

Rules of Procedure of the Arbitration Panel for In Rem Restitution

Adopted on 11 April 2002, published in the "Wiener Zeitung" on 23./24. August 2002. Amended on 22 January 2007 and 21 January 2008. Amendments published on 31 January 2007 (21a) and on 2 April 2008 (16a). The amendments are highlighted in *italics*.

Part I - Creation and Members

Sec. 1 Seat

The Arbitration Panel is established with the General Settlement Fund located in Vienna.

Sec. 2 Members

The Arbitration Panel consists of three members, of which one member is appointed by the Government of the United States of America, one member by the Austrian Federal Government, and a chairperson chosen by these two members.

Sec. 3 Term of Office

The members shall be appointed for the duration of the activity of the Arbitration Panel.

Sec. 4 Freedom from Instructions

The Arbitration Panel and its members shall be independent in the exercise of their function and not bound by any instructions.

Sec. 5 Termination of Membership

Membership shall end by resignation, death or permanent inability to participate.

Sec. 6 Obligation to Confidentiality

The members of the Arbitration Panel shall be obliged to observe confidentiality, especially with regard to person-related data that come to the members' attention in the course of their activity.

Sec. 7 Bias

If a member states that he may be biased, or if a party involved asserts that a member is biased, the other two members shall decide the matter. If a member of the Arbitration Panel is biased, he shall refrain from his office.

Part II - Tasks of the Arbitration Panel

Sec. 8 Tasks

(1) The Arbitration Panel shall examine and decide on applications, filed in time (Sec. 29 of the General Settlement Fund Law), of persons and associations eligible to submit applications (Sec. 27 of the General Settlement Fund Law), in the form of a recommendation for an in rem restitution of publicly-owned property (Sec. 28 of the General Settlement Fund Law), or for an award of a comparable property, to the competent Federal Minister, or it shall dismiss the claim (Sec. 34 of the General Settlement Fund Law).

(2) Reasons shall be given for recommendations and dismissals.

(3) The Arbitration Panel shall publish its recommendations, together with the reasons given, on the homepage of the General Settlement Fund, set up with the Austrian National Fund. After the filing period has expired (Sec. 29 of the General Settlement Fund Law), the Arbitration Panel shall publish these in a separate publication. The data shall be published in an anonymous form, unless the applicant consents to the disclosure of his name.

Part III - Voting Procedure and Decisions

Sec. 9 Decisions

(1) The Arbitration Panel shall take its decisions by resolutions (recommendations, rejections and dismissals for lack of competence and referrals, as well as other procedural dispositions, unless they are taken by the Chairperson in accordance with Sec. 14)

(2) Resolutions shall be brought to the attention of the parties involved.

Sec. 10 Voting Procedure Used by the Arbitration Panel

(1) Resolutions shall be taken during sessions or, upon agreement, by circulatory procedure.

(2) All members must be present if a resolution is to be taken during a session.

(3) The Arbitration Panel shall take its resolutions by simple majority, unless the General Settlement Fund Law or the present Rules of Procedure expressly require unanimity. Abstentions shall not be admitted. Concurring or dissenting opinions are not permissible.

Part IV - Internal Organization

Sec. 11 Secretariat

The Secretary General and the administrative apparatus of the General Settlement Fund shall act as Secretariat of the Arbitration Panel.

Sec. 12 General Obligation to Confidentiality

All persons who participate or have participated in some form in the proceedings or parts thereof shall observe confidentiality.

Sec. 13 Sessions

The sessions of the Arbitration Panel shall be internal meetings of the Members or hearings. The sessions of the Arbitration Panel shall serve to prepare decisions and to take decisions. They are not open to the public. Minutes shall be drawn up on the internal meetings. The minutes shall be drawn up by a member of the Secretariat attending the meetings.

Sec. 14 Tasks of the Chairperson

(1) The Chairperson shall preside over the sessions of the Arbitration Panel. He shall convene the sessions and invite the Members within an appropriate period, indicating the time and venue, as well as a preliminary agenda.

(2) Every Member may ask for additional items to be put on the agenda. In case of hearings, the parties involved shall be notified in time.

(3) The Chairperson shall be responsible for preparing the files for sessions and hearings, in cooperation with the Secretariat. When dealing with applications, he shall act as rapporteur.

(4) It is upon the Chairperson to invite the parties involved, the witnesses and the information-providers.

(5) The Chairperson shall obtain any information from authorities and all other public institutions which the Arbitration Panel requires in order to be able to fulfil its tasks.

Part V - Procedure

Sec. 15 Representation

Persons and associations eligible to submit applications may be represented by any person enjoying their confidence, provided that they present a professional or an authenticated power of attorney.

Sec. 16 Initiating a Procedure

(1) A procedure is initiated with the receipt of an application by the Secretariat. The receipt of an application shall be decisive for observing the deadline according to Sec. 29 of the General Settlement Fund Law.

(2) For the purpose of determining the beginning of the period according to Sec. 33 of the General Settlement Fund Law, an application shall be given when a claim is sufficiently precise so that the Arbitration Panel is able to take a decision in the matter concerned.

(3) The Arbitration Panel may ask applicants to provide additional information to complete an application, if necessary, and will support them in doing so.

Sec. 16a Deadlines

(1) Incomplete applications filed before the end of the filing period in accordance with Sec. 29 of the GSF Law which allow conclusions to be drawn about the property for which restitution is claimed and about the identity of the claimant, shall be considered as timely filed if the object of the application, the first name and surname of the claimant as well as his/her address are disclosed within 24 months of the expiration of the filing period.

(2) In those cases where evidence is available showing that the application form was sent before the end of the filing period, or where the claimant was unable to send the application before the expiration of the filing period due to sickness, applications may be considered regardless of the regulation contained in Sec. 16 (1) provided that the Arbitration Panel is still in existence.

(3) Claimants who are – for reasons of inheritance law – merely entitled to restitution of shares of a property, may within 6 months of the notification of the decision extend their application to other legal successors of the original owner of the property provided these legal successors have assigned their entitlement to file the application to the claimant.

Sec. 17 Hearings

(1) Hearings shall be sessions with the parties involved.

(2) Participants in a hearing shall be obliged to observe confidentiality.

(3) A record shall be drawn up on the course of a hearing. This shall include, in particular:

1. the time, place and subject of the hearing and - in the event of previous sessions on the pertinent matter - a brief outline, if necessary, of the status of the matter;

2. the names of the participating persons;

3. written submissions, if any, as enclosures, of the rapporteur as well as of the parties involved;

4. the motions by the parties involved, which the parties sustain at the time of decision-making;

5. all decisions taken, in full text;

6. the signatures of the Chairperson as well as of the record-keeper.

(4) The record shall be submitted to the Members for reviewing and shall then be brought to the attention of the parties involved. Any objections to the record shall be addressed to the Secretariat in writing and without delay, however, at the latest within one week after the record has been communicated; otherwise, a record shall be deemed to have been approved.

(5) The record shall be drawn up by a member of the Secretariat attending the meeting.

Part VI - Proof and Evidence

Sec. 18 Free Assessment of Evidence

The Arbitration Panel decides on the basis of a free assessment of the evidence.

Sec. 19 Proof of Persecution

(1) The applicant must establish a substantiated credible case of the circumstances of his persecution in accordance with Sec. 27 para. 1 of the General Settlement Fund Law. The arbitration panel will for that purpose take into consideration the known historical circumstances and contexts. The same applies to proving the linkage between persecution and losses or damages.

(2) The following, in particular, may serve as evidence: documents on civil status (e.g. birth certificates, marriage certificates, etc.), excerpts from the land register, court decisions and official orders, documents relating to earlier compensations, witness testimonies and statements by the parties involved, lists of the Jewish Property Declaration Office (Vermögensverkehrsstelle), deeds (purchase and sales agreements, etc.), correspondence, photographs, other documents.

Sec. 20 Proof of Status as Heir

(1) Applicants, who are heirs to persons eligible to apply for compensation, shall give evidence for their status as heirs.

(2) The following, in particular, may serve as evidence: documents on civil status (e.g. birth certificates, marriage certificates, etc.), wills and contracts documenting the entire hereditary succession, inheritance documents (transfers of estate by court order, certificates of inheritance, probates), marriage contracts, other documents.

Sec. 21 Further Themes of Evidence

(1) In the case of Sec. 28 para. 1, subpara. 2, 1st sentence, of the General Settlement Fund Law, the applicant must state that the object, for which restitution is claimed, was never the subject of a claim that was previously decided by an Austrian court or administrative body, or settled by agreement, and for which the applicant or a relative has never otherwise received compensation or other consideration.

(2) In the event that the property was the object of a claim according to Sec. 28 para. 1, subpara. 2, 2nd sentence of the General Settlement Fund Law, and in the event that this claim was rejected for lack of evidence, the applicant shall submit evidence that has become accessible in the meantime.

(3) If an applicant maintains that a decision or a settlement by agreement constituted an extreme injustice, he shall give the reasons thereof and present circumstances that indicate such an injustice.

(4) Applicants shall state that on 17 January 2001 the property item was owned exclusively and directly by the Federation or a legal person under public or private law wholly-owned, directly or indirectly, by the Federation. The Federal Government shall cooperate in the statement concerning the public ownership of the property item.

Sec. 21a New Evidence

(1) Proceedings that have been concluded by a decision finalising the matter can be reopened by the Arbitration Panel if new evidence is presented which previously the parties had no access to and which justifies the assumption that such evidence, had it been presented during the initial proceedings, could have led to a different result. The Arbitration Panel shall notify the parties regarding the reopening of the proceedings and shall provide them with the opportunity to submit a statement.
(2) The application to reopen the proceedings cannot be filed after expiration of two years from the issue of the decision.
(3) The deadline pursuant to para. 2 for all previously decided applications for in rem restitution commences upon the publication of this amendment to the Rules of Procedure in the Wiener Zeitung.

Part VII - Final Provisions

Sec. 22 Referral

In the event that the Arbitration Panel has no competence for processing a claim that is received prior to 28 May 2003, it may refer the claim to the Claims Committee, upon reaching agreement thereon with the Claims Committee and giving due consideration to the latter's By-Laws and Rules of Procedure.

Sec. 23 Costs of the Procedure

No reimbursement is made for costs incurred in connection with procedures.

Sec. 24 Official Procedural Languages

(1) The official procedural languages shall be German and English. Whenever necessary, an interpreter shall be called in for procedures of the Arbitration Panel.

(2) Certified translations shall be produced of documents written in any other than the official procedural languages.

Sec. 25 Amendments to the Rules of Procedure

The Rules of Procedure shall be amended by unanimous vote.

Sec. 26 Provinces and Municipalities

If and as far as provinces and municipalities provide for in rem restitution of publicly-owned property according to Sec. 38 of the General Settlement Fund Law, the provisions of these rules of procedure shall apply mutatis mutandis.

Sec. 27 Person-Related Expressions

The terms used in the present Rules of Procedure relating to individuals apply equally to women and men, whenever this is relevant.