

Image not found or type unknown



Decision no. 853/2012

Application

Applicant, Status

Johanna E., Rejection
Alois G., Rejection
Johann G., Rejection
Heinrich Carl K., Rejection
Wolfgang M., Rejection
Ilse Z., Rejection

Public owner

Land Niederösterreich

Type of property

immovable

Real estate in

KG Breitenstein (23105), Breitenstein, Niederösterreich | [show on map](#)
KG Wald (19601), Pyhra, Niederösterreich | [show on map](#)
KG Nützling (19534), Pyhra, Niederösterreich | [show on map](#)
KG Michelbach Dorf (19523), Michelbach, Niederösterreich | [show on map](#)
KG Loitzenberg (19512), Pyhra, Niederösterreich | [show on map](#)
KG Heuberg (19480), Pyhra, Niederösterreich | [show on map](#)
KG Auern (19406), Pyhra, Niederösterreich | [show on map](#)
KG Schwechat (05220), Schwechat, Niederösterreich | [show on map](#)
[Show all on map](#)

Decision

Number

853/2012

Date

26 Jun 2012

Reasons

No persecution as defined by the GSF Law
Outside the jurisdiction of the Arbitration Panel or the scope of application of the GSF Law
Other grounds for the decision
No seizure as defined by the GSF Law

Type

substantive

Decision in anonymous form

Entscheidung 853 2012 (PDF, 444.29 KiB)

Related decision

Decision no. WA16/2016

Press release

Lower Austria

On 26 June 2012, the Arbitration Panel for In Rem Restitution rejected six applications for restitution of several properties in Lower Austria. The applications regarding the properties owned by the Province of Lower Austria were rejected as the properties had not been seized as defined by the Entschädigungsfondsgesetz ("General Settlement Fund Law" – GSF Law). The remainder of the requested properties did not constitute public property as defined by the GSF Law.

As descendants of the W. family, which was considered Jewish after the Anschluss of Austria to the German Reich, Hans K. and his sister Paula M. were affected by the Nuremberg Laws of 1935. Paula M. was considered a Mischling I. Grades ("first grade half caste") and, due to his marriage to a Jew, her brother was considered Jewish. The K. family took numerous steps in its efforts to gain a more beneficial "genealogical status". After the W. family had assigned a large number of assets to the German Reich, an ancestor of the K. family was declared to be "aryan", as a result of which Hans K. was considered a Mischling II. Grades ("second grade half caste") and his three children "first grade half castes". The heirs of Paula M., who had in the meantime passed away, were then considered "aryan".

Hans K., Paula M. and her brother-in-law Maximilian L. were co-owners of, among other things, the family estates K. and S. in Lower Austria. Even prior to 1938, they had sold large areas of the K. estate to, among others, the Province of Lower Austria due to financial difficulties. From 1937 at the latest, they had also sought to sell the S. estate. After the death of Paula M. in September 1938 and of Hans K. in January 1939, their children, as heirs, continued to seek to sell the estates due to the large inheritance tax claims. At the same time, from spring 1939, sale negotiations took place with the later Reich region Lower Danube concerning the K. estate. Having taken the K. estate into administration in trust, the Reich region Lower Danube purchased the agricultural properties in summer 1940.

After the end of the National Socialist regime, the properties passed into the ownership of the Province of Lower Austria. An application for restitution was not filed by the heirs Hans K., Paula M. or Maximilian L. In 1960, the collection agencies, which had been authorized to assert restitution claims, investigated the sales of the K. estate but, ultimately, did not file an application for restitution. On 17 January 2001, large parts of the former K. estate continued to be owned by the Province of Lower Austria; a few areas were privately-owned.

The applicants, legal successors of Hans K., Paula M. and Maximilian L. asserted before the Arbitration Panel that the K. estate had had to be sold to the Reich region Lower Danube due to the "origins" of the K. family and that Maximilian L. and the heirs of Paula M. had been compelled to sell as they had been related to the K. family.

In its juridical appraisal, the Arbitration Panel firstly examined whether persecution had taken place as defined by the GSF Law. With regard to two heirs of Paula M. and to Maximilian L., this was not the case. In contrast, the K. family and a further heir of Paula M. were without doubt subjected to racial and/or political persecution. The Arbitration Panel also examined whether the "origins" of the K. family had been a directly or indirectly causal factor in the sale of the K. estate to the Reich region Lower Danube. The run up to and the modalities of the purchase contract did not show any signs of discrimination. It could not be established that the vendors had been forced to sell by the Reich region or that other National Socialist authorities had influenced the sale in a discriminating way. The adequate proceeds from the sale were also received in their entirety by the vendors. Furthermore, the Arbitration Panel examined whether the K. family considered itself forced to sell as a result of the imposition of a Jewish capital levy on Hans K., which was later withdrawn. The Arbitration Panel was not able to find any indications regarding an indirect pressure to sell in this regard.

Before the backdrop of the foundation of a limited liability company with the IG Farbenindustrie AG, in April 1938 Hans K. had concluded a purchase contract with regarding one half of another requested property in Schwechat. The purchase was not recorded in the land register. As he had been precluded from taking further steps to establish the company as a result of his persecution, in December 1938 he offered the W. S GmbH, which had been founded in the meantime, the opportunity to acquire the property in his place. Subsequently the W. S GmbH purchased the property in 1939.

In 1949, the heirs of Hans K. conducted restitution proceedings regarding the shares in the company W. S. GmbH and were given back the shares and the property. In 1957, the W. S. GmbH sold the requested property area to the ÖMV, which, although privatized, continued to be the owner on 17 January 2001.

The applicants asserted that the previous restitution decision had been extremely unjust. As the necessary requirement of "publicly-owned property" as defined by the General Settlement Fund Law was not met, these applications for in rem restitution were also to be rejected.

For use by media; not legally binding upon the Arbitration Panel for In Rem Restitution.
For further inquiries contact: presse@nationalfonds.org