

**ANNUAL REPORT**  
2008 - 2009

**NATIONAL FUND**  
OF THE REPUBLIC OF AUSTRIA  
FOR VICTIMS OF NATIONAL SOCIALISM

**GENERAL**  
**SETTLEMENT FUND**  
FOR VICTIMS OF NATIONAL SOCIALISM



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## FOREWORD BY THE PRESIDENT OF THE NATIONAL COUNCIL



A handwritten signature in black ink, which appears to read 'B. Prammer'. The signature is fluid and cursive, with a distinct start and end stroke.

Barbara Prammer  
President of the National Council

With the establishment of the National Fund of the Republic of Austria and the General Settlement Fund for Victims of National Socialism, the Republic of Austria is demonstrating its full commitment towards those people who were persecuted, abused, expelled or murdered by the National Socialists between 1938 and 1945. Founded on the anti-Fascist fundamental consensus of the Second Republic, this – despite being far too delayed in its establishment – is a testimony to the admission to our own past and the active assumption of responsibility as a consequence of the same. Austria's laboriously won, self-critical stance on its own history must therefore be continuously renewed and a commitment to this funda-

mental consensus must be made. At the same time, the lessons learned from history must be reflected in both personal and political actions.

Allow me to cite two recent examples: In July 2009, the closing payments were able to be commenced from the General Settlement Fund, endowed with 210 million US Dollars. With over 18,000 beneficiaries having received an advance payment, by the end of the year around one quarter of the 20,700 applications filed had already been concluded. The imminent positive conclusion of the monetary compensation by the General Settlement Fund is unable to disguise the fact that only

a fraction of the actual losses are able to be compensated. In December 2009, an agreement was reached between the Federation and the provinces on the restoration and maintenance of the Jewish cemeteries. This is another step which, although only taken very late, illustrates the responsible actions already outlined above.

Actively reflecting upon and debating the National Socialist era is a fundamental concern of the National Fund, which provides vital support with its broad range of projects sponsored. Moreover, in 2009, the National Fund assumed the important task of coordinating the redesign of the Austrian pavilion at the memorial site Auschwitz.

A far reaching reflection and debate on National Socialism does not, however, only mean acquiring expert knowledge of this historical period through projects or exhibitions, rather it is necessary to reflect on the fundamentals of our present democracy and to gain knowledge on the contexts of origin of human rights as a foundation of mutual solidarity.

In 2008 and 2009, a great number of historical events from the 20<sup>th</sup> century were remembered which are important points of reference for the reflection on the origins and also the destruction of democracy in Austria. The proclamation of the Democratic Republic in November 1918 and the *Anschluss* of Austria to National Socialist Germany in March 1938 were fundamental events in Austrian contemporary history which were also commemorated in the center of parliamentarianism, the "Hohes Haus", in the form of various events and exhibitions. The outbreak of the Second World War through the invasion of the German Armed Forces of Poland in September 1939, the dissolution of the Austrian parliament in March 1933 or the violent confrontations in February 1934 also formed a part of this active remembrance work in the past two years.

It is indisputable that without knowledge of our past, we will neither be able to understand the present nor to shape the future. For this reason, it is all the more important that we draw the right lessons from this study of our own history. That means drawing attention to exclusion wherever it still occurs or begins to reappear. It means taking firm action against the discrimination of minorities. It means not permitting anti-Semitism or playing down and relativizing National Socialist atrocities.

Not least, it also means closing legal loopholes. The 1<sup>st</sup> September 2009 led to an intensive socio-political debate on the deficiencies in the *Annerkennungsgesetz* ("Recognition Law") of 2005. Just under two months later, the National Council resolved the *Aufhebungs- und Rehabilitationsgesetz* ("Annulment and Rehabilitation Act"), which not only provided for the global rehabilitation of victims of National Socialist martial jurisdiction but also annulled the rulings of the National Socialist courts of hereditary health and rulings against homosexuals. In doing so, the Republic restored the dignity of those affected and gave them the recognition and respect which they had been denied for decades.

This commitment to responsibly dealing with and actively reflecting and debating contemporary history is all the more important when we reconsider events of the last year. The renewed vandalism at the memorial site Mauthausen, the attacks on survivors in Ebensee or the destruction of a memorial plaque in Vöcklamarkt deeply shocked us. These events demonstrated that there are still too many people who are insufficiently aware of our history or who wish to evince interest in or even enthusiasm for National Socialist ideology through destructive deeds. They have demonstrated that although our democracy is stable and secure, it is still often called into question.

The members of the Board of Trustees of the National Fund and the General Settlement Fund, of the Committee of the National Fund, of the Claims Committee of the General Settlement Fund and the Arbitration Panel for *In Rem* Restitution are warmly thanked for their prudent and conscientious work. I would particularly like to single out the staff of both Funds, who, with high levels of dedication, are in contact with the applicants on a daily basis and who, in their area of expertise, render a crucial contribution towards understanding and not least towards a positive public image for Austria. Above all, I would like to thank the Secretary General and her two deputies.

# FOREWORD BY THE SECRETARY GENERAL



A handwritten signature in black ink, which appears to read 'Hannah M. Lessing'.

Hannah M. Lessing  
Secretary General

Two years ago, the work of the National Fund and the General Settlement Fund was introduced to a wider public for the first time in the form of an annual report. For 2008 and 2009, we decided to publish the annual reports for both years in one volume. The two years are connected by the fact that they were both important years of remembrance in Austria and Europe: The *Anschluss* of Austria to the German Reich in 1938 and the German invasion of Poland in 1939 were milestones on Europe's path to one of the darkest periods of its history.

The National Fund has now been involved in investigating the causes and consequences of this cataclysmic time for 15 years. At almost exactly the same time as the present annual report, the National Fund is publishing a two volume publication marking its 15 year anniversary, which reflects on the work of the National Fund and its social-political impact.

The recognition of surviving victims of National Socialism will also remain a central task of the National Fund in the future. At the same time, the Fund is facing new challenges. Broad areas of its work today are not only focused on the past – its educational function

in the field of project sponsorship and public relations is of at least equal importance. As the number of contemporary witnesses decreases, the importance of remembrance work grows. Particularly in this respect, the extent to which the act of dealing with the past is also an act of dealing with the future has become clear.

Thanks to the tireless work of its staff, the General Settlement Fund has to a large degree completed its tasks – almost all applications have been decided by the Claims Committee; in 2009 the closing payments were able to commence. Although in many cases the sums disbursed were unable to adequately compensate the losses suffered, the overwhelming majority of applicants appreciate the attempts at reparation by an Austria which has finally become aware of its historical responsibility. The Arbitration Panel for *In Rem* Restitution, which can recommend the return of properties, occupies a special position. A restitution of this kind is often of particular value to the applicant, including for reasons of a sentimental nature. In June 2009, the first two volumes of collected decisions of the Arbitration Panel were able to be presented.

Annual reports are normally sober affairs, their language that of numbers and facts. Nevertheless, we also want to remember the people and their fates which lie at the center of our work and therefore give five victims from various victims' groups the opportunity to tell their stories. Their experiences are representative of the countless stories of persecution of which we have come to hear over the years and provide a more concrete idea of what persecution involved for the individuals. I know how difficult it is for survivors to recall the terrible experiences of this time. I would therefore like to extend my special thanks to Doris Lurie, Rudolfin Kolmer, Katja Sturm-Schnabl, Andreas H. and Ingeborg Dürnecker for their willingness to share their memories with us.

I would also like to express my gratitude for the interesting articles which shed light on the work of the National Fund and the General Settlement Fund from differing perspectives:

- Thanks to Ambassador Stuart E. Eizenstat for his personal words of esteem – he has accompanied both Funds from the outset;
- thanks to Sir Franklin Berman and o. Univ.-Prof. Dr. Josef Aicher, who, as the chairmen of the Claims

Committee of the General Settlement Fund and of the Arbitration Panel for *In Rem* Restitution respectively, give an impressive insight into the work of the two committees;

- thanks to Ambassador Dr. Ferdinand Trauttmansdorff for his words on the Austrian chairmanship of the Task Force for International Cooperation on Holocaust Education, Remembrance, and Research;
- thanks to Dr. Heidemarie Uhl for her critical as well as accurate thoughts from the perspective of a contemporary historian and
- thanks to Dr. John Barker, the Chairman of the British Foreign Compensation Commission, whose appraisal of the work of the National Fund and particularly that of the General Settlement Fund with "a view from London" is a wonderful endorsement of the path we have taken.

I would like to thank the members of the Board of Trustees and its chairperson Mag. Barbara Prammer for their excellent cooperation and the members of the Committee of the National Fund, of the Claims Committee of the General Settlement Fund and of the Arbitration Panel for *In Rem* Restitution.

Last but not least, my thanks goes out to my staff at the National Fund and the General Settlement Fund – under the leadership of my deputies Dr. Renate S. Meissner and Mag. Christine Schwab, they all provide the foundation for the work of these decision-making bodies and have also worked towards the successful accomplishment of the tasks of both Funds with exemplary dedication in these two years.



“When Jewish-owned shops were attacked, when Jews were assaulted in the streets and forced to efface plebiscite slogans painted with indelible road paint, when it became suddenly dangerous to use public transport, my mother decided to leave Vienna.”

*DORIS LURIE*

# HER PASSPORT WAS DUE TO EXPIRE IN TWO DAYS ...

## DORIS LURIE

I was ten years old on February 26<sup>th</sup> 1938. Some days before the *Anschluss* I was no longer allowed to attend school. When Jewish-owned shops were attacked, when Jews were assaulted in the streets and forced to efface plebiscite slogans painted with indelible road paint, when it became suddenly dangerous to use public transport, my mother decided to leave Vienna.

My mother was a psychologist and was treating a young man from England. The day after the *Anschluss* my mother suddenly thought that should the need arise, she had better collect our passports from the lawyer. With the many new restrictions with respect to officialdom, her patient volunteered to accompany her to the lawyer's offices. There were already two men in Nazi uniform guarding the entrance to the lawyer's building, prohibiting entry. Her patient engaged them in conversation while she slipped through the gate.

Upstairs she found the office door ajar. Behind it sat the lawyer, ashen-faced and terrified that she had come. He told her that on pain of death he may not hand over any documents in his keep. She managed to persuade him to give her at least our passports, saying that no one will ever know ... On her way out of the building, her patient was still distracting the guards – they had not seen her. In the taxi on the way back to our apartment, she checked the expiry date of her passport and found it was valid for only two more days, the time needed to reach France where my father was working at the time. My mother and I had to leave immediately on the 16<sup>th</sup> March 1938. She locked up our apartment with all its contents and gave the keys to a friend. Apart from two small suitcases, we abandoned everything.

All communication with the outside world by phone or telegram was cut off during this period. No Austrians were allowed to leave the country any more. On that day, the last train left Vienna to repatriate foreign tourists. It was our only chance. We boarded without official permission. Soon after the journey began, a Gestapo man came to check our residential address in a very large, heavy book and crossed something out – presumably our name and address. He told us that we may never return to Austria. During the journey some Nazi youths came to our compartment. They proudly wore a swastika armband and threatened us with fists and guns, as well as with arrest “or worse” if we did not cooperate by handing over money, jewelry and papers. My mother had only her wedding ring and the 25 Schillings permitted travel allowance. Although we were both travelling with Austrian passports, my mother also showed her British passport which had become invalid when she married an Austrian.

*Doris Lurie and her mother managed to flee via Switzerland and France to England. From there they emigrated to South Africa, where Mrs. Lurie is still living today.*

You can read the whole story at  
[www.nationalfonds.org](http://www.nationalfonds.org)

# GENERAL INFORMATION

The National Fund of the Republic of Austria for Victims of National Socialism was called into being with the Federal Law *BGBI.* ("Federal Law Gazette") no. 432/1995 in 1995. Its task is to make so called gesture payments, as quickly and unbureaucratically as possible, to persons who were victims of National Socialism in Austria between 1938 and 1945. Over the years, the National Fund evolved into a central point of contact for survivors of National Socialist injustice and as such was entrusted with further responsibilities.

In 2001, on the basis of the Washington Agreement, the General Settlement Fund for Victims of National Socialism, which provides compensation for losses of assets of victims of National Socialism on the territory of the present-day Republic of Austria, was established at the National Fund.

Both institutions pursue a common goal: The recognition of Austria's special responsibility towards the victims of the National Socialist regime.

The common organs of the National Fund and General Settlement Fund are comprised of the Board of Trustees and the Secretary General. Pursuant to the *Nationalfondsgesetz* ("National Fund Law"), the Board of Trustees is composed of the three presidents of the National Council, the Federal Chancellor, the Vice-Chancellor, the Federal Minister for European and International Affairs, the Federal Minister for Labor, Social Affairs and Consumer Protection, the Federal Minister of Finance and the Federal Minister for Education, the Arts and Culture. Twelve further members which are elected by the Main Committee of the National Council complete the Board of Trustees. The President of the National Council, Mag. Barbara Prammer, has been the chairperson of the Board of Trustees since 2006.

# THE NATIONAL FUND OF THE REPUBLIC OF AUSTRIA FOR VICTIMS OF NATIONAL SOCIALISM

That which is offered by the National Fund is fundamentally directed at surviving victims of National Socialist dictatorship in Austria, to whom a symbolic gesture payment of 5,087.10 Euro (70,000 Schilling) is awarded. The aim of this gesture payment is to express Austria's special responsibility for injustices suffered. Through a broad definition of the term victim, the National Fund also takes into consideration for the first time persons who had as yet not received any recognition from the Republic of Austria.

There is no deadline for filing applications. As the majority of applicants are elderly, it is of utmost importance that these applications are dealt with as quickly and unbureaucratically as possible. Within the scope of these proceedings, the National Fund also undertakes a considerable volume of research, as many documents and papers were destroyed during the persecution and flight of the victims. In cases of social need, the National Fund also has the option of making further payments of up to three times the amount of the basic sum of 5,087.10 Euro.

From 1995 until the end of 2009, around 30,000 people were recognized as victims of National Socialism. All in all, the National Fund has so far made gesture payments totaling almost 154.7 million Euro to applicants in over 75 countries.

In 2001, on the basis of the Washington Agreement, the National Fund was entrusted with the implementation of the so called compensation for tenancy rights. To this end, a sum of 150 million Euro was made available; applications could be submitted until 30<sup>th</sup> June 2004. Over 20,000 people were compensated for the loss of tenancy rights, household effects and personal valuables which had been seized from them or their parents under National Socialist rule in Austria in the form of a lump sum payment of 7,630 Euro or 7,000 US Dollars per person. After the completion of the processing of applications, the remaining amount will be distributed among the entitled persons in the form of an additional payment of 1,000 Euro.

The National Fund makes further individual payments from the Hardship Compensation Fund, which was established in 1999, and from the funds that are transferred to it from the Nazi Persecutee Relief Fund.

From the outset, the National Fund has supported a multitude of projects which benefit the victims of National Socialism, serve scientific research into National Socialism and the fates of its victims, remember National Socialist injustice or safeguard the memory of the victims. The focuses of the project sponsorship are, on the one hand, individual assistance for survivors and, on the other hand, the fulfillment of an educational mission. So far, the National Fund has sponsored a total of around 800 projects.

Since 1998, the disposition of looted art which has remained heirless is also part of the agenda of the National Fund. Before the artworks are disposed of, the National Fund provides support in the search for the legal owners of the seized artworks by means of a comprehensive internet database of art objects.

In addition to the mentioned tasks, the National Fund is also active in international educational policy within the scope of the Task Force for International Cooperation on Holocaust Education, Remembrance, and Research.

Moreover, in July 2009, the National Fund assumed the coordination of the redesign of the Austrian memorial at the former concentration and extermination camp and present State Museum Auschwitz-Birkenau.

## PROFILE

# THE GENERAL SETTLEMENT FUND OF THE REPUBLIC OF AUSTRIA FOR VICTIMS OF NATIONAL SOCIALISM

On 23<sup>rd</sup> of January 2001, the Republic of Austria, the USA and Jewish victims' organizations signed the Washington Agreement (Federal Law Gazette III no. 121/2001) which served to form the basis for the establishment of the General Settlement Fund for Victims of National Socialism. The aim of this Fund is to recognize losses of assets which occurred in connection with National Socialism on the territory of present day Austria through ex gratia payments. The categories of losses include, for example, real estate, bank accounts and securities, companies or movable assets. Within the scope of the *Entschädigungsfondsgesetz* ("General Settlement Fund Law", Federal Law Gazette I no. 12/2001), those material losses which had not, or only inadequately, been compensated by prior compensation or restitution measures are to be taken into account.

The General Settlement Fund has at its disposal over 210 million US Dollars, which are distributed among the applicants who have been directly subject to persecution or are the heirs of such people. These people had the opportunity to submit applications to the General Settlement Fund up until 28<sup>th</sup> of May 2003. After the expiry of the application deadline, the independent, internationally composed Claims Committee of the General Settlement Fund decides on all applications and distributes the amount at its disposal to the applicants proportionally in accordance with the material losses suffered.

By the end of 2007, 76 million US Dollars had been disbursed to a total of around 9,000 applicants, i.e. more than one third of the amount with which the General Settlement Fund has been endowed. In total, by the end of 2009, over 23,500 payments worth a total of 173 million US Dollars had been made. More than 82 % of the Fund's endowment had therefore already been paid out by 31<sup>st</sup> December 2009. In order to determine the allocation of these compensation amounts, the staff of the General Settlement Fund processed around 72,000 documents. These documents were researched, assigned to the applications, drawn on for the examination of claims and archived.

In addition to monetary compensation, the General Settlement Fund Law also provides for the return of assets in natura (*in rem* restitution). Properties which had been seized during the National Socialist era and were publicly-owned on 17<sup>th</sup> January 2001 can be claimed back by the former owners or their heirs. Jewish communal organizations can also apply for the restitution of movable physical items, particularly cultural and religious items which are publicly-owned. The Arbitration Panel for *In Rem* Restitution was established to examine these applications. The general deadline for applications for *in rem* restitution expired on 31<sup>st</sup> December 2007. For provinces and municipalities which have affiliated themselves with the proceedings of the Arbitration Panel or which still wish to, there are special deadlines. By the end of 2009, a total of 2,196 applications had been received by the Arbitration Panel, 874 of which have already been decided.

## COMMUNICATION AND TRANSPARENCY

On the one hand, continuous information on the status of the application processing at the National Fund and General Settlement Fund is of importance to the applicants. On the other hand, the progress of the application processing and the way in which the consequences of the National Socialist era are being dealt with on an institutional level is time and again the focus of public attention.

The Board of Trustees and the Secretary General of both Funds take these circumstances into account by means of a transparent and direct communication of the conduct of proceedings. The relevant channels of information were established at various levels and are directed, on the one hand, at the applicants and on the other hand at a national and international public.

The Secretary General directs the public relations of the National Fund and the General Settlement Fund. She represents the public face of the Funds and outlines their work in annual lecture tours and visits to the countries in which many of the applicants live. In 2008 and 2009, the Secretary General carried out 22 business trips to eleven countries, including Israel, Great Britain and the USA. Norway, which held the chairmanship of the ITF in 2009, and Argentina also counted among the countries visited by the Secretary General.

A separate communications department, which was established in December 2006, takes on the task of working directly with the applicants of the General Settlement Fund. On a daily basis, its staff provides information on organizational matters or forwards specific questions regarding the course of proceedings to the legal staff. Personal consultations are also available on request at the office of the General Settlement Fund.

Direct consultation with and care of applicants had already been integrated into the work of the National Fund and laid an important foundation of trust for people who, in the course of their applications, also told their stories of persecution.

Within the framework of its reports to the Board of Trustees, the General Secretariat regularly provides information on the progress of proceedings and organizational requirements. In doing so the comprehensive expert knowledge of the employees of the National Fund and the General Settlement Fund in matters of victim recognition, compensation and restitution is often referred to.

The General Secretariat of both Funds is often in demand from the media as an information point within its own field and with respect to the entire system of dealing with the consequences of the National Socialist era in Austria. For this reason, a Coordination Department for Media Service and Observation was established in 2005 for both the National Fund and the General Settlement Fund. On the joint website [www.nationalfonds.org](http://www.nationalfonds.org), the wider public is able to learn in detail about the history, statutory bases and the procedural details at the National Fund and the General Settlement Fund. The progress of the application processing at the General Settlement Fund can also be viewed on the internet. Since 2008, the public have been offered an insight into the projects supported by the National Fund by means of an online database in which all projects sponsored by the National Fund since 1996 are recorded.

The decisions of the Arbitration Panel for *In Rem* Restitution are also documented in a bilingual database in German and English.

## A JOURNEY THROUGH TIME

### 1995

On the 50<sup>th</sup> anniversary of the foundation of the Second Republic, the National Fund of the Republic of Austria for Victims of National Socialism is founded on the basis of the National Fund Law. The Fund is directed at surviving victims of National Socialist dictatorship, to whom a symbolic gesture payment of 5,087.10 Euro (70,000 Schilling) is awarded.

### 1997

In November, by decision of the Austrian Parliament, the 5<sup>th</sup> of May – the day of the liberation of the concentration camp Mauthausen – is designated as the Day against Violence and Racism in memory of the victims of National Socialism.

### 1998

The Nazi Persecutee Relief Fund is established at the London Conference on Nazi Looted Gold. Through a parliamentary act, the National Fund is entrusted with the administration of the Austrian share of the Nazi Persecutee Relief Fund (“Looted Gold Fund”) for the benefit of Holocaust survivors and projects related to the National Socialist era.

On 1<sup>st</sup> October the Historical Commission of the Republic of Austria is established.

The *Kunstrückgabegesetz* (“Art Restitution Law”) comes into effect. The field of responsibility of the National Fund is extended to include the disposition of non-restitutable looted art under the ownership of the Republic of Austria.

### 2000

Austria participates in the Stockholm Holocaust Conference. Subsequent to this conference, the Task Force for International Cooperation on Holocaust Education, Remembrance, and Research (ITF) is founded.

During the Vienna Reconciliation Fund Conference in May, a continuation of the restitution negotiations after the conclusion of negotiations on compensation for forced laborers (“Reconciliation Fund”) is decided. Secretary General Hannah M. Lessing is appointed to the Austrian restitution negotiations team under the direction of Ambassador Ernst Sucharipa.

The independent Historical Commission of the Bank Austria Creditanstalt commences investigations into the activities of the *Creditanstalt-Bankverein*, the *Länderbank Wien* and the *Zentralsparkasse der Gemeinde Wien* during the National Socialist period (Austrian Bank Settlement). The National Fund informs its applicants about the initiative of the *Bank Austria Creditanstalt*.

### 2001

The Republic of Austria is accepted into the ITF; at the same time the coordination department for Austria is established within the National Fund.

The restitution negotiations are brought to a close with the Washington Agreement of 23<sup>rd</sup> January 2001. On the basis of this agreement, the National Fund is entrusted with the compensation of seized tenancy rights, household effects and personal valuables (so-called compensation of tenancy rights). A sum of 150 million US Dollars is made available for this purpose, which is disbursed in the form of lump sum payments of 7,630 Euro or 7,000 US Dollars per applicant. The deadline for submissions, which first expired on 22<sup>nd</sup> February 2002, is repeatedly extended and finally ends on 30<sup>th</sup> June 2004.

Furthermore, the establishment of the General Settlement Fund for Victims of National Socialism with 210 million US Dollars is resolved. The Federal Law on the Establishment of the General Settlement Fund comes into effect in May. This Fund compensates victims of National Socialism by means of individual payments and *in rem* restitution of publicly-owned assets for losses of property incurred as a result of persecution.

The Secretary General of the National Fund, Hannah M. Lessing, is also appointed Secretary General of the General Settlement Fund.

In July, the opportunity to apply to the General Settlement Fund is announced worldwide.

In October and November the two independent decision-making bodies of the General Settlement Fund are established and release their rules of procedure: The Arbitration Panel taking responsibility for *in rem* restitution, the Claims Committee for the monetary payments of the General Settlement Fund.

The General Settlement Fund commences cooperation with public archives and offices of the Federation and provinces to provide documents for the examination of applications. Uniform standards for the processing of applications ("standardized procedure") are developed for the administration of the expected mass proceedings concerning monetary compensation – it will later turn out that 120,000 individual claims have to be examined.

## A JOURNEY THROUGH TIME

### 2002

The General Settlement Fund structures its own research system which serves for the investigation of conclusive documents for the uniform understanding of the applicants' claims.

### 2003

On 27<sup>th</sup> of January, the Historical Commission submits the documentation of the results of its research, comprising 53 individual reports, and its final report to their commissioners: The Federal Chancellor, the Vice-Chancellor and the Presidents of the National Council and of the Federal Council. By the end of 2004, all research results are published in 49 volumes as "Publications of the Austrian Historical Commission" by the publishing house Oldenbourg.

On 28<sup>th</sup> of May, the application deadline for monetary payments from the General Settlement Fund expires. By this date, 20,700 applications are received.

In October, the Arbitration Panel grants an application for restitution for the first time and recommends the competent Federal Minister to reconstitute a property in the first district of Vienna to the heirs of the former owners.

In November, the General Settlement Fund concludes a cooperative agreement with the International Commission for Holocaust Era Insurance Claims (ICHEIC). This cooperation comprises the mutual forwarding of applications for compensation of insurance policies to the relevant competent organization.

From November, the National Fund commences the payment of a further 1,000 Euro to all people who had already received a lump sum payment on the basis of an application for compensation of tenancy rights (second payments).

### 2004

The General Settlement Fund receives the information on people compensated within the scope of the "Austrian Bank Settlement" in order to avoid repeat compensation of already compensated assets.

The General Settlement Fund introduces an internal reporting body for the further development of application processing and new legal information processing software for the standardized procedure.

### 2005

Through the announcement of the Austrian Federal Government on the completion of "legal closure", after relevant amendments to the law, the advance payments from the General Settlement Fund, endowed with 210 million US Dollars, can be commenced in December. The payment rates are based on statistical prognoses which estimate the anticipated total of all claims.

The functions of the research database of the General Settlement Fund are extended, thus, among other things, simplifying the ordering of files from external archives.

### 2006

In the summer, an integrated database covering the entire course of the proceedings for the National Fund and the General Settlement Fund is introduced.

In October, the National Fund publishes an online art database which enables people to search in museums and collections of the Federation or the City of Vienna for specific art objects which were seized and which qualify for restitution.

### 2007

By the end of the year, three quarters of the applications received by the General Settlement Fund are decided. Furthermore, the archival research and the digital compilation of the case-related documents are able to be completed for the great majority of the remaining applications.

Within the scope of the advance payments by the General Settlement Fund, a total of 76 million US Dollars was paid to 9,000 applicants. A total of 2,104 applications have been received by the Arbitration Panel, of which 531 have already been conclusively dealt with.

### 2008

The National Fund begins to publish the life stories of applicants on its website as a contribution to the Year of Remembrance.

In March, Austria assumes the chairmanship of the ITF for one year.

The legislator creates the opportunity for provinces and municipalities to extend the deadline for submitting applications for *in rem* restitution to the Arbitration Panel to 31<sup>st</sup> December 2009. Within this period, municipalities can affiliate themselves with the Arbitration Panel without any further prerequisites and afterwards only with the consent of the Arbitration Panel.

### 2009

The Council of Ministers entrusts the National Fund with the task of coordinating the project for the redesign of the Austrian memorial at the former concentration and extermination camp and present State Museum Auschwitz-Birkenau.

On 8<sup>th</sup> June the first and second volumes of the decisions of the Arbitration Panel are presented. To mark the occasion, a round table discussion is held in Vienna.

On 1<sup>st</sup> July, an amendment to the General Settlement Fund Law is enacted which enables the Fund to make closing payments to all applicants whose applications have already been decided. On the basis of a report by the Claims Committee on the amount of the claims that it had determined by 1<sup>st</sup> July 2009, the Board of Trustees determines the final payment quotas and shortly afterwards the closing payments begin. Until this amendment was enacted, the closing payments would not have commenced before all applications were decided.

In September, the Art Restitution Advisory Board for the first time decides on the transfer of objects to the National Fund that they may be utilized for the benefit of the victims of National Socialism.

At the end of the year, the scope of application of the Art Restitution Law is extended by an amendment.

By the end of the year, the Claims Committee has decided on all but 46 applications. Almost three-quarters of the total funds of the Fund have been disbursed.

# COMMEMORATION AND REMEMBRANCE AS A MEANS OF COMING TO TERMS WITH HISTORY

BY RENATE S. MEISSNER

### The activities of the National Fund in the Year of Remembrance 2008

2008 was an important year of remembrance for Austria: The Republic remembered the 70<sup>th</sup> anniversary of the German troops marching into Austria.

What meaning do remembrance days and years of remembrance have? Do we need them to commemorate and remember? Are they important and necessary social rituals by virtue of which the collective memory is formed? And what were the activities of the National Fund of the Republic of Austria for Victims of National Socialism in this special Year of Remembrance?

Official days and years of remembrance and the related ceremonies, events and activities serve to give remembrance a targeted emotional impetus. They provide individuals, groups and institutions who are active in this field with the opportunity to present their work to the public, thus conveying important information and experiences of the events that are to be commemorated and remembered.

Stirring the memory of past events in the sense of dealing with that which has long remained undiscussed serves to prepare the path of remembrance of the individual, of groups or segments of society, towards a collective memory. In several ways, remembrance is of great importance for the individual, whether he/she was directly affected or is a descendent of an affected person, and for the society in which he/she lives: firstly, as a part of self-reassurance, as a part of one's own identity and that of a culture and society, and secondly as a vital foundation for shaping the future.

In this respect, the National Fund, the range of activities of which has greatly expanded in recent years compared to its original core tasks, has focused on activities relating to remembrance work and carried out a broad range of diverse activities in this Year of Remembrance.

### The project sponsorship of the National Fund in the Year of Remembrance 2008

In addition to making symbolic gesture payments to the victims of National Socialism and providing personal support to those affected, within the scope of the project sponsorship, which has existed from the outset, a multitude of projects have been sponsored which were especially devoted to the culture of commemoration and remembrance. Of the 130 projects sponsored in 2008, around 100 fulfilled the criteria of commemoration and remembrance. These projects ranged from putting Austrian school children in touch with contemporary witnesses from various countries, to further education opportunities for teachers on the subject of National Socialism and the Holocaust and the sponsorship of various exhibitions, film productions, opera performances and publications on the subject. The erection and installation of memorial plaques and memorials dedicated to the memory of different groups of victims persecuted during National Socialism were also financially supported by the National Fund.

It was also important to support many dedicated local initiatives in order to allow for a visible sign of investigation into the past on a regional level. The accompanying events have shown how important it is that remembrance and reminders not only take place on a national level but also reach people where they live, in their towns, villages and communities, in order that the history of their immediate surroundings can be experienced.

The photo exhibition by the artist Sarah Schlatter displayed in the Jewish Museum Hohenems illustrates this regional aspect very well: Persecution occurred everywhere; perpetrators and victims did not live somewhere far away but among us. In conjunction with her work on the project, the artist experienced precisely this: "It is only by being personally affected that history can really be experienced. So it was only my knowledge of the past, my dealing with history which changed my perception of places: They became charged, meaningful and different."

Passing on a sense of being directly affected – especially to young people – is one of the aims pursued by the National Fund through its project sponsorship and the related educational work.

There was no lack of projects which served to provide direct assistance for elderly Holocaust survivors in the Year of Remembrance 2008. For these victims, important social projects in Austria, Europe and overseas were sponsored, for example: In Vienna, ESRA, the center for psycho-social, social-therapeutic and socio-cultural integration for the care of survivors of National Socialist persecution who had not yet been reached; in Israel, the Central Committee of Jews from Austria for their nationwide project “meals on wheels”, the delivery of food to the clubhouse in Tel Aviv for pensioners originating from Austria and other forms of social assistance; in the USA, the program Selfhelp Community Services for the support of Austrian Holocaust survivors in New York; and in Serbia, the Day Care Center and Homecare for Holocaust survivors in Belgrade, which offers social services and care to elderly Holocaust survivors who often only receive the minimum income and live on the poverty line.

### The publication of life stories

In addition to this targeted sponsorship of projects, in the Year of Remembrance 2008, a main priority of the National Fund was the victims, their fates and the publication thereof. Those who were children at the time of their persecution were given special attention. In line with that focus, this annual report features life stories of people from various groups of victims who experienced the years of persecution as children or young people. The life stories presented here document the years 1938 to 1945 from the victims' perspective. Moreover, they provide insight into the lives of these people after 1945 and their feelings and relationship towards present-day Austria.

Five life stories were selected, which are representative of the fates of all other persecutees.

The ten-year-old Doris Lurie and her mother had to hurriedly leave Austria directly after the *Anschluss* as the mother's passport was only valid for a few more days. There was no time for goodbyes. They both left all of their worldly possessions behind and traveled on the last train, which was repatriating tourists, to Switzerland. From there, and sometimes amid great danger, they managed, via France and Great Britain, to reach South Africa where Doris Lurie now lives.

The concise recollections of Rudolfine Kolmer document the persecution suffered by children with one Jewish parent. While many of those affected tell of the ordeal suffered at school, others tried to conceal their Jewish origins. Rudolfine Kolmer describes her experience of 13<sup>th</sup> March 1938 and how she suddenly became aware of her Jewish origins.

The fates, persecution and daily lives of the Carinthian Slovenes and partisans during National Socialism took a very different form. Katja Sturm-Schnabl was seven years old at the time of the *Anschluss*. Like many Carinthian Slovenes, she and her family were resettled. She meaningfully describes camp life and the fear that she experienced there as a child.

Andreas H.'s writings provide an insight into the persecution of Roma and Sinti. Andres H. was born in 1942 in wooden barracks at the camp Lackenbach and was finally freed aged three. With the exception of a few scant memories, most of what he knows of that time comes from the stories of his parents and siblings who were with him in the camp and he appeals to the readers not to forget the suffering inflicted on people, above all children, during the Holocaust.

The recollections of Ingeborg Dürnecker, who was sent to the notorious children's institution “Am Spiegelgrund” as a young girl, give us an idea of the daily routine that a child there had to survive, despite or perhaps due to the terseness of her description and the succinct style. In this children's institution, erected in 1940 on the grounds of the Sanatorium Am Steinhof in Vienna, over 800 sick or disabled children were murdered under National Socialist rule as part of the so called child euthanasia program.

## YEAR OF REMEMBRANCE 2008

What these biographical testimonials have in common, despite the differing stories of persecution and the narrators belonging to different groups of victims, is the fact that they shed light on the suffering and brutality and attempt to record experiences for others in the form of life stories. All the reports bear witness to the bewilderment, powerlessness, fear, the traumas suffered and the need for the present documentation of all these terrors experienced in the past to serve as a warning to the current and successive generations so that they may never allow the rise of such a regime again. They are to be understood as an attempt to render the indescribable describable and comprehensible, to bring understanding to that which cannot be understood and to contribute to a peaceful future.

Publishing and therefore making accessible life stories is all the more important as the younger generation has already been born into an era and a society in which the difficult fates suffered by people at the time are becoming increasingly intangible due to the temporal distance to the events. The circumstance that the survivors of National Socialist terror live scattered across the world is compounded by the fact that their number is ever decreasing on account of their age. As a result, the following generations have increasingly fewer opportunities to listen to these people speak as witnesses from the time about past events and their lives and also to benefit from their wealth of experience, their reasoning, warnings and suggestions for a peaceful social harmony in the future.

In the light of the importance of conveying the personal testimonies of the victims about their stories of persecution, the National Fund took the Year of Remembrance 2008 as an opportunity to provide its homepage as a platform for the publication of life stories from its extensive archive. The homepage is intended, as a topic-specific information platform, to do justice to the concerns of the victims, to maintain a vital dialogue between contemporary witnesses and the younger generation and to offer schoolchildren and all interested persons the opportunity to expand their knowledge by this dimension of personal stories. In addition to its importance for those affected themselves, the National Fund considers this a further step in its educational and socio-political mandate.

Moreover, in the Year of Remembrance, the National Fund was able to publish survivors' life stories at various exhibitions. To mark the Year of Remembrance 2008, two special events were held by the Parliament, which offered the opportunity for some of these valuable contemporary historical documents to be read out, making them accessible to a wider public. The autobiographical testimonials presented at the commemorative events in Parliament give an insight into the daily routine of those living under persecution, into the hardships and fears of these people, and they highlight the acts of discrimination that these people and their families had to tolerate and suffer but also their courage, hope and will to survive.

Another opportunity to bring the personal recollections of the National Fund's applicants to the attention of the public during the course of the Year of Remembrance was presented by a reading as part of the "Day of the Diary" organized by the Austrian Literary Society. With the title "Fragments of life – the diary as a testimonial of persecution, flight and exile", actors read out diary entries of people selected by the National Fund who had been persecuted by the National Socialist regime.

### The work of the National Fund on an international level

On an official international level, the National Fund is fulfilling its educational and socio-political mandate as the coordination office for the Task Force for International Cooperation on Holocaust Education, Remembrance, and Research (ITF). In the Year of Remembrance 2008, Austria, which has been an active member of the Task Force since 2001, held the chairmanship. In order to politically express the significance of the Austrian chairmanship of the ITF in this important Year of Remembrance, at the invitation of the President of the National Council, Mag. Barbara Prammer, the ITF convened at the Austrian Parliament in Vienna.

### Preserving memory for the future

The future of remembering history depends on its subjective as well as objective ability to continuously renew itself and to create ways in which people can identify with it, because just as the past requires reinforcing through remembrance, this remembrance must also be reinforced in the present. The well-known Holocaust researcher James Young put it like this: "What is remembered of the Holocaust depends on how it is remembered, and how events are remembered depends in turn on the texts now giving them form."

Through its work, the National Fund wants to contribute towards the preservation of remembrance for the future. With its broad range of initiatives and events, the Year of Remembrance 2008 presented the opportunity to convey to the public the effects of the National Socialist persecution and reign of terror and can be considered a further milestone on the path of personal remembrance towards a collective memory. In its function as a mouthpiece of the victims and as representative of the Republic of Austria, the National Fund wishes to make an active contribution towards shaping the collective memory and in an educational and socio-political regard which goes beyond the Year of Remembrance 2008.

### ***Dr. Renate Stefanie Meissner (born 1959)***

*studied Ethnology and Jewish Studies and has been the Deputy Secretary General of the National Fund since 1995. Since 2006, she has been the Scientific Director of the National Fund.*

# A DEPARTURE FROM THE VICTIM THEORY

GUEST CONTRIBUTION BY HEIDEMARIE UHL

If one were to chart the course of Austrian memory, March 1938 would be of key significance. After 1945, the *Anschluss* was the main historical point of reference for the “first victim” theory about the innocent people of Austria, which was occupied by foreign powers using military aggression and handed over to the aggressor only by a treacherous minority while the true Austria hoped for liberation from the Nazi yoke. The “anti-Fascist basic consensus” which was reflected by the official self-portrayals directly after the war was, however, soon succeeded by the anti-Communist basic consensus of the Cold War. A few years after 1945, resistance was considered Communist, the term *KZler* (“concentration camp inmate”) became a swear word. During the following decades, the portrayal as “the first victim” of National Socialism was above all limited to the image projected abroad. In Austria, a different victim theory determined the prevailing historical image: The Austrians featured not as victims of National Socialism but, on the contrary, as victims of the war against National Socialism; military service in the German Armed Forces was considered acting in honorable defense of the homeland.

The fate of the Jewish Austrians was beyond the perceptual horizon of the Austrian post-war memory. It was the few Jews who had returned that commemorated their “murdered brothers and sisters” and the destruction of their synagogues (from the text of a memorial plaque erected by the Jewish Community Graz in November 1963) – the Austrian public did not see itself to be affected. This was only to change upon the broadcast of the television series “Holocaust” in 1979.

It is no coincidence that the conflict surrounding the “unresolved” past arose due to the contradictions between the official victim theory and its powerful, also politically supported opposition. How could the presidential candidate Kurt Waldheim speak of fulfilling his duty in the German Armed Forces – while the Declaration of Independence of 27<sup>th</sup> April 1945 spoke of the forced Austrian participation in a war of aggression? What was alarming was the high level of support for Waldheim among the Austrian population. The Waldheim debate surprised and shocked above all the academic contemporary history community and the initiatives for socio-political enlightenment.

The Year of Remembrance 1938/1988 became an answer to the insecurities caused by the Waldheim debate. Within the scope of this opportunity for a fundamental social debate on National Socialism’s place in Austrian history, the assessment of March 1938 was of prime importance. The advocates of the victim theory – including former resistance fighters – stood in opposition to the critical voices of the “other Austria”<sup>1)</sup>, who viewed it as a “historical lie” (Robert Menasse) and the repression of the National Socialist past.

At this time, a new perspective began to gain in prominence: The loss of sovereignty in March 1938 no longer stood in the foreground – in this regard, Austria could at all events claim the status of a country occupied by external military force – instead the question of the actions of Austrian society in the years 1938 to 1945 became the focus. The attention was directed at the enthusiasm for the *Anschluss* to Nazi Germany of the vast majority, at the Austrian participation in the humiliation, plundering, expulsion, deportation and murder of the Jewish population, and at the persecution of political opponents and other unwanted groups.

In the Year of Remembrance 1938/88, the course was set for the change in attitude, from “first victim” to a society which shared responsibility for the “rise and functionality of National Socialism” (Gerhard Botz) and particularly for the realization of the Holocaust. This new stance was discussed and communicated in a multitude of commemorative ceremonies, school and educational activities, exhibitions, events and press reports. The proof of the shared responsibility was not least found in the photographic documentation of the *Anschluss* celebrations, not only in Vienna, but also in the provincial capitals and even in smaller towns and villages. These pictures could now, often for the first time, be viewed in exhibitions, newspaper articles and media documentation.

The Year of Remembrance 2008 has demonstrated that the departure from the victim theory, which was still politically hotly contested in 1988, has now become widely accepted. The lack of debates and controversy is an indication that “1938” has lost its contentiousness and that there is a general consensus as to the shared responsibility borne by Austrian society. Reference to the victim’s myth – as expressed, for example, by Otto Habsburg at the ÖVP commemoration ceremony in Parliament – today appears, in an age of a trans-national culture of remembrance for the victims of National Socialist persecution, to be historical political folklore which can barely be taken seriously.

Seven decades after 1938, two decades after 1988, the new view of March 1938 as that of the beginning of Austrian involvement in the National Socialist system of rule is firmly ensconced in the Austrian memory. In the future, it is likely to be of importance that the self-critical reflection on the involvement of one’s own society in the National Socialist rupture of civilization is safeguarded from being ossified in the rituals of routine remembrance.

Aleida Assmann recently noted that remembrance days not only serve to commemorate identity-forming historical events but above all, they also serve to introduce new generations to the cultural memory of a society. To keep open this window of opportunity for a critical reflection on one’s own society – and also on its culture of remembrance – for subsequent generations could be a role of future “years of remembrance”.

***Dr. Heidemarie Uhl (born 1956)***

*began work as a historian at the University of Graz in 1988. From 1994 to 2000, she was active in the Special Research Group “Modernity – Vienna and Central Europe around 1900”. Since 2001 she has been working for the research program “Places of remembrance” at the Commission for Cultural Sciences and the History of Theater of the Austrian Academy of Sciences in Vienna. In 2005 she qualified as a professor in general contemporary history at the University of Graz. In 2009, Heidemarie Uhl was a guest professor at the Hebrew University of Jerusalem. Her main areas of research are studies in memory, dealing with the National Socialist past, the theory of cultural sciences as well as culture and identity in central Europe around 1900.*

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# THE AUSTRIAN PRESIDENCY OF THE ITF

## GUEST CONTRIBUTION BY FERDINAND TRAUTTMANSDORFF

In March 2008, Austria assumed the presidency of the Task Force for International Cooperation on Holocaust Education, Remembrance and Research (ITF) from the Czech Republic. The Austrian delegation believes that, a year later, we handed over a more consolidated and dynamic Task Force to the subsequent Norwegian presidency of this international organization of which 28 states are presently members. Whether this constitutes, in the final analysis, a success is to be judged by the other member states and the organizations, staff and supporters involved. In any case, as a delegation, we have been pleased to hear the widespread praise of the Austrian presidency, as we believe we prepared ourselves well for this task and carried it out with great dedication. But we should like to address this praise also to our generous and committed supporters, such as the Austrian Parliament, particularly the President of the National Council, Mag. Barbara Prammer, the provinces of Upper Austria and Vienna as well as the City of Linz. Of course this also applies to the Austrian Federal Government, particularly the two financing ministries, i.e. the Foreign Ministry and the Federal Ministry for Education, the Arts and Culture, and the equally supportive Interior Ministry. But we were all in agreement that the presidency would never have been successful without the full – and also financial – support of the National Fund of the Republic of Austria. The representatives of the National Fund, the above mentioned federal ministries, the Documentation Centre of Austrian Resistance and the Academy of Sciences form the pillars of the Austrian delegation which prepared for and took on the presidency.

In the opinion of our delegation, the most important effects of this presidency, building on nine years of membership of this organization, are those that are not published in any report. The first effect is that Austria has finally found its place among the countries most committed to cultivating remembrance as well as educational and research activities on this darkest chapter in European history. Furthermore, Austria is also genuinely dealing with the omissions in our perception of our historical responsibility. Indeed, it can now be regarded as accepted that this work in Austria is today no longer only supported by a small minority of stalwarts while a wider public's interest in these activities remained motivated by the interest in cultivating the Austrian image. Now, this work has become – while a certain lack of understanding and even resistance still continue to occur – a part of the mainstream socio-political commitment in Austria. As a matter of course, this fact is now also becoming increasingly accepted on an international level. The second effect is that, through the Austrian ITF delegation, a tight group of like-minded activists has further developed, who, on various levels and in various institutions, are working on removing the still existing deficits in the acceptance of the responsibility that the Holocaust has created for the Austrian as well as other societies as a whole and present as well as future generations.

***Dr. Ferdinand Trauttmansdorff (born 1950)***

*joined the Austrian diplomatic service after completing his law studies in 1981. Since then he has worked in the Austrian representation in Geneva, in the embassies of Bucharest, Washington and Budapest and as a Head of Department at the International Law Department of the Foreign Ministry. From 1999 to 2005 he was ambassador in Cairo, Khartoum and Lisbon before becoming Head of the International Law Department. In 2010 he was appointed Austrian ambassador to Prague. Ferdinand Trauttmansdorff was Chairman of the ITF from 2008 to 2009.*



“Suddenly, in March 1938, my life changed, although I was only ten years old.”

*RUDOLFINE KOLMER*

# HOW A TEN-YEAR-OLD EXPERIENCED THE 13<sup>TH</sup> MARCH 1938

**RUDOLFINE KOLMER**

Until March 1938, the fact that I was Jewish was unimportant to me. In Jewish company, my parents also discussed Jewry but otherwise the topic of conversation, as far as was possible during Austrofascism, was left-wing politics. Suddenly, in March 1938, my life changed, although I was only ten years old.

12<sup>th</sup> March 1938: My mother cried, my father seemed depressed. A storm shook the windows. The next morning, I went to the "Konsum" store in our building with my milk can to get some milk. Passers-by in the courtyard of the house said "There goes the Jew!" The words sounded hostile, I haven't forgotten them, and I can still see the scene on the street in my mind.

This was followed by events which had a depressing effect on me as a child. My father was immediately given notice without pay, we had to vacate the apartment within 14 days, the search for an apartment began, we were turned away everywhere for being Jewish. My mother tried to find an apartment in Mödling near Vienna where she had acquaintances. At the train station we were greeted by a sign "Mödling, free of Jews". In the end, the chauffeur of Leopold Figl took us into a single family house in Vienna's Floridsdorf district.

Fellow students at school no longer wanted to share a changing room with me during swimming lessons. My mother knitted pullovers from home so that our family had an income. As my mother was not Jewish, we were afforded a little more protection.

I was no longer permitted to attend the academic high school and did not attend school at all until the fall of 1945. It was only in fall 1945 that the City Schools Board permitted me to again attend the seventh grade of an academic high school. Fortunately, I passed my high school leaving certificate.

From 1944, I was forced to work in a metalware factory, where there were also a lot of Hungarian Jews. I was in the cellar and had to pass pieces of metal for welding. When I went to the bathroom, the foreman said, "You, Jew, if you go out too often you'll be sent to a concentration camp!" My father was also forced to work as a laborer; from 1944 he lived underground near Vienna.

My parents and I survived; two brothers and a sister of my father were deported and murdered. My cousins survived by emigrating. We didn't lose any property as we didn't have any; the few savings we had were used up after 1938 to survive on.

# THE NATIONAL FUND OF THE REPUBLIC OF AUSTRIA FOR VICTIMS OF NATIONAL SOCIALISM

### General Information

The National Fund of the Republic of Austria for Victims of National Socialism (National Fund) was established in 1995 as an expression of Austria's moral responsibility towards all victims of National Socialism. The Federal Law on the National Fund of the Republic of Austria for Victims of National Socialism (Federal Law Gazette no. 432/1995) provides for a gesture payment of 5,087.10 Euro (70,000 Schilling) per person as a symbolic recognition. The payments are financed from the Federation's annual budget. In cases of social need, a second and third payment is possible.

Those entitled to the gesture payment are persons who were persecuted by the National Socialist regime on political grounds, on grounds of origin, religion, nationality, sexual orientation, physical or mental handicap, or of accusations of so-called asociality, or had become the victim of typical National Socialist injustice by other means or who left the country to escape such persecution.

Additionally, persons entitled to file an application must further fulfill the following requirements. They must have:

- been citizens of the Federal Republic of Austria or been domiciled in Austria on 13<sup>th</sup> March 1938, or
- been permanently domiciled in Austria for a period of approximately 10 years as per 13<sup>th</sup> March 1938, or been born as children of such persons in Austria within that period, or
- lost their status as citizens of the Federal Republic of Austria or their place of residence of at least approximately 10 years before 13<sup>th</sup> March 1938 because they left the country due to the imminent march of the German Armed Forces into Austria, or
- been born before 9<sup>th</sup> May 1945 as children of such persons in concentration camps or under comparable circumstances in Austria.

A committee consisting of the chairman of the Board of Trustees, a representative appointed by the Board of Trustees and three further members appointed by the chairman with the consent of the Main Committee of the National Council, meets several times a year to decide on applications for the receipt of a gesture payment.

The supreme body of the National Fund is the Board of Trustees, which either determines the payments to be made by the Committee or decides itself on payments, controls the appropriate use of funds and approves the statement of account.

As an institution which has been working for the victims of National Socialism for 15 years and supports them in many matters, the National Fund has become a symbol for consciously dealing with history and a visible sign for an Austria that has not forgotten the victims of National Socialism.

The special responsibility which Austria professes to have towards the victims of National Socialism is also expressed through the fact that the National Fund was established at the National Council. The President of the National Council presides over the bodies of the National Fund – the Board of Trustees, the Committee and the Secretary General. Hannah M. Lessing has been the Secretary General since 1995.

Against a backdrop of essentially unchanged work demands, the number of personnel in the National Fund in 2008 and 2009 remained the same as the previous years:

On the cut off days 31<sup>st</sup> December 2008 and 31<sup>st</sup> December 2009, 20 members of staff were employed, twelve full time and four part time. Four members of staff were employed on a freelance basis. The personnel and material costs of the National Fund (including the depreciation of the capital assets) came to 1,524,648.89 Euro in 2008 and 1,479,704.37 Euro in 2009.

## Tasks

- The main task of the National Fund is the processing of gesture payments as an expression of recognition for the injustices suffered by people in Austria due to National Socialism. Fundamentally, all surviving victims are eligible to receive a payment – thus people who have so far received no recognition can also be taken into account. In contrast to the proceedings of the General Settlement Fund, there is no deadline for submitting applications.
- In addition to the gesture payments, the National Fund also deals with the processing of the compensation payments pursuant to Sec. 2b National Fund Law (NF Law) – the so called compensation for tenancy rights. Through the Washington Agreement in 2001, the National Fund was also entrusted with the compensation of withdrawn tenancy rights, household effects and personal valuables. 150 million US Dollars was earmarked for this purpose. Applications could be submitted until 30<sup>th</sup> June 2004. The compensation took the form of a lump sum payment of 7,630 Euro or 7,000 US Dollars per person. The amount remaining after all applications have been processed is distributed in the form of an additional payment of 1,000 Euro per person.
- By the end of 2009, a total of approximately 32,500 applications for a gesture payment of 5,087.10 Euro had been received and approximately 23,000 applications had been received pursuant to Sec. 2b of the NF Law. A total of approximately 30,000 applications for gesture payments and over 20,000 applications pursuant to Sec. 2b were approved.
- Viewed according to the countries in which the applicants are resident today, the following picture emerges: Applications were submitted from 75 countries worldwide. The greatest number of applicants, 36 %, are resident in the USA, followed by victims in Austria with around 22 %, Israel 14 %, Great Britain 11 % and Australia 5 %.

- The National Fund places particular emphasis on communication with the applicants. As a result, the staff of the National Fund are in regular contact with victims living in around 75 different countries. Personal support is particularly important for the applicants – regardless of the processing of their applications. The staff of the National Fund have been able to develop an especially trusting relationship with many of the victims.

Pursuant to the NF Law, the Secretary General is assigned the task of cultivating the relationship between Austria and the victims of National Socialism living abroad. In this connection, the public relations work of the Secretary General, in the form of business trips, lectures and work with the media, also constitutes a key component of the Fund's communication with the applicants.

- Due to the specific knowledge of its staff on questions regarding National Socialism and restitution, but also because of its experience in sensitively dealing with the victims, the National Fund has established itself as a reliable and competent point of contact and coordination in matters of restitution over the years. The National Fund also regularly responds to general inquiries in connection with the National Socialist era in Austria.

Since November 1995, the staff have personally met with over 19,000 people and in addition to this have also been available for the applicants for communication by telephone or by letter.

The spectrum of tasks carried out by the National Fund extends well beyond the mere processing of payments: The support of needy Holocaust survivors throughout the world, the utilization of looted art which has remained "heirless" and numerous projects to increase the awareness of National Socialism and its consequences also count among the range of activities of the Fund.

## NATIONAL FUND

- In accordance with its legal mandate, since 1996 the National Fund has been supporting projects which are dedicated to the survivors of National Socialist persecution and the remembrance and commemoration of the victims of the National Socialist regime.

The projects are financed from the budget of the National Fund of the Republic of Austria and from the means of the International Fund for Victims of National Socialism.

- By 1998/1999, the range of activities of the National Fund had already been extended to include the disposition of non-restitutable artworks for the benefit of victims of National Socialism. Artwork which was seized from its owners under the National Socialist regime is subject to this disposition. By exhausting all routes of enquiry, the National Fund endeavors to reach persons who are possibly entitled to a restitution before the art objects are disposed of. For this purpose, since 2006, the National Fund has been running a comprehensive online art database at [www.kunstrestitution.at](http://www.kunstrestitution.at), in cooperation with the museums of the Federation and the City of Vienna. This database so far contains information on around 9,000 objects in the collections and museums of the Federation and the provinces. It enables victims of National Socialist art theft or their heirs to specifically search for seized and restitutable art objects. In order to reach a further circle of potentially eligible persons, the database has also been available in English since July 2007 at [www.artrestitution.at](http://www.artrestitution.at).

The National Fund also maintains strong contacts with the Restitution Commission Vienna and the Commission for Provenance Research. This cooperation ensures that the database is continuously expanded and that it is up to date with the current research status.

Artworks whose owners can no longer be established are transferred to the National Fund and disposed of for the benefit of the victims of the National Socialist regime.

- Further to this, a bill was passed in 1998 (Federal Law Gazette I no. 182/1998) which authorizes the National Fund to administer the funds transferred to it by the Nazi Persecutee Relief Fund. In addition to individual payments to needy Holocaust survivors, the projects sponsored by the National Fund are also partially funded from these funds. In 1999 around 109.1 million Schilling (around 8 million Euro) were transferred to the National Fund from this Fund.
- In 1999, the Hardship Compensation Fund was established by means of a decision of the Board of Trustees. The purpose of this fund is to take into account persons aggrieved as a result of National Socialism who fulfill the criteria of the National Fund to a large extent, but not in their entirety, and whose rejection by the National Fund would constitute a particular hardship. The Hardship Compensation Fund was bestowed with 508,710 Euro (7 million Schilling) from the project funds of the National Fund. Between 2000 and 2009, 87 payments of 5,087.10 Euro have been made from the Hardship Compensation Fund, resulting in a total disbursement of 442,577.10 Euro.
- Austria has been an active member of the ITF (Task Force for International Cooperation on Holocaust Education, Research, and Remembrance) since 2001. This task force has implemented transnational programs for research and educational work on the Holocaust. The coordination department for Austria is located at the National Fund.
- Furthermore, since 2009 the National Fund has been entrusted with the coordination of the redesign of the Austrian memorial in the former concentration camp and present State Museum Auschwitz-Birkenau in line with the notions of an appropriate and up-to-date culture of remembrance.

**Decision-making:  
Victim recognition**

In accordance with the elements of persecution named in Sec. 2 (1) item 1, the NF Law provides the opportunity for various groups of persons to be recognized as victims of National Socialism. This recognition is expressed through the gesture payment.

Since 1995, in addition to people who already belong to a recognized group of victims, people who had until then failed to receive recognition were also gradually recognized on the basis of this provision. With its decisions, the National Fund was able to contribute to an increased socio-political sensitivity with regard to the perception of individual groups of victims and different forms of persecution.

In 1996, the so-called Spanienkämpfer received recognition as victims of political persecution. These persons had participated in the Spanish Civil War in the fight against General Franco's army and were subsequently extradited to the German Reich and detained in concentration camps.

In 1997, the National Fund recognized widows, widowers and children of people who had been executed, had died in custody or in concentration camps as victims, as well as parents of children who had fallen victim to euthanasia. People with one Jewish parent – so-called first grade half-castes – were also assigned victim status even without the existence of an act of persecution due to the general state of peril they were in, as did so-called Carinthian Partisans. In 2007, the children of Carinthian Slovenes who were affected by the National Socialist rule were also recognized as victims, taking into account their special circumstances.

In 1998, people who had emigrated for "racial" or political reasons from 12<sup>th</sup> July 1936 – the day of the so-called July Agreement between Austria and the German Reich – were recognized as victims.

Children who were detained in the sanatorium "Am Spiegelgrund" during the National Socialist era and were subject to mistreatment and often medical experimentation were also recognized as victims for the first time.

In 2002, the recognition of conscientious objectors and deserters of the German Armed Forces took place for the first time.

From the outset, people who were resettled from the "Döllersheimer Ländchen" between 1938 and 1941 for the purposes of the construction of the military training area Allentsteig (Lower Austria) also qualified as victims in the meaning of the NF Law.

# NATIONAL FUND

## The years 2008 and 2009

### *Gesture payments and payments pursuant to Sec. 2b of the NF Law*

In 2008 and 2009, applications for the gesture payment continued to be received by the National Fund. Experience to date has shown that particularly after so many years of waiting, the decision to file an application is for many victims a difficult and meaningful process as it concerns the fundamental recognition as a victim. For this reason, the staff of the National Fund is expecting to receive further applications in the future.

Overall, during the 2008 and 2009 business years, the National Fund recorded an increase in applications for second and third payments due to social need, which was predominantly to be attributed to the increasing age of the applicants. For many victims who are living under particularly difficult circumstances in some countries the support of the National Fund is essential and enables aid which is often urgently required.

In the case of the additional payments from the remaining balance pursuant to Sec. 2b of the NF Law, the majority of the disbursements in 2008 and 2009 were made to heirs of late applicants. In these cases, a complex search for heirs is often necessary before the payment can be made.

In 2008, 184 gesture payments, each amounting to 5,087.10 Euro, were carried out. Therefore a total of 936,026.41 Euro was disbursed.

In addition to the basic amount, 21 people received further payments due to social need – the sum of these payments amounted to 106,829.10 Euro.

Moreover, in 2008, a total of ten applications pursuant to Sec. 2b of the NF Law were positively decided and a total of 67,320.39 Euro was disbursed.

A total of 473 additional payments from the remaining balance were made in 2008 amounting to 447,798.89 Euro.

In 2009, 146 gesture payments, each amounting to 5,087.10 Euro, were carried out. In total 742,716.45 Euro was disbursed.

In addition to the basic amount, 29 people received further payments due to social need – the sum of these payments amounted to 143,188.80 Euro.

Moreover, in 2009, a total of 17 applications pursuant to Sec. 2b of the NF Law were positively decided and a total of 129,439.16 Euro was disbursed.

An additional 398 payments from the remaining balance were made in 2009 amounting to a total of 398,448.01 Euro.

## *Project finance*

In 2008, 135 projects were financially supported with a total sum of 1,607,863.75 Euro. Of these projects, 125 were supported with funds from the National Fund to a total of 1,273,863.75 Euro and ten projects were supported using funds from the Nazi Persecutee Relief Fund totaling 334,000.00 Euro.

In 2009, 108 projects were financially supported with a total sum of 1,304,341.84 Euro. Of these projects, 104 were supported with funds from the National Fund to a total of 1,153,641.84 Euro and four projects were supported using funds from the Nazi Persecutee Relief Fund totaling 150,700.00 Euro.

## *Hardship Compensation Fund*

At the end of 2008, the funds of the Hardship Compensation Fund stood at 91,567.73 Euro. In 2008, no payments were made from the Hardship Compensation Fund.

In 2009, five payments totaling 25,435.50 Euro were made. At the end of 2009, the Hardship Compensation Fund therefore stood at 66,132.23 Euro.

## *Funds from the Nazi Persecutee Relief Fund*

In 2008, ten projects were supported with funds from the Nazi Persecutee Relief Fund to a total of 334,000.00 Euro.

In 2009, the Committee of the National Fund resolved – in addition to the financial support of four projects to a total of 150,700.00 – one individual payment of 5,087.10 from the funds of the International Fund for Victims of National Socialism, which will, however, not be carried out until 2010.

By the end of 2009, with the exception of the individual payment still to be made, the remaining funds of the “Looted Gold Fund” had been exhausted.

## *Art Restitution*

Within the framework of its legal mandate to utilize heirless art objects, the National Fund also carried out its role as active observer of the sessions of the Commission for Provenance Research and the Restitution Commission Vienna in 2008 and 2009.

In early 2008, the restitution of a painting by Adriaen van Ostade (“Bauernbesuch/In der Bauernstube”) was able to be carried out. The Art Restitution Advisory Board had already recommended the restitution of the painting in 2007 after it had been able to be attributed to the former Bruno Jelinek collection by staff of the Commission for Looted Art in Europe as a result of its publication in the art database.

In 2009, the National Fund helped resolve the provenance and tracing of legal successors in several cases. A painting by Ludwig Koch (“Kaisers Dank”) from the Vienna Museum could be restituted in 2009 after its unambiguous identification by the descendants of the original owner.

On 11<sup>th</sup> September 2009, in its 48<sup>th</sup> session, the Advisory Board for the first time made a recommendation that the National Fund was to receive heirless art objects so as to dispose of them appropriately. The objects are over 8,000 “ownerless” publications from the Austrian National Library which had come to be there via the Gestapo. Provenance research carried out by the library had yielded no indications as to the previous owners of these items.

In late 2009, the scope of application of the Art Restitution Law was extended by an amendment (Federal Law Gazette I no. 117/2009). Since then, in addition to art objects, other moveable cultural items are covered by the scope of the law. Moreover, not only objects from the Federal museums and collections but also those which are otherwise directly owned by the Federation are included. Furthermore, items which were seized during 1933 and 1938 on the entire territory of the German Reich can also be restituted.

### *Redesign of the Austrian Memorial at Auschwitz-Birkenau*

In July 2009, as stipulated in the government program (chapter “Art and culture”, item 17 “Responsibility towards the victims of National Socialism”), by means of a resolution by the Council of Ministers, the National Fund was entrusted with the redesign of the Austrian memorial in the former concentration and extermination camp and present State Museum Auschwitz-Birkenau.

In August 2009, the National Fund commissioned the development of a rough concept containing the main topic areas of the new exhibition. This concept, compiled by Univ.-Doz. HR Dr. Brigitte Bailer, Director of the Documentation Centre of Austrian Resistance, Dr. Heidemarie Uhl from the Institute for Cultural Sciences at the Academy of Sciences and Univ.-Doz. Dr. Bertrand Perz from the Institute for Contemporary History of the University of Vienna, will be examined by two advisory committees – an academic and a societal advisory board.

On 24<sup>th</sup> November 2009, the Academic Advisory Board convened in the Parliament. The ten person committee is composed of experts from the relevant fields of expertise such as Holocaust research, memorial site education and the culture of remembrance. The members appointed Hon.-Prof. Dr. Wolfgang Neugebauer, former Director of the Documentation Centre of Austrian Resistance, as their chairperson and Dr. Brigitte Halbmayr from the Institute for Conflict Research as deputy chairperson.

### Outlook

The continued receipt of applications for gesture payments is to be expected. In this regard, it has to be remembered that all those who were born up to 8<sup>th</sup> May 1945 are able to apply – the youngest possible applicants will therefore be turning 65 in 2010. An increase in the number of applications for second and third payments due to social need is also to be expected – not least due to the age of those concerned.

Since the funds of the “Looted Gold Fund” have been exhausted, with the exception of a single individual payment, no further payments will be made from this Fund.

A particular task of the National Fund is the sponsorship of projects with an educational mandate. The sponsorship of projects in schools and also of exhibitions, films, books etc. is an instrument of educational policy for the future which must not be underestimated. Since 2008, all projects financially supported since 1996 with means of the National Fund and the Nazi Persecutee Relief Fund can also be viewed in an online database.

In the field of art restitution, the National Fund is planning to integrate the outcomes of the provenance research of the provincial museums into the art database. In doing so, in accordance with the basic principles of the Washington Conference 1998 (Washington Conference Principles on Nazi Confiscated Art), a register which is as comprehensive as possible containing information on “heirless” art and cultural objects confiscated during National Socialism is to be created.

# PROJECT SPONSORSHIP BY THE NATIONAL FUND

BY EVELINA MERHAUT

In addition to the many payments to individuals, the National Fund of the Republic of Austria for Victims of National Socialism also sponsors projects which have a direct connection to the National Socialist era and Austria. The projects of the National Fund are financed from the budget item "project sponsorship" stipulated in the National Fund Law. Until the end of 2009, funds from the Nazi Persecutee Relief Fund were also used.

In this regard, the National Fund strives to devote the same level of attention to the projects, whether they be large or small, and to assess them on a uniform basis, guaranteeing all applicants the same chance of success. Consideration of the variety of subjects is as important as the broad spread of the various people/organizations carrying out the projects.

The National Fund supports projects relating to all groups of victims that have been recognized by the Committee of the National Fund. In 2008 and 2009, a total of 243 projects were supported to a total of 2,912,205.59 Euro. The focus was placed on projects benefiting the living victims or their descendents in Austria and abroad. In many cases, those affected and their descendents still suffer from the effects of National Socialism today.

The spectrum of the projects which come into consideration for financial support ranges from initiatives with a social, socio-medical and psychotherapeutic background, to scientific works – above all book publications – as well as conferences and archival projects and artistic productions of all descriptions: documentaries, exhibitions, theater and opera performances, concerts etc.

In order that the victims of National Socialism are never forgotten, the National Fund above all supports remembrance projects such as the compilation of lists of names of concentration camp inmates. Yet it is not only the victims of the inhuman National Socialist system who are commemorated but also those who, often at danger to their own lives, assisted Jewish and other persecutees.

Moreover, initiatives in the field of education are also given particular focus. Above all, through conversations with contemporary witnesses, who bear witness to their past through telling the stories of their lives, school students are prompted to confront the crimes of National Socialism in a very intensive way. The aim of these projects is to raise awareness among future generations to critically approach the subject of National Socialism and the Holocaust. In order to convey the need to consciously deal with this part of our history, it is also a prime concern of the National Fund to train and raise awareness among Austrian teachers, both in schools and adult education.

The project work of the National Fund has made a lasting change to the image of the country both abroad and in Austria itself.

A few of the projects financed by the National Fund in 2008 and 2009 are presented in closer detail here:

### *Projects with a social background*

For seven years, the “Center for psycho-social, socio-therapeutic and socio-cultural integration in Vienna” (ESRA), which specializes in illnesses in connection with the so called Holocaust and migration syndrome, has been specifically approaching those survivors of National Socialism who have never before been able to take advantage of the help offered by ESRA. ESRA views the continuation of this work and providing as many survivors as possible with the help they require as a great priority. As the need for information, advice, support and therapy continues to be so great among the survivors, concerted efforts must be made, particularly in the coming years, to reach all survivors who require assistance. Around 280 previously unreached people are reached by ESRA each year. Home visits and other measures are made to penetrate the social isolation and loneliness that these people in particular often suffer from.

The Association “Central Committee of Jews from Austria in Israel” offers social and medical assistance for Austrian Holocaust survivors in Israel. Within the scope of the program, the association contributes, for example, towards the costs of orthopedic shoes, vision aids, prosthetic teeth, hearing aids, mechanical walkers, wheel chairs, bed underlays, special beds etc.

As early as 1998, the Jewish Museum Hohenems facilitated the first worldwide meeting of the descendents of Jews from Hohenems (province of Vorarlberg). Ten years later, in summer 2008, around 150 people from around the world (from the USA, Israel, Australia, Switzerland, Italy, Belgium and many other European countries) again met in the museum in Hohenems. Many of them had lost family in the Shoah. The victims’ descendents were able to exchange their often very different experiences of how their families dealt with the past.

### *Art projects*

On 14<sup>th</sup> and 15<sup>th</sup> June 2008, the Sirene Operntheater Vienna showed the opera-monodrama “Anne Frank’s Diary” by Grigori Frid at the Jugenstiltheater am Steinhof. The composer Grigori Frid, born in 1915 in St. Petersburg, considers the diary of the Jewish girl Anne Frank, which she wrote in her Amsterdam hideout during the German occupation until her deportation, as a symbol of human suffering in general. In the foreground there are atmospheric images of the young girl. The increasingly intensifying external events remain in the background. The composer is more interested in the subjective perception of the individual and less in the objective circumstances which led to the catastrophe. Through this form of “shared suffering”, he is able to give the text a universal message. This is not intended to musically underline the horror but, through the music, bring out the human aspect. The opera ends with a scene in which Anne gains hope for her life from the light of day. A vain hope: Anne Frank died in the concentration camp Bergen-Belsen in 1945.

### *Book projects*

The book *Tödliche Romantik. Das legitimistische akademische Corps ‘Ottonen’*, published by the Austrian Association for Student History and written by Christian Prosl, describes the history of this fraternity and its members from 1922 until the Second World War on the basis of, in some cases, previously unpublished personal documents and information. The “Ottonen” was the only fraternity in Austria which almost *in toto* decided to go underground and fight for the resistance against National Socialism directly after the *Anschluss*. Many “Ottonen” were forced to flee; others were sentenced to several years in prison. Their leader Karl Burian was executed on 13<sup>th</sup> March 1944, his close collaborator Dr. Josef Kringinger was murdered in the concentration camp Mauthausen. The idealism of the “Ottonen”, which distinguished them from the other fraternities in the 30s, moved the author to search for reasons for this and, as far as was possible, to examine the ideas, as well as the origins and socialization, of the “Ottonen”.

Another book that is worthy of mention – among many others – was published by the Milena publishing house: Vilma Neuwirth's *Glockengasse 29. Eine jüdische Arbeiterfamilie in Wien*. Until 1938, Jewish and Christian small business owners and workers lived together harmoniously in the building at Glockengasse 29 in the second district of Vienna. In March 1938, neighbors became persecutors and persecutees. Vilma Neuwirth survived the horror and the terror of National Socialist rule in the building in Glockengasse as a so called star-wearer, not least through the courage of her "aryan" mother. In her recollections, she vividly describes the daily changes under the new rulers, the anti-Semitic agitation, youthful imprudence and dramatic separations between 1938 and 1945. The work provides unique insights into the life of a Jewish working class family during the years of Nazi terror, thus making an important contribution to research into contemporary history.

#### *Projects in the field of education*

In 2008, the National Fund sponsored projects in the field of education, such as the project by the Viennese "Radetzkysschule" (Federal Academic High School in Radetzkystraße in the 3<sup>rd</sup> district of Vienna), in which students carried out research into the fates of former Jewish students at their school and came into personal contact with survivors.

#### *Film projects*

In 2009, among others, the television documentary by Tom Matzek *Verfolgt, verschleppt, vernichtet* was sponsored and presented in Parliament in November. This documentary was the fourth part of a five-part series on the Second World War broadcast by the ORF as part of its series *Menschen & Mächte*.

#### *Archival projects*

Decades after the liberation of Austria, the archival holdings which were painstakingly set up by the National Socialists have still not been processed in their entirety. They were often damaged as a result of being stored for years in bad conditions. In order to preserve the contents of these important documents for future generations and to make them available to a wider public, the National Fund also supports a number of digitalization and data processing projects.

One of these projects, initiated by the Institute for Conflict Research, was the compilation of a list of names of Austrians incarcerated in the concentration camp Ravensbrück. The aim of the Institute was to collect the names of as many Austrians as possible who were deported to Ravensbrück, regardless of which group of persecutees they belonged to. It has already been able to determine the names of 2,367 persons. Previous project financing had only allowed for research to be carried out at the victims' welfare authorities and in the provincial archives as well as at the memorial site Ravensbrück itself. With the support of the National Fund, the research was also able to be extended to other archives. Consequently, a representative documentation of all Austrian victims in Ravensbrück is ensured.

The complete list of all projects sponsored by the National Fund can be found at [www.nationalfonds.org](http://www.nationalfonds.org).

#### **Mag. Evelina Merhaut (born 1962)**

*studied History and has been responsible for the projects at the National Fund since 2001.*



“Born in 1936, I grew up with my sister Veronika and my brothers Andrej and Franci in a Slovenian extended family on a farm near Klagenfurt.”

*KATJA STURM-SCHNABL*

# FROM THE RECOLLECTIONS OF A CHILD ABOUT THE NATIONAL SOCIALIST ERA

**KATJA STURM-SCHNABL**

In addition to my parents, grandparents and two aunts, six or eight laborers also lived on our farm and at harvest time there were also day laborers. These adults all treated us children as people in our own right, they involved us in what was happening, took us with them into the fields and the stables and answered our questions smilingly yet seriously. I never heard a bad word spoken and was never even threatened with so much as a spanking. Exciting things happened, like the birth of a foal or calf, a litter of piglets, young dogs or cats, lambs, chicks, meadows full of colorful flowers, a stream with fish, crabs and shells, a forest where you could pick berries and mushrooms. Friends or relatives often came to visit. How exciting it was when they sat at a set table in the reception room on the first floor and conversed with my grandparents and parents. Then we could sit quietly in the corner and hear about so many things about the world beyond our own. During one such visit, it dawned on me for the first time that our world, in which my mother and father were the supreme authorities, was endangered. The visitor, a friend of the family, had brought a map of Europe with him which he hung on the wall in order to explain to my grandfather and the others a situation in which the "Nemci" (the Germans) were doing terrifying and threatening things which could also happen to us.

And one day, a Thursday, when my mother and father were in the town, they came. In uniforms, in boots, weapons fixed, with pistols and military caps on their heads. They stormed into the house, shouted incomprehensible things in abrupt sentences (when I was a child I didn't understand German) and there was immediately indescribable chaos in the house. My aunts cried, the maids cried too – there was great confusion, the "Nemci" shouted and I was gripped by a total panic because my parents weren't there. I hid until they returned home. Then, stony-faced, my mother began to dress us four children (my

youngest brother Franci was two-and-a-half years old, my sister Veronika seven, my brother Andrej five and I was six). A few sacks were gathered and some clothing and such was thrown into them. Then, we – my parents, my aunts and us children (my grandfather was no longer alive and my grandmother was visiting an aunt, her third daughter) – had to leave house and home. "Nemci" to the left and right and us in the middle, that is how we were taken away, we had to walk through the village and then another two kilometers by foot until we reached the road. The red bus, which had been waiting on the road, brought us to a place with many long, low rise wooden barracks within a barbed wire fence. In one such barracks, we met our maternal grandmother, an ancient, fragile little woman (she was 83 at the time), she was lying in this barracks on straw (like we had strewn for the cows at home) and next to her, my uncle's youngest child (a six-week-old baby, Maks). When she saw my mother, she kept repeating "Nemci nas nekam vlečejo." ("The Germans are taking us somewhere.") Yes, and around the barracks were these "Nemci", in uniforms with caps on their heads, with boots, weapons, pistols and unsmiling faces, looking so angry, like I had always imagined the villains in the fairytales to look. One of them took a photo of my mother with us and when he was gone, she said scornfully, "And in my moment of deepest humiliation, he has the impudence to photograph me as well".

*In April 1942, around 1,000 Carinthian Slovenes were "resettled". In Ebenthal near Klagenfurt, there was a so called collection point, from where the families to be "resettled" were taken to "Altreich" where they were interned in camps. Katja Sturm-Schnabl survived the war in the Eichstätt camp in Bavaria.*

The whole story can be read at [www.nationalfonds.org](http://www.nationalfonds.org)

# THE GENERAL SETTLEMENT FUND FOR VICTIMS OF NATIONAL SOCIALISM

### General Information

On the basis of the Washington Agreement of 23<sup>rd</sup> January 2001, the Republic of Austria passed a resolution for the establishment of a General Settlement Fund for Victims of National Socialism (in the following also General Settlement Fund). The General Settlement Fund (Federal Law Gazette I no. 12/2001) has the task of comprehensively resolving open questions of compensation for victims of National Socialism and recognizing through ex gratia payments Austria's moral responsibility for property losses suffered by victims of the National Socialist regime in Austria between 1938 and 1945. Those property losses which until now had not been taken into account, or had only been inadequately compensated by means of previous Austrian restitution or compensation measures are a priority.

The General Settlement Fund is endowed with 210 million US Dollars, of which 25 million US Dollars are reserved for seized insurance policies. The sum of the losses or damages is calculated on an individual basis. People directly affected and their heirs were able to file applications in two kinds of proceedings – claims-based and equity-based. The difference between these proceedings lies in the standard of proof and takes into account the fact that the events occurred over 60 years ago and many applicants only have few documents relating to the National Socialist era at their disposal. The deadline for applications ended on 28<sup>th</sup> May 2003; by this cut off day, the independent Claims Committee had recorded 20,700 applications for monetary compensation.

The General Settlement Fund provides compensation in ten different categories of losses:

- Liquidated businesses, including licenses and other business assets
- Immovable property, unless an *in rem* restitution pursuant to Part 2 of the General Settlement Fund Law has been granted.
- Bank accounts
- Stocks
- Bonds
- Mortgages
- Moveable property
- Insurance policies
- Occupational and educational losses
- Other losses and damages.

In comparison with other national or international compensation measures, according to which only few categories of assets could be claimed or the compensation took place in the form of a lump sum payment, the terms of reference of the individual payments for damages in ten categories are incomparably more complex.

In agreement with the Allied occupying forces of the time and with regard to the economic capacity of the then still young Republic of Austria, Austria's restitution policies pursued the principle of restituting available assets and leaving assets which were no longer available uncompensated. After 1955, there were indeed compensation measures but only to a certain extent. The decision of that time is reflected today in the fact that most claims were made in the categories "liquidated businesses" and "occupational and educational losses", and the highest claims are recognized in these two categories.

By virtue of the General Settlement Fund Law, the General Settlement Fund is an independent legal entity and its headquarters are located in Vienna. On the cut off day, 31<sup>st</sup> December 2008, besides the Secretary General it had a staff of 100, of which 64 worked full time, 14 worked part time and 22 were employed on a freelance basis. By the end of 2009, the staff had been reduced to 69 (54 full time and 15 part time) plus 13 people working on a freelance basis.

The personnel and material expenses for the Fund in 2008 (including the depreciation of the capital assets) amounted to 5,197,357.15 Euro. This amount includes 750,723.00 Euro for the Arbitration Panel for *In Rem* Restitution. In 2009, the total costs amounted to 4,906,047.54 Euro of which 867,761.00 Euro was for the Arbitration Panel.

The Board of Trustees serves as the highest supervisory body of the General Settlement Fund. Its tasks include the approval of statements of account, the financial plan and the presentation of the annual business report. A further body is the independent Claims Committee, which examines and decides on applications to the General Settlement Fund for monetary compensation.

The members of the Board of Trustees and the Claims Committee are listed in the appendix on p. 86 f.

## Procedure

The General Settlement Fund developed its own procedures which had to be drawn up completely from scratch, from the drafting of the application form to the individual operating procedures, from the necessary software to the legal guidelines. The infrastructure, the personnel and the procedures were developed from scratch in order to implement the law as effectively as possible. It was necessary to enable the processing of the 120,000 individual claims as efficiently as possible, to treat identical things identically and disparate things differently, to apply relaxed standards of proof, to develop transparent working methods and not least to provide the applicants with comprehensive information on their claims.

### *Internal Reporting*

In 2004, an internal reporting body was introduced in order to give high priority to the principle of procedural transparency. Within the scope of this reporting, a weekly report is produced that comprises the most important statistics of the individual departments. In this way, the course and development of operating procedures can be summarized and, if necessary, adapted. The progress of the General Settlement Fund can also be tracked on the internet.

### *Back Office/Secretariat*

The back office or secretariat supports both the National Fund and the General Settlement Fund and functions as a vital point of contact for all departments.

Among the main tasks of the staff of the secretariat is the support of the management and division heads as well as the caseworkers of the National Fund, the communications department, the heirs department and the case processing department. In particular, the secretariat is responsible for the entire correspondence of these departments: Forwarding incoming letters, documents and inquiries, sending decisions of the Claims Committee and other letters. Moreover, in the years 2008 and 2009, the back office was responsible for preparing the necessary forms, documents and informative letters for the payments from the General Settlement Fund. Additionally, the ordering system, general administration and supporting the sessions of the Claims Committee also count among the department's tasks.

### *The Archive*

The archive department functions within the General Settlement Fund and the National Fund as a distribution center for all applications. These are given a digital signature after each step of the procedure and forwarded by the department's staff to the next processing step in accordance with the procedure.

During 2008 and 2009, around 71,000 individual files were retrieved and returned to their correct location and the correspondence accrued (internal and external) was incorporated into the relevant files. The volume of the archive to be administrated was recalculated in August 2009 and at this time it came to approximately 690 linear meters, including the holdings already stored elsewhere.

In addition to the regular procedure for dealing with the files, the department is also responsible for a second procedure, especially conceived for the closing payments. Moreover, its staff also assist other departments in certain instances (research on individuals, translations, general office work).

## GENERAL SETTLEMENT FUND

### *The IT Department*

The highly complex, custom-made software, "SV neu" (SV stands for *Standardisiertes Verfahren* – "standardized procedure"), which, as an integrated database application, particularly contains innovative legal informatics functions for processing the applications to the Claims Committee, was extended in October 2008 with an advance payment module and a fully automatic bookkeeping system. Through connecting "SV neu" with the "HV-SAP" software of the Federal Financial Administration, the payments could be made more speedily and, at the same time, significant financial savings were made.

In parallel to the development of the statutory bases for the closing payments, the department's staff conceived the "SV neu" closing payments module which was developed together with an expansion of the bookkeeping system and was able to be put into operation on the due date of July 2009.

Using sophisticated inquiries to the "SV neu" data holdings, case constellations and the status of the application processing were regularly compiled and prepared and presented to the management and specialist departments in a clear and logical way.

With the assistance of modern monitoring and administration software, the department was able to provide almost the entire internal IT infrastructure. By optimizing software (e.g. the internet website and the virus and spam protection) and targeted use of recent developments in the areas of hardware and networks (e.g. virtualization of the server and the implementation of a storage server), not only were the technical efficiency of the IT service and its user-friendliness continually improved but administration and maintenance were also dramatically reduced.

### *The Finance Department*

The Finance Department ensures the smooth handling of all payments of the National Fund and the General Settlement Fund. This includes the payments to entitled persons as well as the processing of the organizational expenses.

The original task of the Finance Department was making the payments of the National Fund. Upon the commencement of the advance payments for the General Settlement Fund, the department's area of responsibility was once again extended.

Since May 2008, the Finance Department has taken on the pre-compilation of all payment documents in the Fund-SAP (FI-Workflow); until this time, this task had been outsourced to the bookkeeping agency of the Federation. Since July 2009, the Finance Department has focused on swiftly carrying out the closing payments of the General Settlement Fund.

All inquiries and concerns relating to payments are regularly forwarded to the Finance Department for processing. This leads to a continued cooperation with other departments and also comprises correspondence with applicants, authorities and banks.

In addition to the mentioned activities, over recent years the Finance Department has increasingly assumed diverse agendas which relate to the planning and processing of the organizational expenses of both Funds.

This includes all budgetary matters, such as requesting budgetary funds from the Parliament Directorate, the administration and investment of these funds with the assistance of the Austrian Federal Finance Agency, the preparation of statements of account and financial plans as well as the payroll, administrative expenses and a range of further bookkeeping tasks.

Furthermore, the Finance Department regularly works with the Control Committee of the Board of Trustees. It prepares information on both Funds and makes it available to the Committee.

### *The Communications Department*

The General Settlement Fund places great value on direct contact and personal support of the applicants. The procedure before the Claims Committee stipulated by law is complicated and, consequently, the applicants have a great need for information.

The department "Communication with the Applicants", which is composed of the sub-teams telephone switchboard and lawyers assumes the task of providing assistance to the applicants and their representatives throughout the entire proceedings and of answering complex legal questions.

In 2008 and 2009, an average of 1,300 telephone calls and 60 face-to-face consultations were carried out each month. Moreover, in cooperation with the secretariat, the department's staff sent around 600 letters per month. These letters concerned, on the one hand, information on all stages of the proceedings and, on the other hand, the decisions of the Claims Committee.

The department's staff also developed statements and similar documents, for example for the Ombudsman Board or other political bodies and institutions.

After the decision on the applications, the inquiries of the applicants generally concern subjects such as co-heirs (persons who, on the basis of an opportunity granted by the Claims Committee, can be later included by applicants in the proceedings without having filed an application themselves), the possibility of lodging an appeal and the course and acceleration of the payments. Questions regarding the contents of the decision, such as, for example, the inheritance shares, the documents relevant to the decision or the amount of the individual claims, are also clarified.

Since the commencement of the closing payments in July 2009, the applicants' questions primarily concern the shares and the amount of the closing payment, the procedural steps necessary and when the payment can be expected.

In addition to comprehensively answering all questions, the personal contact with the applicants is particularly important. Considering the background of mainly dramatic life histories and the advanced age of many applicants, an especially high degree of sensitivity is essential for the staff of the department for this emotionally demanding work.

### *The Research Department*

In the area of historical research, the Fund has developed its own standards in order to historically document claims for compensation of assets and to comply with the principle of equality. This means that for each applicant, the same comprehensive sources and archives are taken into account. In individual cases concerning certain questions, special research is initiated. Newly researched facts are taken into consideration as a matter of course and can also result in an extension of the original application. In 2008 and 2009, research was concluded for 85 applications; in around 600 cases more detailed further processing was required. These figures do not include those applications which had to be newly researched due to appeals lodged or ex officio reopenings. In total, in the two years, around 3,600 documents relevant to the application processing were obtained and processed accordingly; by the end of 2009 the standard research had been completed for all applications.

Since its establishment, the General Settlement Fund has been receiving several data collections on seizure and restitution procedures in Austria, from Austrian archives and research institutions and also from private persons, and has supplemented these through years of its own research. On 31<sup>st</sup> December 2009, the research database which subsequently came into being contained 220,000 entries and presents the opportunity to carry out a targeted search for documents and allows them to be easily identified during the course of the application processing. Due to its many query options, the database enables preliminary information to be obtained on file holdings in archives and can be considered a unique research aid for assets of persecutees of the National Socialist regime in Austria.

## GENERAL SETTLEMENT FUND

The following holdings are examined in detail in the course of standardized research:

- Historical land register
- Property notices from the National Socialist Property Transaction Office
- “Index of businesses” from the Collection Agencies A/B
- Insurance archives
- Files regarding the Ordinance on the Notification of Seized Property
- Files from the Financial Directorates
- Files from the Collection Agencies A/B
- Files from the Compensation Fund
- Index from department 34 of the Federal Ministry for Property Control and Economic Planning (1945–1950, later integrated into the Federal Ministry of Finance)
- Files from the holdings of the regional archives

The General Settlement Fund obtained around 72,000 different copies of documents from across Austria, the large majority of which, around 49,400, originates from archives in Vienna, the remainder from other cooperative departments. Among others, in more than 12,000 cases information regarding insurance policies was obtained. The research department maintains many links with different contacts in archives, authorities and institutions which provide documents or information for the Fund’s work.

Since the end of 2005, considerable provenance research has been carried out, as it was evident that information on claimed art objects and previous restitution measures with respect to these art works could not be adequately acquired by means of the standard research methods. By 2009, the processing of 150 “art cases” was able to be completed by the competent historians.

Processing those cases in which “extreme injustice” of a previous decision or settlement was asserted proves to be particularly time consuming. In order to be able to assess whether prior proceedings are to be qualified as “extremely unjust”, various arguments must be clarified. As a result, the research (following on from the historical case processing of the Arbitration Panel for *In Rem* Restitution) must be extended to new sources and special holdings. In 2008 and 2009, research was completed for 82 applications asserting “extreme injustice”. In total, this complex procedure concerned 300 applicants.

Until the end of the deadline for appeals, the focus will be placed on art research and additional research for appeals and reopenings.

### *Data Compilation and Processing*

Electronic processing of all applications submitted to the General Settlement Fund occurs in the data compilation department. All statements made by the applicants, the enclosed documents and also the results of the research department are compiled. This processing is a basic prerequisite for the legal processing under the standardized procedure.

On the basis of “initial legal research”, applications which are connected with one another (for example applications of siblings) are examined for completeness, heirs are established and additional losses which were identified in the course of the “initial legal research” and the historical research are included. In 2008 and 2009, the department was able to conclude the initial compilation of almost all applications and it deals now mainly with data cleansing.

## *Case Processing*

The case processing department is entrusted with the legal processing of the applications and the preparation of the draft decisions for the Claims Committee in the procedural languages German and English. The development of proposals for guidelines which serve as the basis for the decisions of the Claims Committee also counts among the tasks of the department.

In order to carry out these tasks, all statements in the applications and all other letters from the applicants to the General Settlement Fund, the results of the historical research and any available files from the National Fund and Arbitration Panel proceedings are taken into account. If applicable, the application is extended on the basis of this information and the guidelines stipulated by the Claims Committee. Should supporting documents be missing, the applicants are requested by letter to submit further documentation or to make supplementary statements. In other cases, the in-house historians carry out special, often time consuming research.

In 2008 and 2009, the department mainly focused on particularly extensive and demanding applications. These are, on the one hand, applications with many aggrieved persons and numerous losses in all categories of assets – a typical case involves, for example, 64 claims regarding the losses of 17 people, and for its processing the applications of eleven other applicants had to be taken into account – and, on the other hand, applications in which there are complicated legal issues. In the last two years, the case processing department has succeeded in preparing all but 26 applications for the Claims Committee. Therefore, by the end of 2009, the initial processing of almost all applications had been concluded.

A further focus of the department lies in the preparation of decisions on applicants' appeals and ex officio reopenings by the Claims Committee: by the end of 2009, the Claims Committee had made 464 appeal decisions and reopened 1,330 cases on its own initiative.

## *The Claims Committee*

The Claims Committee is independent and holds sole responsibility for deciding on applications for compensation. The decision takes place either during the course of one of the regular meetings or by circular resolution. One member of the Claims Committee was appointed by the American government and one by the government of the Republic of Austria. The chairman was selected by these two members.

Sir Franklin Berman holds the post of chairman of the Claims Committee, the other two members are Dr. Kurt Hofmann and G. Jonathan Greenwald.

## *The Heirs Department*

The task of the heirs department is to trace the heirs of applicants who have passed away. In doing so, the inheritance documents of the respective countries must be examined in order to prepare the decision of the Claims Committee with whom the proceedings are to be continued. The search for heirs takes place on the basis of the information in the file of the late applicant and with the aid of queries at the Austrian Pension Insurance Institute, Austrian embassies or victims' organizations at home and abroad. The most time consuming phase of the work, in addition to contacting potential heirs, consists of obtaining the correct documentation to prove the right to inherit. After an official decision of the Claims Committee on the continuation of proceedings, the proceedings are resumed with the heirs.

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## *The Payments Department*

### 1) The advance payments

Originally, after the decision on and assessment of all applications, the total funds of the General Settlement Fund in the amount of 210 million US Dollars were to be shared *pro rata* between the approved claims and the payment to applicants or heirs was to take place.

In order to be able to commence the payments sooner, after the rejection of the last pending class action suit in the USA against Austria or Austrian enterprises, an amendment to the GSF Law was resolved (Federal Law Gazette I no. 142/2005). As a result, under certain conditions those applicants whose applications had already been decided were able to receive early compensation payments before the assessment of all claims.

The amount of the advance payment is calculated on the basis of everyone receiving a fixed portion of the claim amount established in each case. For claims that were approved in the claims-based proceedings, the portion amounts to 10 % of the determined claim amount. For claims from the equity-based proceedings and for claims resulting from seized insurance policies in the claims-based proceedings the portion amounts to 15 %.

The advance payments rendered in accordance with the portions cannot be less than 500 US Dollars or more than 2 million US Dollars (= the statutory upper limit for an awarded compensation payment). An important requirement for the determination of the amount of these payments was the estimate of the total amount of the approved claims, as only then was it possible to determine a portion for these preliminary payments.

In effecting the advance payments, older applicants who were directly affected by the National Socialist persecution and seizure of assets were given priority. The first advance payment letters with the offer of a preliminary payment to applicants were sent by the General Settlement Fund on 15<sup>th</sup> December 2005.

In July 2009 the closing payments were commenced and the advance payments were ceased.

### 2) The closing payments

On 8<sup>th</sup> July 2009, the General Settlement Fund commenced with the closing payments which had been made possible by an amendment to the GSF Law (Federal Law Gazette I no. 54/2009) and an amendment to the Rules of Procedure of the Claims Committee.

On the day prior, the Board of Trustees had decided the final payment quotas on the basis of the decisions passed by the Claims Committee by 1<sup>st</sup> July 2009 and the funds available to the General Settlement Fund. In doing so, the *pro rata* distribution of the funds in relation to the established losses of assets was settled. These (rounded) quotas amount to

- 10.56 % of the established losses in the claims-based proceedings
- 17.16 % of the established losses in the equity-based proceedings
- 20.74 % of the established losses in the proceedings for seized insurance policies.

In those cases where applicants have already received an advance payment, the payment already received is deducted from the determined disbursement quota (i.e. the remaining payment quota where advance payments have been received amounts to 0.56 % in the claims-based proceedings, 2.16 % in the equity-based proceedings and 5.74 % in the proceedings for seized insurance policies):

Proceedings	Advance payment	Closing payment	Total
Claims-based proceedings	10 %	0.565150 %	10.565150 %
Equity-based proceedings	15 %	2.164658 %	17.164658 %
Insurance policies	15 %	5.736232 %	20.736232 %

In the period from July to December 2009, within the scope of the closing payments, 12,261,626 US Dollars were paid to 5,469 beneficiaries – both applicants and heirs.

Pursuant to Sec. 2 (1) of the GSF Law, for all first decisions of the Claims Committee passed after 1<sup>st</sup> July 2009 or decisions amended by the committee after that date, the Federation shall make further funds available according to the determined payment quotas.

Prior to the closing payment, all beneficiaries receive a notification in which the amount of the payment is explained in detail. In order to receive a payment, a signed waiver is required in which the beneficiary states that in exchange for the payment from the General Settlement Fund, he/she waives all claims against the Republic of Austria and Austrian companies.

In total, the General Settlement Fund is currently expecting that there will be around 23,000 beneficiaries who will receive a closing payment. This number is rising on an almost daily basis, as increasing numbers of heirs are being included. The aim is to make the closing payment to the majority of applicants and heirs by the end of 2010.

By the commencement of the closing payments, the Claims Committee had recognized 20,537 of the 20,700 applications containing around 120,000 individual claims and losses of assets amounting to 1.5 billion Dollars. In total, the Fund has – as was agreed in the Washington Agreement between Austria and the USA – 210 million US Dollars at its disposal.

Around 30 % of all claims are related to occupational and educational losses, 20 % to liquidated businesses. The remaining 50 % relate to the other categories of assets: bank accounts, stocks, bonds, mortgages, movable property, insurance policies, real estate and other losses.

### 3) The year 2008

In 2008, the General Settlement Fund delivered advance payment offers to 7,860 beneficiaries. During the same period, 6,472 beneficiaries replied to this advance payment offer. In total, 5,905 persons received 52,938,046.48 US Dollars, of which 26,334,292.10 US Dollars were disbursed in the claims-based proceedings, 20,374,108.67 US Dollars were disbursed in the equity-based proceedings and 6,229,645.71 US Dollars were disbursed for insurance policies.

### 4) The year 2009

By 30<sup>th</sup> June 2009, advance payment offers were delivered to 2,011 beneficiaries and 3,297 replies to the advance payment offer were received from beneficiaries. The advance payments made to 3,643 persons in the first half of 2009 amounted to 32,605,779.30 US Dollars, of which 18,342,090.40 US Dollars were disbursed in the claims-based proceedings, 11,116,203.53 US Dollars were disbursed in the equity-based proceedings and 3,147,485.37 US Dollars were disbursed for insurance policies.

In the period from 1<sup>st</sup> July to 31<sup>st</sup> December 2009, closing payment offers were delivered to 12,117 beneficiaries and replies to the closing payment offer were received from 7,230 beneficiaries. Closing payments totaling 12,261,625.53 US Dollars were disbursed to 5,469 persons, of which 4,947,545.39 US Dollars were disbursed in the claims-based proceedings, 4,684,515.67 US Dollars were disbursed in the equity-based proceedings and 2,629,564.47 US Dollars were disbursed for insurance policies.

# GENERAL SETTLEMENT FUND

## The years 2008 and 2009

In 2008, six and, in 2009 four formal sessions of the Claims Committee took place, each lasting several days. During the October 2008 session, on 15<sup>th</sup> October an informal observation session took place in the offices of the Fund. (The GSF Law and the Rules of Procedure of the Claims Committee provide for the admission of observers, nominated by victims' organizations, to certain stages of the procedure). In addition, the Claims Committee met twice with the Arbitration Panel, in February 2008 and December 2009, in order to discuss applications pending with both decision-making bodies.

In 2009, the General Settlement Fund presented its work to the Chairman of the British Foreign Compensation Commission, Dr. John Barker, and to a delegation led by Stuart E. Eizenstat. Finally, the software "SV neu" was presented to the Chief Information Officer of the Austrian Federal Government, Univ.-Prof. Reinhard Posch.

A high point of the Claims Committee's activities in the last two years was the approval of the report on the claim amounts which had so far been determined, which was a requirement for the determination of the final payment quotas by the Board of Trustees and therefore also for the commencement of the closing payments.

## Outlook

In 2010, the decisions on the last remaining applications and the further processing of the closing payments shall be the main priority. Moreover, the search for heirs is expected to still take considerable time.

## Statistics for 2008:

Archive	39,946	file movements
Research	73	applications for which the research was completed
	540	applications for which special research was carried out
Data compilation	417	applications newly compiled
	73	applications reworked
Case processing	2,185	decisions on applications prepared for the Claims Committee
Claims Committee	3,719	decisions made on applications
Advance payments	7,860	advance payment offers delivered
	5,905	beneficiaries paid
Heirs department	1,288	decisions of the Claims Committee reached on the resumption of proceedings with the heirs

## GENERAL SETTLEMENT FUND

### Statistics for 2009:

Archive	30,985	file movements
Research	12	applications for which the research was completed
	33	applications for which special research was carried out
Data compilation	1	application newly compiled
	5	applications reworked
Case processing	197	decisions on applications prepared for the Claims Committee
Claims Committee	333	decisions made on applications
Advance payments up to 30 <sup>th</sup> June 2009	2,011	advance payment offers delivered
	3,643	beneficiaries paid
Closing payments from 1 <sup>st</sup> July 2009	12,117	closing payment offers delivered
	5,469	beneficiaries paid
Heirs department	595	decisions of the Claims Committee reached on the resumption of proceedings with the heirs

### Overall statistics at the end of 2009:

Research	20,700	applications for which the research was completed
Data compilation	20,688	applications electronically recorded
Case processing	20,674	decisions on applications prepared for the Claims Committee
Claims Committee	20,654	decisions made on applications
Advance payments up to 30 <sup>th</sup> June 2009	20,570	advance payment offers delivered
	18,062	beneficiaries paid
Closing payments from 1 <sup>st</sup> July 2009	12,117	closing payment offers delivered
	5,469	beneficiaries paid
Heirs department	2,282	decisions of the Claims Committee reached on the resumption of proceedings with the heirs

## GENERAL SETTLEMENT FUND

# THE CLAIMS COMMITTEE OF THE GENERAL SETTLEMENT FUND

## AN INTERIM REVIEW BY THE CHAIRMAN SIR FRANKLIN BERMAN

The period covered by this report has been one of decisive importance for the accomplishment of the mandate of the Claims Committee, and of the General Settlement Fund (GSF) as a whole. Whereas the initial phase of the Committee's work after the GSF was founded in 2001 was crucial in devising and establishing the procedures for the efficient handling of the very large number of claims that could be expected, the current period has been the moment when the value of that preparatory work has been put fully to the test. It is gratifying to note that the test has been passed with flying colors. It had always been the hope that by the end of 2007 the Claims Committee would be in a position to make a forecast of the likely completion of its work. In fact, the Committee has been able to go well beyond that, and to achieve, within the year that followed, an initial decision at least on the overwhelming majority of the claims outstanding before it. In its session of October 2008, the Committee reached this important threshold in respect of 20,000 claims, leaving less than 1,000 still for decision; and by its session in December 2009, the figure had shrunk to well under 100 – even though that number includes several claims (or groups of claims) that are particularly complex, and may therefore take longer to complete than others. All the same, and with due allowance made for the steady proportion of cases having to be reopened after the first decision, either at the request of the claimant or because new facts come to light, it is now possible to look forward to the final completion of the Committee's activities in the near future.

That satisfactory conclusion nevertheless calls for some elaboration. On the one hand, some statistics about the claimants themselves: It is notable that, although very many claims have been submitted by heirs in respect of their relatives, well over half of the claims processed are from people who were themselves direct victims of Nazi persecution, and it is even more remarkable that the Committee has been able to make awards of compensation to well over 2,000 survivors now in their 90s or even over 100. That said, it is a sad inevitability that a substantial part of the final administrative tasks for the GSF Secretariat will be the difficult and time-consuming one of identifying and locating the heirs – in very many different countries – of claimants who have died after notification of the Committee's decision on their claims.

Then, a most significant event in the course of 2009 was the parliamentary initiative to amend the GSF Law so as to enable the final payments out of the Fund to begin even before all claims had been decided by the Committee. The legal, technical and administrative challenges this posed were considerable; they were however relished both by the Committee members and by their support staff, with the impressive result that within one week from the entry into force of the statutory amendment in July 2009 all of the formalities had been successfully completed to allow the payments to begin. Since then, the energetic pursuit of the payment process has been the main preoccupation of the Secretariat. By the end of 2009, some 80 % of the Fund had already been distributed to successful claimants. It should however be remarked that, in applying the criteria laid down in the GSF Law and the intergovernmental Agreement, the Committee had by then recognized losses to the tune of US Dollars 1.5 billion – by comparison with the total amount of US Dollars 210 million available for distribution from the Fund itself. In the process, the Committee has had to confront an astonishing variety of claims for assets, a vast array of social circumstances and family histories, and to elaborate some delicate distinctions between acknowledging past procedures that cannot be reopened and identifying losses that those past procedures had not recognized.

Finally, it should be said that to have managed the virtual completion of the registration, adjudication, valuation and distribution of over 20,000 claims, all within eight years of the closing date, is a quite extraordinary achievement, the credit for which is wholly due to the staff of the GSF Secretariat, for their imagination, dedication, technical competence and sheer hard work. The Republic of Austria owes them a debt of gratitude.

***Sir Franklin Berman (born 1939)***

*has been Chairman of the independent Claims Committee of the General Settlement Fund for Victims of National Socialism since 2001. In 1965 he joined the diplomatic service of the United Kingdom and was Legal Advisor to the Foreign and Commonwealth Office of the British Foreign Ministry from 1991 to 1999. He teaches international law at the Universities of Oxford and Cape Town and at King's College London and often acts as judge in international dispute settlement procedures and court cases. Sir Franklin is the co-editor of the British Yearbook of International Law and recipient of numerous prestigious awards in the United Kingdom.*



"I, Andreas, can remember neither my illness nor my other experiences in the concentration camp Lackenbach, but I know from my parents and siblings that I was very sick."

*ANDREAS H.*

## BORN IN THE LACKENBACH CAMP

ANDREAS H.

I, Andreas, was born on 1<sup>st</sup> February 1942 in a wooden barrack in the forced labor and deportation camp in Lackenbach, Mittelburgenland. I would like to mention, if I may, that in the mid-1930s, around 11,000–15,000 Roma and Sinti were statistically recorded in Austria, thousands of which, on racial grounds and in the name of the “final solution”, were deported or exterminated, died of hunger, thirst or illness or due to the hard labor in quarries, suffocated in the wagons before arriving at their destination or were forced to disembark in their hundreds, taken into the woods and shot there by special SS units.

I know from my mother and my older siblings that the Lackenbach camp was equipped the same as all of the other concentration camps in Germany, Austria and Poland, except there were no ovens or crematoria installed for gassing people. Therefore, every day at 6am roll call, men, women and children were selected and loaded on to the transports to the large concentration camps and deported. During this daily “ceremony” the SS units were, of course, also present with their killer dogs. One day, my older brother and his friend had stolen two cobs of corn on their way home from their forced labor because they were so hungry. But they were caught and brought into the camp by the SS where they received 50 lashes on their backs, behinds and legs with an oxtail whip. After this beating, they were unable to work for 14 days and only received cabbage soup and a piece of bread to eat each day. They were only fourteen at the time, and only their strong will to survive kept them alive. Or if someone arrived at roll call too late in the morning, he would receive 25 blows with a stick and nothing to eat for three days, followed by work as an extra punishment, such as cleaning the toilets etc. If someone no longer had the strength to keep going

and collapsed due to malnutrition, for example while working on road construction, he was shot on the spot. And I could go on with the list of atrocities which were carried out in the Lackenbach camp between 1941 and 1945 until the camp was liberated by the Russians. I would also like to mention the unhygienic conditions in the wooden barracks, where, above all in winter, the fleas, lice and bedbugs would crawl into the wooden planks and suck the blood from the prisoners during the night, infecting them. Infection with epidemic typhus was a daily occurrence and many people died of it. An equally frequent cause of death was murine typhus and dysentery, illnesses which many inmates caught because of the poor and insufficient nutrition.

I would also like to mention that the old house in Mörbisch, which was owned by the third generation on my father’s side, my grandparents Antonia and Andreas, was expropriated. A family from the area acquired the house at a ridiculously low price. Neither my grandparents nor the twelve children received anything and in August 1938 a clay and reed hut was leased to them.

*At the end of 1941, there were over 2,300 inmates in the “gypsy camp” Lackenbach. Around 2,000 of them were deported and murdered in extermination camps. Only 300 to 400 people lived to experience the liberation in April 1945. Among them were Andreas H. and his family, who returned to Mörbisch on foot after the liberation of the camp, where they were taken in by family friends.*

The whole story can be read at  
[www.nationalfonds.org](http://www.nationalfonds.org)

## GENERAL SETTLEMENT FUND

# THE NATIONAL FUND AND THE GENERAL SETTLEMENT FUND: A VIEW FROM LONDON

GUEST CONTRIBUTION BY JOHN BARKER

In establishing the General Settlement Fund and the National Fund, Austria has contributed a beacon to light the way to a better world. Not only has it promoted a higher standard of justice, it has also developed a case handling system that is breathtaking in its sophistication and capacity to accommodate the complexity of the cases being processed, as well as the human needs of claimants. This is good not only for Austria and for the victims of National Socialism, but for other nations seeking to correct injustices. The Foreign Compensation Commission in London is one such international beneficiary.

The Foreign Compensation Commission was established in 1950 to manage and distribute funds paid by foreign states for British property adversely affected by expropriation and other measures taken by them. In order to keep up-to-date, we have undertaken a survey of comparable claims-handling institutions in other jurisdictions to gain insight into how information technology is used to facilitate the processing of large numbers of cases. As part of that exercise I was fortunate enough to visit the General Settlement Fund and National Fund headquarters during the period of this report. I was most impressed by the dedication and professionalism of the team and by the powerful system that they had developed to address a range of difficult issues.

Delivering on its mandate required an understanding of the human dimensions as well as the legal and technological aspects and the requirements of procedural fairness. There was the vulnerability of the elderly to be considered, problems of producing evidence so long after the event, psychological factors, and of course the need to provide appropriate and tangible responses to various forms of loss and deprivation. This ranged from the provision of compensation funds to medical care to support for a wide range of commemorative and educational projects, all reflecting a responsive and respectful approach that did not permit internal institutional convenience and imperatives to trump the needs of the victims and claimants. Two aspects in particular invite comment.

Possibly unique to the General Settlement Fund was the fact that responsibility for the detailed design of the database system was embraced by the legal staff rather than delegated to IT staff who then worked in partnership to implement and progressively upgrade the specification. As a result, the system reflects the nuanced contours of the cases and tracks their progress through the process rather than being variations on familiar databases. This partnership has resulted in a lot of original thinking and an innovative and powerful approach to claims worthy of worldwide attention.

The second aspect concerns the importance of narratives in documenting history and healing trauma. While monetary compensation often comes to mind as defining the essential character of such programmes, the General Settlement Fund and the National Fund have quite correctly identified the preservation and, in appropriate cases, the publication of narratives as a strategy to promote the healing of victims as well as understanding for those who did not live those experiences.

To illustrate its significance to claimants, some years ago I assisted in the establishment of a compensation scheme in a small country in Southern Africa to assist the victims of a dictatorship. What stood out from the exercise were the narratives, carefully written, many in the shaky handwriting of the elderly, chronicling a life experience that in other circumstance might have been scripted for a film.

It was a poor country with limited funds to pay compensation for lost years in administrative detention, lost jobs, lost educational opportunities, debilitating injuries and lost loved ones. Many letters went well beyond the subject of compensation and seemed to be written for a different purpose. The nation had treated these claimants as villains. It was evident that the compensation programme provided a long-awaited vehicle to place on record once and for all the facts that vindicated them. They wanted to formalise a defence denied to them at the time, a definitive statement for posterity that would never be forgotten. Part of the relief provided, therefore, was an opportunity to leave their story so that the lessons learned would make others, including succeeding generations, that much safer.

These are important lessons and signposts worthy of attention. There is no shortage of examples of injuries suffered by individuals when the power of the State is used against citizens rather than to protect them. Although the “safety catch” of democratic accountability may be ascendant, it is far from ubiquitous or reliable in its application, even in established democracies. Moreover, the sovereign state is losing its relative advantage over private actors in access to deadly force, with citizens – yet again – easy targets.

How then can societies protect the lives and vital interests of their members so that they are not subordinated and sacrificed to those willing and able to apply lethal force? The fundamental problem is much the same regardless of whether the machinery and trappings of State power have been constitutionally conferred, captured or bypassed.

Among the implements to be found in the citizen’s protective toolkit is the formalised recognition by States of human dignity through various human rights instruments, laws and institutions. Another is the requirements and logic of democratic legitimacy. A third is the enforcement of constitutionalism and legality. These help to define and impose limits upon those exercising de facto and de jure power.

## GENERAL SETTLEMENT FUND

One of the most challenging yet most potent conceptual tools available, arguably underpinning many others, is the notion of justice. It resonates powerfully with an inner sense of fairness and yet has practical expression in the laws and institutions of every land. As a principle of infinite variety in its application, it seeks to balance competing interests, protecting and supporting those who neither wish to victimise nor be victimised, and who – crucially – are not prepared to stand by and accept injuries wilfully inflicted on others. The level of justice in a society and the extent to which the pursuit of justice is taken seriously goes a long way to defining the quality and sustainability of society as a whole.

Justice has retributive and restorative dimensions. One of the justifications for retributive justice is that it is ultimately preventive. However, post-war experience, including the current experience of international criminal courts, suggests that the prospect of punishment, while undoubtedly a telling factor in many instances, does not by itself provide sufficient deterrence. Sadly, atrocities occur in circumstances that do not readily defer to rationality. Something more strategic is also needed.

Restorative justice focuses on the experience of victims. Creating opportunities to address a wide range of psychological and material needs of individual victims is, of course, an end in its own right. However, there are at least two ways in which restorative justice may contribute to reducing the risk of repetition. One is to face communal trauma head on. Reducing the effects of harm limits outstanding collective grievances and diminishes the risk of their smouldering underground unresolved, waiting to reignite. The former Yugoslavia demonstrates that denial, repression and sweeping historical events under the carpet do not work, even with the passage of time measured in generations. Symbols and folklore can be more influential than objective facts and are more prone to manipulation by those who would inflame identity issues to empower themselves.

Another effect of addressing the direct experience of victims is that it equips mankind with a higher definition picture, enabling the rest of us to grasp and measure the true impact of harmful measures and, more importantly, to recognise, understand and respond to the symptoms and mechanisms of organised violence well before they become incendiary. This requires something rather more than the superficial, reactive decision-making in response to breaking news. It calls for a profound understanding based on a close reading of prior experience, careful analysis and wide access to findings. The General Settlement Fund and the National Fund understand this dimension very well and have been innovative in taking seriously the narratives that accompany compensation claims, among their many other accomplishments. Whether the opportunities presented to capture and disseminate the lessons of history are realised will depend on whether their significance is recognised at the time.

Understanding and applying prior historical experience requires conscious commitment and an investment of resources. By far the largest investment was already made in the form of the financial cost, human toll and lost economic opportunity inflicted when human experiments in social engineering and governance went so horribly wrong. The marginal additional cost of preserving and applying expensively acquired lessons to avoid repetition is negligible by comparison. As teachers correctly point out, if you think education is expensive, try ignorance. So too with the acquisition of vital lessons of history.

It is not sufficient to know what happened; we need to know how it happened. For this reason, first-hand narratives of events are key, providing accounts that explain the less visible layers of human organisation and interaction that make atrocities possible. And so, as the increasingly urgent search goes on for more effective means to prevent and limit conflict and civilian harm, passing up opportunities to acquire an in-depth grasp of the facts and to reduce grievances is not an option.

Without fanfare or self-proclamation, the National Fund and its judicial counterpart, the General Settlement Fund, take their place among the most advanced and effective case-handling institutions ever created. It was a great privilege and pleasure to encounter in Vienna, working away quietly and earnestly in its modest offices, a real gem - one of the juridical wonders of the world.

I am greatly indebted to Sir Franklin Berman for opening the doors to this remarkable institution. Hannah Lessing and her able deputies Christine Schwab and Renate Meissner are to be congratulated on forging such an innovative and dedicated team, delivering a programme that is so responsive to the wider needs of victims and of our wider national and global society. It is truly a gold standard against which all others must be measured.

***Dr. John Barker (born 1951)***

*has been the Chairman of the British Compensation Commission since 2004. He has also been a lecturer at the Lauterpacht Centre for International Law and at Hughes Hall College at the University of Cambridge for over ten years. He specializes in human rights and matters relating to the development of functioning democratic institutions. Since 1982 he has advised several African states on the implementation of judicial system reforms.*

# IN REM RESTITUTION

### General Information

In addition to monetary compensation for assets, the General Settlement Fund Law (GSF Law) also provides for the possibility of *in rem* restitution of publicly-owned property, which is regulated in the second part of the Law. Hence real estate, buildings or superstructures as well as moveable property of Jewish communal organizations can be claimed back by the former owners or their heirs. The Arbitration Panel for *In Rem* Restitution was established at the General Settlement Fund to decide on such applications for restitution.

Fundamental requirements for an actual restitution are that the property

- had been seized during the National Socialist regime in Austria between 1938 and 1945,
- had never been subject of restitution proceedings after 1945 and
- was publicly-owned on the cut off day 17<sup>th</sup> January 2001.

How and when the public owner had become owner of the seized property, i.e whether it had been involved in the seizure during the National Socialist era or had only acquired the property after 1945 is irrelevant.

In this regard, publicly-owned property comprises property owned by the Federation and by those provinces and municipalities which have affiliated themselves with the proceedings of the Arbitration Panel. So far, they are: the City of Vienna, the provinces of Upper Austria, Salzburg, Carinthia, Lower Austria, Styria, Vorarlberg and Burgenland and the municipalities of Bad Ischl, Bad Vöslau, Eisenstadt, Frauenkirchen, Grieskirchen, Kittsee, Koberndorf, Korneuburg, Mattersburg, Oberwart, Purkersdorf, Rechnitz, Stockerau, Schwechat, Vöcklabruck and Wiener Neudorf.

The majority of properties for which restitution is applied with the Arbitration Panel have already been the subject of a "prior measure". A prior measure exists if claims have already been decided on by Austrian courts or administrative bodies or if they have been dealt with by agreement, for example with a settlement. In special exceptional cases, the Arbitration Panel can nevertheless recommend a restitution if it reaches the conclusion that this prior measure was "extremely unjust". The same applies if the claim had been rejected in prior proceedings due to lack of evidence and this evidence was not acces-

sible but – for example, as a result of research carried out by the Arbitration Panel – has become available in the meantime.

### Historical background

After the *Anschluss* of Austria to the German Reich in March 1938, in addition to other assets, properties were also seized from the racially and/or politically persecuted owners through various avenues. The bureaucratically organized seizure of assets, executed on the basis of discriminating laws, concerned above all persons who were considered Jewish pursuant to the "Nuremberg Laws"<sup>1)</sup>.

Assets belonging to Jewish associations and foundations, including properties but also religious and artistic items were frequently seized by the Liquidation Commissar for Clubs, Organizations and Associations without compensation<sup>2)</sup>. With regard to properties, in addition to Jewish owners and the Roma and Sinti, predominantly political persecutees were affected by the seizure and confiscation of so called hostile assets<sup>3)</sup>.

The notification of Jewish property, as introduced by law in April 1938<sup>4)</sup>, was a fundamental requirement for the state-supervised "aryanization". Around three quarters of the properties recorded in the property notices were situated in Vienna; the Viennese properties constituted around 85 % of the total value of Jewish property ownership in Austria<sup>5)</sup>. The seizure occurred by means of forced sales or direct seizure by the state. In many cases assets reverted to the German Reich<sup>6)</sup> as a result of the flight abroad or the deportation to concentration and extermination camps.

After the war, the re-established Republic of Austria faced the task of constitutionally dealing with this enormous displacement of property from a legal perspective. The restitution acts passed in the second half of the 1940s, the implementation acts enacted within the scope of the State Treaty of 1955 and other measures covered a large number of the "aryanized" properties or those seized by other means.

In a control sample, the Historical Commission arrived at the conclusion that with regard to those Viennese properties "which had been seized on the basis of the *Elfte Verordnung zum Reichsbürgergesetz* [Eleventh Decree to the Reich Citizenship Law'] or as assets hostile to the people and the state and were therefore to be restituted pursu-

ant to the *Erstes Rückstellungsgesetz* ['First Restitution Act'] [...], nearly all property shares were restituted in their entirety."<sup>7)</sup> In those cases in which a property was not seized by the state but had been "aryanized" by private persons (under the supervision of the Property Transaction Office), this figure is considerably lower. Around 60 % of the properties subject to an "aryanization" by means of a purchase contract were entirely or partially restituted, in around 30 % of cases restitution proceedings were initiated but were, however, concluded without an *in rem* restitution. In many instances, these cases were dealt with through in-court or out-of-court settlements. In the remaining 10 % of cases, no restitution occurred. In these cases, the Collection Agencies, established on the basis of the State Treaty of 1955, were able to lay claim to the assets which had remained "heirless", for example properties, and use the proceeds to benefit the victims of National Socialism.

Last but not least, the research of the Historical Commission showed that the restitution practice had covered the majority of the seized properties, but that the compensation or restitutions which were in fact carried out in this area were insufficient and felt to be unsatisfactory by many restitution claimants. The complexity of the various restitution acts and deadlines or the lack of state assistance for the victims of the seizures in their efforts to achieve restitution also played an important role in this regard. This is where the mandate of the Arbitration Panel stipulated by the GSF Law comes into play.

### Application processing

The Arbitration Panel for *In Rem* Restitution works independently in the examination of applications and is neither an authority nor an internal organ of the Republic of Austria, but an international institution based on the Washington Agreement. Arbitration Panel proceedings result in either

- a recommendation for the restitution of the requested property subject of the application,
- a rejection
- or a dismissal of the application.

One member of the Arbitration Panel was appointed by the US government and one by the Austrian government. The chairman was appointed by these two members. The chairman of the Arbitration Panel is o. Univ.-Prof. Josef Aicher; ao. Univ.-Prof. August Reinisch was nominated by the American government and Hon.-Prof. Erich Kussbach was nominated by the Austrian government.

The application processing is carried out by historians and lawyers working in interdisciplinary teams. This approach seems necessary and practical, as the seizures and the restitution proceedings occurred decades ago and their interpretation requires a deep knowledge of the respective organizational and legal frameworks. Moreover, only seldom do the applicants themselves possess the necessary documentation (evidence). In many cases it is not until comprehensive research has been carried out by the historians at the relevant archives and authorities within the scope of an "ex officio" establishment of the truth that it is possible to reach the findings regarding the facts of the case which are necessary for legal decision-making.

Through this, the applicants – the majority of them descendents of aggrieved persons – receive detailed information about the fates of their families and their property ownership during and after the National Socialist era. The results of the investigations to establish the facts of the case on the basis of official records are sometimes in contradiction to the memories of the applicants. Particularly members of the second and third generation of the victims of National Socialism often only know of the seizure and compensation and restitution measures from stories told within their families and only have – due to residing abroad – limited access to Austrian archives and authorities. In addition to the documents submitted by the applicants and the documentation of the Historical Commission, which contains fundamental findings on seizure and restitution and compensation, the results of this active research form the basis for the processing of all applications.

The GSF Law stipulates that the recommendations of the Arbitration Panel are to be published. By publishing the decisions and their English translations in anonymous form in an online database and in book form, the provisions of the GSF Law are not only fulfilled but the policies of persecution and seizure of the National Socialist regime and the restitution and compensation measures post 1945 are reconstructed on the basis of life stories and documented for subsequent generations.

# GENERAL SETTLEMENT FUND

## The course of proceedings

In principle, the order in which the applications are processed is based on the date on which the application was received; however, the applications of older applicants are prioritized.

As an initial step, the applications are examined for the formal statutory requirements of public ownership on the cut off day in 2001 and also whether the property was owned by the applicant or his/her predecessors in 1938. If these elements are present, the application is subsequently designated “substantive”. If this is not the case, it is designated a “formal” application. For applications in which no specific property is stated, in a further step, on the basis of the applicants’ submissions, the land register, historical address books and registration details and any property notices from the National Socialist era are investigated in order to determine to which properties the application could apply. The applicants are informed of the outcomes of this research in writing and given the opportunity to improve the application.

Applicants of “formal” applications are in a similar way also directly involved in the proceedings and are able to submit a statement before the application is further processed. As a result of supplementary submissions or research, it can emerge that a “formal application” is a substantive application. In many cases however, the applicants learn that no restitutionable property could be established or that their claims to *in rem* restitution had already been dealt with, or indeed granted, in prior restitution proceedings.

“Substantive” applications are each processed by one lawyer and one historian, who initially determine the necessary research method. The duration of the historical research varies from case to case. On average, a duration of several months is to be expected for the application processing due to the comprehensive research of archives and official offices. The research serves to determine the eligibility to file an application, the ownership status in 1938, a persecution related seizure and a possible “prior measure” after 1945.

Should the Arbitration Panel reach the opinion that the applicant could have further documents or informative material regarding a questionable point of evidence, then, similarly to the “formal applications”, a written request for improvement is conveyed. Subsequently, the application and the researched documents are delivered to the public owner with the request to submit a statement. This statement is then – again with the opportunity to submit a statement – delivered to the applicant with the researched documents.

Through these “adversarial proceedings”, which can also be described as a mutual exchange of arguments, both the applicants and the public owner have the opportunity to present their view of the case, thus ensuring a fair hearing.

After concluding the research, and obtaining the statements of the parties involved, the competent caseworkers produce a draft of the decision which describes the facts of the case in detail and presents the resulting legal questions. This draft is discussed in detail in the monthly sessions of the Arbitration Panel with the competent staff of the business apparatus. The three person committee then decides on the applications.

If necessary, the Arbitration Panel can call a hearing with the parties to the proceedings if new findings which go beyond the written submissions can be expected. Thus far, three hearings have taken place.

The implementation of the decisions in which a restitution is recommended falls under the competence of the public owner. If *in rem* restitution is not practical or feasible (this is the case, for example, with public road areas, schools or municipal residential buildings), a comparable asset can be restituted to the applicants. Generally, this takes the form of the (proportional) market value of the property, which is determined by the Arbitration Panel on the basis of an independent expert valuation. Moreover, experience has shown that, as a result of applications which have been received later, for example from further heirs, proceedings which had already been decided often required supplementation by means of supplementary decisions.

Since an amendment to the Rules of Procedure of the Arbitration Panel in 2007, proceedings which have already been concluded can be reopened. If such an application is filed, the Arbitration Panel initially decides whether the reopening of proceedings is granted. This occurs when evidence which was previously unknown is submitted which justifies the assumption that it would have resulted in a different outcome to the previous proceedings. In such a case, the Arbitration Panel makes a renewed decision on the subject of the application and repeals its earlier decision.

For every decision on a substantive application as well as for supplementary and reopening decisions, the Arbitration Panel publishes press releases in German and English, which outline the facts of the case and the juridical appraisal in a condensed form. Moreover, the press releases are published in the online database with the decisions of the Arbitration Panel.

## The status of the application processing

By the end of 2009, a total of 2,196 applications for *in rem* restitution had been received. 874 applications have already been decided; 13 of these were cases in which the application for a reopening of proceedings was rejected. 452 applications were being processed on the cut off day 31<sup>st</sup> December 2009 of which 269 were “formal applications” and 183 “substantive applications”. Information and requests for improvement were sent for 708 applications. For 162 applications the proceedings were concluded without a decision by the Arbitration Panel due to the withdrawal of the application, lack of powers-of-attorney or similar. The value of the properties so far restituted amounts to an estimated 40 million Euro.

### *The Year 2008*

In 2008, the Arbitration Panel decided on a total of 179 applications. Of these, 20 were “substantive” decisions affecting 84 applicants. In these decisions, the Arbitration Panel pronounced rejections for 45 applicants, dismissals for three applicants and recommendations for 36 applicants. Three applicants were awarded a comparable asset to a total of 960,000 Euro after reopened proceedings, two further applicants were awarded 7,400 Euro for an area of street. Two applications for the reopening of proceedings which had already been concluded were rejected. Additionally, in a supplementary decision, a recommendation from 2005 was extended to include a further 29 applicants. Moreover, during the time covered by this report, 95 “formal applications” were able to be decided. In 2008, eight one-day sessions of the Arbitration Panel were held and one hearing took place.

## GENERAL SETTLEMENT FUND

In spring 2008, the Rules of Procedure of the Arbitration Panel were amended once more. The new section 16a stipulates, among other things, that applications which have been received but are incomplete can be improved for up to 24 months after the expiry of the filing period. Secondly, applications which only arrived after the expiration of the filing period will also be decided by the Arbitration Panel if it can be shown that the application was sent late due to ill health. Thirdly, applications can be extended to include further heirs or inheritance shares after a decision has been passed if no application with respect to these heirs or shares had been received. The Rules of Procedure as amended on 22<sup>nd</sup> January 2008 were published in the *Wiener Zeitung* on 2<sup>nd</sup> April 2008. The victims' organizations were also informed.

In June 2008, the first volume of the bilingual series "Decisions of the Arbitration Panel for *In Rem* Restitution"<sup>6)</sup> was published in book form. It contains the first seven decisions of the Arbitration Panel on "substantive" applications from the years 2003 and 2004, including the first recommendation for the return of a property owned by the Republic of Austria and the decisions on the applications of the Habsburg-Lothringen family. In publishing the Arbitration Panel's decisions in German and English, a part of Austria's most recent compensation policies is documented and a vital segment of the current restitution case law is highlighted. The first volume also contains a general introduction, which describes the historical background, establishment and work processes of the Arbitration Panel as well as the pertinent legal provisions and the Rules of Procedure of the Arbitration Panel.

### *The Year 2009*

In 2009, the Arbitration Panel decided on 164 applications. 14 "substantive" decisions related to 39 applicants. In these, the Arbitration Panel pronounced rejections for 18 applicants, dismissals for 19 and recommendations for two. 125 decisions related to "formal applications" which were rejected or dismissed. Twelve applications for the reopening of proceedings which had already been concluded were rejected. In three supplementary decisions, the Arbitration Panel granted three applicants comparable assets to a total of just under 2.5 million Euro. In 2009, a total of eight one-day sessions of the Arbitration Panel took place and one hearing. Moreover, in May 2009 the business apparatus of the Arbitration Panel presented their work to a delegation from the USA led by Stuart Eizenstat.

In June 2009, the second volume of the series "Decisions of the Arbitration Panel for *In Rem* Restitution" was published. At the presentation of this volume on 8<sup>th</sup> June 2009, a round table discussion on the subject "Restitution as an interdisciplinary challenge? The cooperation between lawyers and historians in matters of restitution" took place at the Documentation Centre of Austrian Resistance. The high level of interest in the event – over 100 people participated – is illustrative of the great socio-political importance of the issue of Austria's dealing with its National Socialist past and more recent compensation and restitution measures, even 70 years after the *Anschluss* of Austria. The round table contributions and subsequent discussion are documented in the appendix of this report.

In September 2009, the redesigned online database, in which the "substantive" decisions had been published since October 2007, went live. One of the fundamental new features is the complete publication of all decisions in anonymous form, including those on "formal applications" and the English translations. Moreover, sophisticated filter functions allow for targeted searches according to the outcome of the decision (recommendations, rejections or dismissals), the legal grounds for the decision, the type of asset requested (moveable or immovable) and the cadastral district or province in which the requested property is situated. Those decisions whose contents are related to one another, as is the case, for example, with supplementary decisions or reopenings, are linked to each other. There is also a short description of each decision – in the case of the "substantive" decisions these short descriptions are identical in wording with the press releases which have been published.

### *Amendments to the law during the period covered by this report*

The general deadline for filing applications pursuant to the GSF Law expired on 31<sup>st</sup> December 2007. With Federal Law Gazette I no. 89/2008, the legislator created the opportunity for provinces and municipalities which had affiliated themselves with the Arbitration Panel (opt-in) pursuant to Sec. 38 of the GSF Law for the examination of applications for the *in rem* restitution of their property by the Arbitration Panel to extend the application deadline until 31<sup>st</sup> December 2009. Applications can be submitted within 24 months from when the regional administrative body had affiliated itself with the Arbitration Panel. The relevant deadlines are announced on the website of the General Settlement Fund (<http://www.en.nationalfonds.org/Deadlines.html>). Moreover, provinces and municipalities which had not yet affiliated themselves with the proceedings of the Arbitration Panel were able to make use of the opt-in until the end of 2009 without meeting any further requirements; after this an opt-in requires the consent of the Arbitration Panel.

After the City of Vienna had, in October 2008, already consented to a deadline extension until the end of 2009, the other provinces and municipalities that had already affiliated themselves with the proceedings were also informed by the Arbitration Panel of the opportunity to extend the deadline. During the course of 2009, the provinces Burgenland, Lower Austria, Upper Austria, Salzburg, Styria and Vorarlberg and the municipalities of Bad Ischl, Grieskirchen, Kobersdorf, Korneuburg, Mattersburg, Oberwart, Purkersdorf, Vöcklabruck and Wiener Neudorf consented to the extension of the deadline for filing applications. The province of Carinthia and the municipality of Kittsee rejected an extension of the deadline. During the course of 2009, the municipalities of Bad Vöslau and Schwechat each affiliated themselves with the proceedings before the Arbitration Panel for one single application each. The municipality of Frauenkirchen made use of the opt-in in September 2009. The province of Lower Austria last extended the deadline for filing applications for two years. Therefore, applications for the restitution of properties which were publicly-owned by the province of Lower Austria on the cut off day 17<sup>th</sup> January 2001 can be filed until 31<sup>st</sup> December 2011.

### Outlook

The priority for 2010 is the rapid processing of applications. Moreover, in 2010 volume 3 of the bilingual series “Decisions of the Arbitration Panel for *In Rem* Restitution” will be published. The volume will feature twelve decisions of the Arbitration Panel from the first half of 2006. They include three recommendations, four rejections, one dismissal and four supplementary decisions. In two of the four supplementary decisions, a comparable asset was awarded as *in rem* restitution was not considered to be feasible due to the communal buildings situated on the properties. In both other supplementary decisions, a previously ruled recommendation was extended to include a further heir or further property shares. The twelve decisions concern applications for restitution of properties owned by the City of Vienna and the Republic of Austria in Vienna and Upper Austria as well as moveable property, an association library.

The extension of the online database containing the decisions of the Arbitration Panel is also planned in order that their assessment according to various aspects may be simplified. In addition to being continuously updated, the decisions are to be made available according to historical keywords. Furthermore, the possibility of filtering the search for requested moveable properties and – if available – the public owner is to be implemented. A graphical web display is to allow the geographic distribution of the properties requested to be viewed on a map.

## GENERAL SETTLEMENT FUND

# THE ARBITRATION PANEL FOR IN REM RESTITUTION

## AN INTERIM REVIEW BY THE CHAIRMAN JOSEF AICHER

The Arbitration Panel for *In Rem* Restitution, established in accordance with the provisions of the GSF Law, is, as an independent decision-making committee, competent to decide on the restitution of publicly-owned property – predominantly of properties but also of moveable assets of Jewish communal organizations – which was seized or “aryanized” during the National Socialist era in Austria between 1938 and 1945. Furthermore, in exceptional cases, there is also the possibility of legally reexamining compensation measures of the Second Republic carried out decades ago – without doubt an absolute first in Austrian legal history. The particular legal mandate to correct any possible deficiencies in the restitution practice poses a great challenge from both a legal and a socio-political perspective.

### The Decisions of the Arbitration Panel

By the end of 2009, the Arbitration Panel had decided 874 of the 2,196 applications in 600 decisions. As the applications are often submitted by several applicants (e.g. family members) and can also involve several properties, related individual applications are processed and decided together. The decisions passed so far reflect the wide range of both property seizure under National Socialism and restitution practice after 1945. Each case has its own unique aspects and differences, but nevertheless experience shows that “groups of cases” can be formed in the judicial practice to date to which the decisions can be attributed. Certain grounds for decisions are decisive for each of these groups. This applies to both “formal” applications, which do not fulfill the fundamental requirements for an application and “substantive” applications where these requirements are met.

### Decisions on “Substantive” Applications

For decisions on “substantive” applications, the distinction must be made between recommendations on the one hand and rejections and dismissals on the other. A recommendation for restitution is pronounced in those cases in which

- new evidence pursuant to Sec. 32 (2) item 2 of the GSF Law becomes available,
- no prior proceedings can be established or
- an “extreme injustice” exists pursuant to Sec. 32 (2) item 1 of the GSF Law.

A recommendation on the basis of new evidence has only been pronounced in one case<sup>1)</sup>, where the findings of a study by the Historical Commission were decisive for the later affirmation of a property seizure. In four cases<sup>2)</sup>, no previous proceedings were able to be determined – this means that the requested property was not decided on in restitution proceedings after 1945 and the claim was also not settled by agreement, for example by means of an out-of-court settlement. Additionally, in these cases neither the applicants nor relatives have received compensation or any other consideration for the requested property by other means. In nine cases<sup>3)</sup>, the Arbitration Panel reached the unanimous conclusion that the prior measure constituted an “extreme injustice”. In line with previous case law, an exception of this kind, not more precisely defined by the Law, exists if in addition to a large discrepancy in value (between the value of the seized property and the compensation agreed in the settlement), the freedom of contract of the applicant was demonstrably restricted during the settlement negotiations.

Of the properties which have so far been restituted – which roughly estimated come to around 40 million Euro – around 6.9 million Euro were recommended in the form of a comparable asset. The estimated value of a property, determined by an independent expert valuation, is awarded when property parcels which are to be restituted are today, for example, part of a street, a communal building or a school and a restitution does not therefore seem practical.

A rejection or dismissal is pronounced in those cases in which

- the restitution to the aggrieved owners has already occurred after 1945,
- no persecution or seizure on the grounds stipulated by the GSF Law exist,
- no legal succession or eligibility to file an application exists,
- the Arbitration Panel is not competent to decide or the scope of application of the GSF Law does not apply,
- the *ex lege* restitution to the Collection Agencies A/B<sup>4)</sup> has occurred,
- no extreme injustice pursuant to Sec. 32 (2) item 1 of the GSF Law can be determined.

In twelve cases<sup>5)</sup>, the requested property had already been restituted in restitution proceedings after 1945. Regarding these cases, the Arbitration Panel held that the requested properties cannot be restituted a second time. Any financial losses from the prior proceedings could or can potentially be asserted before the Claims Committee. In eleven cases<sup>6)</sup>, the Arbitration Panel was unable to determine that an applicant had been persecuted or a seizure on the grounds of persecution listed in the GSF Law had occurred. With regard to the second point, it is to be highlighted that a connection must exist between the persecution of the person and the seizure of the property. If, for example, a property was required for the creation of a military training area or barracks and the sale of the property was not connected to persecution on political, racial or other grounds pursuant to the GSF Law, then no seizure exists pursuant to the GSF Law. In ten cases<sup>7)</sup>, the Arbitration Panel was unable to establish the eligibility of the applicants to file an application, for example due to an absence of legal succession. In seven cases<sup>8)</sup>, the applications were dismissed because they did not fall into the field of competence of the Arbitration Panel and/or the scope of application of the GSF Law. The applications for the restitution of the assets of the Habsburg-Lothringen family, which were dismissed for constitutional and international legal reasons, counted among these. In four cases<sup>9)</sup>, the requested properties had been transferred to the Collection Agencies A/B ex lege. These cases are unsatisfactory for both the applicants and the decision-making committee, because it emerges that the property had not remained "heirless" after all. Heirs who are entitled to the claim have now filed an application for restitution, which is precluded by a prior measure – the transfer to the Collection Agencies is also considered as such – for which a restitution cannot be recommended. In eight cases<sup>10)</sup>, the existence of an asserted "extreme injustice" was denied by the Arbitration Panel. In two of these cases<sup>11)</sup>, the proceedings were reopened as a result of new evidence and the existence of an "extreme injustice" was confirmed; in a third reopened case<sup>12)</sup> however the rejection was confirmed.

## Decisions on "Formal" Applications

The great majority of applications decided, around 600, did not fulfill the formal application requirements for a restitution. For around one half of these applications, the requested property was not publicly-owned on the cut off day, 17<sup>th</sup> January 2001. Other possible reasons are, for example, that no specific address is given in the application and, despite extensive research into historical sources, the Arbitration Panel was not able to establish a property to which the application could relate, or that an application for moveable physi-

cal objects was filed although it was not, as stipulated by the GSF Law, submitted by Jewish communal organizations or their legal successors.

## The Human Dimension to the Applications

The stories of persecution and property seizure are many and diverse. They tell of oppressive life and survival under National Socialism, of persecution, expulsion, expropriation or "aryanization" suffered, of the murder of family members, of an uncertain new start in a foreign country. But they also tell of the experiences of the victims after 1945, of their strenuous efforts for restitution of their properties. Nevertheless, the findings of both the Historical Commission and the Arbitration Panel show that a large majority of the properties seized under National Socialism had been covered by the restitution and compensation measures. Many applicants only learn through the research by the Arbitration Panel that their restitution claim had already been decided in prior proceedings. In many cases there had been a settlement in which restitution was waived in exchange for a payment. The reasons for a restitution not taking place – where the victims of the National Socialist regime had actually survived – varied. In the early days of the Second Republic, there was little interest in the fates of those who had been expelled – barely anyone was received with open arms or actively brought back from exile. Some of the restitution claimants in the 1940s and 1950s also experienced this when trying to have their properties restituted. The way in which these experiences have been passed down through the families of the victims is also reflected in the submissions of the applicants. The decisions of the Arbitration Panel are only able to document a fraction of these human tragedies. Yet each and every story would be worth being told in full.

### *o. Univ.-Prof. Josef Aicher (born 1947)*

*has been Chairman of the Arbitration Panel for In Rem Restitution since 2001. In 1975, he became Professor for Civil Law at the University of Graz and in 1978, Professor for Commercial and Securities Law at the University of Linz. He has been Professor for Commercial and Securities Law (now Corporate and Commercial Law) at the University of Vienna since 1982.*



“No one took houses, jewelry or such things from me. They took 62 years of my life.”  
*INGEBORG DÜRNECKER*

# HIDDEN SCARS – MY SUFFERING IN SPIEGELGRUND

INGEBORG DÜRNECKER

Abandoned at three months in January 1935, at temperatures below freezing. That is how it began. Seven years old: abuse and neglect. This made me well suited to being a guinea pig. Six weeks Child Reception Point, 18 months Spiegelgrund and almost 5 years Erlangdorf children's home. All so-called homes.

For me, Spiegelgrund and the Erlanghof children's home were so-called children's concentration camps: Cold, hunger, beatings, vast numbers of tablets and injections. Daily acts of sadism were par for the course. We became bedwetters. They hung the bed sheet over our heads and we had to stand on a stone floor until the sheet was dry. My toes froze.

The so called face-wash: We had to kneel before the toilet bowl, head in the bowl, and flush. I was given vomit-inducing injections by Dr. Gross – I thought I was going to die.

Once, I dared to take a few crusts of bread from a birdhouse. To punish me, I was tied up and my fingernails were cut down to the quick. Another time they shaved off my hair. Or they sprayed us with ice cold water against a wall until we collapsed. And there would be much more I could tell.

No one took houses, jewelry or such things from me. They took 62 years of my life. Destroyed my life, my nerves and my mental health.

You ask what such a loss is worth, when you never got to be a child and were abused? I've no idea what a human life is worth.

Finally, I would just like to say: It is so sad that the majority of them were our fellow countrymen.

*Even before 1938, the Child Reception Point served as a reception and distribution point for children and young people who had been taken into public care. During the National Socialist era, many disabled children were transferred from there to institutions such as, for example, "Am Spiegelgrund". By 1945, almost 800 sick or disabled children had been murdered in the children's institution "Am Spiegelgrund", erected in July 1940 on the grounds of the "Sanatorium Steinhof" in Vienna. One of the institution's doctors was Heinrich Gross.*

## EPILOGUE

# COMMENTS ON AUSTRIAN NATIONAL FUND AND AUSTRIAN GENERAL SETTLEMENT FUND

BY AMBASSADOR STUART E. EIZENSTAT

In 2010, the Austrian National Fund celebrates its 15<sup>th</sup> anniversary, under the inspired leadership of Hannah Lessing, and with the support of the broad Austrian political leadership. It has been a record of great success, vision and leadership.

I began my work as the Clinton Administration's leader on Holocaust-Era restitution issues in 1994, while I was also U.S. Ambassador to the European Union in Brussels. My initial work was on encouraging the return of communally owned property to the Jewish and Christian religious communities, which had been confiscated by the Nazis during World War II and the Communists in the post-war period.

However, my major negotiations began in the fall of 1995, first with Switzerland, over dormant Holocaust-Era bank accounts, and then in following years with the Germans over slave labor, insurance, and other property issues; with Austria, over slave labor, private property, insurance, and other matters; and with France over bank accounts. I likewise was the principal negotiator of the Washington Principles on Nazi-looted Art in 1998, and my staff worked with the International Commission on Holocaust Era Insurance Claims (ICHEIC), and its leader, former Secretary of State Lawrence Eagleburger, on insurance claims.

Importantly, the initiative of the Austrian government to create the Austrian National Fund did not result from external pressure from the U.S. or elsewhere. It was created in 1995 at the sole initiative of Austria. This helped create momentum for my future negotiations, by setting an example for other countries.

Austria, unlike Germany, followed a complicated path to reconcile with its role in World War II. Was Austria victim or willing accomplice? Even as late as my negotiations in the late 1990s and 2000 with Austria, leading political figures stressed that Austria was the "first victim" of Nazi aggression. But the creation of the National Fund was a recognition that Austria had a wartime debt to Holocaust survivors and their families.

I had begun to get a glimpse of the desire of the Austrian government to face its past during my tenure as U.S. Ambassador to the European Union. Much to our surprise, we found that an obscure post-war institution in Brussels, the Tripartite Commission for the Restitution of Monetary Gold (in short: Tripartite Gold Commission, TGC), still had gold deposits taken by the Nazis from the central governments of a number of countries. At the meeting of the TGC, Ambassador Hans Winkler of Austria took the lead on urging countries to contribute the value of the gold holdings to an international fund for Holocaust survivors. I was deeply moved when Ambassador Winkler pledged all of Austria's remaining share and said that "We all have a moral obligation to the survivors of the Holocaust, and to make their remaining days better." This dramatic statement opened a floodgate of commitments. It was the beginning of what I have called "belated justice" for Holocaust victims, and because it came from Austria, it had a particular impact.

Over the years, the National Fund has allocated approximately 153 million Euro to about 30,000 recipients. These funds have been administered in an efficient and transparent manner.

As result of my negotiations, then as Deputy Secretary of State, with the Austrian government to resolve class action suits against Austrian companies, I reached a series of agreements for slave labor compensation and private property compensation and restitution, with then Chancellor Wolfgang Schüssel (with whom I developed a relationship of great trust and confidence). I negotiated intensively with the Chancellor and his talented aides, including Ambassador Winkler, Maria Schaumayer (a remarkable person, who had been president of the Austrian Central Bank and who Chancellor Schüssel had persuaded to come out of retirement to negotiate a "Reconciliation, Peace and Cooperation" fund for surviving forced and slave laborers) and Ernst Sucharipa, for property negotiations. Our agreements resulted in close to a total of 1 billion US Dollars in payments.

It was a sign of the confidence that the Austrian government and the U.S. government had in Hannah Lessing and her staff, that the U.S.-Austrian agreement of 2001 provided that Ms. Lessing's National Fund would be given the additional responsibility of administering the complicated General Settlement Fund of over 200 million US Dollars for private property compensation to those whose property was confiscated by the Nazis.

I have met personally with Hannah Lessing and her staff on several occasions, most recently in 2009. I expressed to them my admiration for the dedicated work they have done on both the National Fund and the General Settlement Fund.

Frankly, we underestimated how many claimants there would be for the General Settlement Fund – over 20,000 claims were filed. As a result, the over-200 million US Dollar fund was insufficient to provide the level of justice we had hoped, giving claimants only a small fraction of the value of their property or their families' property. But under these trying circumstances, Hannah Lessing did an extraordinary job to provide a clear, honest claims process, which did the most possible for victims and their families under the agreement with which she had to live.

More recently, I met with Ms. Lessing at the Prague Conference on Holocaust Assets at the end of June 2009. I headed the United States delegation, and there were 46 countries represented, including Austria. Here again, Austria took the lead. In the detailed Terezin Declaration that materialized from several days of negotiations, the 46 nations placed their key priority in helping the elderly, poor Holocaust survivors, who are living out an already tragic life in poverty and deprivation. We were able to point to Austria as having taken the kind of leadership that would help survivors in their declining years. Austria has developed a home care program which assists not only Austrian Holocaust survivors living in Austria, but those living anywhere else in the world.

Austria has traveled a long way in recent years to come to terms with its wartime past. While there are still elements of the Austrian political scene which provide reason for concern, I believe that as shown by the success of the Austrian National Fund and the completion of the claims process of the General Settlement Fund, all under the leadership of Hannah Lessing, Austria has turned an important page in its history. I congratulate the National Fund on its 15<sup>th</sup> anniversary. There is much reason to celebrate.

#### **Stuart E. Eizenstat (born 1943)**

*worked in the Lyndon B. Johnson administration in the 1960s. Under President Carter, he was the Assistant for Domestic Affairs and Policy and Executive Director of the Domestic Policy Staff; under Bill Clinton he was the Under Secretary of State of Commerce for International Trade from 1996 to 1999 and then Undersecretary of State for Economic, Business and Agricultural Affairs and from 1999 to 2001 Deputy Secretary of the Treasury. In the Clinton administration he also became increasingly involved in foreign policy: From 1993 to 1996 he worked as US Representative to the EU, in 1997 he was the head of the US delegation to the UN Climate Conference in Kyoto. In his role as "Special Representative" of the President and Secretary of State on Holocaust-era Issues, he achieved the conclusion of the compensation agreements with Switzerland, Germany, Austria, France and other European countries. Today, Stuart E. Eizenstat works as a lawyer in Washington, D.C.*

ALLGEMEINER ENTSCHÄDIGUNGSFONDS  
GENERAL SETTLEMENT FUND  
AICHER | KUSSBACH | REINISCH (HRSG. | EDS.)

# Entscheidungen der Schiedsinstanz für Naturalrestitution

Band 2 | Volume 2

# Decisions of the Arbitration Panel for *In Rem* Restitution

*„Restitution als interdisziplinäre Herausforderung? Zur Zusammenarbeit von JuristInnen und HistorikerInnen in Restitutionsfragen.“*

Podiumsdiskussion und Präsentation  
am Montag, 8. Juni 2009 um 18 Uhr  
im Dokumentationsarchiv  
des österreichischen Widerstandes



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# RESTITUTION AS AN INTERDISCIPLINARY CHALLENGE?

## The cooperation between lawyers and historians in matters of restitution

*The possibility of in rem restitution was provided for in the Washington Agreement of 23<sup>rd</sup> January 2001 for assets seized during the National Socialist era that are publicly-owned today. The series "Decisions of the Arbitration Panel for In Rem Restitution" documents a fundamental element of the more recent Austrian compensation measures dealing with the consequences of the National Socialist era.*

*To mark the publication of volume 2 of the series, on 8<sup>th</sup> June 2009 a round table discussion on the question "Restitution as an interdisciplinary challenge?" was held at the Documentation Centre of Austrian Resistance. In their presentations, the participants related their personal experiences of the possibilities and restrictions presented by interdisciplinary cooperation between historians and lawyers in restitution matters, thus making a contribution to the current debate. In doing so, questions regarding synergetic effects and fundamental problems of interdisciplinary cooperation were the focus of the discussion.*

*The various approaches and methods of the study of history and law can lead to diverging opinions in questions of restitution. Here the question of justice and injustice forms the focus of the debate or – in the case of the Arbitration Panel for In Rem Restitution – what "extreme injustice" in fact was. An interdisciplinary approach seems necessary and makes sense, as the seizures and the restitution proceedings took place decades ago and require a precise knowledge of the relevant organizational set-up and legal framework.*

*The English translation of the German transcription of the round table discussion is printed in the following. The welcome address by Hannah Lessing, the introductory words by August Reinisch and the presentations by the participants of the round table discussion are a translation of an essentially word-for-word German transcription. The subsequent round table discussion has been summarized.*

## Welcome address by Mag. Hannah M. Lessing:

President Dr. Jabloner<sup>1)</sup>,  
Chief Rabbi Eisenberg<sup>2)</sup>,  
Retired Undersecretary Dr. Finz and  
Dr. Bock from the Control Committee<sup>3)</sup>,  
Parliamentary Vice Director Dr. Janistyn<sup>4)</sup>,  
Ladies and Gentlemen!

As Secretary General of the General Settlement Fund, I am pleased to be able to welcome you to this event this evening, where the first two volumes of the Decisions of the Arbitration Panel will be introduced. At the same time, this presentation shall be an opportunity to illuminate through a round table discussion aspects of the interdisciplinary cooperation between lawyers and historians in questions of restitution.

Therefore, please allow me to first of all welcome the participants of the round table discussion – they are:

- the Scientific Director of the Documentation Centre of Austrian Resistance and Deputy Chairperson of the Historical Commission of the Republic of Austria, Univ.-Doz. Dr. Brigitte Bailer<sup>5)</sup>, who I would also like to thank at this point for providing through the Documentation Archive this conference room;
- the President of the Supreme Administrative Court and Chairman of the Historical Commission of the Republic of Austria and of the Art Restitution Advisory Board, Univ.-Prof. Dr. Clemens Jabloner;
- and the Head of the Institute for Contemporary History of the University of Vienna, Univ.-Prof. Dr. Dr. Oliver Rathkolb<sup>6)</sup>.
- Unfortunately, o. Univ.-Prof. Dr. Josef Aicher<sup>7)</sup>, who is the Chairman of the Arbitration Panel for In Rem Restitution of the General Settlement Fund, is unable to be here today due to illness. His place at the round table discussion will kindly be taken by ao.Univ.-Prof. Dr. August Reinisch<sup>8)</sup> LL.M., Professor for International Law and European Law at the Faculty of Law of the University of Vienna and Member of the Arbitration Panel for In Rem Restitution.
- Dr. Peter Huemer<sup>9)</sup> will be moderating the discussion.

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I would like to extend a particularly warm welcome to

- Retired Ambassador Dr. Erich Kussbach<sup>(10)</sup> LL.M., Member of the Arbitration Panel for *In Rem* Restitution;
- G. Jonathan Greenwald, Member of the Claims Committee of the General Settlement Fund;
- Ambassador Dr. Ferdinand Trauttmansdorff<sup>(11)</sup> from the Federal Ministry for European and International Affairs;

and to all those present who I am unable to welcome by name without going over time.

At this point, I would also like to thank the staff of the Facultas publishing house for the excellent cooperation, particularly Mag. Kaier and Ms. Winter.

Since the National Fund commenced its activities almost 14 years ago and the General Settlement Fund eight years ago, employees with different educational backgrounds have been working together closely: They are mostly lawyers and historians but a few employees also hail from fields such as political science, ethnology or Judaic studies. What unites us in our work is the common task and the common aim, namely that through our work we contribute to Austria fulfilling, as best as is possible, its historical responsibility towards both the victims of National Socialism themselves and towards their heirs. While a central task of the National Fund is, in addition to symbolic recognition, social and emotional help for the survivors, for the General Settlement Fund, the final compensation of losses of assets stood in the foreground from the outset. In this respect, the activities of the Arbitration Panel occupy a special place in the field of compensation: While financial compensation for assets which had been seized remains the sole possibility for most victims and heir heirs after so many years, the Arbitration Panel allows for the possibility of *in rem* restitution, the restitution of the seized object itself. It goes without saying that an actual restitution of this kind can also be an act of particular emotional importance for the aggrieved persons. Due to the interweaving of historical and legal questions during the case processing, the employees work in extraordinarily close, interdisciplinary cooperation with one another. Dr. Reinisch will describe the work of the Arbitration Panel in more detail in his introduction following this.

At this point, there remains only one more thing to say: I would like to take this opportunity to thank the lawyers and historians and all other employees of the Arbitration Panel for their excellent work. I hope that they will continue to carry out this task with such dedication in the coming years. I wish you all a pleasant evening and will now pass over to Dr. Reinisch. Thank you.

### Introductory words by August Reinisch:

Ladies and Gentlemen, I am not Professor Aicher. I received a phone call this morning, asking whether I would be prepared to stand in for him, which I am naturally doing with pleasure. During the last eight years, the Chairman of the Arbitration Panel, Professor Aicher, has managed to avoid having one single "dissenting opinion". Those among you, I am speaking to the lawyers, who are familiar with arbitration know that this takes some doing. I would like to pass on a greeting from him. When I spoke to him it was very clear that he is not in a position to speak here today. He spoke on the takeover regulations in Krems for seven hours on Saturday and, in doing so, lost his voice. As Ms Mag. Lessing has already mentioned, I would like to present the subject of the round table discussion: The cooperation between historians and lawyers, the particular importance of this cooperation and its results for the Arbitration Panel, for the tasks which face us as members of the Arbitration Panel. By way of introduction, I would like to single out a few aspects which led to this book presentation. This is essentially Section 36 of the General Settlement Fund Law, which succinctly states that the recommendations of the Arbitration Panel are to be published. We discussed whether publication on the internet would have more than sufficiently fulfilled this legal mandate. I hope you will agree with me when you see the copies before you – volumes 1 and 2 of the decisions of the Arbitration Panel – that it is not merely the preference of the academics for something in print but that it has the added value that it is perceived and read entirely differently. Of course we are constantly dealing with drafts and printouts and similar in our daily work, however an actual bound version of the decisions makes a thoroughly different, thoroughly critical examination possible. Volume 1, which has already been available for a year, contains the decisions from years 2001 to 2004 and the volume presented today

those from 2004 and 2005. The decisions are also translated into English. It is stipulated that the work of the Arbitration Panel is not only to be carried out in German but also in English. We receive a great number of applications which are completed in English. We will discuss the procedure for filing applications and communication with the applicants later. It is therefore also very important that the results of the Arbitration Panel, that is the decisions, can also be received by the applicants concerned in a language which is accessible to them.

What are the decisions of the Arbitration Panel? What is the Arbitration Panel? In the meantime, even the Constitutional Court has grappled with what this peculiar hybrid actually is<sup>12</sup>. Ambassador Kussbach, sitting here in the front row, is the Member of the Arbitration Panel appointed by the Republic of Austria. I was nominated on the part of the Americans and we both agreed on the appointment of Prof. Aicher. Why this arrangement, which is somehow peculiar? Normally, international arbitration tribunals are appointed in this way, that is, one nominee for each party to the dispute and a neutral chairperson appointed by the parties' nominated arbitrators. We were able to reach an agreement. Should we not have been able to agree, it would have indeed been possible that the American party and the Austrian party would have had to reach an agreement in order to appoint such a chairperson. Interestingly, however, there is a domestic legal basis for the Arbitration Panel and that is the General Settlement Fund Law. However, it forms to a great extent – and please allow me this short digression into my own field, international law – a type of special transformation, these days we say “copy and paste”. During the process of special transformation, the Washington Agreement was therefore implemented word for word. I would like to add: sometimes there are indeed small differences between the Washington Agreement and the General Settlement Fund Law which have given us and will probably continue to give us quite a headache. This law is also the basis for the activities of the Arbitration Panel, that means that in the meantime the suspicion has also arisen that we are an Austrian authority, a quasi-court or similar. The Constitutional Court was correct in not sharing this opinion and therefore, since October 2001, we have been a court of arbitration functioning in an honorary capacity on an interstate basis. This basis stipulates – and I don't want to go into

detail here but maybe just briefly call to mind the actual mandate of the Arbitration Panel – to decide primarily on the restitution of properties, to a certain, limited extent also on movable assets which belonged to Jewish communal organizations, particularly regarding cultural and religious objects. It therefore concerns assets which were seized on the territory of present day Austria during the National Socialist era and which, at the same time, were owned on a particular cut off day – a date which was in no way chosen at random but resulted logically from the conclusion of the Washington Agreement – by the Republic of Austria or publicly-owned by those provinces and municipalities which have submitted themselves to the competence of the Arbitration Panel. Maybe just as a footnote: it is often very difficult to follow precisely who and at what time has submitted themselves to the Arbitration Panel.

The fundamental task, if I have interpreted it correctly, of both the General Settlement Fund Law and the Washington Agreement, was to now carry out a restitution, an actual restitution of those assets, primarily properties – hence *In Rem* Arbitration Panel – which had never been the object of restitution proceedings. Why do I stress fundamental? There is also, of course an exemption provision, and this exemption provision which is prescribed here pertains to relevant assets that had been seized, although already having been subject of restitution proceedings, the outcome of these, however, amounted to an extreme injustice. I do not want to go into the term “extreme injustice” in detail. There is quite an amount of legal literature on this subject and there have also already been a few professional seminars which have examined the subject. The topic today is, of course, a different one, the cooperation between historians and lawyers in the research and processing, which naturally provides the basis for the decisions of the Arbitration Panel. At the same time, this exemption shows and it has become evident quite quickly in the practical work of the Arbitration Panel that this case, which was probably only anticipated by the Washington Agreement and the General Settlement Law to be an exceptional circumstance had, in fact, become the general rule to the extent that the “substantive” cases, that is those cases which require a detailed intensive deliberation, are, in fact, all cases of potential extreme injustice. It is exactly here that we are reliant on the cooperation between the historians and the lawyers, who do

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a fantastic job in the General Settlement Fund, but I would like to also give them my special thanks in the course of the round table discussion. To start out, as said, the book presentation: I would like, also in the name of our Chairman, Professor Aicher, to thank the employees of the Arbitration Panel, as a representative I would like to particularly mention Ms MMag. Betz, for the work which is done after we have made a decision, as a fair amount of work is still required to make it into a book. I would also like to thank Mag. Kaier and Ms Winter from Facultas and Richard Hart from the publishing house Hart, as this book is also published in cooperation so that it can also gain circulation in the English speaking countries. Finally, we owe our thanks to the General Settlement Fund and the Federal Ministry for European and International Affairs for their financial support which made this series of publications possible. Thank you very much!

### On the subject:

#### Clemens Jabloner

Thank you for allowing me to speak here. My work with the Austrian Historical Commission dates back a few years. The details have vanished, the nuances remain. Now I am involved with art restitution, which I would also like to briefly discuss. I approach the issue from a relatively abstract angle, as, when we talk of cooperation it must first be understood: What do historians do, what do lawyers do? They are neighboring disciplines, to some extent they are carried out identically, although I am not now thinking of jurisprudence but of the application of law, the creation of law, that is the production of various legal sources and the execution of the laws. The parallels are, however, to a certain extent superficial. A cooperation can only be undertaken at a higher level of discussion. These fields are initially similar in that facts must first be established, resulting in a type of narrative. The next step is an evaluation: In the application of law, it compellingly arises from the process of subsumption under an element of the case with the imposition of a legal consequence. The narrative can encapsulate more or less evaluation; no evaluation at all is not possible. However, fundamental differences exist between these narratives. In accordance with certain methodical guidelines, history reconstructs an earlier event and the establishment of the event can – and

therein lies the first important difference – occur with varying degrees of certainty. The likelihood of an event can more or less be spoken of. The outcome can also remain open and academic knowledge is gained despite this. The application of law involves the dogmatic determination of the facts of the case, a certainty must be expressed in the ruling. The methods are also different; modern historiology essentially avails of sources, it proceeds empirically and seeks to find out that which the lawyers perhaps describe as substantive truth. For the lawyers, this is only a very late result of the Age of Enlightenment. Previously, they made their findings regarding the facts of the case on the basis of, for example, trial by ordeal and it is now also far from being the case that this principle of substantive truth, that is seeking to establish what really happened, is prevalent in all areas of application of the law. There are many areas which are characterized by a formal notion of truth. What is important, and this is also often overlooked by lawyers, is that the establishment of the facts of a case is not an empirical process but a legal ruling in application of the rules of procedure. This is also the source of many procedural problems. I know the problem from the perspective of the Administrative Court, that the authorities often string together any insights into any events but then fail to say on what facts they bindingly base their assessment. This is a very typical problem. On the other hand, experts tend to preempt legal assessments, in practice this varies greatly. This results in different perspectives of the two academic fields concerning appeals. If lawyers determine the facts of a case, then they are dogmatized, they are fixed and procedural law generally does not look very favorably on the reopening of proceedings. The reasons for an appeal, the reasons for a reopening are always borne by the endeavor to leave the proceedings as limited and complete as possible. It is also a matter of legal peace, the ending of dispute and not necessarily about the ultimate truth and justice. The cooperation between lawyers and historians usually takes certain paths. Here is a classic example: we have a war criminal trial and a historian appears as an expert on the organization of the SS, for example. On the other hand, lawyers in historical commissions can make contributions regarding legal history. This is all unproblematic. It only becomes problematic when, as was the case in the 1990s, both endeavors are very closely linked to one another, hence, on the one hand, this striving for historical truth and research

and, on the other hand, the very close connection with the creation or execution of legal provisions. Now, what do lawyers do when they establish facts: their work is person-orientated, at least in the area of criminal and liability law, where the guilt of a person must be established. Here lies the problem which, for example in war criminal trials, becomes very clear where fault of an organization is established and it emerges that a person was somehow involved in a criminal event, it is necessary that certain actions are personally ascribed to this person. That is the structural difficulty of war criminal trials. This was very clear recently, during The Hague Tribunal. It requires an extraordinary amount of effort until it is possible, as a public prosecutor, to render somebody such as Milošević liable for a certain action. The legal system, which is now orientated towards determining such ascription of liability applies a normative scheme of interpretation to the facts with a very distinguished technique of allocating and ascribing guilt. This is a problem which historians encounter when they, to a certain extent – which they shouldn't do – identify guilty parties in events so that they are lacking this instrument of a legal trial. Now, where are the main transgressions which could be wanted or unwanted? The first thing is that there is a very strong aspiration on the part of the victims to have their history determined in a binding manner. This is something which is traditionally unrelated to the demand for restitution and compensation. Their fate should be quasi officially documented. It should be made appeal-proof. One therefore also speaks of historical revisionism – which threatens time and again. It is a result, partially of deconstructive tendencies, partially also of the internet. Everything seems to be of equal value, all interpretations are suddenly possible. That means that these victims are deprived of their own history and then want to have it legally determined. This is then virtually part of legal proceedings although legal consequences are possibly not even attached to it. A famous example was the South African Truth and Reconciliation Commissions, where it concerned precisely this, without – as far as I know – consequences being attached. On the other hand, historiography was not always immune from appearing as a kind of historical jurisdiction as a fourth state authority which also leads to great difficulties which I have already mentioned. That means it is important to know what one party is doing and what the other party is doing. This is the requirement for this cooperation which we,

I believe, have very successfully cultivated at the Historical Commission. I have now been involved in the field of art restitution for some time. In principle, the same methodical issues arise, but it is even more complicated because here I am entering a special area of contemporary history or a special branch of art history which had previously not existed at all, that is provenance research, the techniques for which have only been developed in the last two decades and all questions here are particularly focused: The more valuable the items are, the more furious the disputes about them are. What happens during the restitution of art? It is similar to *in rem* restitution, it concerns publicly-owned artwork. There are two main groups: the first is those cases where restitution was granted but by means of strange settlements under the pretext of the ban on export items were retained. That is the first type. The other type were objects, which although legally acquired, were based on a null and void legal transaction in accordance with the restitution legislation. The abundance of objects which fall into this category is astounding. It ranges from magnificent, very valuable paintings, which can be read about in the papers to very small objects, to the collection of stuffed humming birds, cars or sewing machines and other similar things, which also forced the definition of art to be broadened in the sense that everything which was worthy of collection by the state also actually deserved to be returned. I don't want to ridicule this, but a recent interesting case of restitution was a boiler which is on display at the Technical Museum as a very early model but which has a very clear provenance. Of course it will not really be restituted, instead compensation will be offered. And so ends my little description of what I do. Thank you!

### Brigitte Bailer

By way of introduction, I would, as host of this conference room so to speak, like to once again warmly welcome you. I am pleased that this event can take place here, as the question of the way in which Austria deals with the victims of National Socialism has also been a field of research for us since the early 1990s. I admit – I introduced it. You may have already seen our exhibition, from which you can see how intensively we are dealing with the issue of the persecution of the victims of National Socialism. And we

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did not want this story to stop at 1945 as it must also be asked how the Republic of Austria dealt with these persecutees post-1945. For today's event, I was requested to speak a little on my experience of the interdisciplinary work in the Historical Commission. As President Jabloner has already said, the Historical Commission marked the beginning of interdisciplinary work between historians and lawyers. I remember well that the nomination of President Jabloner by the government as the chairperson of a Historical Commission, which was then still to be appointed, was widely covered by the media. This was greeted with an eruption of doubt and skepticism in the guild of historians. It was firstly thought that the President of the Administrative Court was surely appointed by the government in order to control us and secondly, why is a lawyer involved in this enterprise and thirdly, above and overall, in the opinion of the "guild" it should have been a respected historian appointed to this position. I would like to stress, not because you are sitting here now Mr. President but because it is the truth, that these doubts were very quickly quashed. Looking back, the decision was actually a wise one, as by bringing a lawyer on board, there was somebody unaffiliated who was above the discussions and conflicts which exist within the group of historians. In reality, this chairperson appointed by the government did the Commission a lot of good. In the final report there is a chapter "The legal threads running through the Historical Commission", meaning the interdisciplinarity of our work and this actually arose by itself from the subject that we were presented with. The property seizures by the National Socialists ranged from brutal deprivation to pseudo-legal legal transactions, which were enabled by an inhuman dictatorship. The Second Republic could only counter this criminal process on the basis of the democratic rule of law. A conflict, an ambivalence, was shown by a few historian colleagues because it was unsatisfactory: the consequences of a criminal process should have been reversed with democratic means under the rule of law – that could not work. This is one of the problematic areas of restitutions, but that also applies to the restitution laws in the Federal Republic of Germany. Thus, a part of the investigations imposed upon us as historians had already become a job of the lawyers. As a historian with little pre-existing legal knowledge it was possible to, for example, investigate the political history of restitution and compensation which I also did. However, without knowledge and

understanding of problematic wordings of the law and difficulties – how can something be worded in a law in a way that it can be interpreted to the disadvantage of one of the affected persons – it would have been a lot more difficult to also historically assess the very differing and numerous bills for the restitution acts. For precisely this reason we at the Historical Commission also selected the Professor for Private Law Georg Graf<sup>f13</sup> – he is here today – for the commission as a legal expert. An observation as an aside: there are considerably more lawyers here today who worked in the sphere of the Historical Commission than historians. In addition to our historical work, the Historical Commission has had legal opinions compiled on individual fields of law which were incredibly important for our understanding as historians of the legal material, the origins of which we, among other things, also investigated. Historians and lawyers, however, sometimes have an entirely different view of matters. President Jabloner has also referred to this in part. In my opinion as a historian, the focuses are a little different. For example, for me, laws are the product of a societal political conscience, political hierarchy and opportunities. The classic example of this is probably the prevention of the Apartment Restitution Act within the context of opportunist political behavior. For lawyers, laws are to be bindingly enforced, so long as they came about in conformity with the constitution. The social background, the genesis, is of interest – the lawyers may correct me – at all events in the case of authentic interpretation when determining what the legislator actually intended with this law. Despite all this, in the legal expert opinion by Georg Graf, but also in that of Walter Pfeil on social legislation, there were only few differences of opinion. The lawyers highlighted problem areas which had already become clear in the historical analysis, for example during the investigation of the process of becoming law, specifically in the case of the Third Restitution Act, which was already addressed by the great lawyer Klang, who had warned of several provisions in the Third Restitution Act prior to its resolution. The situation was a little different in international law, where a member of our Commission demonstrated a different view of the question of the applicability of the occupation theory to the lawyers in the field of international law who had investigated this subject for us. There were greater differences in the assessment of the execution of the law. For us, it was often very difficult to understand that the lawyers

accepted some things as entirely normal and correct which we actually perceived as unjust, for example the question of settlements – colleague Meissel<sup>14)</sup> is also here – that was one of the subjects of discussion. The group which investigated the enforcement of the Third Restitution Act believed, from the perspective of a lawyer completely correctly, that a series of entirely acceptable settlements had occurred. From our perspective, or from the perspective of several historians, that was again marked with a very large question mark. How could these settlements have been correct if in reality the aryanized property remained in the hands of the aryanizers in exchange for a comparatively simple partial payment? The lawyers replied that the costs for long proceedings were avoided through this. A lawyer also views long proceedings due to the Code of Civil Procedure, which also applies to the restitution acts, as completely normal. For the affected persons, they were unbearable and after several historians, myself included, also took the side of those affected, we didn't view it as a foregone conclusion to the same extent as the lawyers. But that was of course a problem which lay with the legislator and not with the lawyers' interpretation. And yes, historians also tend towards – President Jabloner has already mentioned it – evaluations – not to judgments but to evaluations, and here the Historical Commission, perhaps also under the influence of lawyers has moderately counteracted this a little, not always to the joy of those participating in our projects. But in summary, it can indeed be said that lawyers represent the law, historians and affected persons demand, above all, justice, and we were often forced to recognize that law is not also justice. That was definitely a conclusion we were able to draw. The interdisciplinary discussions and getting to know other lines of argument was interesting and I believe that we historians have learned from the lawyers. Whether the lawyers have learned from the historians must be judged by the colleagues here. The extent to which we had been legally influenced became clear to me during the debate on the Habsburg assets after the conclusion of the Historical Commission. We had been provided with the documents by the legal representatives of the House of Habsburg at the outset. However, the discussion then flared up again after the Historical Commission had ended when Georg Graf presented his view of things in which he stated that it had in fact been a seizure of assets during the National Socialist era and Graf's

view was also reported in the newspapers. Here in the Documentation Archive a discussion ensued, and I admit I tended more towards Graf's view of things, to which a historian colleague said to me "how can you say that, how can one argue in favor of the Habsburgs, that just cannot be." So it was very clear that also on the part of the historians a political opinion, say an evaluation overwhelmed and transformed the strictly legal view and then I understood that we have already learned a fair amount, and therefore, in conclusion: I found the cooperation very fruitful, personally, I would like more interdisciplinary research, and I am very pleased to have been able to be involved in this experiment. Thank you!

### August Reinisch

After art restitution and the Historical Commission, a third example of cooperation and interdisciplinary work between historians and lawyers, is the, plainly said, business apparatus of the Arbitration Panel: In fact, it is of course the historians and lawyers who support us in our activities as the Arbitration Panel. Of course it is predominantly a question of historical facts of a case which require clarification. Those historical facts, which not only concern the seizure and the circumstances surrounding the seizure but above all the restitution or non-restitution after 1945. Both are of course in the meantime present occurrences with a certain historical distance, which means that we are very often reliant on historical research into the facts. That is, of course, always a legal process too, as we have heard, because it is a matter of working out facts of a case, taking into consideration the provisions which are to be applied, but this is something which requires research and where we experience support through a particular type of teamwork. Because both the Arbitration Panel and the Claims Committee are assigned several specialized representatives from these two areas, the fields of law and historiography, who, when a new case comes in, both try as a team to examine whether the fundamental requirements for a decision are fulfilled or, as is very often the case, to determine together specifically what is necessary for an "ascertainment of the truth through official investigations". When we receive an application which states: My uncle had a house in the 6<sup>th</sup> district, this often is not a lot of help and it would be easy to say, the application is not detailed

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enough and therefore we won't deal with it or we will just send it back. Precisely this should not happen and it is exactly here that the work of the historians and lawyers of the General Settlement Fund comes into play, in order to determine from the holdings of the archives: What in fact is the object of a restitution application which is being filed today, i.e. after 2001? Firstly, and I can really only speculate here as I am not a historian, the historical tools are required to know the way around the archives. Where to go, where to find which files, where are holdings still archived? Of course files which have already been destroyed pose a great problem for the reconstruction of the course taken by proceedings 40 or 50 years ago. It requires historical and academic skills in order to manage the relevant specialized literature, to master the work of the Historical Commission (which provides essential help for the work at the General Settlement Fund of both the Claims Committee and the Arbitration Panel) and to include these in the decisions. I don't want to go into the proceedings before the Arbitration Panel in too much detail, but would like to bring a few elements to the fore and explain how a decision comes into being, what procedure is followed when an application is received. From its structure, the Arbitration Panel is of course already quasi founded on a contradictory procedure, that means there are applicants, there are adverse parties. The parties to the proceedings, on the one side the applicants and on the other the Republic of Austria or other public owners, must be afforded the opportunity to submit their statements. Very often, these contradictory proceedings are only possible once the requirements have been established within the Arbitration Panel, which is precisely the nature of the work done by the teams of historians and lawyers. Whether there was public ownership on the cut off day is rarely a problem. It is more of a problem to determine legally whether the respective owner constitutes a public owner, that is the question of which outsourced or other quasi public institutions are deemed direct or indirect owners. The main difficulty is the determination of which properties are concerned, who claims which property – it is primarily properties we are dealing with. In the first phase of dealing with the application, it is the work of the historians who can fall back on the research databases some of which are already available in-house and others are in the *in rem* database on property ownership by the Federation and the City of Vienna and

who then can continue to work through the archive holdings, not only through Austrian archives but also foreign archives in order to first be able to determine which properties or other assets of the applicants are specifically being claimed. Only when these facts have been roughly established, is it then outlined what possibilities there are for a restitution. Drafts of decisions are presented in the monthly sessions of the Arbitration Panel and there are often memoranda prior to the drafts. The legal problems, which arise due to the often initially assumed facts of the case, are discussed. In a fruitful dialogue between the members of the Arbitration Panel and the employees of the Arbitration Panel, we try to develop suggestions for solutions. As soon as there is a draft of a decision, often with possible variations because there are uncertainties in the ascertainment of the facts, then a decision is made whether possibly an oral process, i.e. a hearing is required. Should this be the case, a hearing is carried out. This is particularly necessary if individual elements of the facts of the case are still unresolved. Only after generally – and I know, this is also something which doesn't make any of us happy – fairly long proceedings, recommendations can be pronounced by the Arbitration Panel. I would, however, like to put this in perspective with other arbitration proceedings which usually – and these always deal with only one dispute – last for three or four years. I would ask you to take into consideration that we have so far had over 2000 applications. I can also remember well when, even before the appointment of our Chairman, Ambassador Kussbach and I discussed how long it would take and it was indicated to us that these matters would be finished in three or four years. It was not three or four years and we also do not want to speculate how much longer it will take. But – and I think that this is what is decisive – the entire thing would have been a completely unmanageable task had we not had the support of the historians and lawyers, who contribute fundamental, essential work to the General Settlement Fund. As I mentioned, I only stepped in this morning and therefore have not had the opportunity to prepare extensively for this evening but I would definitely say that the Arbitration Panel is a very good example of a successful cooperation and interdisciplinary work because it is not even noticeable, because it just works and at the same time I would like to hand this back to the staff of the General Settlement Fund as thanks and as a compliment.

### Oliver Rathkolb

As the last speaker, I don't want to keep you for long. I think that there are many people here who could make interesting contributions to discussions regarding the basic theme. I would like to emphasize four points: two departures from protocol, a symbolical political line of argument and then I would like to begin to publicly discuss the question of criticism of the consequences of the decisions of this excellent Arbitration Panel. Regarding the departures from protocol: the first has already been alluded to; in contrast to the restitution proceedings of the Second Republic, which were, with very few exceptions, handled on all levels by lawyers, with the Arbitration Panel here, the attempt is being made to introduce to a much greater extent real historical competence, critical consideration of sources and also assessment, interpretation of sources, contextualization to what are ultimately legal proceedings, than had been used in the restitution proceedings post-1947 particularly. These two volumes need only be compared to the decisions of the various higher decision-making bodies within the scope of the restitution proceedings post-1947 to see the difference. I think that despite the methodical and fundamental differences between the work of historians and lawyers one can sense this departure from protocol and also a well functioning interaction between these two disciplines. I think that this is also really a break in tradition in the history of restitution proceedings in the Second Republic and this should be highlighted. It is also a break in tradition with regard to contemporary historical research. In fact, contemporary historical research had only a passing interest in historical sources relevant to restitution in the late 1980s, the 1990s. That was dismissed as positivist, unnecessary trivia. Hardly anyone found their way to the archives and in the ranking of historical work, such activities were marginalized as uninteresting along the lines of: who's going to the archive today? The development since the 1990s was very interesting. The State Archives were fuller than ever before. Very interesting things were found and they were provided with various new contextualizations and, on the basis of new methodical approaches, interpreted differently. The issue is not that historians deliver the material to fill databases but it is about interpreting this material in a wider social, political, cultural context. Much has also occurred within the

Historical Commission and to a certain extent this has again led to a paradigm shift in another direction. I think the historians can also be pleased about this chance which has developed in the 1990s and from the year 2000. It must also be said, they have used these chances. A completely new branch of research and line of work has come into being: provenance research – who had ever used the term provenance research in the late 1990s except for amateur historians at certain auctions or certain collectors? We will, however, perhaps discuss this later. I would also like to briefly mention the book: It is after all a book presentation and I would like to warmly congratulate the editors and the whole team. Its entire translation into English impressed me greatly. It is a shame that the reports of the Historical Commission were not published in English – the Republic could have reached into its budget pocket one more time in this respect. Now I have arrived at the fourth point that I would still like to briefly discuss before I conclude with a sort of differing assessment. The question, whether it is at all purposeful to once more exercise this instrument so long after the end of the Second World War, after the end of the restitution proceedings, which were mostly completed in their entirety at the latest in the late 1950s, early 1960s? I think it was a very intelligent and important decision which was reached in the Washington Agreement in this respect, although I suspect that errors were made regarding the contents. It was not a matter of actually forgotten property but of cases of extreme injustice and I believe that the Arbitration Panel's judicial practice, if that is what you want to call it, is also carried out along the correct lines. What I believe, however, which is important, is that proceedings of this kind, also the debates on the proceedings carried out in the media, in a public arena of discussion lead to the subject being newly revisited in publications, thus fed into a new historical, societal discourse. Elazar Barkan made it clear in his book: Often it is less important how a case is decided or what material value is actually restituted, rather it is much more important that a new determination of historical injustice, of theft, of "aryanization" occurs, also obviously including subjects as drawn on by my colleague Bailer-Galanda which are only indirectly related to the main subject. An application by a group from Döllersheim/Allentsteig was rejected by you in the Arbitration Panel. With regards to the decision on the Family Fund of the Habsburg-Lothringen family, I have to say I am of a

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completely different opinion to Professor Graf and also to parts of the Historical Commission. I consider it a relatively simple legal question, but apparently I have become a little pigheaded as a result of my legal studies and the Arbitration Panel actually established in two sentences. I quote: "The Habsburg Law is an essential component of the Austrian Constitution. The Habsburg Law contained an active ban on the restitution of assets since its enactment in 1919 until the constitution of 1934. It was reinstated with this content in 1945 and has since been part of Austria's Constitution." You must not believe, however, that the Arbitration Panel chose the easy way out. I don't think that there are any proceedings where so many opinions were obtained from the most diverse experts, also from historians, for example Prof. Binder in Graz. And I have to say, I find it a clear legal conclusion. It can be discussed and there are, of course, other legal opinions, which in my opinion go further, they cannot limit themselves to the level of restitution of the so called Family Fund but then we would have to openly and honestly discuss the repeal of the Habsburg Law with all its consequences, which I, as a republican and a democrat, would be very strongly opposed to. But that is a political decision and not the decision of a lowly historian. Now the last point. That which really takes me aback is not this interesting and remarkable work of the Arbitration Panel but the question of what surrounds it. What really irritates me is that before the historical backdrop, that is all other questions of restitution and compensation, there are these immense influences in the matter of the actual transfer of property to these large groups of heirs, where so called heir investigators and also lawyers play a role, which I believe is not a positive role and that is what I would like to contribute as a criticism into the discussion. I think, in this regard, that symbolically correct, dedicated work of the historians and lawyers is being pushed in a completely different direction in public understanding. You are all familiar with the reports in the media on individual properties which, as previously, were still unable to be restituted because so many various heirs and groups of lawyers are feuding. In this regard, and this is actually nothing more than a moral appeal, I would like there not only to be an Arbitration Panel which decides on claims, but also a meditating body – not an Arbitration Panel but a mediating body which gets these conflicts and disputes under control. Please keep in mind that in the field of public discourse, the very important positive

work of both the Historical Commission and also the various funds is reflected in a bad light and I very much hope that we don't consequently have a strange new line of debate in the upcoming Viennese election campaign. Thank you.

### Discussion

Berthold Unfried<sup>15)</sup> posed the question whether the reopening of prior restitution proceedings, made possible by the introduction of the term "extreme injustice", which had been concluded half a century ago in a constitutional state would not lead to the aporia that old materials would be reassessed in the light of newly developed legal opinions and to which the legal instrument of the statute of limitation is generally applied. Jabloner replied that the statute of limitation was an instrument of positive law and that it depended on how it was viewed: Considered from a static perspective – for example a procedural system such as the Code of Criminal Procedure or the General Administrative Procedure Act – *res judicata* was fundamental. Within this system, change was rejected. If, however, this view was broadened to include legal dynamics, then legal positivism meant accepting the changeability of law. It was possible to later differently assess things that have already been assessed, and precisely this could happen. The argument that, for example, National Socialist judges had executed National Socialist law and could therefore not be prosecuted was the legal positivism of the dumb, because it is precisely when one was a positivist that such things could change. The division of law and morality meant that one was always to be held accountable for one's actions. The fact that these actions were legal, alone did not suffice. They also had to be morally justifiable or the risk was run of later being held to account.

Regarding Unfried's second question on the criteria for defining an extreme injustice, Reinisch explained that this term had neither been invented by the Arbitration Panel nor by the legislator, but by the parties to the Washington Agreement. It fell to the three arbitrators to create logical criteria for the definition and its application. In doing so the methodical problem arose that the legislator had created a genuinely new term – he could have defined the term but had not done so.

Gerhard Botz<sup>16)</sup> added that the term extreme injustice threw up numerous fundamental questions, questions pertaining to historical theory and also legal questions. Injustice and justice were defined in historical literature as a process of social negotiation but were only created by society and had not been made forever concrete. This also implied the change: actions which had been considered less unjust 70 or 80 years ago had been regarded or determined – also by the victorious powers – to be unjust after 1945. A historicization of the term was therefore crucial. Historians were not required to reach any really relevant decisions pertaining to property law or law concerning persons. The fact that they worked in cooperation with lawyers would therefore mean that the issue of restitution was also viewed as a legal re-definition or historical process. In this process, the lawyers were the accessories to politicians, which wanted the problem to be reopened and re-solved in line with a new understanding of justice adopted by the Austrian and international public. It was a question of a very important and interesting cooperation between two very different disciplines which were seemingly unconnected. The fulfillment of such a precise assignment to produce an expert opinion relevant to the proceedings did not actually belong to a historian's field of practice. History defined, as did all academia, the questions from the process of research and discussion itself. This was not the case with an expert opinion, but it did not mean that in many cases, Mr. Longerich<sup>17)</sup> will confirm this, expert opinions used in court did not also contribute decisively towards a redefinition of subjects like restitution or the issue of war criminals through the societal legal parameters. On the other hand, however, it brought history closer to the legal determination of facts. There was – to expand on the statements of Oliver Rathkolb – no majority historical culture in Austria which followed postmodern or poststructuralist principles. As a historian one was not confronted with established facts but these would rather be first created on the basis of empirical evidence (source material) during the process of posing questions. Due to a strict procedure (the tracing, criticism and analysis of sources), this two-way process created what was commonly known as data or was referred to as facts.

According to Huemer, events which occurred 70 years ago were today considered absolutely unjust in line with our understanding of justice and injustice.

This was entirely logical, as we live within an entirely different political and legal structure. However, in this context we also consider events which occurred 50 or 60 years ago today as absolutely unjust. The Arbitration Panel must now address exactly this issue, namely the fact that within a continuity of both the political and legal structure our perception of justice surrounding a specific issue had changed to such an enormous extent.

Rathkolb responded to this that this change was the result of an international global discourse. Without the large-scale American intervention, neither the Arbitration Panel nor the forced laborers' compensation would have existed.

Jabloner confirmed this and added that the fact that the USA lived in an almost perpetual continuity while the central Europeans had a completely different set of experiences in changing legal systems as a result of revolutionary events, and this was a reason for this clash of legal cultures. The Second Republic had had to exist for a relatively long time in order for a feeling of consistency to emerge. This way of thought had only prevailed through this long peace process and consistency.

In response to Huemer's interjection that, with regard to extreme injustice, this could be assessed as an exculpation of lawyers, Jabloner specified that people in the 1940s to 1960s had also been overwhelmed by the speed and transformation and that people must live for a time in stable ownership structures in order to be able to develop such thoughts.

Bailer contradicted the objection of Werner Doralt<sup>18)</sup> that the restitution acts had not been the fault of the lawyers but of the politicians who had commissioned them and referred to the actual problems in the restitution legislation: the negotiating processes between the various lobbyists. Lawyers had indeed been in the background, and had of course been influenced by various lobbies. However, it had not been party politics directly but much more complicated interweavings of interests which had also led to the great difficulties in the bare texts of the laws and to a greater extent in their later interpretation by the Restitution Commissions. With these matters, the devil lay in the detail, and the responsibility for that lay with the lawyers.

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In her statement, Eva Blimlinger<sup>19)</sup> referred to the merits of the National Fund, the General Settlement Fund and the Art Restitution Law, which was, however, not to draw focus away from the fact that there was no procedural system and no appeal process before the Claims Committee and the Arbitration Panel. For art restitution there was an authority appointed, however, there was no further judicial review process, neither under civil nor administrative law. It was therefore to be discussed whether the present situation did not constitute a deterioration in comparison to the 1940s, where in exchange for a payment of around ten percent of the awarded amount a signature had to be given waiving all rights of appeal. The establishment of a body where no kind of code of procedure in the sense of administrative procedure or procedure under private law existed, was questionable. Reinisch answered this question with the remark that this procedure was not a domestic restitution procedure as those after 1945 but existed at a kind of meta level. The subjects were not the aryanization by the Nazis and its reversal but the way in which this reversal was carried out 50 years ago. The model of the international court of arbitration where there was typically no appellate instance had been chosen for this reason. In this respect a thoroughly routine procedure was followed which could also have been conceived differently. Where there was a judicial review process, the problem of overlong proceedings occurred. Blimlinger pointed to the length of proceedings of both decision-making bodies of the General Settlement Fund which were in all cases lengthy. Reinisch stressed that behind this consensus, which was governed by a certain pragmatism, had been the will to reassess these restitution issues. Whether a conclusive assessment from a historical perspective was even possible, was in any case questionable.

Ferdinand Trauttmansdorff argued that he fostered a natural distrust of legal positivism. Austria under Nazi rule but later also dealing with the Nazi past became an example of a culture of "legalization" of injustice and negative emotions, even mala fides. The legal positivist approach made such a culture easier than a sociological-legal or natural justice approach. For this reason it was also so important that Austria had found a partner in the USA, above all in its legal approach and processing of the past, who countered our fundamental "top-down" approach to legisla-

tion with a legal concept evolved from customary law. That possibly sounded a little theoretical and generalizing but it was at precisely this point especially important to have created a new approach to a processing of the history of legal relationships which were previously untouchable as they provided predictability and certainty of the law. This was actually the great change brought forward by the very concept of the Arbitration Panel, which also compared favorably with international standards. This concept could also definitely serve as a model for other states that still have a great deal of unresolved restitution issues to process. Unsatisfactorily, this also had limits, because the historical opening needed to take into account the interest in the legal security and predictability of the decisions. That was, however, precisely the compromise that lawyers had to make.

Jablonek argued that the inclusion of the USA could be viewed from different angles. Generally, in Austria there had been a need for a regulation of Austrian affairs and the USA had come in handy because people had then been able to say: "Actually they forced us into it, we would never have done it but we had to due to the international relations..." The outcome was very ambivalent and typically Austrian – done by all with the best intentions but also a political exoneration strategy, which – as Bailer added – had also been used in the 1940s. Jablonek assessed the outcome to be positive on the whole, however, the inclusion of another state was as such unusual. The interjection from the audience that Waldheim had triggered this development was contradicted by Rathkolb insofar as the same system had also been applied between the USA and France, for example, in agreements in the field of banking. Similar models in Germany and Switzerland demonstrated that this was not only to be explained by Austrian history from the Second World War but that it concerned European history as a whole. In this regard, Huemer added that without this contract with another state, it could be certain that nothing would have happened and it was also not intended to extend this aspect of extreme injustice to the entire judicial system.

Unfried objected to the impression that the Austrian restitution legislation had been systematically unjust. He had worked as an expert for the Historical Commission and had been astounded that the results of his research had contradicted this impression. The

actual findings from the report of the Austrian Historical Commission had been the unexpectedly great extent of the restitutions and compensation in Austria in comparison to what had been presupposed. Incidentally, this was the result of all European Historical Commissions. With regard to the cooperation between historians and lawyers, the question must therefore be posed, whether the findings of this Historical Commission had also contributed to the concrete practice of the General Settlement Fund. Jabloner referred to the enormous quantitative extent of the dispossessions. It was therefore obvious that restitution was an uncommonly complicated process. The opinion that there had been no restitutions or compensation after 1945 had always been wrong and had also not been the basis for the Historical Commission. However, it had also been clear that the system had had extraordinary gaps and traps and that the people who had already been in a weakened position had had to fight for this restitution and compensation. The fact that the state had privatized compensation was the foremost and very important element. Restitution post-1945 had not been considered a public duty rather it had been an individual's responsibility and even where this responsibility had also been binding upon the state it had, for example with the State Financial Procurator's Office, had access to a hugely more powerful instrument than the restitution claimants, had they not been very powerful and not been able to engage the best lawyers. Moreover, the restitution legislation would never have been able to include all of the relatively subtle forms of economic damage. The wide range of methods of National Socialism had been two-faced and, in addition to the general law-making and its bureaucratic execution, it had always contained the *Maßnahmenstaat* ("prerogative state") - i.e. the unjust even by the standards of the time. National Socialism worked, on the one hand, from top to bottom and, on the other hand, also through this upwards "working towards the Führer". A critical examination is necessary in order to be able to grasp this complex picture. Had it not been a picture full of gulfs and problems, then the statutory measures, which had been considered necessary, would not have existed. To construct something dialectically which had never been asserted in order to then be able to say "it was good anyway" is at all events short of the mark.

Alfred Noll<sup>(20)</sup> expressed the general suspicion that the historians allowed themselves to be abused by

the jurists. Jurists would take a different approach in determining facts on which claims were based than historians who, orientated towards historical knowledge, strove for the truth. The interest of the jurists was, with their view meandering tentatively between the legal facts and/or elements of the case and that which they would need as facts in order to find the right information in order to come to a particular decision. When one considered more closely what jurists would do with historical statements, the conclusion would be reached that they used this meandering, sometimes eloquently, sometimes not so, sometimes cleverly, sometimes banally, as a source to illustrate their own prejudices or opinions. The historians were much too modest and had conceded the responsibility for that which they did because they believed that they were not permitted or must not judge historical injustice. The historians should not make the mistake that the jurists would, by necessity, have to make as they are programmed for a decision and not for perpetual discourse. Blimlinger interjected that one should rather speak of lawyers than jurists in general. Reinisch remarked that this description holds true for the job of a lawyer. He had to admit that as a jurist, an expert opinion was much easier to write, because one knew approximately what the end result should be. In contrast, to pronounce a decision was the most difficult thing and the Arbitration Panel attempted to determine the facts processed by the jurists and particularly the historians so that these would also stand up to an historical examination.

The former historian with the Arbitration Panel, Jürgen Schremser, replied to Noll and agreed with his statements insofar as it was actually a peculiar situation for a historian to carry out research within the scope of strict legal boundaries. However, this type of new context for research with the Truth Commissions in European countries had been in the offing, through which an incredibly productive large scale academic research had resulted. On the other hand, this was also questionable methodically, particularly in the way in which historians actually dealt with sources and should make them public. Regarding the decision-making of the Arbitration Panel, Schremser pointed out that, in his experience, in the interdisciplinary discursive process in the determination of the facts, considerations from both disciplines find a place. In this regard, the picture painted by Noll of the cooperation in the proceedings seemed like a caricature to

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him. Ultimately, the historian is confronted with the unusual situation that his/her considerations could also have practical consequences. This could also be seen as a school of morality. The model of preparing a draft, working out solutions, options for different lines of argumentation for unresolved issues – all this was indeed also a product of the problems of having to come to a decision point. The historians had to counter the schematic approach of the lawyers to please finally conclude this determination of the facts. In this special, new context of academic, interdisciplinary work which had come about as a result of the discussion in the late 1990s in Europe, a new quality of academic practice had developed which was still to be held to account.

Huemer deemed these last statements to be good closing words and finally, expressed his thanks for the discussion and the interest.



# ORGANS

As at 31<sup>st</sup> December 2009

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Dr. Alfred Gusenbauer  
Mag. Wilhelm Molterer  
Dr. Erwin Buchinger  
Dr. Ursula Plassnik  
Prim. Dr. Elisabeth Pittermann  
Dr. Gertrude Brinek  
Dr. Helene Partik-Pablé

Paul Grosz (honorary member, passed away on 29<sup>th</sup> August 2009)

Regularly called in experts:

Moshe Jahoda	Claims Conference; Committee for Jewish Claims on Austria
Willi Mernyi	Chairman of the Mauthausen Committee Austria
Dr. Gerhard Kastelic	Chairman of the Austrian People's Party Fellowship of Victims of Political Persecution

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o. Univ.-Prof. Dr. Josef Aicher (Chairman)

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 ao. Univ.-Prof. MMag. Dr. August Reinisch LL.M.

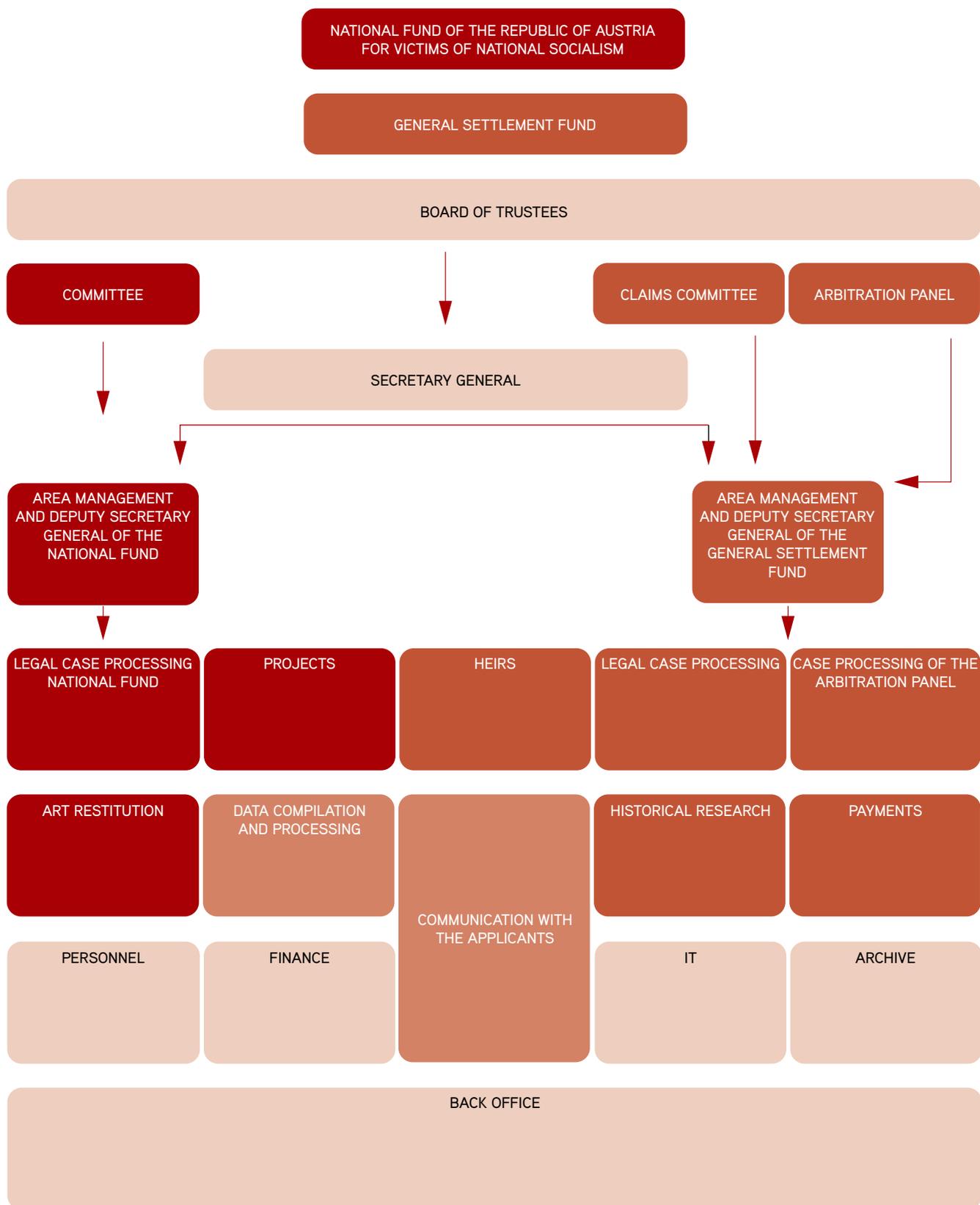
**Control Committee**

Dr. Richard Bock	Auditor and tax advisor
Dr. Alfred Finz	Undersecretary, retired

Until 25<sup>th</sup> February 2009  
 Univ.-Prof. Dr. Clemens Jabloner

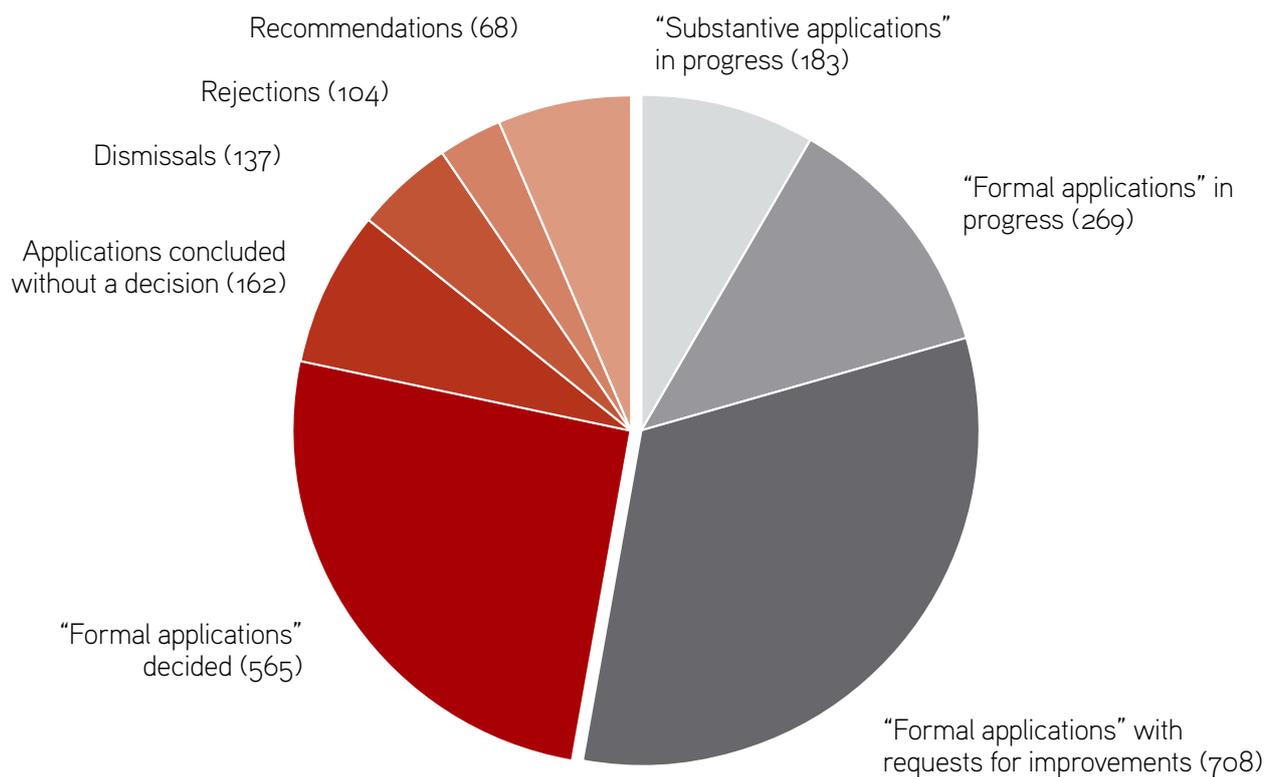
SC Dr. Helmut Fehrer (passed away on 18<sup>th</sup> December 2008)

# ORGANOGRAM



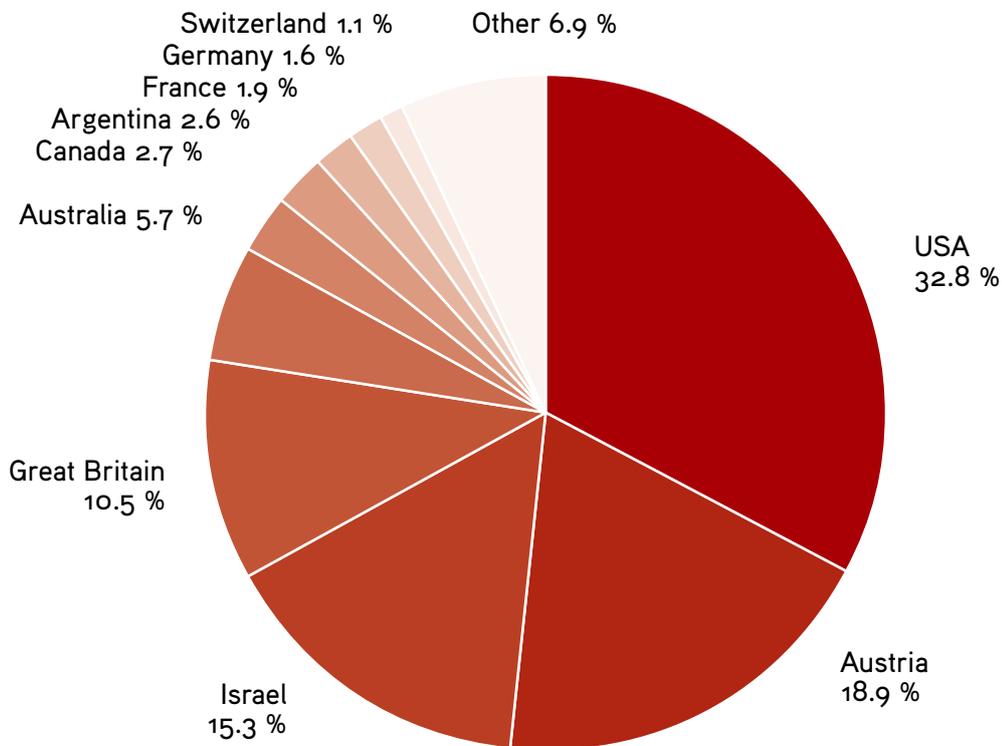
# APPLICATIONS TO THE ARBITRATION PANEL FOR IN REM RESTITUTION

Total applications received by the Arbitration Panel by 31<sup>st</sup> December 2009: 2,196

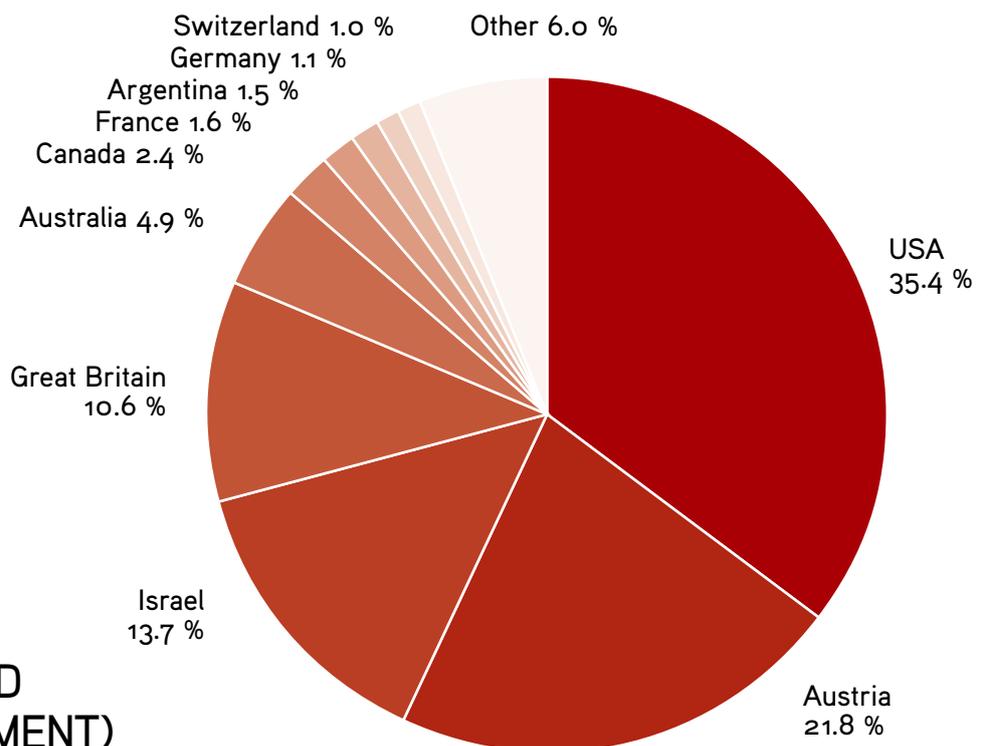


# APPLICANTS ACCORDING TO COUNTRY

## GENERAL SETTLEMENT FUND

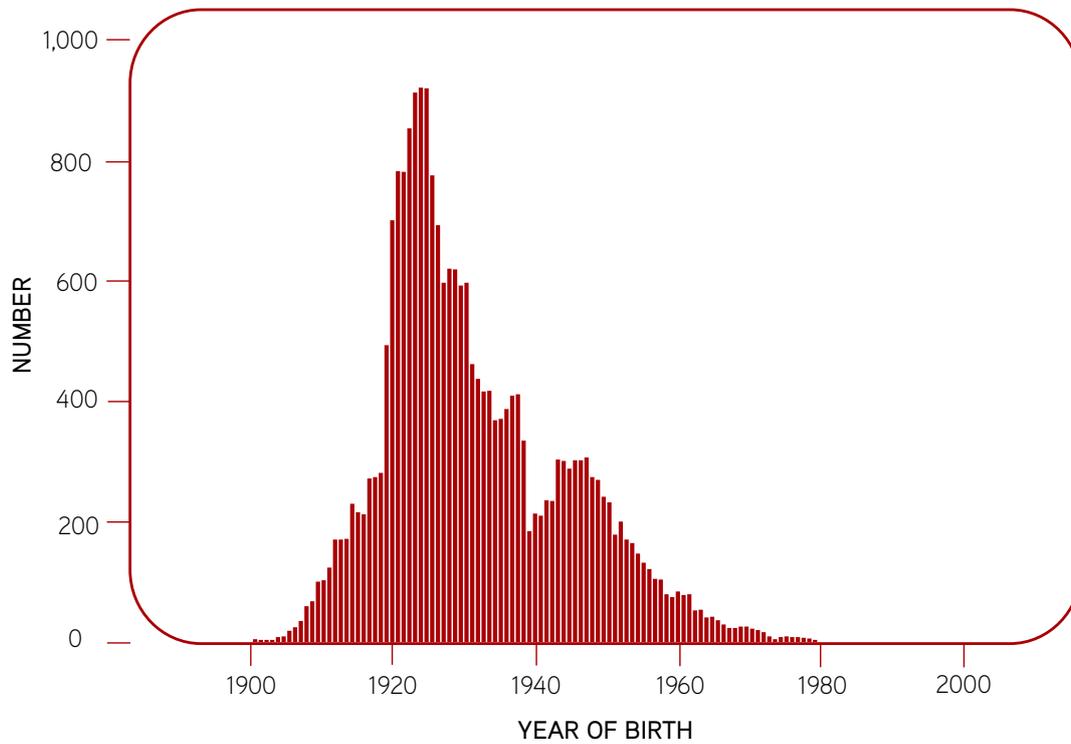


## NATIONAL FUND (GESTURE PAYMENT)

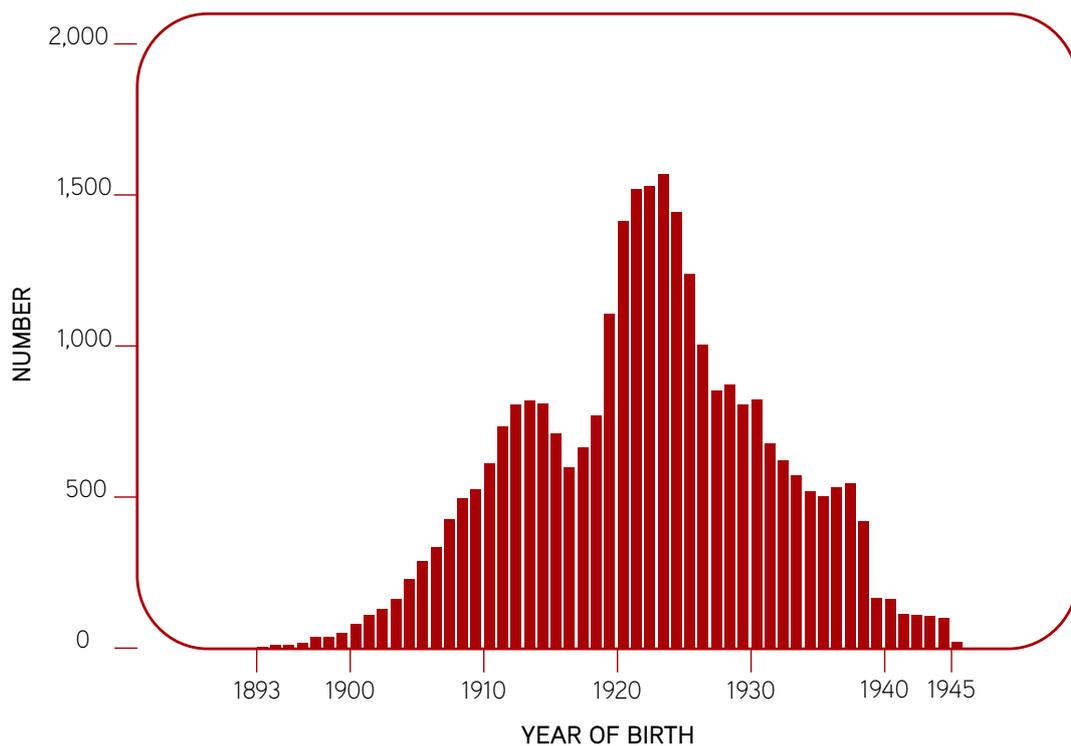


# AGE DISTRIBUTION OF THE APPLICANTS

## GENERAL SETTLEMENT FUND



## NATIONAL FUND



# AN OVERVIEW OF IN REM RESTITUTION RESOURCES

### Resources and holdings from cooperating archives, offices and authorities:

#### a) Standard Research

##### Austrian State Archives, Archives of the Republic

##### - Financial, compensation and restitution matters:

- Property Transaction Office: Property notices
- Property Transaction Office: Property, industry, transactions, commerce, trade, legal affairs, statistics, industry, provisional administrators and trustees
- Financial Directorate Vienna
- Collection Agencies A/B
- Collection Agencies: Property index, company index, property notice duplicates
- Old Assistance Fund
- New Assistance Funds I and II
- Compensation Fund
- Federal Ministry for Property Control and Economic Planning
- Federal Ministry of Finance
- State Financial Procurator's Office II (Second Republic): Dept. 6

##### Municipal and Provincial Archives of Vienna:

- Municipal department 119: Ordinance on the Notification of Seized Property
- Provincial Court for Civil Matters: Restitution files (Third Restitution Act, initial decision-making body), estates/certificates of death
- District courts: Probate files, trusteeship (*in absentia*) files, historical land register and collection of documents (regarding some districts)
- Historical registry disclosures
- Holdings of the NSDAP Vienna, "Regional files": Personal files of the Reich region Vienna

##### Further Provincial Archives:

- Aryanization files
- Files of the provincial governments: Property control, restitution matters, public administration
- Historical land register and collection of documents
- Probate files, trusteeship files

##### Offices and Authorities:

- Federal Office for Metrology and Surveying
- Victims' Welfare Files (Vienna: Municipal department 40)

##### District Courts:

- Historical land register
- Collection of documents regarding the land register
- Electronic land register
- Probate files
- Trusteeship (*in absentia*) files

##### Jewish Community:

- Documentation from the registry office of the Jewish Community
- Documentation from the archive of the Jewish Community Vienna

##### IN REM Project:

- Documentation of the Federation
- Documentation of the City of Vienna
- Documentation of the City of Eisenstadt

##### Documentation Centre of Austrian Resistance:

- Database "Collection of Names of the Austrian Holocaust Victims"
- Documents related to individuals' persecution

#### b) Case related special research

(demonstrative selection of holdings used to date)

##### Austrian State Archives, Archives of the Republic:

##### - Judiciary:

- Federal Ministry of Justice, dept. 3
- Supreme Administrative Court (1945–1979)
- Reich Ministry of Justice (1938–1945): Personal files

##### - Civil files of the National Socialist era:

- Files of the National Socialist German Workers Party's Regional Personnel Office Vienna (Regional files)
- Reich Governor in Vienna – State Administration of the Reich Region Vienna (1940–1945)
- Reich Commissar for the Reunification of Austria with the German Reich (1938–1940): Liquidation Commissioner Vienna (1938–1944)
- Reich Governor in Austria (1938–1940): Department III – Mühlmann office (1938–1940), foundations and funds (1938–1939)
- Uniformed police (1938–1940)

##### - Federal Chancellery:

- Federal Chancellery 2<sup>nd</sup> Republic: Subordinate departments: Liquidator of the Establishments of the German Reich in Austria

##### - Labor, social affairs:

- Holdings of the Reich Ministry of Labor/Provincial Employment Office

##### - Trade, mining, structures, technology:

- Federal Ministry for Trade and Reconstruction (Public administration)
- Federal Ministry for Trade and Reconstruction: Files on the purchase and administration of properties owned by the Republic
- General Directorate of the Postal and Telegraph Administration: B.d.G.D. dept. 5

**- Farming and forestry:**

- Reich forestry administration: Office for forest planning, provincial forestry offices
- Austrian Federal Forests, files and dossiers of the General Directorate

**- Finance and compensation and restitution measures:**

- Federal Ministry for Property Control and Economic Planning, division "Property Control": Files on the War- and Persecution-Related Material Damages Act and the Occupation-Related Material Damages Act
- Federal Ministry of Finance (1918–1942 and 1945–1991): Budget division, taxes and charges division, credit division
- Federal Ministry of Finance (1918–1942): Processing and settlement office dept. 6 ("Judenvermögensabgabe")
- Federal Ministry of Finance (1945–1991): Estate Klein
- State Financial Procurator's Office I (First Republic)

**- Federal Ministry of Defense:**

- Air force command (1934–1941)

**- Ministerial Council Affairs:**

- Ministerial Council of the 1<sup>st</sup> Republic: Ministerial Council minutes

**Municipal and Provincial Archives of Vienna:**

- Vienna Municipal Council minutes
- Municipal dept. 101, civil law department
- Municipal dept. 114, administrative building inspection
- Municipal dept. 119, National Socialist registration files and public administration
- Municipal dept. 215, housing office
- Municipal dept. 215a, technical examination point
- Municipal dept. 218, municipal and provincial planning
- Municipal dept. 219, technical land matters
- Municipal dept. 236, building inspection
- Municipal dept. 245, property administration (primarily transaction files)
- Municipal dept. 769, land transactions
- Commercial court: Trade register/commercial registers, insolvency files
- State courts: People's Court Vienna case files
- Biographical collection and documentation
- Holdings of the National Socialist German Workers' Party Vienna: Office for Kinship research (Regional Kinship Office)

**Further Provincial Archives:**

- Files from the district commissions and districts
- Various other court records

**Further Town Archives and Municipal Offices:**

- Municipal Council minutes
- Files of the building inspection
- Historical registry disclosures

**Other Archives:**

- Austrian National Bank, Archive of the Bank's History
- Historical Archive of the *Postsparkasse*
- Archive of the Diocese of Vienna

**Offices and Authorities:**

- Municipal dept. 37 of the City of Vienna, Building Inspection
- Municipal dept. 21 a/b, Zoning and Development Office
- Municipal dept. 63, Central Commercial Register
- Municipal dept. 35, Citizenship evidence, citizenship records
- Police archives Vienna
- Federal Office for the Protection of Monuments: Restitution materials; monument protection materials
- State Financial Procurator's Office
- Federal Buildings Administration (since 1992 Federal Real Estate Corporation)
- Bar association Vienna
- Austrian embassies abroad
- Tax office for fees and property transfer tax, assessed value files
- Austrian Federal Forests, General Directorate
- Federal Buildings Commission Austria

**Courts:**

- Provincial Court for Civil Matters Vienna: Index of names 1955–1956 concerning German Property
- Provincial Criminal Court Vienna: Files of the public prosecutor's office
- Supreme Administrative Court (3<sup>rd</sup> instance, First and Second Restitution Acts)
- Supreme Court (3<sup>rd</sup> instance, Third Restitution Act – files of the Supreme Restitution Commission, including the 2<sup>nd</sup> instance, Third Restitution Act – judgments of the Higher Restitution Commission)

**Documentation Centre of Austrian Resistance:**

- "Resistance and Persecution" in Austria, paper documentation
- Secret State Police files, daily reports (1938–1945)
- People's Court case files against aryanizers (copies and microfilms)

**Libraries with special holdings:**

- Parliamentary Library (e.g. statutory texts)
- National Library: e.g. protocols of the Allied Council and the Executive Committee, Project ANNO – historical Austrian newspapers and magazines online (Internet)
- University libraries
- Library of the Federal Ministry of Finance

**Literature:**

- Case-specific specialized literature (e.g. reports of the Historical Commission)

**Foreign Institutions:**

- Federal Archives, Berlin
- Institute for Contemporary History Munich: Office of the Military Government of the United States (OMGUS), Reports of the US Allied Commission in Austria
- German department for the notification of next-of-kin of members of the former German Wehrmacht who were killed in action
- International Tracing Service of the Red Cross in Bad Arolsen (Germany)
- Federal Office for Central Services and Unresolved Property Matters
- Národní archive, Prague
- Yad Vashem database (Israel)

## SPECIALIZED LITERATURE OF THE STAFF

Select bibliography of specialized literature by (former) employees of the National Fund or General Settlement Fund on both Funds and the subject of compensation and restitution:

- Allgemeiner Entschädigungsfonds/Aicher, Josef/Kussbach, Erich/Reinisch, August (eds.): *Entscheidungen der Schiedsinstanz für Naturalrestitution*. Volume 1, Vienna 2008 [bilingual, German/English].
- Allgemeiner Entschädigungsfonds/Aicher, Josef/Kussbach, Erich/Reinisch, August (eds.): *Entscheidungen der Schiedsinstanz für Naturalrestitution*. Volume 2, Vienna 2009 [bilingual, German/English].
- Azizi, Fiorentina/Göbller, Günter: *Extreme Ungerechtigkeit und bewegliches System*. In: *Juristische Blätter* 7/2006, p. 415–436.
- Betz, Susanne Helene: *Von der Platzeröffnung bis zum Platzverlust. Die Geschichte der Hakoah Wien und ihrer Sportanlage in der Krieau 1919–1945*. In: Betz, Susanne Helene/Löscher, Monika/Schönberger, Pia (eds.): *„...mehr als ein Sportverein“. 100 Jahre Hakoah Wien 1909–2009*. Innsbruck 2009, p. 150–184.
- Bjalek, Nina: *Der Nationalfonds der Republik Österreich. Restitutionsmaßnahmen für Opfer des Nationalsozialismus*, University Dissertation, Vienna 2003.
- Doujak, Michael: *Möglichkeiten der Darstellung der Geschichte der Verbrechen der Nationalsozialisten im Staatlichen Museum Auschwitz-Birkenau am Beispiel einer Neugestaltung der Österreich-Ausstellung*. University Diploma Thesis, Vienna 2008.
- Fritsch, Claire: *Ein Jahr im Netz. Die Kunst-Datenbank des Nationalfonds der Republik Österreich für Opfer des Nationalsozialismus als Spiegel der österreichischen Kunstrestitution*. In: *Kunst und Recht* 5/2007, p. 105–110.
- Göbller, Günter/Betz Susanne [Helene]: *Ist die Vergangenheit nicht mehr zu bewältigen? Eine Replik auf Graf: Privatautonomie und extreme Ungerechtigkeit, JBl 2007, 545*. In: *Juristische Blätter* 2008, p. 690–707.
- Immler, Nicole: *Restitution and the Dynamics of Memory: A Neglected Trans-Generational Perspective*. In: Erll, Astrid/Rigney, Ann (eds.): *Mediation, Remediation and the Dynamics of Cultural Memory*. Berlin/New York 2009 (= Media and Cultural Memory, 10).
- Lessing, Hannah M./Meissner, Renate S./Bjalek, Nina: *„Wir können nur anklopfen, wo die Tür offen ist“ – der lange Weg zu Anerkennung und Entschädigung*. In: Pawlowsky, Verena/Wendelin, Harald (eds.): *Ausgeschlossen und enteignet*. Vienna 2006 (= Raub und Rückgabe – Österreich von 1938 bis heute, vol. 4), p. 241–259.
- Lessing, Hannah M./Seidinger Michael R./Fritsch, Claire: *Österreichische Aspekte der Kunstrestitution. Die Tätigkeit des Nationalfonds der Republik Österreich für Opfer des Nationalsozialismus im Rahmen der Rückgabe von Kunstgegenständen*. In: *Kunst und Recht* 1/2006, p. 8–13.
- Lessing, Hannah M./Rebernik, Richard/Spitzky, Nicola: *The Austrian General Settlement Fund: An Overview*. In: The International Bureau of the Permanent Court of Arbitration (ed.): *Redressing Injustices Through Mass Claims Processes. Innovative Responses to Unique Challenges*. Oxford 2006, p. 95–107.
- Lessing, Hannah M./Azizi, Fiorentina: *Austria Confronts Her Past*. In: Bazylar, Michael/Alford, Roger P. (eds.): *Holocaust Restitution. Perspectives on the Litigation and its Legacy*. New York/London 2007, p. 226–238.
- Lessing, Hannah M./Meissner, Renate/Scheck, Sylvia: *Der Nationalfonds der Republik Österreich für Opfer des Nationalsozialismus*. In: Horn, Sonia (ed.): *Medizin im Nationalsozialismus. Wege der Aufarbeitung. Wiener Gespräche zur Sozialgeschichte der Medizin. Überarbeitete Vorträge der internationalen Tagung im Psychiatrischen Krankenhaus der Stadt Wien Baumgartner Höhe, 5.-7. November 1998*. Vienna 2001, p. 171–184.
- Lessing, Hannah M.: *„Bei uns werden alle berücksichtigt“*. In: Schulze, Heidrun (ed.): *Wieder gut machen? Enteignung, Zwangsarbeit, Entschädigung, Restitution. Österreich 1938–1945/1945/1999*. Vienna/Innsbruck 1999, p. 132–138.
- Lessing, Hannah M.: *Wiedergutmachung in Österreich. Von der Unterlassung zur symbolischen Geste*. In: Lappin, Eleanor (ed.): *Die Lebendigkeit der Geschichte. (Dis-)Kontinuitäten in Diskursen über den Nationalsozialismus*. St. Ingbert 2001 (= Österreichische und internationale Literaturprozesse, 13), p. 395–407.
- Lessing, Hannah M./Meissner, Renate S.: *Projekte gegen das Vergessen. Der Beitrag des Nationalfonds zum Gedenkjahr 2008*. In: *Spurensuche*, volume 18, booklet 1–4/2009, p. 60–67.

- Lucas, Stefanie: „...der erste und einzige Sammelpunkt für all die Entwurzelten.“ *Die Wiederbelebung des SC Hakoah in der ersten Nachkriegsdekade*. In Betz, Susanne Helene/Löscher, Monika/Schölnberger, Pia (eds.): „...mehr als ein Sportverein“. *100 Jahre Hakoah Wien 1909–2009*. Innsbruck 2009, p. 185–206.
- Lukan, Johanna: *Der Nationalfonds der Republik Österreich für Opfer des Nationalsozialismus*. University Diploma Thesis, Vienna 1999.
- Meissner, Renate S., commissioned by the Nationalfonds (ed.): *10 Jahre Nationalfonds. Zahlen. Daten. Fakten*. Vienna 2005 [bilingual, German/English].
- Meissner, Renate S., commissioned by the Nationalfonds (ed.): *10 Jahre Nationalfonds. Einblicke. Ausblicke*. Vienna 2005 [bilingual, German/English].
- Meissner, Renate S.: „*Entheimatet*“. *Erinnertes Leben – erzähltes Gedächtnis aus fünf Kontinenten*. In: Institut für Geschichte der Juden in Österreich (ed.): *Juden in Mitteleuropa*, 2006 edition, without stated place of publication, p. 67–78.
- Meissner, Renate S.: *ÜBER LEBEN. Erinnern im Kontext des Nationalfonds der Republik Österreich für Opfer des Nationalsozialismus*. In: Lappin, Eleanor/Lichtblau, Albert (eds.): *Die „Wahrheit“ der Erinnerung. Jüdische Lebensgeschichten*. Innsbruck/Vienna 2008, p. 204–215.
- Meissner, Renate S.: *Nationalfonds der Republik Österreich für Opfer des Nationalsozialismus: Die Lebensgeschichten der Opfer – mehr als eine historische Quellengattung*. In: *Parlament Transparent*, Volume 3, no. 1–2/2008, p. 11–16.
- Meissner, Renate S., commissioned by the Nationalfonds (ed.): *Nationalfonds der Republik Österreich für Opfer des Nationalsozialismus. Entwicklung, Aufgaben, Perspektiven*. Vienna 2010 [bilingual, German/English].
- Meissner, Renate S., commissioned by the Nationalfonds (ed.): *Erinnerungen. Lebensgeschichten von Opfern des Nationalsozialismus*. Vienna 2010 [bilingual, German/English].
- Nationalfonds der Republik Österreich für Opfer des Nationalsozialismus (ed.): *In die Tiefe geblickt. Lebensgeschichten*. Selection and concept: Lessing, Hannah M./Janistyn, Susanne/Meissner, Renate S. Vienna 2003.
- Niklas, Martin/Gößler Günter: *Ein konstruktiver Staatsdiener. Eine Erinnerung an den Juristen Heinrich Klang, der die österreichische Rechtsprechung maßgeblich beeinflusst hat*. In: *Wiener Zeitung extra*, 24<sup>th</sup> January 2009, p. 9.
- Niklas, Martin/Wartlik, Helmut: *10 Jahre Nationalfonds*. In: *Gedenkdienst 2/2005*, p. 4.
- Petrinja, Iris: *„Das Versöhnungsfonds-Gesetz“. „Entschädigung“ von NS-ZwangsarbeiterInnen in Österreich*. University Diploma Thesis, Vienna 2004.
- Schoiswohl, Michael/Schulze, Marianne: *Der Entschädigungsfonds – Entstehung und Grundlagen*. In: *Juridikum 1/2003*, p. 38–41.
- Schremser, Jürgen/Seidinger, Michael R.: *Kunst-Datenbank als Informationsschnittstelle bei der Restitution in Österreich*. In: *AKMB news. Information zu Kunst, Museum und Bibliothek*, booklet 2/2007, p. 22–26.
- Seidinger, Michael R./Fritsch, Claire/Lessing, Hannah M.: *Die Tätigkeit des Nationalfonds der Republik Österreich für Opfer des Nationalsozialismus im Rahmen der Kunstrückgabe – Die Kunst-Datenbank des Nationalfonds*. In: Anderl, Gabriele/Bazil, Christoph/Blimlinger, Eva/Kühschelm, Oliver/Mayer, Monika/Stelzl-Gallian, Anita/Weidinger, Leonhard (eds.): *...wesentlich mehr Fälle als angenommen. 10 Jahre Kommission für Provinienzforschung*. Vienna/Cologne/Weimar 2009, p. 246–252.

Coming soon:

- Allgemeiner Entschädigungsfonds/Aicher, Josef/Kussbach, Erich/Reinisch, August (eds.): *Entscheidungen der Schiedsinstanz für Naturalrestitution*. Volume 3, Vienna 2010 [bilingual, German/English].
- Lessing, Hannah M./Lanzrath, Maria Luise: *Gedanken zu Erinnerung und Restitution* [working title]. In: Litsauer, Alexander/Litsauer, Barbara (eds.): *Verlorene Nachbarschaft. Jüdische Emigration von der Donau an den Rio de la Plata*. Vienna 2010.

## END NOTES

## Departure from the Victim Theory

- 1) See Lehmann, Brigitte/Rabinovici, Doron/Summer, Sibylle (eds.): *Von der Kunst der Nestbeschmutzung. Dokumente gegen Ressentiment und Rassismus seit 1986*. Vienna 2009.

## In Rem Restitution

- 1) Nuremberg Laws of 15<sup>th</sup> September 1935, German Reich Law Gazette I p. 1146f., announced in Austrian Law Gazette of 20<sup>th</sup> May 1938, no. 150/1938.  
 2) See Duizend-Jensen, Shoshana: *Jüdische Gemeinden, Vereine, Stiftungen und Fonds*. Vienna 2004 (= publications of the Austrian Historical Commission, vol. 21/2).  
 3) See the announcement of the Reich Governor in Austria with which the Ordinance on the Seizure of Assets Hostile to People and the State in the Country of Austria of 18<sup>th</sup> November 1938 is announced, Austrian Law Gazette no. 589/1938 of 21<sup>st</sup> November 1938 and Austrian Law Gazette no. 441/1939 of 7<sup>th</sup> April 1939.  
 4) See Austrian Law Gazette nos. 102/1938, 103/1938, 139/1938, 633/1938 and 697/1938.  
 5) According to the results of a study by Melinz, Gerhard/Hödl, Gerald: *„Jüdisches“ Liegenschaftseigentum in Wien zwischen Arisierungstrategien und Rückstellungsverfahren*. Vienna 2004 (= publications of the Austrian Historical Commission, vol. 13), p. 200.  
 6) See the Eleventh Decree to the Reich Citizenship Law of 25<sup>th</sup> November 1941, German Reich Law Gazette I p. 722 ff.  
 7) Jabloner, Clemens et al. *Schlussbericht der Historikerkommission der Republik Österreich. Vermögensentzug während der NS-Zeit sowie Rückstellungen und Entschädigungen seit 1945 in Österreich. Zusammenfassungen und Einschätzungen*. Vienna 2003 (= publications of the Austrian Historical Commission, vol. 1), p. 320.  
 8) General Settlement Fund/Aicher, Josef/Kussbach, Erich/Reinisch, August (eds.): *Decisions of the Arbitration Panel for In Rem Restitution*. Vol. 1, Vienna 2008.

## Interim Review by the Chairman of the Arbitration Panel

- 1) Decision no. 24/2005.  
 2) Decisions no. 25/2005 (see also endnote 10), 206/2006, 481/2008 and 533/2009.  
 3) Decisions no. 3/2003, 27/2005, 88/2006, 89/2006, WA/RO 1/2007 and WA/RO 2/2007 (see also end note 11), 27C/2008, 482/2008 and 550/2009.  
 4) These "receiving organizations" were established during the course of the State Treaty of 1955 in order that they may apply for seized assets which remained "heirless" – including properties – and utilize the proceeds for the benefit of victims of National Socialism.  
 5) Decisions no. 28/2005, 317/2006, 318/2006, 319/2007, 372/2007, 382/2007, 412/2008, 415/2008, 416/2008, 441/2008, 531/2009 and 602/2009.  
 6) Decisions no. 1/2003, 8/2004, 9/2005, 26/2005, 33/2006, 306/2006, 377/2007, 442/2008, 444/2008, 483/2008 and 515/2009.  
 7) Decisions no. 303/2006, 366/2007, 27b/2007, 3a/2007, 411/2007, 9a/2008, WA/RO 3/2008, 532/2009, 553/2009 and 597/2009.  
 8) Decisions no. 2/2003, 5/2004, 6/2004, 7/2004, 68/2006, 371/2007 and 586/2009.  
 9) Decisions no. 413/2008, 414/2008, 508/2008 and 614/2009.  
 10) Decisions no. 4/2004, 25/2005, 46/2006, 142/2006, 204/2006, 443/2008, 461/2009 and 515/2009.  
 11) Decisions no. WA/RO 1/2007 and WA/RO 2/2007.  
 12) Decision no. WA/RO 7/2009.

## Documentation of the round table discussion

- 1) Univ.-Prof. Dr. Dr.h.c. Clemens Jabloner, President of the Supreme Administrative Court, Chairman of the Historical Commission of the Republic of Austria and of the Art Restitution Advisory Board. Selected publications on the subject of National Socialist property seizure and restitution: co-authored with Brigitte Bailer-Galanda et al.: *Schlussbericht der Historikerkommission der Republik Österreich. Vermögensentzug während der NS-Zeit sowie Rückstellungen und Entschädigungen seit 1945 in Österreich. Zusammenfassungen und Einschätzungen*. Vienna 2003 (= publications of the Austrian Historical Commission, vol. 1); *Der juristische Einschlag der Historikerkommission*. Presentation given before the Law Society of Lower Austria in Reichenau on 11<sup>th</sup> June 2003, Vienna 2003 (= Schriftenreihe Niederösterreichische Juristische Gesellschaft, issue 89); *Juristische Aspekte der Historikerkommission*. In: *Juridikum. Zeitschrift im Rechtsstaat*. Issue 1/2003, p. 19 ff.  
 2) Prof. Paul Chaim Eisenberg is the Chief Rabbi of the Jewish Community Vienna and of the Federal Association of Jewish Communities in Austria.  
 3) Retired Undersecretary Dr. Finz and the accountant and auditor Dr. Richard Bock are members of the Supervisory Committee of the Board of Trustees of the National Fund and General Settlement Fund.  
 4) Parliamentary Vice Director Dr. Susanne Janistyn is a member of the Committee of the National Fund.  
 5) Univ.-Doz. HR Dr. Brigitte Bailer, Scientific Director of the Documentation Centre of Austrian Resistance, Deputy Chairperson of the Historical Commission of the Republic of Austria. Selected publications on the subject of National Socialist property seizure and restitution: *Die Entstehung der Rückstellungs- und Entschädigungsgesetzgebung. Die Republik Österreich und das in der NS-Zeit entzogene Vermögen*. Vienna 2003 (= publications of the Austrian Historical Commission, vol. 3); co-authored with Eva Blimlinger: *Vermögensentzug – Rückstellung – Entschädigung. Österreich 1938/1945–2005*. Innsbruck 2005 (= Österreich – Zweite Republik. Befund, Kritik, Perspektive, vol. 7); co-authored with Clemens Jabloner et al.: *Schlussbericht der Historikerkommission der Republik Österreich. Vermögensentzug während der NS-Zeit sowie Rückstellungen und Entschädigungen seit 1945 in Österreich. Zusammenfassungen und Einschätzungen*. Vienna 2003 (= publications of the Austrian Historical Commission, vol. 1).  
 6) Univ.-Prof. DDr. Oliver Rathkolb, Head of the Department of Contemporary History of the University of Vienna. Selected publications on the subject of National Socialist property seizure and restitution: *Das Vermögen der jüdischen Bevölkerung Österreichs: NS-Raub und Restitution nach 1945*. Vienna 2004 (= publications of the Austrian Historical Commission, vol. 9); *Vermögenswerte jüdischer Kunden in dem „Postsparkassenamt“ Wien: Nazi-Raub 1938–1945*. In: Stiefel, Dieter (ed.): *Die politische Ökonomie des Holocaust*, Vienna 2001, p. 149–180; *Die späte Wahrheitssuche. Historiker-Kommissionen in Europa*. In: *Historische Anthropologie*. 8<sup>th</sup> year of publication 2000, issue 3, p. 445–453; *NS-Kunstraub und Diversion in den Erinnerungen über den Holocaust in Europa. Der „schlagende Symbolismus“ der Kunstraubdebatte in der Gegenwart*. In: Petschar, Hans/Rigele, Georg (eds.): *Festschrift für Georg Schmid*. Vienna 2004, p. 203–211.  
 7) o. Univ.-Prof. Dr. Josef Aicher, Professor for Corporate and Commercial Law at the University of Vienna, Chairman of the Arbitration Panel for In Rem Restitution and co-editor of the bilingual series *Entscheidungen der Schiedsinstanz für Naturalrestitution*. Volume 1, containing decisions no. 1/2003, 2/2003, 3/2003, 4/2004, 5/2004, 6/2004 and 7/2004 and volume 2 with decisions no. 8/2004, 9/2005, 24/2005, 25/2005, 26/2005, 27/2005 and 28/2005 have already been published. Volume 3 is currently in preparation.

- 8) ao. Univ.-Prof. MMag. Dr. August Reinisch LL.M., Professor for International Law and European Law at the Faculty of Law of the University of Vienna, Member of the Arbitration Panel for *In Rem* Restitution appointed by the United States and co-editor of the bilingual series *Entscheidungen der Schiedsinstanz für Naturalrestitution*.
- 9) Dr. Peter Huemer, presenter, historian and journalist led the round table discussion.
- 10) Retired Ambassador Hon.-Prof. Dr. Dr. h.c. Erich Kussbach LL.M., Professor for International Law at the Catholic Pázmány Péter University in Budapest and full member of the European Academy of Sciences and the Arts. He is the Member of the Arbitration Panel for *In Rem* Restitution appointed by Austria and co-editor of the bilingual series *Entscheidungen der Schiedsinstanz für Naturalrestitution*.
- 11) Ambassador Dr. Ferdinand Trauttmansdorff was the Director of the International Law Office of the Federal Ministry for European and International Affairs and is now an ambassador in Prague. In 2008 he led the Austrian chairmanship of the Task Force for International Cooperation on Holocaust Education, Remembrance and Research (ITF). See also Ambassador Trauttmansdorff's article on the ITF chairmanship in this report.
- 12) See the decisions of the Constitutional Court B 783/04 (accessible on the Internet at <http://www.vfgh.gv.at/cms/vfgh-site/attachments/4/6/1/CH0006/CMS1108464907299/b783-15-04.pdf>) and B 62/05-6, G5/05-6 (accessible on the Internet at [http://www.vfgh.gv.at/cms/vfgh-site/attachments/7/6/6/CH0006/CMS1113307721063/habsburg\\_b62-05.pdf](http://www.vfgh.gv.at/cms/vfgh-site/attachments/7/6/6/CH0006/CMS1113307721063/habsburg_b62-05.pdf)).
- 13) Univ.-Prof. Dr. Georg Graf, Professor for Civil Law at the Department of Austrian and European Private Law of the University of Salzburg, permanent expert of the Historical Commission of the Republic of Austria. Selected publications on the subject of National Socialist property seizure and restitution: *Die österreichische Rückstellungsgesetzgebung - eine juristische Analyse*. Vienna 2003 (= publications of the Austrian Historical Commission, vol. 2); together with Clemens Jabloner et al.: *Schlussbericht der Historikerkommission der Republik Österreich. Vermögensentzug während der NS-Zeit sowie Rückstellungen und Entschädigungen seit 1945 in Österreich. Zusammenfassungen und Einschätzungen*. Vienna 2003 (= publications of the Austrian Historical Commission, vol. 1); *Privatautonomie und extreme Ungerechtigkeit. Kritische Anmerkungen zur Entscheidungspraxis der Schiedsinstanz*. In: *Juristische Blätter*, 129<sup>th</sup> year of publication, issue 9/2007, p. 545-554.
- 14) Univ.-Prof. Dr. Franz Stefan Meissel is a university professor at the Faculty of Law of the University of Vienna. Selected publications on the subject of National Socialist property seizure and restitution: together with Thomas Olechowski and Christoph Gnant: *Untersuchungen zur Praxis der Verfahren vor den Rückstellungskommissionen*. Vienna 2004 (= publications of the Austrian Historical Commission, volume 4/2); *Unrechtsbewältigung durch Rechtsgeschichte? Zum Begriff der „extremen Ungerechtigkeit“ im Entschädigungsfonds-Gesetz*. In: *Juridikum. Zeitschrift im Rechtsstaat*, issue 1/2003, p. 42-46; together with Ronald Faber: *Nationalsozialistisches Steuerrecht und Restitution*, Vienna 2006.
- 15) Univ.-Doz. Dr. Berthold Unfried is a lecturer at the Department of Economic and Social History of the University of Vienna. Selected publications on the subject of National Socialist property seizure and restitution: co-authored with Ulrike Felber et al.: *Ökonomie der „Arisierung“. Zwangsverkauf, Liquidierung und Restitution von Unternehmen in Österreich 1938 bis 1960*. Vienna 2004 (= publications of the Austrian Historical Commission, vols. 10/1 and 10/2); *Restitution und Entschädigung von entzogenem Vermögen im internationalen Vergleich. Entschädigungsdebatten als Problem der Geschichtswissenschaft*. In: *Zeitgeschichte* (Vienna) 5/2003, p. 243-267; Heller, Olla, Bloch: *Beispiele für Vorgangsweisen bei „Arisierung“ und Restitution von Unternehmen*. In: Pawlowsky, Verena/Wendelin, Harald (eds.): *„Arisierte“ Wirtschaft*. Vienna 2005 (= Raub und Rückgabe - Österreich von 1938 bis heute, vol. 2), p. 171-192.
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