



## Rules of Procedure of the Claims Committee

Adopted on 2 July 2002, amended on 26 February 2004, 13 December 2005, 25 June 2009 (entered into force on 1 July 2009) and last amended on 25 June 2012.

### Part 1 - General

#### Sect. 1 Adoption and Publication of the Rules of Procedure

(1) The Rules of Procedure of the Claims Committee of the General Settlement Fund (the Rules) are adopted by the Claims Committee pursuant to Section 12 of the General Settlement Fund Law (the Law). The Rules may be amended by decision of the Claims Committee.

(2) On adoption, the Rules as well as any amendment to them shall be published in the *Amtsblatt zur Wiener Zeitung* and simultaneously on the Home Page of the General Settlement Fund.

#### Sect. 2 Use of terms

(1) Terms used have the same meaning in the Rules as in the Law.

(2) Personal expressions used in the Rules apply, according to the context, equally to men and to women.

#### Sect. 3 Committee Secretariat

(1) In accordance with Section 4, paragraph 5 of the Law, the National Fund of the Republic of Austria provides the technical and administrative support for the Claims Committee

(2) The Secretary General and the administrative apparatus of the General Settlement Fund shall act as the Secretariat of the Claims Committee.

(3) The Secretary General shall appoint a person to be Secretary of the Claims Committee who shall be present at all Sessions of the Committee. The duties of the Secretary shall in particular be: the preparation of Sessions, the distribution of papers and supporting documents to Committee Members, the establishment of the Agenda and the preparation of the Record in accordance with Section 7, paragraph 6. A member of the staff of the National Fund or the General Settlement Fund may substitute for the Secretary in the execution of any of the latter's duties.

#### Sect. 4 Confidentiality

(1) The Members of the Claims Committee, the members of the Secretariat and other persons employed by the General Settlement Fund, as well as all other persons, including experts, observers and witnesses, present at Sessions of the Claims Committee, or engaged in the preparation of such Sessions or in the handling of Applications, shall maintain strict confidentiality of the information that comes to their knowledge in the course of such activities.

(2) Observers nominated by the bodies referred to in Section 19 paragraph 1 are obliged to make a written declaration accepting this obligation of confidentiality before they are admitted to any Session of the Claims Committee.

(3) The bodies entitled to nominate observers under Section 19 are bound by the obligation of strict confidentiality laid down in Section 12 of the Law and have to make arrangements for handling reports received from their nominated observers which conform to the requirements of that Section.

### Part 2 - The Claims Committee

#### Sect. 5 Composition

(1) The Claims Committee is composed of one Member each appointed by the Governments of the United States of America and the Austrian Federal Government, together with a Chairman appointed pursuant to Section 4, paragraph 2 of the Law.

(2) A vacancy caused by the incapacity or resignation of a Member shall be filled by applying *mutatis mutandis* the provisions of Section 4 of the Law.

#### Sect. 6 Status and Functions of the Claims Committee

(1) Functions of the Claims Committee shall be carried out in a personal capacity.

(2) The Claims Committee and its Members shall be independent in the exercise of their functions and not bound by any instructions.

(3) The Claims Committee shall decide on all matters necessary for the exercise of its functions under the Law.

#### Sect. 7 Sessions of the Claims Committee

(1) In principle, all Sessions of the Claims Committee shall be held at the Seat of the Fund. In exceptional cases, however, where the fulfilment of the Committees functions so requires, Sessions may also be held at other places by unanimous decision of the Committee.

(2) Sessions of the Claims Committee shall be convened by the Chairman, taking into account in particular the quantity of pending work and the need for its efficient despatch. A Session shall also be convened by the Chairman upon request of the other two Committee Members. The Secretary General may propose to the Chairman the convening of a Session.

(3) A Session of the Claims Committee requires the presence of all three of its Members.

(4) The Chairman shall preside over the Sessions of the Claims Committee.

(5) Sessions of the Claims Committee shall be held in private; neither claimants nor their representatives shall be present. Apart from the Committee Members themselves and the members of the Secretariat, there shall be admitted to the Sessions those persons whose presence is required for the conduct of the business as well as for the technical and administrative support of the proceedings. In accordance with Sections 10, 14 and 19 the Claims Committee may grant other persons admission to particular segments of its proceedings.

(6) A Record shall be maintained of each Session of the Claims Committee. The Record shall be signed by the Chairman.

#### Sect. 8 Working Languages

(1) The working languages are English and German. Interpretation shall be provided for all Sessions of the Claims Committee.

(2) All communications addressed to the Claims Committee and documents shall be submitted in one of the working languages. If a document is not available in one of the working languages, the Applicant shall furnish a translation. In exceptional cases, the Claims Committee may require a sworn translation.

(3) If documents remain untranslated even after an express request to that effect, the Claims Committee may decide to leave those documents out of account in handling the Claim.

#### Sect. 9 Decision-making within the Claims Committee

(1) Except insofar as the Law or the Rules expressly provide for unanimity, the Claims Committee shall take its decisions by simple majority with the participation of all its Members. Each Member of the Committee shall be required to cast a vote.

(2) In accordance with Section 10, paragraph 2 and Section 16, paragraph 1, taken together with Section 15, paragraph 1, subparagraph 2 of the Law, unanimity shall be required for a decision by the Claims Committee that a previous decision of an Austrian court or administrative authority constituted an extreme injustice.

(3) Decisions of the Claims Committee may be taken through a procedure by correspondence, in which the vote of each Member of the Claims Committee is cast in writing on one or more specific questions. A Record shall be kept of all decisions reached through the correspondence procedure. The Record shall be communicated to all Members of the Claims Committee and shall be signed by the Chairman.

### Part 3 - Applications

#### Sect. 10 Eligibility

(1) In accordance with Section 6, paragraph 1 of the Law, persons (and, in the claims-based procedure, associations) shall be eligible to file Applications if they were persecuted by the National Socialist regime on political grounds, on grounds of origin, religion, nationality, sexual orientation, on the ground of physical or mental handicap, or on the ground of an accusation of so-called asociality, or if they left the country to escape such persecution, and suffered loss or damage as a result of or in connection with events having occurred on the territory of the present-day Republic of Austria during the National Socialist era.

(2) In accordance with Section 6, paragraph 2 of the Law, heirs of persons who would, but for their death, have been eligible claimants pursuant to paragraph 1 shall be eligible to file Applications; for this purpose the provisions of the General Civil Code shall be applied mutatis mutandis. In the case of a dissolved association, an association which the Claims Committee regards as the legal successor shall be entitled to file an Application.

#### Sect. 10a Co-heirs

(1) In cases in which it appears that the Applicant is claiming on behalf of one or more of his co-heirs as well as himself, the Applicant (called hereafter the original Applicant) will be entitled to payment of the inheritance shares of the co-heirs in addition to his own share. All Applicants shall be informed of this rule. They have then the opportunity to apply to the General Settlement Fund within three months.

(2) The prerequisites for the payment of additional inheritance shares according to paragraph 1 shall be:

1. a written application to that effect by the original Applicant no later than three months after notification by the General Settlement Fund, which must be accompanied by a written declaration stating that the co-heirs assign all their rights to payment out of the General Settlement Fund to the original Applicant;
2. the inheritance title of the co-heirs has to be proved according to the standards of proof laid down in Section 16 paragraph 2 of the Rules of Procedure.

## Sect. 11 Applicants and their representatives

- (1) Applicants may be represented. Representatives of Applicants must produce a power of attorney establishing their status.
- (2) Applicants and their representatives shall have the right to have access to the file with the exception of records of deliberations and decision-making by the Claims Committee.

## Sect. 12 Quantification of the loss or damage suffered

- (1) It shall lie with the Claims Committee to determine the Claim Value.
- (2) Claims Values shall be based on the historic value of the loss or damage suffered, uprated to present day values by a factor to be determined by the Claims Committee.
- (3) Applicants may put forward their own estimate for the historic values but these are not binding on the Claims Committee.

## Sect. 13 Time limits

- (1) Applications must be submitted not later than 28th May 2003.
- (2) The time limit for Applications shall also be regarded as met if either the postcard distributed by the Fund to request Application forms, or a comparable written item, has been received by the General Settlement Fund by the date specified in paragraph 1. In such cases, Application forms will be taken into consideration if submitted to the General Settlement Fund not later than six months after the date specified in paragraph 1.
- (3) In exceptional cases where evidence exists to show that the Application form was completed and dispatched before the expiry of the time limit or in which the Applicant, on grounds of ill-health, was genuinely unable to complete the Application, Application forms received immediately after the closing date by the General Settlement Fund may nevertheless be considered.
- (4) Co-heirs of Applicants who submitted a timely Application according to paragraphs 1 and 2 can file an Application in their own name within six months after the date specified in paragraph 1, provided that their names were on record with the General Settlement Fund by the closing date of 28th May 2003.
- (5) Applications transferred to the Claims Committee under Section 22 of the Rules of Procedure of the Arbitration Panel will also be considered, provided that they have been received by the General Settlement Fund by the date specified in paragraph 1 and have been transferred to the Claims Committee not later than six months from that date.
- (6) Insurance claims transferred to the General Settlement Fund under the Agreement concluded on 26th November 2003 between the International Commission on Holocaust Era Insurance Claims (ICHEIC) and the General Settlement Fund will also be considered, provided that they have been transferred to the General Settlement Fund not later than six months from the date specified in paragraph 1.

## Part 4 - Procedure

### Sect. 14 Taking of evidence

- (1) The Claims Committee may decide to hear evidence from witnesses, including from Applicants or their representatives so far as they are being heard as witnesses. The Claims Committee may also decide to hear experts either on general issues or in relation to particular claims.
- (2) Witness and other evidence may be given either orally or in writing, as the Claims Committee may decide.
- (3) If the Claims Committee hears witness evidence or expert evidence on a particular claim, the Applicant shall be informed and will have access to the record of the evidence on the file.

### Sect. 15 Choice of procedure

In accordance with Section 9 of the Law, compensation for loss or damage within the meaning of Section 7 of the Law may be claimed under either the claims-based or the equity-based procedure. Only one Application may be made in either procedure, which may encompass loss and damage falling within several categories. It is however not permissible to make simultaneous Applications under both procedures for one and the same loss or damage. Should there be sufficient evidence, the Claims Committee will consider under the claims-based procedure a claim which has been submitted under the equity-based procedure. The Applicant will be so notified.

### Sect. 16 Evidence and burden of proof

- (1) The Applicant is required to produce all of the evidence available to him which tends to establish the credibility of his claim. The Applicant may at any time be requested to furnish further evidentiary material..
- (2) As provided in the Law, the Claims Committee shall determine individual claims on the basis of the available evidence in accordance with relaxed standards of proof. The Claims Committee shall for that purpose decide what weight to attach to any given item of evidence.

### **The Claims-based Procedure**

## Sect. 17 Claim and Payment Values

- (1) (a) If the Claims Committee comes to the conclusion that an Applicant fulfils the conditions laid down in Section 15 of the Law, it shall establish a consolidated sum representing all of the accepted claims put forward by the Applicant (Claim Value). The Applicant shall be so notified.
- (b) In the event, however, that procedures which have to be taken into account according to Section 16, paragraph 2 of the Law are not yet concluded, the Claims Committee will not for the time being proceed to establish a Claim Value. The Applicant shall be so notified.
- (2) If the Claims Committee comes to the conclusion that a claim fails on the merits, it shall reject the Application. The Applicant shall be so notified with a statement of the reasons. In accordance with Section 9 of the Law, following complete and final rejection of an Application under the claims-based procedure the Claims Committee will deal with the Application under the equity-based procedure.
- (3) After expiry of the period for Applications in accordance with Section 8 of the Law and after establishment of the payment rates according to Section 5, paragraph 3 of the Law, the Claims Committee shall establish for each Applicant a pro rata reduced sum (Payment Value) on the basis of the total of established Claim Values in relation to the total amount set aside for the claims-based procedure under Section 5 of the Law.
- (4) In accordance with Section 16 of the Law, no Payment Value may exceed 2 million US Dollars.
- (5) If new evidence, in particular concerning inheritance, has been produced, the Claims Committee may reopen the establishment of a Claim Value at any time before the Payment Values have been established under paragraph 3. The Applicant shall be so notified and shall be given opportunity to comment.

## Sect. 18 Recourse

- (1) An Applicant may, in the event of the rejection of his Application and its transfer to the equity-based procedure, make an Application for a fresh determination. The Applicant may similarly apply if the Claims Committee has assigned a historic value which is lower by more than 20% from the historic value estimated by the Applicant. The Applicant shall put forward the grounds in favour of an alteration of the original determination. Reference to new circumstances or to factual or legal errors in the determination by the Claims Committee shall in particular rank as such grounds.
- (2) The notice to the Applicant of the determination of his claim by the Claims Committee shall include an explanation of the rights of recourse open to him. The notice shall be signed by the Chairman of the Claims Committee.
- (3) If the Applicant is resident in Austria, the time limit for the right of recourse shall be 30 days from the delivery of the notice. If the Applicant is resident outside Austria, the time limit for the right of recourse shall be 60 days from delivery of the notice.
- (4) The Claims Committee will consider all Applications under this section as soon as possible. The Applicant will be notified of the outcome.

## Sect. 19 Observers

- (1) The Claims Committee may decide pursuant to Section 12, paragraph 3 of the Law to invite legal persons who, in accordance with their statutes, represent the interests of the groups of persons specified in Section 6 of the Law to nominate observers to attend designated Sessions of the Committee. Each organization may nominate one observer only.
- (2) Observers duly nominated under paragraph 1 shall have the possibility to attend at their own expense those general deliberations designated by the Claims Committee, but not under any circumstances determinations or decisions by the Claims Committee. Observers will be notified of the date of all designated Sessions and the Agenda.
- (3) Observers shall have no right of access to files.

## Sect. 20 Decisions in respect of insurance policies

- (1) In accordance with Section 18, paragraph 1 of the Law, the Claims Committee shall apply, mutatis mutandis, in respect of insurance policies, the International Commission on Holocaust Era Insurance Claims (ICHEIC) Rules for the decision of claims, including those concerning valuation, the standard of proof and the corresponding decisions of the Chairman; for this purpose, the rules in question shall be those established by ICHEIC as at the time of the adoption of these Rules.
- (2) Legal succession in respect of insurance policies shall however be determined in accordance with Section 6 paragraph 2 of the Law.

## **The Equity-based Procedure**

### Sect. 21 Equity-based Payments

If the Claims Committee has reason to believe that the requirements of Section 20 of the Law are fulfilled, the Claims Committee will award the Applicant an equity-based payment.

### Sect. 22 Recourse

There shall be no right of recourse against decisions of the Claims Committee in the equity-based procedure.

### Sect. 22a Service

(1) Service of documents under these Rules of Procedure will be considered to have been effected within Austria on the second working day after their despatch by the General Settlement Fund or outside Austria on the fifth working day after their despatch by the General Settlement Fund.

(2) Where service is required on any person or persons but the address for service or the identity of the recipients cannot be ascertained without difficulty, service may be effected by means of deposit with the Secretary General in accordance with paragraphs (3) and (4) below.

(3) Service by means of deposit under paragraph (2) above shall immediately be announced on the website of the General Settlement Fund but in a form that preserves the anonymity of the beneficiaries.

(4) Service shall be considered as having been effected one month after the deposit of the documents with the Secretary General.

(5) All documents which the General Settlement Fund has not been able to serve by 31 December 2013 shall be served by deposit under paragraphs (2), (3) and (4) above.

#### Sect. 22b Time limits

The Secretary General may be authorized by the Claims Committee to set reasonable time limits for undertaking procedural steps.

### Part 5 - Handling of Files and Carrying out of Decisions

#### Sect. 23 Handling of files

The Claims Committee shall lay down an internal division of responsibilities, according to which a Member of the Claims Committee will be designated the Reporting Member for each Application. It shall be the duty of the Reporting Member to submit to the Claims Committee in writing a draft determination. Procedural decisions may be taken either by the Reporting Member or by the responsible member of the staff of the General Settlement Fund to whom the Application has been allocated.

#### Sect. 24 Carrying out of decisions

The Secretary General is responsible for carrying out the decisions and determinations of the Claims Committee.

### Part 6 - Data Protection

#### Sect. 25 Data protection

Personal data relating to persons who have approached the Fund shall be protected in accordance with the applicable legislation, and may only be used within the framework of the fulfilment of functions in the implementation of the Law.

### Part 7 - Distribution of Funds

#### Sect. 26 Report on losses and damages on which a first decision had been reached by 1st July 2009

(1) Immediately after the 1st July 2009 the Secretary General shall submit a report to the Claims Committee on the losses and damages, on which a first decision had been reached by the Claims Committee by that day.

(2) The report shall contain the sum of the Claim Values for insurance policies and for the other categories in the claims-based procedure, as well as the sum of the recognized losses in the equity-based procedure.

(3) On confirmation of the completeness and correctness of the report by decision of the Claims Committee, the Secretary General is authorized to transmit the report to the Board of Trustees.