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# **The Ostmarkgesetz of 14 April 1939 - One of the Normative Grounds of the Annexation Of Austria**

## **Introduction**

This study addresses the issue of the Ostmarkgesetz and its role as an instrument for the annexation of Austria into the Third Reich. It was an act of constitutional rank, which changed the political and administrative principles of the Austrian state. This act defined in detail the individual stages of change on both the central and local government levels. It divided the country into districts managed by governors appointed by the Third Reich government.

This paper is the first of its kind to present the legal model (based on the Ostmarkgesetz) for the incorporation of Austria into the Nazi state, along with an outline of the changes following its implementation. The aim is to determine the legality of this act, as well as the entire process, according to the laws of the time, along with the significance of the benefits of doing so for the Third Reich. The research problems will include the following aspects: first, an assessment of the extent to which the Austrian authorities at the time could have prevented this, and second, an evaluation of the degree to which the regulations introduced by the Third Reich took into account the Austrian norms in force at the time (e.g. acts, ordinances, etc.) and, indeed, whether they did so at all).

## **The Political and Legal Background to the Passing of the Ostmarkgesetz**

On March 12–13, 1938, Nazi Germany annexed Austria, which, first in fact and then in law, ended Austria's existence as a separate state. Hitler's first, unsuccessful, attempt to annex the country had been made in July 1934. In the previous year, authoritative rule in Austria had been taken over by the leader of the Austrofascists, Engelbert Dollfuß.<sup>1</sup> The Austrofascists were supporters of Austrian independence, and ideologically they were closer to fascist Italy, with which they also sought closer political ties.<sup>2</sup> Following Dollfuß's seizure of power, the Austrian parliament was dissolved and replaced by a so-called "cadet parliament" (only 76 of the 165 elected deputies were present), which on May 1, 1934, passed a new corporatist-fascist constitution in flagrant violation of the law.<sup>3</sup> In practice, it was imposed by Dollfuß on a submissive parliament.<sup>4</sup>

Shortly thereafter, the Austrian Nazis staged an attempted putsch that resulted in the death of Chancellor Dollfuß, who, after suppressing the Nazi revolt was succeeded by Kurt von Schuschnigg.<sup>5</sup> Hitler refrained from renewed action because he feared the reaction of Benito Mussolini.<sup>6</sup> However, the Nazi pressure on the Austrian authorities did not cease.

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1 For more on this person, see: G. Walterskirchen, *Engelbert Dollfuß. Arbeitermörder oder Heldenkanzler*, Wien 2004; P. Kaźmierczak, *Morderca robotników czy bohaterki kanclerz? Austriackie spory o Engelberta Dollfussa*, in A.P. Bieś ed., *Pamięć. Historia. Polityka*, Kraków 2012, pp.323–354.

2 For more on this subject, see: E. Czerwińska – Schupp, *Faszyzm austriacki (1934–1938) – założenia filozoficzno-ideowe, ustrojowe i praktyka polityczna*, „Filozofia Publiczna i Edukacja Demokratyczna”, T.I, 2012, no. 2, pp. 87–100.

3 S. Pawłowski, *Kwestia tożsamości państwa przykładzie Austrii*, „Gdańskie Studia Prawnicze”, T. XXXI, 2014, p.341. The constitution, in force since 1929, allowed it to be amended only by referendum, not by a resolution of parliament. H. Wereszycki, *Historia Austrii*, Wrocław 1986, p.295. It is noteworthy that within a few hours he approved hundreds of decrees issued during the Dollfuß government. P. Kaźmierczak, *Morderca robotników czy bohaterki kanclerz?...*, p.343. Certainly the procedure for their approval was not democratic.

4 H. Wereszycki, *Historia...*, p.295.

5 P. Kaźmierczak, *Morderca robotników czy bohaterki kanclerz?...*, p.347.

6 J. Kozeński, *Zabór Austrii w 1938 r. i przezwyciężenie idei Anschlusu po II wojnie światowej*, „Przegląd Zachodni” 1968, no. 3, p.79. For more on Mussolini's attitude toward

A decisive turning point in Austrian-German relations was the July 1936 *Juliabkommen*, in which Austria agreed to a series of concessions to Germany, including the entry of two avowed Nazis into the government: Guido Schmidt and Edmund Glaise-Horstenau. In 1937, the Austrian Nazi leader Arthur Seyss-Inquart joined the ranks of Nazi ministers in the Austrian government. All of them, as Joseph Kozenski wrote years ago, “*systematically undermined Austria’s existence from within, rendering it incapable of resisting Germany*”.<sup>7</sup>

Hitler’s pressure on Austria intensified after February 12, 1938. During Schuschnigg’s meeting with Hitler in Berchtesgaden, the Austrian chancellor was not only forced to tolerate the Nazis in his cabinet, but also to agree to the Nazis extending their control over the military. On February 20, Hitler publicly announced that he was forced to concern himself with the fate of 10 million Germans outside the Reich, which also meant a tougher course toward Austria. Schuschnigg, in order to protect Austria from the Anschluss and hoping that the majority of the population was against it, announced a referendum on Austria’s accession to the Reich for March 13, 1938. Under pressure from Hitler, however, Schuschnigg was forced to resign on March 11, and his place was taken by Seyss-Inquart.<sup>8</sup> Another Nazi, Ernst Kaltenbrunner, joined his cabinet that day as Secretary of State for Security, with the task of suppressing possible civil resistance. The next day, the German army entered Austria with “Operation Otto,” and Hitler, welcomed by Seyss-Inquart, was enthusiastically received by the population, especially in Linz.<sup>9</sup>

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the Anschluss see, among others: G. Ch. B. Waldenegg, *Hitler, Göring, Mussolini und der „Anschluß“ Österreichs an das Deutsche Reich*, “Vierteljahrshefte für Zeitgeschichte” 2003, H.2, pp.147–182.

<sup>7</sup> J. Kozenski, *Zabór Austrii w 1938 r...*, p.79.

<sup>8</sup> N. Foster, *Austrian Legal System and Laws*, Routledge – Cavendish 2003, p. 16; L. Jedlicka, *Bundespräsident Wilhelm Miklas am 13 März 1938*, “Mitteilungen des Instituts für Österreichische Geschichtsforschung”, LXXX, 1963, pp. 492–498.

<sup>9</sup> H. Batowski, *Rok 1938: dwie agresje hitlerowskie*, Poznań 1985, pp. 204–205; K. Grünberg, *Adolf Hitler. Biografia Führera*, Warszawa 1988, p.204; N. Foster, *Austrian Legal System...*, p.16.

In this way, the political and military part of the Anschluss was executed, paving the way for its legal part, which is more important from the point of view of the issue addressed in the present study. The key to the execution of such intentions was the promulgation by the Seyss-Inquart government on March 13, 1938 of the act *Bundesverfassungsgesetz über die Wiedervereinigung Österreich mit dem Deutschen Reich*.<sup>10</sup> The law, with identical wording, was also published in the German official gazette.<sup>11</sup> It consisted of four articles. According to Article 1, Austria was to become one of the Lands of the German Reich (*Österreich is ein Land des Deutschen Reiches*). This article set April 10th, 1934 as the date for a referendum on Austria's unification with the Reich, which was to decide Austria's future status by a majority of votes cast. The law took effect on the day it was promulgated. The law announced the gradual implementation of Reich legislation in Austria. Existing Austrian legislation was to remain in force and German law was to be introduced gradually by decrees of the Fuehrer and the Reich Chancellor or Reich Minister empowered by the Fuehrer (Article 2). In addition, the Reich Minister of the Internal Affairs, in cooperation with other competent Reich Ministers, was given the authority to issue the necessary legal or administrative orders for the implementation and supplementation of the Basic Laws.

In practice, the legal Anschluss of Austria was only a matter of time, and neither the Austrians nor the Austrian state had any influence over it. In the words of Henryk Batowski, this law "*also formally abolished Austria's existence as a separate state*".<sup>12</sup> According to the prevailing thesis in the Austrian scholarly literature, Austria had not lost its legal capacity. From the perspective of international law, Austria was first the victim of aggression and was then an occupied territory, and not a legal-

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10 *Bundesverfassungsgesetz über die Wiedervereinigung Österreich mit dem Deutschen Reich*, BGBl I, Nr 138/75.

11 *Bundesverfassungsgesetz über die Wiedervereinigung Österreich mit dem Deutschen Reich*, RGBl I, 1938/237.

12 H. Batowski, *Rok 1938...*, s.205.

ly incorporated one.<sup>13</sup> However, this is relevant to the later assessment of the legal effects of the Anschluss.

The first decree based on the law of March 13, 1938, sometimes referred to as the “Unification Law,” was issued on March 15, 1938, and contained a provision extending the validity of German official gazettes to Austria. According to its provisions, laws of the Reich that were promulgated after the entry into force of the Unification Law were also to apply in Austria, unless otherwise stipulated. This decree incorporated the basic constitutional principles of the Reich into the Austrian legal system.<sup>14</sup> The results of the referendum announced in the Unification Law were used as an important argument in favor of the legality of such measures. According to official announcements, 99.73% of all voters were in favor of the Anschluss, which was seen as a confirmation of the Austrians’ wish to belong to the German Reich.<sup>15</sup>

It is worth noting here that the legal aspect of the *Anschluss* was largely prepared due to the longstanding dependence of a weakening Austria on an increasingly powerful Reich, which deepened over time, but also due to earlier attempts at convergence between the legal systems of the two countries. Even before the Anschluss, attempts had been made to unify the judiciary and legal norms in the spirit of national socialist justice. Even before 1938, concepts such as “Führerwillens” or “National Socialist Weltanschauung” had been pushed in Austria, as well as the idea that the NSDAP program should be regarded as the legal source of law and authority.<sup>16</sup>

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13 Sz. Pawłowski, *Kwestia tożsamości państwa...*, p.341.

14 H. Luterpacht, *Annual digest and reports of public international law cases. Being a Selection from the Decisions of International and National Courts and Tribunals given during the Years 1941–1942*, Cambridge 1987, p.105.

15 N. Foster, *Austrian Legal System...*, p.16; O. Jung, *Plebiszit und Diktatur: die Volksabstimmungen der Nationalsozialisten*, Tübingen 1995, p. 121.

16 B. Rütters, *Die Unbegrenzte Auslegung*, in U. Davy ed., *Nationalsozialismus und Recht. Rechtssetzung und Rechtswissenschaft in Österreich unter der Herrschaft des Nationalsozialismus*, Wien 1990, p. 15 and ff. In the literature, differences in the referendum result are encapsulated in fractional values. O. Rathkolb, *The Neglected Factors Leading to the “Anschluss” 1938*, “Wien Klin Wochenschr” 2018, no. 130, p. 285.

In fact, all of these measures and their supporting circumstances paved the way for the erasure of Austria's political and cultural distinction. As early as April 14, 1938, the law abolished the *Gesetz über den Aufbau der Verwaltung in der Ostmark (Ostmarkgesetz)*<sup>17</sup>, to which separate attention is given in this study, and the name Austria (*Österreich*) was replaced by the name *Ostmark*. As in the Reich, it was divided into provinces. Their names also broke with Austrian tradition. This proved that Hitler's intention was to absorb Austria completely into the Reich and to erase any traces of its separateness.

### **The Legal Grounds of the Ostmarkgesetz - Layout and Structure**

The formal basis for the Ostmarkgesetz was the Unification Law of March 13, 1938, which was passed as a law of the Reich and not as a law of the Austrian Republic, while the material basis was the result of the referendum of March 10, 1938, in which, as noted above, almost all participants voted to incorporate Austria into Germany. Researchers warn against the hasty conclusion that the astonishing results of the vote were solely the result of brutal terror, propaganda pressure unprecedented in its aggression and scale, or vote – counting fraud. According to the Austrian historian Olivier Rathkolb, the almost unanimous vote in favor of the Anschluss was the result of opportunism, the real convictions of the voters and enormous propaganda pressure, the like of which the Austrians had never encountered before. He also points out that the Austrian Jews were denied the right to participate in the referendum.<sup>18</sup> Assuming that all the Jews voted against the Anschluss, the vote of the Jews would have been of little consequence for the final outcome of the referendum. According to data from 1934, there were 191,481 Jews in Austria (176,034 of whom lived in Vienna alone), ac-

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<sup>17</sup> *Gesetz über den Aufbau der Verwaltung in der Ostmark*, RGBI I 1939/77.

<sup>18</sup> O. Rathkolb, *The Neglected Factors Leading...*, p.284–285.

counting for 2.83% of the total population.<sup>19</sup> Their exclusion from the referendum, however, must be taken into consideration when evaluating its legality, especially since they were not the only ones excluded from participating in the referendum on April 14, 1938. In total, about 10 percent of Austrian citizens were affected by exclusion, for various reasons.<sup>20</sup>

The results of April 14, 1938, although they may be considered authoritative in some sense for the reasons stated above, were used by the authors of the Ostmarkgesetz as a plea for achieving the fundamental goal of the Anschluss. Austria was included in the group of countries known as *Altreich*<sup>21</sup> thus, legal and political unification was one of Hitler's fundamental priorities. Achieving this goal meant abolishing Austria's legal separateness and reducing it to the role of one of the federal states.<sup>22</sup>

The Ostmarkgesetz was one of the main instruments of Austria's incorporation into the German Reich. Although the Ostmarkgesetz did not abolish the previous administrative division of the country, it did, however, completely change Austria's position through the change of name and the organization of state and administrative power. The law in question was a rather concise legal act, but due to its subject matter it had the rank of a constitutional law. It consisted of three articles, divided into smaller editorial units: paragraphs and sections. In article 1 §1 of the Constitution it provided for the creation of the following Reich Districts (*Reichsgaue*) within the territory of the Federal State of Austria (*des Landes Österreich*): Vienna (*Wien*, main administrative center Vienna), Carinthia (*Kärnten*, Klagenfurt), Lower Danube (*Niederdonau*, Krems on the Danube), Upper Danube (*Oberdonau*, Linz), Salzburg

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19 J. Tomaszewski, *Żydzi w II Rzeczypospolitej*, Warszawa 2016, p. 15.

20 O. Jung, *Plebiszit und Diktatur...*, p. 121

21 J. Gumkowski, T. Kułakowski, *Zbrodniarze hitlerowscy przed Najwyższym Trybunałem Narodowym*, Warszawa 1965, p. 95.

22 Cf. Statistisches Reichsamt, *Amtliches Gemeindeverzeichnis für das Deutsche Reich, Teil I: Altreich und Land Österreich*, Vierte Auflage, Berlin 1939, pp. 218–235.

(*Salzburg*, Salzburg), Styria (*Steiermark*, Graz), and Tyrol (*Tirol*, Innsbruck). A separate administrative district and self-governing unit was also created from the former state of Austria, Vorarlberg, under the authority of the Reich Governor of Tyrol. The names of the individual Reichsgaue omitted those that contained the word *Österreich* (except for the name of the Land). As a result, former Lower Austria was renamed *Lower Danube* and Upper Austria *Upper Danube*. The old Austrian names were retained for the former Austrian provinces of Carinthia, Styria, Tyrol and Vorarlberg. The intention of the authors of this law was not to use such names, but to blur the distinction between Austria and the *Altreich*. This was contained in the title of the law regulating the administration and organization of the authorities in *Ostmark* (East Margraviate), although in the detailed provisions the term Land Austria (*des Landes Österreich*) was used. In accordance with the intentions of the legislator, the title of the law determined its place in the legal system of the Third Reich. With this law, the internal structure of Austria was broken down and reshaped as a federal state of the Third Reich.<sup>23</sup>

The Reich Districts were, according to Article 1 § 2, State administrative districts and territorial administrative units. They were headed by the Reich Governor (Article 1 §3.1) who was empowered to control all major areas of life in subordinate districts and to issue orders regarding the necessity of taking essential measures in relation to them, as well as to enact laws on the territory of this unit in the form of statutes. These could be repealed only by the highest authorities of the German Reich (Article 1 §3.2). The authority of the Governor of the Reich was indivisible, in the sense that he could not cede the powers granted to him by this law to subordinate officials (Article 1 §3.3). The appointment of the Reich Governor in the Reich Districts was subject to the provisions

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23 W. Stöckler, *Führungsstruktur und inszenierte Befehlsausgabe im Nationalsozialismus. Die »Politischen Leiter« der NSDAP im Reichsgau Wien und die Dienstappelle Baldur von Schirachs*, Wien 2012, pp. 3–4.



of the *Verbindung mit dem Reichsstatthaltergesetz* of 30 January 1935 (§ 5. 2).<sup>24</sup>

At the level of the Reich District, the Reich Governor exercised, under the supervision of the Minister of the Internal Affairs (Article 1, § 6. 1) and in accordance with the instructions of the Reich Ministers within the scope of their jurisdiction, the function of the state administration as the administration of the Reich (Article 1, § 4.1). Matters of justice, finance, national railroads, and the postal service were excluded from this jurisdiction. The remaining departments and non – associated administrative bodies within the Reich District were subordinated to the Governor. He administered them through administrators appointed by him (article 4, §4.2). The administrative bodies within the Governor’s jurisdiction included several districts, and the *Führer*, whom the law also named Reich Chancellor (Article 4 § 4.3), was responsible for their administration. This was undoubtedly a circumstance conducive to strengthening the party and political position of some Governors at the expense of others, and probably an incentive for the latter to make personal efforts in this direction. The Reich Governor was represented in the state administration by the “Government President” (*Regierungspräsident*), who was an official of the Reich, and in local administration, the state governor (*Gauhauptmann*), who was an official of a local government unit.

The status of the Reich District of Vienna was somewhat different, as it was regulated separately in the *Ostmarkgesetz*. In matters not regulated, the Austrian capital was subject to the provisions of the *Deutsche Gemeindeordnung (DGO) vom 30. Januar 1935*.<sup>25</sup> The *Ostmarkgesetz*, in accordance with Article 1, Section 8, divided its administration into state and municipal level (Section 1), constituted it as an independent municipality, which also performed the tasks specific to higher level municipal associations and at the same time had the tasks of higher level municipal associations (Section 2). According to further provisions of

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<sup>24</sup> *Verbindung mit dem Reichsstatthaltergesetz*, RGBl I, 1935/23.

<sup>25</sup> *Deutsche Gemeindeordnung (DGO) vom 30. Januar 1935*, RGBl I, 1935/55.

the cited article, the Governor of the Vienna Reich District was represented in the government, like others, by the President of the government, but in local administration by the Mayor, which office was to be held by the first councillor of the city of Vienna (*Ersten Beigeordneten der Stadt Wien*) (Section 3), and his advisors in matters of municipal administration were councillors of the city of Vienna (sec. 4). The special regulation of Vienna in the law in question was probably determined by the importance the Nazi authorities attached to the Austrian capital as the country's main socio – political and economic center, and the role it could play in consolidating the achievements of the Anschluss policy.

The Reich Governor also controlled regional farmers' unions and regional social insurance companies. In the regional authorities of the former, he was represented by the president of the board, and in the board of the latter – by the national starost (Article 1 § 4 (1)). In terms of the powers of the Reich Governors, the *Ostmarkgesetz* was a *lex specialis* to the *Verbindung mit dem Reichsstatthaltergesetz*. As per Article 1 (5) sec. 2 of the former, he kept all the powers that the latter gave to governors. This meant that the Reich Governors appointed on the basis of the *Ostmarkgesetz* regulations had special powers relating only to the federal state of Austria, which were not possessed by the Reich Governors operating in other areas.

The *Ostmarkgesetz* also regulated the issue of the succession of the powers of the highest authorities of the former Austrian federal states. Pursuant to the provisions of Article 4 § 4 (5) of the Act, they were transferred by law to the Governor, unless the Reich Minister of Internal Affairs, in agreement with the competent Supreme Authorities of the Reich, did not delegate these powers. Ultimately, therefore, it was the highest authorities of the Reich that decided whether the function of the Governor would be assumed by the current president of the federal state (*Bundespräsident*) or whether it would be delegated to another person, more trusted by the Reich authorities. In practice, the offices of governors were filled with gauleiters from the newly created NSDAP Reich Districts.

In the scholarly literature, attention is drawn to the special position that the Ostmarkgesetz assigned to the Governor of the Reich. This was due to the fact that he was also the Nazi Party *Gauleiter* of the Reich District of the same name. In other words, the *Reichsstatthalter-Gauleiter* was at the same time the *Reichsstatthalter*, as a state organ it had the statutory powers indicated above and was subordinate to the Reich Minister of Internal Affairs, while as *Gauleiter* he was responsible directly to the *Fuehrer*. He also had the opportunity to consult him directly, which gave him many opportunities in the day-to-day performance of his function.<sup>26</sup>

This situation was a source of tension between the *Gauleiters* and the Minister of Internal Affairs, especially when the latter rescinded the *Gauleiters'* instructions in accordance with the law. As Wolfgang Stickler writes, from an organizational point of view this was a "strange construction" (*merkwürdige Konstruktion*), as it violated the coherence of the system of state power and led to the aforementioned conflicts of competence between the *Reichsstatthalter* and the Reich Minister of Internal Affairs. This solution was due in large part to Josef Bürckel, Commissioner for Reunification with Austria, who initially pushed the idea of a governor fully independent of the central state administration, but met with resistance from the departmental ministers. As a result of the compromise he proposed, railroad, postal, judicial and financial matters were excluded from the *Reichsstatthalter's* sphere of competence and made dependent on the Reich Minister of Internal Affairs.<sup>27</sup> As Stickler writes, inconsistencies such as in the legal empowerment of the *Reichsstatthalter* in the Ostmarkgesetz were nothing special and reflected the primacy of politics over law typical for the Nazi state, stemming from the fundamental assumption that the political goals of National Socialism, the political will of the NSDAP and the *Fuehrer* were paramount. In general, the regulations adopted in the Ostmarkge-

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<sup>26</sup> W. Stickler, *Führungsstruktur und inszenierte...*, p.4.

<sup>27</sup> *Ibidem*, p.4.

setz placed the *Reichsstatthalter* in a privileged position with respect to the ministers of the Reich, over whom they could, in case of real need, gain an advantage.<sup>28</sup>

The Ostmarkgesetz regulated the issues of district and city administration in Article II. The former were to be districts of state administration and territorial administrative units headed by a starost, while the latter were territorial administrative units headed by a senior mayor (Oberbürgermeister) (sections 2–3). The district starost (chief administrative officer) was responsible for the administration of the district (art.2 § 10), while retaining the powers hitherto delegated by the Reich Minister of Internal Affairs in consultation with the Reich High Authority (section 2). On a similar basis, the state administration in urban districts was to be headed by a mayor, but police matters could be excluded from his jurisdiction unless a separate regulation was in force or was intended to be adopted (Art. 2 § 11).

The issue of territorial administration was regulated by the Ostmarkgesetz in article 2 § 12. In municipal districts, this task was entrusted to the starost (district chief administrative officer), with the assistance of the district councils as advisory bodies (section 1.). The district as a unit of local self-government performed public tasks on its own responsibility (section 2.) and conducted its activities on the basis of its statutes (section 3). Direct supervision over the district as a territorial administrative unit was exercised by the Reich Governor, and on the central level by the Reich Minister of Internal Affairs (section 4).

The final provisions (Art. III) dealt mainly with temporal issues related to the implementation of the provisions of the Ostmarkgesetz and thus the termination of the previous legal status, and the bodies obligated in this regard. The date of entry into force of the Ostmarkgesetz was set at 1 May 1938 (Article III, Section 19), and the deadline for the establishment of the Reich Districts, the legal successors to the former Austrian federal states (Section 14(2)), i.e. *de facto* implementation of

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<sup>28</sup> Ibidem, p.4

the law, was set at 30 September 1939 (Section 14(1)), because until this date the law in question extended the term of validity of the decree of the *Fuehrer* and the Reich Chancellor on the appointment of the Commissioner for the Reunification of Austria with the German Reich of 23 April 1938 (*Bestellung des Reichskommissars für die Wiedervereinigung Österreichs mit dem Deutschen Reich*). (*Bestellung des Reichskommissars für die Wiedervereinigung Österreichs mit dem Deutschen Reich*).<sup>29</sup> The date of September 30, 1939 therefore marked the time horizon for the full implementation of the Ostmarkgesetz. It also established a kind of “road map” for this process. Detailed regulations were to be issued by the Reich Minister of Internal Affairs in accordance with Article III, § 18 of this law. Together with the Reich Minister of Finance, he was also responsible for introducing property regulations that were necessary for the implementation of the Ostmarkgesetz. These were to be adopted after consultation with the appropriate Governors (art. III, § 15). It should be added that these regulations were important not only because of the timely execution of the law, but also because of the urgency of the dispossession of the Austrian Jews.

After its entry into force, all authorities and institutions of the Reich District, if they were not authorities and institutions of the Reich District as territorial administrative units, municipalities, associations of municipalities, entities with legal personality, institutions and foundations under public law, became authorities and institutions of the Reich, and the persons sitting on them became officials of the Reich (§ 13).

Until the appointment of governors, the administration in the former Austrian federal states was to be led by their former prime ministers; however, it is worth noting, not under Austrian law but under Reich law, i.e. the Ordinance on Legislative Law in the Land of Austria of 30 April 1938 (*Verordnung über das Gesetzgebungsrecht im Lande Österreich*).<sup>30</sup>

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<sup>29</sup> *Bestellung des Reichskommissars für die Wiedervereinigung Österreichs mit dem Deutschen Reich*, RGBI I, 1938/65.

<sup>30</sup> *Verordnung über das Gesetzgebungsrecht im Lande Österreich*, RGBI I, 1938/43.

On this basis, they could also issue ordinances (Art. III § 17 section 1 sentence 1). The same powers with respect to Vienna were to be exercised by the Commissioner for the Reunion of Austria with the German Reich, represented by the mayor (§ 17 section 1, sentence 1). According to the Ostmarkgesetz, the deadline for its implementation was September 30, 1939. The process of its implementation can be described as a “legal Anschluss”, i.e., a complete adaptation of the legal status to the actual state that had been created after March 13, 1938. The analyzed act had the rank of a constitutional act. It was signed by Adolf Hitler and the Reich Chancellor, Minister of Internal Affairs, Frick, Hitler’s deputy R. Hess, Reich Finance Minister Graf Schwerin von Krosigk, and Minister and Chief of the Reich Chancellery Lammer. The location of the issuance of the document is significant: Berchtesgaden. This means that the decisions about the *Anschluss*, including its legal aspects, were made at the highest levels of the NSDAP and were above all an exponent of its expansionist policy, of which Austria was the first victim.

### **Changes in the Legal and Real State Introduced by the Ostmarkgesetz**

The Ostmarkgesetz can be regarded as the legal act legalizing the de facto annexation of Austria by Adolf Hitler, calling it reunification with the Reich, on March 13, 1938. Its provisions, which were based on the extremely favorable referendum results of April 14, 1938, marked the beginning of a process of “reunification” whose end horizon was set for September 30, 1939. At the same time, there are no sufficient grounds for questioning the legitimacy of these results. As has been mentioned, the literature expresses the view that they were to a large extent an exponent of the Austrian position at the time, influenced either by genuine convictions or opportunism. Other factors, such as aggressive propaganda and brutal terror (the first deportations of the Jews from

Austrian territory to Dachau took place as early as April 1, 1938<sup>31</sup>) did not affect the outcome of the referendum of April 10, 1938. For the assessment of the legal effects of the Ostmarkgesetz, the referendum was of little importance. It could, however, be taken into account in subsequent Austrian claims for damages that the law had caused to Austrian statehood and Austrian citizens, by bringing about facts that proved to be irreversible after the fall of the Nazi Reich.

The Ostmarkgesetz thus initiated a months – long process of legal, organizational, and political changes that gave the Anschluss its material dimension and shape. The Ostmarkgesetz introduced an administrative order on Austrian territory that incorporated Austria into the German Reich as a federal state. The Ostmarkgesetz also created the conditions for the transformation of property referred to in Article III, § 17. It did not even set a reference date, so as not to bind the authorities responsible for its implementation and thus give them a free hand in making the changes as quickly as possible. The changes in question were not to be limited to Austria itself, but affected the entire Reich. This was the so-called Aryanization of property, i.e., the taking over of Jewish property by the Nazi authorities.<sup>32</sup> The passing of the Ostmarkgesetz on 14 April 1938, preceded by the deportations of the Austrian Jews to Dachau on 1 April and their exclusion from participation in the referendum, is worthy of mention in a sequence of legal acts that appeared shortly after this date as part of the “Aryanization of property”. Attention should be drawn in particular to the decree of the Ministry of Internal Affairs dated 26 April 1938, inspired by Hermann Göring, obliging all the Jews to register their property (*Verordnung über die Anmeldung des Vermögens von Juden war eine Verordnung*).<sup>33</sup> It was an expression of the state’s involvement in the “Aryanization of property”, aiming at

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31 O. Rathkolb, *The Neglected Factors...*, p.285.

32 Rudawski B., *Mienie i rasa. Wybrane aspekty „aryzacji” majątku żydowskiego w trzeciej rzeszy i w Kraju Warty*, „Meritum” 2016, VIII.

33 *Verordnung über die Anmeldung des Vermögens von Juden war eine Verordnung*, RGBl, I, 1938/35.

its complete control over this process.<sup>34</sup> It is noteworthy that this decree appeared less than two weeks after the promulgation of the Ostmarkgesetz. It seems reasonable to conclude that this law opened the way for a radical acceleration of the “Aryanization” of the estates of the Austrian Jews. Other effects began to appear gradually as the law was implemented, according to the calendar set forth in the law. The final result of the Ostmarkgesetz was the dismantling of Austria’s national identity and its relegation to a state within the German Reich.

### Conclusion

The Ostmarkgesetz is undoubtedly an example of a legal act legitimizing the annexation of the territory of a foreign state. From a formal legal standpoint, it institutionalized the results of the referendum of April 10, 1938, on Austria’s accession to the Reich, which was extremely favorable to Hitler. In fact, it legitimized the military occupation of Austria by Nazi Germany on March 13, 1938, which the Nazi-dominated, Seyss-Inquart-led Austrian cabinet supported by passing a law on Austria’s accession to the German Reich on the same day. As can be seen, the Austrian government at the time did little to prevent this. In this way, the results of the aforementioned referendum of April 10, 1938, became yet another act of the Austrian people’s desire to “reunite” as an *Altreich* country with the Nazi Third Reich. The Ostmarkgesetz gave this will the form of legal norms under which Austria was to be joined to the latter as another federal state. Some local laws continued to be in force; however, upon annexation, most laws, ordinances, and other acts lost their validity.

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34 C. Goschler, *The Dispossession of the Jews and the Europeanization of the Holocaust, in Business in the Age of Extremes. Essays on Modern German and Austrian Economic History*, D. Ziegler ed., Washington 2013, p. 195; B. Rosenkötter, *Treuhandpolitik, Die „Haupttreuhandstelle Ost“ und der Raub polnischer Vermögen 1939–1945*, Essen 2003, pp. 151–152.



In essence, the Ostmarkgesetz was a legal instrument which the Nazi authorities granted to themselves in order to carry out their political intentions. Therefore, more than from the perspective of the legislation, this act should be seen as a blatant case of the political instrumentalization of the law.

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## **SUMMARY**

### **The Ostmarkgesetz of 14 April 1939 – One of the Normative Grounds of the Annexation of Austria**

The article presents the political and legal changes that accompanied the passing and then the introduction of the Ostmarkgesetz in Austria in 1939. It also contains a detailed analysis of the structure and layout of this normative act. The Ostmarkgesetz was extremely important because it thoroughly changed the administrative organization and introduced a new administration of the state in this area. The consequences had a significant impact on the Austrian legal order. This law is considered to be one of the main tools of the direct annexation of Austria by the Third Reich. This was the beginning of the subsequent war conquests of the Nazi state.

Keywords: Third Reich, Austria, Annexation, Law, Ostmarkgesetz, law, administrative changes.

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