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Decision no. 700/2010

Application

Applicant, Status

Michael Anthony B., Recommendation  
Paul Roderick B., Recommendation  
Philip William B., Recommendation  
Margaret Helen S., Recommendation  
David S., Recommendation  
George Leopold S., Recommendation  
Gregory John S., Recommendation  
Peter Mark S., Recommendation  
Robert Edmund S., Recommendation

Public owner

Stadtgemeinde Bad Vöslau

Type of property

immovable

Real estate in

KG Vöslau (04035), Bad Vöslau, Niederösterreich | [show on map](#)  
KG Leopoldstadt (01657), Wien, Wien | [show on map](#)  
KG Brigittenau (01620), Wien, Wien | [show on map](#)  
KG Penzing (01210), Wien, Wien | [show on map](#)  
KG Hadersdorf (01204), Wien, Wien | [show on map](#)  
KG Wieden (01011), Wien, Wien | [show on map](#)  
KG Landstraße (01006), Wien, Wien | [show on map](#)  
[Show all on map](#)

Decision

Number

700/2010

Date

27 Sep 2010

Reasons

In rem restitution already granted after 1945  
Outside the jurisdiction of the Arbitration Panel or the scope of application of the GSF Law  
No prior measure pursuant to the GSF Law  
No ownership 1938-1945

Type

substantive

Decision in anonymous form

Entscheidung 700 2010 (PDF, 87.19 KiB)  
English translation: Decision 700 2010 (PDF, 170.61 KiB)

Related decision

Decision no. 700a/2011

Press Release Decision No. 700/2010

Lower Austria, Bad Vöslau

On 27 September 2010, the Arbitration Panel for In Rem Restitution recommended the restitution of public road areas in Bad Vöslau. In 1938, these had belonged to development properties whose owner had fled National Socialist persecution to Australia with his family.

The case brought before the Arbitration Panel concerned, among other things, 1,743 m<sup>2</sup> which, in 1938, had formed part of nine development property parcels in the Lower Austrian town Bad Vöslau. The co-owner, the Viennese pharmacist Hans S., had been persecuted by the National Socialist regime for being Jewish. After the Anschluss, he was able to flee with his family via Italy to Australia.

All of Hans S.'s property – in addition to the nine development parcels in Bad Vöslau, it was comprised mainly of shares in tenanted buildings in Vienna – was subsequently confiscated by the German Reich. In 1943, the Municipality of Bad Vöslau purchased various small areas from Hans S. and from private property owners in order to construct/extend municipal roads. Among these areas were the 1,743 m<sup>2</sup>, 1/6 of which has previously belonged to Hans S. In 1944, these small areas were transferred into the public property of the municipality. Since then, they have essentially remained unaltered and have been used as public road areas of the municipality.

At the request of Hans S., then residing in Sydney, in the years 1947 to 1949 the Austrian authorities restituted all of the seized properties, including the six confiscated development parcels. The only exception was the area acquired by the Municipality of Bad Vöslau in 1943. By the time of his death in 1975, Hans S. had still never filed a claim for restitution of this area.

Georg S., a son of Hans S., now filed an application for restitution of the properties in Bad Vöslau pursuant to the Entschädigungsfondsgesetz ("General Settlement Fund Law – GSF Law"). In December 2009, the Municipality of Bad Vöslau requested the Arbitration Panel examine this case pursuant to the provisions of the GSF Law. In early 2010, the other heirs of Hans S., his eight grandchildren, joined the proceedings.

Regarding the case itself, the municipality submitted that Hans S. had waived the restitution of these properties. After all, in 1954/55, Hans S. offered the restituted development parcels to the municipality for sale, while the small areas which had been partitioned off under National Socialism were never mentioned in the contract negotiations. In contrast, the Arbitration Panel held that mere silence could not be assessed as a waiver.

Finally, the municipality also expressed doubt as to whether the case even fell under the scope of application of the GSF Law, as it was only the heirs of Hans S., his son and eight grandchildren, the applicants before the Arbitration Panel, who had filed a claim for these public road areas; Hans S. never had. The Arbitration Panel initially held that this objection was justified, as Hans S. had indeed instigated the restitution of the other assets seized from him – for the most part tenanted apartment buildings and his "aryanized" Viennese pharmacy.

However, the Arbitration Panel lacked conclusive evidence that Hans S. had learned, among other things, of the road construction measures which had been carried out with his property during the National Socialist era, before the filing period for restitution claims had expired in 1954. After his flight from Vienna he had settled in Sydney with his family and did not return to Austria after the end of the National Socialist regime. In the files for the restitution proceedings which he conducted through a Viennese lawyer, the dimensions of the restituted properties were not stated. While Hans S. had possibly not been aware of the transfer of the small areas, when the Municipality of Bad Vöslau had acquired them it was aware that it was purchasing seized property.

Therefore an unresolved matter of compensation pursuant to the Law existed. The Arbitration Panel therefore recommended the restitution of 1/6 of 1,643 m<sup>2</sup> to the nine applicants. On the cut off day pursuant to the General Settlement Fund Law, 17 January 2001, 100 m<sup>2</sup> were no longer owned by the Municipality of Bad Vöslau.

Due to the continued use of these areas as public roads, an in rem restitution is not practicable. The Arbitration Panel will therefore recommend the Municipality of Bad Vöslau pay to the applicants the current market value of the area.

For use by media; not legally binding upon the Arbitration Panel for In Rem Restitution.

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