</sup> The Altmann family initiated similar legal proceedings through their lawyer Dr. Reinisch, but they did not get the “Lady in Gold” back.

The Austrian Belvedere Gallery was aware of the dubious provenance of the paintings mentioned by Dr. Erich Führer (Dr. Führer, after the property of Ferdinand Bloch-Bauer has been seized, became the temporary proprietor). He traded Bloch-Bauer’s portraits for another painting by Gustav Klimt. Nevertheless, it was only the investigation and a series of articles by journalist Hubertus Czernin that revealed that the museum concealed how some of the works ended up in their collections. The actions of the Austrians in the first attempt to regain the family property by the Bloch-Bauers, right after the end of the Second World War in 1948, can be described as lacking good faith. The state seemed to pretend that it did not know how the said portrait got to the Viennese museum, explaining that the managers were simply following the will of Adele Bloch-Bauer, who died in the 1920s, and who bequeathed part of the property (including the portrait) to the Belvedere Gallery. However, neither Adele nor her husband willed the painting to the museum.<sup>56</sup> Another piece of evidence against the museum was the letter regarding the handing over of the works, signed by Dr. Führer with words “Heil Hitler”.<sup>57</sup>

Austria’s response to the actions of Mrs. Maria Altmann to regain her family’s property was very firm. The return of the portrait of Adele Bloch-Bauer and other works turned out to be one of the biggest scandals of the time. This particular painting, next to “The Kiss”, was one of the pearls in the collection of the Viennese gallery, and its loss would have been considered a direct hit on the country’s pride and reputation. With a considerable financial background, Austria was therefore ready for a long and costly fight. Their primary strategy was simply to wait out the case: in 1998, when Maria Altmann was beginning her fight to get the paintings back, she was already eighty-two years old. It was therefore in the best interest of Austria to delay this case for as long as possible. Mrs. Altmann herself was to say that “her opponents were waiting for her imminent departure”.<sup>58</sup> The picture of post-war Austria was that of a dependent, economically destabilised, and, above all, morally ambiguous country. We are taught that the world is often unfair, and I am convinced that the concealment of the origin of parts of the collection was due to the inconsistencies of the time. There is no direct proof about with whom exactly the Belvedere authorities sympathise and why this decision was made, but one thing is certain – Austria did not want to let the “The Lady in Gold” go.

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<sup>55</sup> Ibid.

<sup>56</sup> Supreme Court of the United States, *Republic of Austria v. Altmann*, 541 U.S. 677 (2004), Opinion of the Court, p. 5.

<sup>57</sup> Ibid.

<sup>58</sup> “Art of the Heist...”

One of the turning points in this case actually came from an unanticipated event. After one of Egon Schiele's paintings on loan from the Viennese Museum to New York turned out to be a cultural asset plundered by the Nazis,<sup>59</sup> Pandora's box has been opened. To clear their reputation, the Austrian state published an act that made it possible for the public to access the state archives.<sup>60</sup> At that moment, it was only a matter of time before someone dug into them to extract inconvenient facts. That person turned out to be Hubertus Czernin, whose research gave Maria Altmann the unexpected aid – the matter that I addressed in the previous chapter.

Almost seventy years after Ferdinand Bloch-Bauer escaped from Austria, the portrait of his wife returned to the family. However, it did not stay in its homeland. Vienna lost her "Mona Lisa", even though Mrs. Altmann wanted the painting to stay in Belvedere at first. It was the way she was treated by the country she and her family called home that forced her to take her aunt's portrait away. "The Lady in Gold" has become a recognisable item not only in the world of art, but it has also grown to be one of the symbols of the fight for justice and dignity with the Nazi regime.

This case showed the intricacies of art restitution cases all over the world – how interconnected they were and how seemingly insignificant events may turn the tide. In 1998, Austrians exposed their weaknesses to protect themselves from the Schiele scandal. It was thanks to this discovery that the spiral was triggered, which led to the fact that today in Austria, we see the likeness of Adele Bloch-Bauer on mugs and calendars in gift shops, but not in the Viennese art gallery.

## 6. Conclusions

The Bloch-Bauer family was part of the Viennese bourgeoisie in the late nineteenth and early twentieth centuries, and their lives seemed to resemble a fairy tale that millions could only dream of. They were affluent and fulfilled people, whose only fault was their ancestry and religion. The Bloch-Bauers were forced by the Nazi regime to flee, leaving their possessions behind. Ferdinand Bloch-Bauer left Austria never to return, and the portrait of his wife became the subject of one of the most important restitution cases in history.

This matter touched on so many branches of law that its interpretation still arouses great controversy. At the level of Austrian national law, it was affected firstly by inheritance law and secondly by post-war restitution edicts. The question of whom the portrait

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<sup>59</sup> "Schieles Geliebte 'Wally'", 8 April 2018, <https://oe1.orf.at/artikel/400869/Schieles-Geliebte-Wally> (accessed: 20.10.2020).

<sup>60</sup> Kunstrückgabegesetz – KRG.

of a woman really belonged to cannot be answered with absolute certainty. I assume that Ferdinand Bloch-Bauer was the owner of the paintings, which proves the invalidity of his wife's will and undermines the main argument of the Republic of Austria, which stated that the works were donated to the museum in 1936.

After the dispute spilled over into the United States, the case became international. Austrian representatives did not want to resolve the case on American soil, but after the decision of the US Supreme Court, they had no choice but to recognise the superiority of Maria Altmann's arguments, and in 2006 they reached an out-of-court settlement.<sup>61</sup> The story of these two extraordinary women – Adele Bloch-Bauer and Maria Altmann – almost fifteen years after the end of this high-profile case, still holds many uncertainties. Whatever the truth might be, the case itself is a perfect illustration that it is worth to fight for one's rights in the courtroom and that a skilled lawyer will use all the tools at his disposal to fight for his client.

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<sup>61</sup> Arbitral Award – 5 *Klimt paintings Maria V. Altmann and others v. Republic of Austria*, 15 January 2004, <https://plone.unige.ch/art-adr/cases-affaires/6-klimt-paintings-2013-maria-altmann-and-austria/arbitral-award-5-klimt-paintings-maria-v-altmann-and-others-v-republic-of-austria-15-january-2004/view> (accessed: 29.11.2020)

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## Summary

### **The Klimt row: Analysis of property restitution laws based on the Austrian Klimt Bloch-Bauer case**

In this article I focus on the legal and moral complexity of Gustav Klimt's "Portrait of Adele Bloch-Bauer I" restitution case on an example of the case of *Maria Altmann v. The Republic of Austria*. The article illustrates the interconnectedness of various branches of law – inheritance law and restitution law at the national level, and at the international level – the jurisdiction of a state in a lawsuit against another sovereign entity. In this text, I utilise a number of sources, including Austrian legislation, judgments of American courts, legal acts of international law, scientific publications, a documentary, and a number of online resources consisting of mostly governmental or highly reputable newspapers. The painting's history shows how the turmoil of the Second World War influenced the lives of its owners, the attitudes of public authorities and a difficult moment in history of Austria.

**Keywords:** denazification, inheritance law, jurisdiction, Klimt, restitution

## Streszczenie

### **Awantura o Klimta: analiza praw restytucyjnych na podstawie austriackiej sprawy Klimt Bloch-Bauer**

Artykuł dotyczy prawnej i moralnej złożoności sprawy o restytucję portretów Adele Bloch-Bauer autorstwa Gustava Klimta. Wskazuje on na wzajemne powiązania różnych gałęzi prawa. Z jednej strony na poziomie narodowym – prawo spadkowe i prawo restytucyjne, a z drugiej strony – na poziomie międzynarodowym – jurysdykcja innego państwa w sprawie przeciwko innemu suwerennemu podmiotowi, na podstawie sprawy *Maria Altmann przeciwko Republice Austrii*. Autorka korzysta z wielu źródeł, w tym z ustawodawstwa austriackiego, wyroków sądów amerykańskich, aktów prawa międzynarodowego, publikacji naukowych, filmu dokumentalnego, a także stron internetowych, przede wszystkim stron rządowych i renomowanych tytułów prasowych. Losy obrazu doskonale pokazują, jak II wojna światowa wpłynęła na życie ich właścicieli, działania władz w Austrii w trudnym momencie jej dziejów.

**Słowa kluczowe:** denazyfikacja, jurysdykcja, Klimt, prawo spadkowe, restytucja