

Asylum and the memory of the border

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The refugee policy of the Second World War shaped the modern law of asylum in Switzerland more than any other experience. The Asylum Act of 1979 replaced the rudimentary rules that had governed the admission of refugees during the war, and a totally revised Asylum Act entered into force in 1999.¹ It defines a refugee in line with the Geneva Refugee Convention of 1951 and prohibits the return of a person to a State in which his life or freedom would be threatened (Art. 5 AsylA). The Federal Constitution of 1999 raises the principle of non-refoulement to constitutional rank: refugees may not be deported or extradited to a State in which they would be persecuted (Art. 25(2) Cst.), and no one may be deported to a State in which he faces torture or other cruel and inhuman treatment (Art. 25(3) Cst.).² The circular of 13 August 1942, which excluded persons persecuted "only on racial grounds" from refugee status, would be unlawful under every one of these provisions.

The Confederation has also addressed the individual injustices of the period. On 7 May 1995 the President of the Confederation, Kaspar Villiger, apologized in Parliament for the introduction of the "J" stamp and for the refugee policy of the war years. The Federal Act of 20 June 2003 annulled the criminal judgments against persons who had helped refugees to enter Switzerland during the Nazi period. The best-known helper, the St Gallen police commander Paul Grüniger, who had been dismissed and convicted for admitting Jewish refugees in 1938, had already been rehabilitated by a court in 1995.³ The act applies to helpers on every frontier, including the guides, border guards and private citizens who had brought refugees across the southern border or hidden them in Ticino. In Ticino the memory of the war years remains present in the Customs Museum at Cantine di Gandria, which tells the story of smugglers and refugees together, and in the place that the canton's border has kept in the migration debates of the twenty-first century.⁴

For the practitioner. Legacy relationships with roots in the period before 1945 or in the lira economy call for a structured review. - Establish the history of the account: date of opening, original holders, successive beneficial owners and transfers. - Check whether the bank has classified the relationship as without contact or dormant, and whether a search through the Swiss Banking Ombudsman is appropriate for heirs. - Assess the tax status of the assets in Italy and Switzerland, including any regularization under the Italian voluntary disclosure programmes (Chapter E.II). - For works of art, precious metals and securities acquired between 1933 and 1945, carry out provenance research and consider restitution claims under the Washington Principles. - Remember that Article 47 BankA does not protect information against Swiss authorities acting under their own procedures or against the legal channels of international assistance.

1 Notes

1. Kälin, "Asyl" (above). ↩
2. Asylum Act of 26 June 1998 (AsylA), SR 142.31, Art. 3 (definition of the term refugee) and Art. 5 (ban on refolement), English text at <https://www.droit-bilingue.ch/en-de/1/14/142.31-3-6.html> and <https://www.droit-bilingue.ch/en-de/1/14/142.31-5-8.html>; Federal Constitution of the Swiss Confederation of 18 April 1999, SR 101, Art. 25(2) and (3), English text at <https://www.droit-bilingue.ch/en-de/1/10/101-25-30.html>. ↩
3. Federal Act of 20 June 2003 on the Annulment of the Convictions of Persons who assisted Refugees at the time of the Nazi Regime, SR 371, Arts. 1 and 2, in force since 1 January 2004 (AS 2003 4264), English text at <https://www.droit-bilingue.ch/en-de/3/37/371-1-4.html> and <https://www.droit-bilingue.ch/en-de/3/37/371-14-17.html>. On Grüniger's dismissal in 1939, his conviction in 1941 and the annulment of the judgment by the District Court of St Gallen in 1995 see Wikipedia (English), "Paul Grüniger", https://en.wikipedia.org/wiki/Paul_Gr%C3%BCniger (consulted as a last resort). ↩

4. Federal Customs Administration, Museo delle dogane svizzero (above); on the museum's teaching material on smugglers and refugees see the Federal Office for Customs and Border Security, school materials "Schmuggler und Flüchtlinge". ↩

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