

20th Anniversary of the Washington Agreement – a Review

2021 marked the 20th anniversary of the signing of the "Agreement Between the Austrian Federal Government and the Government of the United States of America on the Settlement of Questions Concerning Compensation and Restitution for Victims of National Socialism", Federal Law Gazette III no. 121/2001), which entered into effect in 2001.

An annex to the agreement comprised ten paragraphs in which specific measures were agreed. The ways in which these measures were implemented are briefly outlined below.

1. Immediate Compensation for Survivors

Item 1 of this Agreement provided for immediate compensation to be paid to survivors for seized tenancy rights, household effects and personal valuables. This was put into practice by the National Fund from 2001 onward.

Applications could be filed until 30 June 2004. Lump sums of 7,630 euros (7,000 US dollars) and an additional payment of 1,000 euros were disbursed to approx. 20,000 applicants or their heirs. In total the National Fund made payments totaling approx. 175 million euros as compensation for seized tenancy rights.

2. Establishment of a General Settlement Fund

Item 2 concerned the establishment of a General Settlement Fund as a comprehensive resolution to open questions of compensation for victims of National Socialism.

In 2001 the Federal Law on the Establishment of a General Settlement Fund for Victims of National Socialism and on Restitution Measures (General Settlement Fund Law, GSF Law) was enacted. The opportunity to file applications was publicized worldwide in 18 languages, 29 countries and 138 print media editions. By the time the deadline had expired in May 2003, over 20,700 applications had been filed. After the last class action suit against Austria and Austrian enterprises had been dismissed in the USA in 2005 and legal closure (see Item 10) had been declared, in January 2006 the General Settlement Fund began to disburse the 210 million U.S. dollarswith which it had been endowed.

The applications for compensation of losses of assets filed with the General Settlement Fund were decided on by an independent three-person Claims Committee. The governments of the United States and the Republic of Austria each appointed one member. These two members then nominated their chairman. The Claims Committee was composed of Sir Franklin Berman (Chairman), the U.S. American nominee G. Jonathan Greenwald and the Austrian nominee Dr. Kurt Hofmann.

The Claims Committee has now decided on all applications for compensation of asset losses. Approx. 215 million US dollars have been disbursed. In total around 25,000 beneficiaries (applicants, heirs and co-heirs) received a payment from the General Settlement Fund.

On 4 April 2017, the Final Report of the Claims Committee was officially acknowledged by the Main Committee of the National Council whereupon the Claims Committee was dissolved.

3. Arbitration Panel for In Rem Restitution of Publicly-Owned Property

Item 3 stipulated the establishment of an Arbitration Panel for *In Rem* Restitution to examine applications for the return of immovable properties and the assets of Jewish communal organizations.

In addition to the Claims Committee, an independent Arbitration Panel for In Rem Restitution was also established at the General Settlement Fund. This three-person committee was active from 2001 to 2021 and could recommend the restitution of real estate and superstructures, as well as movable assets belonging to Jewish communal organizations that were publicly-owned on 17 January 2001.

In this context, publicly-owned property comprised property owned (directly or indirectly) by the Federation (Republic of Austria) or by the provinces and municipalities that had opted into the proceedings of the Arbitration Panel. These were the City of Vienna, the provinces of Upper Austria, Salzburg, Carinthia, Lower Austria, Lower Austria, Styria, Vorarlberg and Burgenland and the municipalities of Bad Ischl, Eisenstadt, Frauenkirchen, Grieskirchen, Kittsee, Kobersdorf, Korneuburg, Mattersburg, Oberwart, Purkersdorf, Rechnitz, Stockerau, Vöcklabruck and Wiener Neudorf. The municipalities of Bad Vöslau and Schwechat also requested the Arbitration Panel to examine two cases that came before the Panel.

One member of the Arbitration Panel was nominated by each of the governments of the United States and the Republic of Austria. The chairman was nominated by these two members. The Chairman of the Arbitration Panel was University Professor Josef Aicher; University Professor August Reinisch was nominated by the US American government and the Austrian government nominated former Ambassador Erich Kussbach.

The Arbitration Panel decided on all 2,307 applications for in rem restitution received and issued 1,582 decisions on them. The total value of the properties recommended for restitution by the Arbitration Panel amounts to an estimated 48 million euros.

On 29 June 2021, the Final Report of the Arbitration Panel was officially acknowledged by the Main Committee of the National Council, whereupon the Arbitration Panel was dissolved.

4. Additional Social Benefits for Survivors*

Item 4 provided for additional social benefits for surviving victims of National Socialism in the field of victims' welfare, nursing allowance and pensions.

In order to implement these agreements, the *Opferfürsorgegesetz* ("Victims' Welfare Act") and the *Allgemeines Sozialversicherungsgesetz* ("General Social Security Act") were amended when the GSF Law was enacted. For nursing allowance, it was agreed to "allow disbursement of nursing allowance up to category 7 to victims of National Socialism living abroad as soon as possible". Furthermore, it was agreed that the previously applicable cut off of six years of age at the time of forced emigration as a requirement for receiving compensation was dropped and internment in establishments similar to concentration camps, such as *Sammellager* ("assembly camps") was put on equal footing with imprisonment in order to meet the requirements to claim a pension. Finally, the requirement that pension recipients hold Austrian citizenship no longer applies.

Since 2002 money for all seven categories of nursing allowance has been "exported" to victims of National Socialism residing abroad; this was previously only possible in the second category of care. Between the end of 2001 and the end of 2003 the number of recipients of nursing allowance pursuant to Sec. 5a of the Victims' Welfare Act was on the increase; since 2004 the number of recipients has been in decline. At the end of 2021, 1,030 recipients of nursing allowance lived abroad: 671 in the USA, 529 in Israel, 135 in Great Britain. The remainder are resident in 21 other countries. From 2002 up to and including 2021, nursing allowance amounting to 255.1 million Euro was distributed to persons abroad.

The number of recipients of a pension pursuant to the Victims' Welfare Act diminished from almost 1,648 in the year 2016 to 1,092 in early 2022. As per January 2022 there were a total of 176 recipients with their place of residence outside Austria.

By the end of 2021 a total of 1,022.1 million Euros had been spent in the field of victims' welfare. This sum consists of total victims' welfare expenditure of 988.6 million Euro and monetary payments from the Offset Tax Fund/victims' welfare in the amount of 33.5 million Euro.

With regard to the General Social Security Act, it was determined in the Washington Agreement that "all those born on the present-day territory of the Republic of Austria between 1 January 1933 and 12 March 1938 will be eligible to buy into the Austrian pension system under the conditions of Sec. 502 (1), (4), (6)." At the end of 2005, around 14,300 persons were drawing a pension from the state pension system on the basis of the benefits provisions; at the end of 2021 there were 3,107. In the same period, the total annual expenditure for the pensions of these beneficiaries fell from around 22 million euros to 46 million euros.

5. Restitution of Works of Art

Item 5 regulates the restitution of artworks, which was to be continued on the basis of the Kunstrückgabegesetz ("Art Restitution Law") of 1998 "at an accelerated pace". Beyond this, similar procedures were to be carried out at a municipal and provincial level and, with this in mind, provenance research was to be intensified. The Austrian Federal Government gave assurance that it would do "its utmost" to tackle the issue of art restitution for objects owned by Austrian companies and public bodies which were not covered by the Art Restitution Law.

Following resolutions in this regard by Vienna and Styria (passed prior to the publication of the Washington Agreement), in 2002 Salzburg, Lower Austria, Burgenland and Upper Austria passed similar resolutions or provincial laws, joined by Carinthia and Vorarlberg in 2003, Tyrol in 2007 and the Municipality of Stockerau in 2004.

In 2009 the scope of application of the Art Restitution Law – which up to this time had only governed items in Austrian federal museums and collections – was extended to include other moveable cultural objects directly owned by the Federation and, furthermore, also objects which had been seized between 1933 and 1938 on the entire territory of the German Reich. To date, around 10,000 objects have been restituted on the basis of the Art Restitution Law.

The National Fund has also been running an art database since 2006. It serves as a platform for information and a forum for finding the heirs to restitutable art. It contains around 9,000 objects, 2,800 of which have already been subject to examination. If no legal successors can be found to the aggrieved owners of an object which is suitable for restitution, the National Fund disposes of the item in accordance with its legal mandate and allocates the proceeds for the benefit of the victims of National Socialism. In June 2010, art objects were transferred to the National Fund pursuant to the Art Restitution Law for the first time: it received 8,363 books from the National Library, the proceeds of which benefit the victims of National Socialism.

For more information on the tasks of the National Fund in the area of art restitution, see https://www.nationalfonds.org/disposition-of-heirless-art-objects

6. Hakoah Sports Club

Item 6 provided for the restitution and renovation of the former grounds of the Jewish Sport Club Hakoah.

In 2004, in exchange for the grounds seized by the Nazi regime in 1938, the reestablished club was given a 19,500 m² piece of land in the Vienna Prater near the Ernst Happel Stadium. Beyond this, the City of Vienna and the Republic of Austria each provided four million US dollars for its conversion. The opening ceremony for the sports center took place in March 2008.

7. State Archives

Item 7 stipulated that the Republic of Austria provide additional funding to the Austrian State Archives to improve access to the files and answer enquiries about restitution and compensation matters quickly and non-bureaucratically.

In 2001, two positions were created for community servicemen (filled on rotation in line with the duration of their compulsory period of service) to assist with these inquiries; in 2007, they were reduced to one position. An estimated 90,000 files were made available for processing the applications for restitution and compensation. Around two-thirds of the 72,000 files that were researched for the Claims Committee by the Research Department of the General Settlement Fund came from archives in Vienna, the majority from the Austrian State Archives.

8. Jewish Cemeteries

Item 8 stipulated financial support for the restoration and upkeep of Jewish cemeteries in Austria.

After systematic records had been made of the Jewish cemeteries in Austria in 2001, and the Federal Office for the Protection of Monuments had carried out investigations as to their suitability as official registered monuments, in 2010 the *Bundesgesetz über die Einrichtung des Fonds zur Instandsetzung der jüdischen Friedhöfe in Österreich* ("Federal Law on the Establishment of the Fund for the Restoration of the Jewish Cemeteries in Austria") was enacted. The National Fund was entrusted with administering the Fund. An Advisory Board issues recommendations for the decisions of the Board of Trustees. On the basis of guidelines that were issued in May 2011, the Board of Trustees of the Fund for the Restoration of the Jewish Cemeteries in Austria makes its decisions on applications for funding.

From 2010 to the end of 2020, the Cemeteries Fund subsidized around 50 restoration projects at 13 Jewish cemeteries throughout Austria with a total of around 7.3 million euros.

9. Subsidies to the Annual Holocaust Education Program at the Salzburg Seminar

Item 9 provided for subventions for the annual Holocaust educational program of the Salzburg Seminar.

The "Salzburg Global Seminar" of the "Holocaust Education and Genocide Prevention Initiative" is a long term project which was developed in collaboration with the United States Holocaust Museum and the Austrian Foreign Ministry to investigate the links between Holocaust education and genocide prevention. Austria subsidized the international founding conference of this initiative, "The Global Prevention of Genocide: Learning from the Holocaust", with 75,000 Euro from the Future Fund. The Austrian team of the Task Force for International Cooperation on Holocaust Education, Remembrance, and Research (today the International Holocaust Remembrance Association) assisted in planning and holding the conference.

Another conference, "Learning from the Past: Global Perspectives on Holocaust Education", which was held in Salzburg in 2012, investigated the role of the Holocaust as a point of reference for educators on the subject of genocide and human rights worldwide. The conference was sponsored by the National Fund and the Future Fund.

Another conference, "Holocaust Education and Genocide Prevention: Sharing Experiences across Boarders" was also co-funded by the National Fund in 2014.

10. Legal Closure

Item 10 governs the legal closure regarding claims "arising from or related to the National Socialist era or World War II that have been or may be asserted against Austria and/or Austrian companies".

Following the establishment of the General Settlement Fund and the Arbitration Panel, the statutory amendments pertaining to the additional social measures agreed under Item 4, the "good faith progress" in implementing Items 5 to 9 and the dismissal of the last class action suit, in 2005 "legal peace" was announced in Federal Law Gazette II no. 414/2005.

Conclusion

Twenty years on from the signing of the Washington Agreement, most of its measures have been fully implemented. Critical analysis of Austria's (own) Nazi past and the ability to learn its lessons shall continue to remain challenges in the future.

* The information on Item 4 "Additional social benefits for survivors" was updated on 16 May 2022 with information provided by the Federal Ministry of Social Affairs, Health, Care and Consumer Protection on 22 April 2022.