

The proceedings before the Arbitration Panel

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.

As an initial step, the applications are examined for the formal statutory requirements of public ownership on the cut off day, 17 January 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. In a further step for applications in which no specific property is stated, on the basis of the applicants' submissions, the land register, historical address books and registration details and 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 outcome of this research in writing and given the opportunity to improve the application. Each "substantive" application is 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, depending on to the research required at archives and official departments. This 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.

During the proceedings, both the applicants and the public owner have the opportunity to present their view of the case to the Arbitration Panel, 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 is discussed in detail in the monthly sessions of the Arbitration Panel before it reaches its final decision. 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.

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 awarded to the applicants. Generally, this takes the form of the market value of the property, which is determined by the Arbitration Panel on the basis of an independent expert valuation.

Since an amendment to the Rules of Procedure of the Arbitration Panel in 2007, proceedings which have already been concluded can be reopened. In such cases, the Arbitration Panel initially decides whether the reopening of proceedings is granted. This requires the submission of evidence which was previously unknown and warrants the assumption that such evidence 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.