

GENERAL
SETTLEMENT FUND
FOR VICTIMS OF NATIONAL SOCIALISM



**“TO COMPREHENSIVELY RESOLVE OPEN
QUESTIONS OF COMPENSATION FOR
VICTIMS OF NATIONAL SOCIALISM...”**

**THE GENERAL SETTLEMENT FUND
FOR VICTIMS OF NATIONAL SOCIALISM
2001–2022**

ENGLISH

IMPRINT

Publisher: National Fund of the Republic of Austria for Victims of National Socialism, Parliament, Dr.-Karl-Renner-Ring 3, A-1017 Vienna

Contact: Hannah M. Lessing (Secretary General), e-mail: h.lessing@nationalfonds.org

Press enquiries: Peter Stadlbauer, tel.: +43 1 408 12 63, e-mail: presse@nationalfonds.org

Website: <https://www.entschaedigungsfonds.org>

Final Editor: Peter Stadlbauer with the assistance of Susanne H. Betz and Claire Fritsch

Design support: Nikolaij Kreinjobst

Proof Reading: Martin Niklas

Translations: Sarah Fink

Editorial deadline: April 2022

Photo credits: Parlamentsdirektion/Ulrike Wieser (p. 35), Parlamentsdirektion/Johannes Zinner (p. 13, 22), Georg Schenk (Cover), Diplomatische Akademie Wien – Vienna School of International Studies/Weingartner (p. 19), National Fund/Kreinjobst (p. 8, 9, 23, 30, 38, 39), Facultas (p. 11, 31), Federal Ministry for European and International Affairs (p. 14, 15, 38)

Print: BCN Drucklösungen GmbH, Wien

ISBN: 978-3-9505259-3-9

CONTENTS

1. The General Settlement Fund: an overview	4
Introduction (4), The Fund in figures (5), Applicants according to country of residence (6), Members of the Claims Committee (8), Members of the Arbitration Panel (9)	
2. Compensation of assets	10
General information (10), The procedure (11), Payments (12), Payment quotas (12), The Final Report of the Claims Committee (13)	
2.1. The Dissolution of the Claims Committee.....	14
Press release (14), Notes verbales (16)	
2.2. The Presentation of the Final Report of the Claims Committee.....	18
Programme (18), Hans Winkler: “From the Washington Agreement to the General Settle- ment Fund” (18), Christine Schwab: “The Compensation of Assets in Practice” (21), Sir Franklin Berman: “The Activities of the Claims Committee” (24)	
2.3. Compensation of assets: facts and figures.....	26
Statistical overview of the proceedings before the Claims Committee (26), Applicants to the Claims Committee (28), Categories of assets (29)	
3. In Rem Restitution	30
General information (30), Historical background (30), The procedure (31), The publication of the decisions of the Arbitration Panel (32), The Final Report of the Arbitration Panel (33)	
3.1. The Dissolution of the Arbitration Panel.....	34
Press release (34), Speech by Josef Aicher (36), Speech by August Reinisch (38), Note verbale (40)	
3.2. Summary of the Final Report of the Arbitration Panel.....	41
3.3. Facts and figures on <i>in rem</i> restitution.....	44
Procedural statistics of the Arbitration Panel (44), SIGIS (46), Recommendations of the Arbitration Panel (47)	

1. THE GENERAL SETTLEMENT FUND: AN OVERVIEW

Introduction

The dissolution of the General Settlement Fund for Victims of National Socialism, which was established in 2001, marks the completion of one of Austria's largest-scale projects to provide restitution and compensation for Nazi-seized assets.

The General Settlement Fund for Victims of National Socialism was established in 2001 on the basis of the Washington Compensation Agreement of the same year and endowed with 210 million US dollars (Federal Law Gazette no. 12/2001). Its task was to acknowledge, through voluntary payments, moral responsibility for asset losses suffered by persecutees of the Nazi regime in Austria. The awards themselves did not take the form of fixed lump-sum payments but were based on the sum total of the losses incurred in each individual case and calculated *pro rata* in relation to the total amount available to the Fund.

The filing period for applications to receive monetary awards from the General Settlement Fund ended on 28 May 2003. Persons who had been personally affected by Nazi asset seizures and their legal successors were eligible to file applications. In total, the Fund received 20,702 applications, which were decided by an independent Claims Committee.

There was also an Arbitration Panel for *In Rem* Restitution established at the General Settlement Fund, which decided on applications for restitution of publicly-owned property. Real estate or the movable assets of Jewish communal organisations that had been seized from their owners during the Nazi era and were publicly-owned on the statutory cut-off date, 17 January 2001, by the Republic of Austria or by provinces and municipalities that had opted into the proceedings of the Arbitration Panel could be eligible for restitution. The panel received a total of 2,307 applications. The last filing period for applications for *in rem* restitution ended on 31 December 2011.

Both the Claims Committee and the Arbitration Panel had to take previous compensation and restitution measures into account. If corresponding claims had already been conclusively decided or settled by agreement by Austrian courts or administrative authorities, no award could be made unless the Claims Committee or the Arbitration Panel reached the conclusion that such a decision or settlement by agreement had constituted an 'extreme injustice'.

Once the Final Report of the Claims Committee had been acknowledged by the Main Committee of the National Council on 4 April 2017 and the Claims Committee had thereby been dissolved pursuant to Sec. 4 (6) of the General Settlement Fund Law, and once the Final Report of the Arbitration Panel for *In Rem* Restitution had been acknowledged by the Main Committee of the National Council on 29 June 2021 and the Arbitration Panel had thereby been dissolved pursuant to Sec. 23 (6) of the General Settlement Fund Law, on 26 April 2022 the Board of Trustees of the General Settlement Fund issued the following resolution:

"Pursuant to Sec. 1 (3) of the Rules of Procedure of the General Settlement Fund for Victims of National Socialism* the Board of Trustees hereby determines that the Fund has fully completed its tasks.

As a result, pursuant to Sec. 1 (4) of the General Settlement Fund Law, the General Settlement Fund for Victims of National Socialism is dissolved as of this day.

In this connection, reference is made to Sec. 2a (1) item 7 of the National Fund Law in accordance with which the National Fund has the following tasks in relation to the General Settlement Fund:

'the promotion and dissemination of knowledge about National Socialism, its consequences and the fate of its victims, and the preservation of the memory of the victims, particularly by:

a) systematically recording and preserving the procedural and persecution documentation produced by the National Fund and General Settlement Fund; [...]

c) providing and conveying information about National Socialism and compensation and restitution measures to the public and facilitating access to the relevant materials'."

* Excerpt from the Rules of Procedure of the General Settlement Fund for Victims of National Socialism:

§ 1 Objective and headquarters of the General Settlement Fund

(1) The General Settlement Fund is established for the purpose of comprehensively resolving outstanding issues relating to the compensation of victims of National Socialism for losses and damage incurred as a result of or in connection with events on the territory of the present-day Republic of Austria during the National Socialist era and is headquartered in Vienna.

(2) The General Settlement Fund is an institution of the Republic of Austria, is subject to Austrian law, has its own legal personality and serves exclusively non-profit purposes. The services of the General Settlement Fund shall be rendered by way of private sector administration.

(3) Upon the full completion of its tasks, the Fund shall be deemed dissolved. The complete fulfilment of the tasks of the fund shall be determined by resolution of the Board of Trustees.

The National Fund will secure and document the databases, the files and the materials and documents produced and accumulated during its administrative support of the Claims Committee and the Arbitration Panel since 2001.

During the course of the administrative process of winding down the General Settlement Fund the contracts concluded by the General Settlement Fund were terminated or transferred to the National Fund and the accounts on the means of the Fund were finalised. When the Fund has fully completed its tasks, it is deemed dissolved.

The Fund in figures

Compensation of assets

All 20,702 applications for compensation of assets were decided by the independent Claims Committee by 25 June 2012.

The General Settlement Fund made advance payments in the amount of 161.5 million US dollars and closing payments in the amount of 53.5 million US dollars; 215 million US dollars in total. Around 25,000 beneficiaries received a payment from the General Settlement Fund.

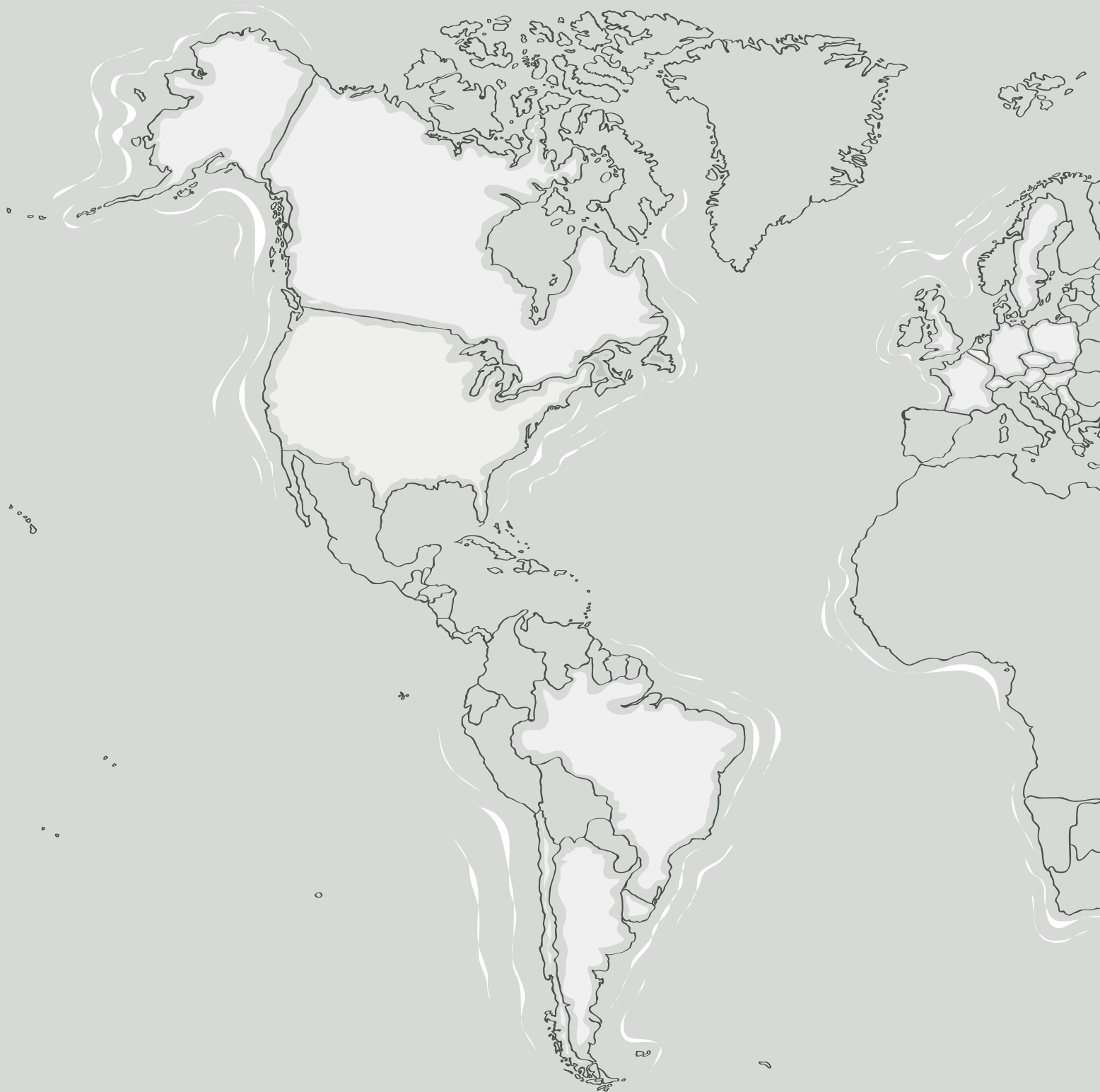
Overall, the Claims Committee recognised claims in the amount of 1.6 billion US dollars; approx. 32 % of them were for educational and occupational losses, 22 % for liquidated businesses and around 15 % for stocks. The remainder was distributed among the other categories of losses: bank accounts, insurance policies, real estate, moveable assets, bonds, mortgages, and other losses and damages.

In rem restitution

The Arbitration Panel for *In Rem* Restitution, established with the General Settlement Fund, received a total of 2,307 applications for *in rem* restitution. The processing of the applications was completed on 30 November 2018; the last filing period for applications to reopen proceedings ended at the end of August 2020. The Arbitration Panel granted a total of 140 applications for *in rem* restitution. Every one of its restitution recommendations was implemented by the respective public owners.

The total value of the real estate recommended for restitution comes to an estimated 48 million euros; 9.8 million euros of this amount were awarded as a comparable asset.

Applicants according to country of residence*





Country of residence	Compensation of assets	In Rem restitution
USA	6795	822
Austria	3802	225
Israel	3160	254
United Kingdom	2180	211
Australia	1178	114
Canada	554	52
Argentina	535	32
France	406	44
Germany	349	49
Switzerland	229	21
Serbia	33	67
Sweden	137	17
Brazil	119	19
Belgium	114	11
Uruguay	91	4
Hungary	118	8
Czech Republic	123	4
Chile	64	3
Poland	33	2

* This table shows the countries in which applicants to the General Settlement Fund have had their permanent residence. Persons who filed several applications in different proceedings are listed for each application. The list also includes persons whose applications were rejected.



The Claims Committee of the General Settlement Fund. From left: Kurt Hofmann, Sir Franklin Berman, G. Jonathan Greenwald

Members of the Claims Committee

Sir Franklin Berman

Visiting Professor of International Law at Oxford University, Cape Town University and King's College, London. Judge in international dispute settlement and court proceedings; most recently as Judge ad hoc at the International Court of Justice, The Hague 2019–2020. Arbitrator in ongoing international arbitration proceedings. 1960 University of Cape Town (BA Mathematics; BSc). 1963–1965 Wadham & Nuffield Colleges; University of Oxford (BA Jurisprudence; MA). 1965 joined the Diplomatic Service of the United Kingdom. 1991–1999 Legal Adviser to the Foreign & Commonwealth Office. Holds high honours of the United Kingdom: Honorary Queen's Counsel (1992) and Knight Commander of the Order of St. Michael & St. George (1995); Master of the Bench, Middle Temple. Editor of *McNair's Law of Treaties*. Co-editor *British Year Book of International Law*.

Chairman of the Claims Committee from 2001 to 2017.

Kurt Hofmann (deceased 2020)

Examination commissioner of the Chamber of Public Accountants and Tax Advisors, chairman of a commission under the Expert Witnesses and Interpreters Act. Retired judge. 1955 University of Vienna (Dr. jur.). Appointed judge in 1959. Worked at various Austrian courts, latterly at the Vienna Higher Regional Court (1977) and the Supreme Court (1980); retired as its Vice-President in 1998. Author of numerous specialist articles with a focus on civil law and European private law.

Member of the Claims Committee appointed by Austria from 2001 to 2017.

G. Jonathan Greenwald

Vice President of the International Crisis Group, Washington D.C. (since 2001). Responsible for overseeing the Crisis Group's global conflict prevention reporting and research activities. 1964 Princeton University (BA, History), 1968 Harvard Law School (LLB). 1998–1999 Visiting Professor of Diplomacy at Lawrence University (USA). 1968–1969 Legal Advisor at the US Department of Defense; 1969–1997 US Department of State employee (Department of State) and US delegate to numerous international conferences, including CSCE conferences in Geneva/Helsinki 1973–1975, Belgrade 1977–1978 and Madrid 1980–1981. Diplomat in Berlin, Budapest and Brussels (European Union). 1999–2000 responsible for foreign policy issues in Senator Bill Bradley's presidential campaign. Author of *Berlin Witness: An American Diplomat's Chronicle of the East German Revolution* (1993) and numerous articles on foreign policy issues in journals (*Foreign Policy*, *The Washington Quarterly*) and daily newspapers (*Financial Times*, *Los Angeles Times*, etc.).

US-appointed Member of the Claims Committee from 2006 to 2017.

Vivian Grosswald Curran

US-appointed Member of the Claims Committee from 2004 to 2006.

Robert Rosenstock (deceased 2004)

US-appointed Member of the Claims Committee from 2001 to 2004.



The Arbitration Panel for *In Rem* Restitution. From left: August Reinisch, Josef Aicher, Erich Kussbach

Members of the Arbitration Panel

Josef Aicher

Professor emeritus of Corporate and Commercial Law at the University of Vienna, Honorary Professor at the University of Salzburg, Visiting Professor at Danube University Krems, Corresponding Member of the Austrian Academy of Sciences, Deputy Chairman of the Takeover Commission. 1970 University of Salzburg (Dr. iur.). 1975 Professor of Civil Law at the University of Graz. Professor of Commercial and Securities Law at the Universities of Linz (1978) and Vienna (1982). Co-editor of the legal journals *Wirtschaftsrechtliche Blätter* and *Zeitschrift für Vergaberecht und Bauvertragsrecht*.

From 2001 to 2021 Chairman of the Arbitration Panel for *In Rem* Restitution.

August Reinisch

Professor of International and European Law at the University of Vienna, Member of the Institut de droit international. Member of the International Law Commission of the United Nations, Corresponding Member of the Austrian Academy of Sciences. 1988 University of Vienna (Mag. iur.), 1990 University of Vienna (Mag. phil.). 1989 New York University (LL.M. International Legal Studies), 1991 University of Vienna (Dr. iur.), 1994 Diploma of the Hague Academy of International Law. Co-editor of *International Organizations Law Review*, *International Legal Materials* and *Oxford Reports on International Law in Domestic Courts*. Until 2016 Vice Dean of the Faculty of Law at the University of Vienna. 2016–2019 Member of the Senate of the University of Vienna.

US-appointed Member of the Arbitration Panel for *In Rem* Restitution from 2001 to 2021.

Erich Kussbach

Former Member of the International Humanitarian Investigation Commission, Founding Rector of the Gyula Andrassy German Language University Budapest, retired Austrian ambassador; Full Member of the European Academy of Sciences and Arts. 1953, 1958 Universities of Budapest and Vienna (Dr. iur.; Dr. rer. pol.), 1961 Yale University (Master of Law). 1963 joined the Austrian Diplomatic Service. Most recently Ambassador to Hungary and Permanent Representative to the International Danube Commission 1993–1996. Since 1996 Honorary Professor of International Humanitarian Law at the University of Linz. Until 2008 Professor of International Law at the Catholic Pázmány Péter University in Budapest. Author of numerous publications in the field of public international law, private international law, philosophy of law and political science.

Member of the Arbitration Panel for *In Rem* Restitution appointed by Austria from 2001 to 2021.

2. COMPENSATION OF ASSETS

General information

The General Settlement Fund was established in 2001 and endowed with 210 million US Dollars in order to comprehensively resolve open questions of compensation for victims of National Socialism for losses and damage incurred as a result of or in connection with the events that occurred on the territory of the Republic of Austria during the Nazi era. The Fund's task was to provide compensation for property losses which had not been covered by previous restitution or compensation measures, or which had only been inadequately compensated.

The General Settlement Fund was established following intensive negotiations between the governments of the United States of America and Austria with the participation of victims' organisations, which resulted in a general agreement being reached on 17 January 2001. This was followed by an intergovernmental agreement (the Washington Agreement), which was implemented forthwith by 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], Federal Law Gazette I no. 12/2001).

The Law provided for an independent, internationally-composed Claims Committee that would develop a procedure and decide on the submitted applications for compensation. The filing period for applications expired on 28 May 2003.

Pursuant to the GSF Law, people or associations who were personally affected by persecution were eligible to file applications, as were their heirs/legal successors. Persecution may have been inflicted on political grounds, on grounds of origin, religion, nationality or sexual orientation, on grounds of a physical or mental handicap, or of the accusation of so-called asociality. People who left the country to escape such persecution were also deemed eligible.

Losses could be asserted in ten different categories of assets:

- Liquidated businesses including licenses and other business assets
- Real estate
- Bank accounts
- Stocks
- Bonds
- Mortgages
- Movable assets
- Insurance policies
- Occupational and educational losses
- Other losses and damage

The entire sum of 210 million dollars was earmarked for the compensation payments. Administrative costs were covered by the Fund interest or paid by the Federation.

In comparison to other national and international compensation measures, under the terms of which only few categories of assets could be claimed or the compensation took the form of a lump sum payment, the remit to make individual payments for damages in ten categories was incomparably more complex. Especially the category "other losses" provided the General Settlement Fund with the possibility of taking all types of damage into account that were not covered by the other categories.

In consensus with the Allied occupying forces and with regard to the economic capacity of the Republic of Austria at that time, Austria's restitution policies post-1945 pursued the principle of restituting available assets and leaving assets which no longer existed uncompensated.

The gaps in the Austrian restitution and compensation measures were reflected in the applications to the General Settlement Fund: many claims were made in the category "liquidated businesses", for example, and the Claims Committee awarded relatively large amounts of compensation in that category.

The procedure

The General Settlement Fund developed its own procedure which had to be created completely from scratch, from the drafting of the application form to the individual operating procedures, from the necessary software to the legal guidelines. It was necessary to enable the processing of the around 150,000 individual claims as efficiently as possible, to treat like cases alike and different cases differently, to devise the relaxed standards of proof required by the GSF Law, to develop transparent working methods and, not least, to provide the applicants with comprehensive information on their claims.

The fundamental basis for the legal processing of the cases was provided by the historical research carried out at the General Settlement Fund. In order to guarantee the equal treatment of all applicants, the same comprehensive source holdings and archives were consulted in each case. In individual cases concerning certain questions, special research was undertaken.

The legal processing of the applications occurred on the basis of the information obtained through the historical research, supported by a custom-made software (“SV” = *Standardisiertes Verfahren* – “standardised procedure”), which, as an integrated database application, contains innovative legal informatics functions. Each claim was individually examined and if granted on its merits, valued. If a claim could not be attributed a value due to lack of historical valuation guidelines, the General Settlement Fund applied a system of fixed lump-sum valuations for the different categories of assets.

There were two different types of procedure for examining the applications, the claims-based procedure and the equity-based procedure. In the equity-based procedure, the standards of proof were lower than in the claims-based procedure in order to account for the fact that the events occurred over 60 years ago and ownership and seizure of assets are often difficult to trace today.

In the claims-based procedure, the applicants also had a right of recourse against the rejection of claims. Moreover, the Claims Committee was able to reopen proceedings on its own initiative.

Payments

As the final determination of the compensation quotas required a valuation of all recognised losses, in view of the age of many applicants the General Settlement Fund Law (GSF Law) was amended in 2005 (Federal Law Gazette I no. 142/2005). This enabled advance *pro rata* payments to those applicants whose losses had already been established. In December 2005, the advance payments (AP) commenced.

In order to expedite the payments from the General Settlement Fund, another amendment to the GSF Law, enacted on 1 July 2009 (Federal Law Gazette I no. 54/2009), enabled closing payments (CP) to be made before decisions had been issued on all applications.

Payment quotas

After the 2009 amendment to the GSF Law, the quotas for payments from the General Settlement Fund were calculated on the basis of the decisions reached by the Claims Committee by 1 July 2009 and the financial means at the Fund's disposal:

Process	AP	CP	total
Claims-based process	10 %	0.565150 %	10.565150 %
Equity-based process	15 %	2.164658 %	17.164658 %
Insurance policies	15 %	5.736232 %	20.736232 %

For all decisions reached after 1 July 2009 or decisions revised due to an appeal or a reopening, the Federation made further funds available in accordance with the determined payment quotas pursuant to Sec. 2 (1) of the GSF Law.



General Settlement Fund for Victims of National Socialism (ed.), Final Report of the Claims Committee of the General Settlement Fund for Victims of National Socialism, Vienna: facultas 2020, 562 pages. ISBN: 978-3-7089-1954-6

The Final Report of the Claims Committee

In September 2015 the Final Report of the Claims Committee of the General Settlement Fund for Victims of National Socialism was submitted to its Board of Trustees, whose members included the Presidium of the National Council, representatives from all parliamentary parties and the Federal Government, and from victims' organisations and the religious communities. On 4 April 2017, in the presence of the Claims Committee, the Final Report was acknowledged by the Main Committee of the National Council.

Overall, the claims recognised by the Claims Committee totalled approx. 1.6 billion US dollars; around 32 % of these were for occupational and educational losses, around 22 % for liquidated businesses and 15 % for stocks, with the remainder distributed among the other categories of losses; bank accounts, insurance policies, real estate, movable assets, debentures, mortgages, and other losses and damage.

The Final Report of the Claims Committee of the General Settlement Fund for Victims of National Socialism was published in book form in March 2020. Spanning 562 pages, the publication documents the activities of the Claims Committee and, in particular, the importance of the Washington Agreement in dealing with the consequences of Nazi rule in Austria, the complexity of the aspects to be considered in its implementation, the procedure and the high standards applied in the proceedings.

2.1. THE DISSOLUTION OF THE CLAIMS COMMITTEE

Claims Committee of the General Settlement Fund dissolved upon acknowledgment of its Final Report

Press release, 5 April 2017

On 4 April 2017, the Main Committee of the Austrian National Council unanimously acknowledged the receipt of the Final Report of the General Settlement Fund's Claims Committee. The three-member Claims Committee, which has decided on 20,702 applications for compensation of victims of National Socialism is now disbanded and "one of the Second Republic's most significant projects to compensate Nazi seizures of assets has been completed", stated National Council President Doris Bures in tribute to the work of the Claims Committee at a reception held at the Parliament in the Committee's honour.

The National Council President stressed that it would not have been possible to accomplish this task without the enormously dedicated and highly competent Claims Committee, and it would certainly not have been easy for the applicants to be confronted with their past again after so many years. The work of the Claims Committee had made an enormous contribution towards addressing the legacy of the past. Of the Claims Committee's three Members, just G. Jonathan Greenwald had not yet received official recognition for his work, Bures continued. During the reception she awarded him the Great Silver Medal for Services to the Republic of Austria.

In his closing remarks the Chairman of the Claims Committee, Sir Franklin Berman, expressed the Claims Committee's hope that "through its work and, indeed, its very existence, it had in its own way made a contribution towards creating an atmosphere of reconciliation, and perhaps even towards healing wounds of the past". It was not possible to present the report without feeling a degree of emotion, which arises not out of satisfaction at the fulfilment of a task, but rather out of the nature of the task itself, Berman continued. "To have contributed, over a period of some 15 years, to the construction, and then the successful operation of a system for addressing intolerable past injustice is a moral activity, felt equally strongly to be so by all of those involved." The Claims Committee had been aware from the very outset that "monetary payment could never in itself make good for gross injustice". Instead, the main purpose of the General Settlement Fund was "to make it known that here was a body that would listen to claimants, hear their stories, and offer them some form of official acknowledgement of their suffering".

The Final Report spans over 700 pages and documents the work of the Claims Committee, in particular the importance of the

Washington Agreement in dealing with Austria's Nazi past, the many and varied aspects that had to be taken into consideration during its implementation, and the procedure and the high procedural standards applied in it. In September 2015 the Final Report was submitted to the Fund's Board of Trustees and then, subsequently, to the Main Committee of the National Council as stipulated by the General Settlement Fund Law. Preparations are currently underway to publish an edited version of the Final Report with an English translation in book form. A brief overview of the Final Report containing the most important results, statistics and figures is available on the General Settlement Fund's website.

The Claims Committee has decided on 20,702 applications containing 151,949 claims for 94,335 losses. It has awarded 18,155 applicants (87.7 %) compensation; 2,547 (12.3 %) applications were denied in their entirety. A little over two thirds of the claims (103,425 or 68.07 %) were granted. The largest proportion of positive decisions was issued in the category "Occupational and educational losses", while the vast majority of claims for real estate were rejected. These figures reflect Austria's previous restitution policies which after 1945 pursued the policy of restituting only assets, including real estate, that were still available.

Overall, the claims recognised by the Claims Committee totalled approx. 1.6 billion US dollars; around 32 % of these were for occupational and educational losses, around 22 % for liquidated businesses and 15 % for stocks, with the rest distributed among the other categories of losses; bank accounts, insurance policies, real estate, movable assets, debentures, mortgages, and other losses and damage.

In line with the fixed amount with which the Fund was endowed, by 15 March 2017 a total of approx. 213.27 million US dollars was disbursed, around 161.52 million US dollars thereof in the form of advance payments and 51.75 million as closing payments. Upon its conclusion a total of 24,000 beneficiaries will have received a payment from the General Settlement Fund.

The remaining tasks of the General Settlement Fund are: the search for heirs of deceased applicants, its function as the business apparatus of the Arbitration Panel for *In Rem* Restitution, which will submit its Final Report in 2018, and securing and documenting the databases and archive holdings. Heirs are still being sought for 666 applicants who passed away during ongoing proceedings. There are still 1,373 applications that have not yet been paid out in full. It is still possible to lay claim to payments for claims that have already been granted until the end of April 2019, after which they become subject to the statute of limitations. Once the General Settlement Fund has completed all of its tasks it shall be dissolved.



The Claims Committee of the General Settlement Fund at a meeting in April 2015. Seated from left, Claims Committee members Kurt Hofmann (deceased 2020), Sir Franklin Berman and G. Jonathan Greenwald. Standing from left, staff member Maida Hadzic, Secretary General Hannah Lessing, Deputy Secretary General Christine Schwab and staff members Iris Petrinja and Sonja Öhler.

The Claims Committee first convened in November 2001 having been established on the basis of the Washington Agreement between the Governments of the USA and Austria in order to settle questions of compensation and restitution for victims of National Socialism, and on the basis of the General Settlement Fund Law, as an independent, international decision-making body for applications for financial compensation filed with the General Settlement Fund. Sir Franklin Berman, Visiting Professor for International Law at the Universities of Oxford, Cape Town and King's College, London, and judge in international arbitration and court proceedings, has been the Committee Chairman since its inception. The Austrian appointee is the former Vice President of the Austrian Supreme Court, Dr. Kurt Hofmann, Claims Committee Member since 2001.

American nominees have been Prof. Robert Rosenstock from 2001 to 2004 and Prof. Vivian Grosswald Curran from 2004 to 2006. The U.S. Diplomat and Vice President of the International Crisis Group, Washington D.C., G. Jonathan Greenwald was a Member of the Claims Committee from May 2006.

The General Settlement Fund for Victims of National Socialism was established in 2001 as a comprehensive solution to open questions of compensation for victims of National Socialism for losses and damage that were incurred as a result of or in connection with events that took place on the present-day territory of the Republic of Austria during the National Socialist era. The Fund has the task of compensating losses that were not, or only insufficiently, accounted for by previous restitution and compensation measures.



Ref. No. Recht_74_2017

NOTE VERBALE

The Embassy of Austria presents its compliments to the US Department of State and has the honor to inform that in accordance with the provisions of the Law on the General Settlement Fund (GSF) for Victims of National Socialism (*Entschädigungsfondsgesetz*) the Claims Committee of the GSF has duly completed its important tasks and submitted a Final Report to the Austrian Parliament.

On April 4, 2017, the Main Committee of the National Council of the Austrian Parliament discussed and unanimously took note of the Claims Committee's Final Report.

At a ceremony held on the same day, the President of the Austrian Parliament expressed the gratitude of the Republic of Austria for the personal commitment and tireless efforts of the members of the Claims Committee and their staff. After having been relieved from its duties, the Claims Committee was dissolved.

An executive summary of the Final Report of the Claims Committee is enclosed for ease of reference.

The Embassy of Austria avails itself of this opportunity to renew to the US Department of State the assurances of its highest consideration.

Washington
May 24, 2017



U.S. Department of State
Washington, D.C.

The U.S. Department of State refers the Embassy of Austria to its diplomatic note No. RECHT_74_2017, dated May 24, 2017, regarding the completion of the tasks of the Claims Committee of the General Settlement Fund Law (Entschädigungsfondsgesetz) and the Law on the National Fund of the Republic of Austria for Victims of National Socialism (Nationalfondsgesetz), and the submission of the Final Report to the Austrian Parliament. The United States acknowledges receipt of said note and the executive summary, and thanks the Republic of Austria and the Claims Committee for the important work that has been undertaken.

Department of State,
Washington,

JUL 07 2017

DIPLOMATIC NOTE



2.2. THE PRESENTATION OF THE FINAL REPORT OF THE CLAIMS COMMITTEE

January 2021 marked the 20th anniversary of the Washington Agreement, which was concluded between the USA and Austria. The Agreement dealt with questions of compensation and restitution for victims of National Socialism and was hailed as a milestone in Austria's efforts to deal with its Nazi past.

To mark this anniversary, the Final Report of the Claims Committee was published in book form and presented at a podium discussion, which took place on 19 January 2021 in an online video conference due to the pandemic.

Programme

Words of welcome

MAG. HANNAH LESSING (Secretary General of the National Fund of the Republic of Austria and the General Settlement Fund for Victims of National Socialism)

Greeting

MAG. WOLFGANG SOBOTKA (National Council President and Chairman of the Board of Trustees of the General Settlement Fund)

From the Washington Agreement to the General Settlement Fund

DR. HANS WINKLER (former Director of the International Law Office, key player in the negotiations leading up to the Washington Agreement of 2001)

The Compensation of Assets in Practice

MAG. CHRISTINE SCHWAB (former Deputy Secretary General of the General Settlement Fund)

The Activities of the Claims Committee

SIR FRANKLIN BERMAN (former Chairman of the Claims Committee)

Moderation

MAG. HANNAH LESSING

The talks held by the contributors at this event are documented on the following pages. Many thanks to the speakers and participants at the event and Facultas Publishers for their cooperation.

From the Washington Agreement to the General Settlement Fund

Hans Winkler

Dear Secretary General, dear Hannah,
Ladies and Gentlemen!

In the course of the preparations for this evening I refreshed a number of memories – there were many things I had already forgotten. When going back over the events it became clear to me again what had been so special about them.

Today, on its 20th anniversary, we are remembering the Washington Agreement. That is not quite correct, since the Joint Declaration was actually signed on 17 January 2001 in Washington. A formal agreement in the form of an Exchange of Notes between the governments of Austria and the United States was not concluded until a few days later. The goal of this Joint Declaration was, after so many years, to give the victims of National Socialism "a certain measure of justice", in the – very apposite – words of Stuart Eizenstat.

The Joint Declaration itself is not a binding international legal treaty. It was a political agreement, but it was certainly politically binding for Austria insofar as Austria had undertaken in it to transpose its content – which was signed or initialled by attorneys, victims' representatives and the Jewish Community – into Austrian law. The implementation of the Declaration occurred with breath-taking speed: just days after the Joint Declaration had been signed, an Exchange of Notes was, as mentioned, concluded, and in late February the General Settlement Fund Law was passed by the National Council. This speed was also met – it must be said – with reproach. When a number of issues regarding its implementation emerged in its practical application, it was said that – I quote from a television report – "it had been done sloppily".

I believe, however, that this swift implementation was sensible and wise. Firstly, the Federal Chancellor at the time, Wolfgang Schüssel, had correctly recognised that it would be wise to take advantage of the positive mood among the Austrian population in order to swiftly implement what had been agreed. Secondly, it was pointed out that – I don't think people are particularly aware of this – in Vienna, elections for the Municipal Council were in the offing, in March 2001, and Federal Chancellor Schüssel wanted to keep the packet of compensation measures out of the discussion.

I have often been asked how these negotiations came about. I have also written on the subject. However, this question usually refers to the events in the immediate leadup to the negotiations. How did they commence, how did they proceed, what happened afterwards?

In fact, the story should actually start on 30 October 1943. In a sense, the adoption of the so-called Moscow Declaration by the Foreign Ministers of the USA, Great Britain and the Soviet Union marked the starting point in the history of post-1945 restitution. No one knew that at the time, of course. But this declaration, and later on, its – albeit extremely one-sided – entrenchment in the Austrian consciousness played a central role in determining Austria's actions after 1945.

I assume you are aware of the "Moscow Declaration", at least the first part, where Austria is described as the first victim of Hitlerite aggression. However, the Moscow Declaration also had a second part, in which Austria is reminded that it bears responsibility for its participation in the war at the side of Hitlerite Germany that it cannot evade, and that in the final reckoning the extent to which Austria contributed to its own liberation would be taken into account.

As such, it provided two perspectives: on the one hand, an offer was made to the passive sections of the population and those that had been true to the regime that they would once again enjoy national sovereignty after the war and would not be collectively punished for the crimes of the Nazis. On the other hand, the sections of the population that may have been wavering were called upon to change sides and position themselves against the Nazi regime, like in Italy.

The first part – about Austria's victimhood – established itself after 1945 as the victim theory and became a state doctrine of sorts until into the 1980s. This doctrine essentially meant – to put it in very simple terms – that Austria was prepared to reconstitute assets that were still available, not, however, to provide compensation for stolen assets that no longer existed or for other losses. This was seen as being Germany's responsibility alone.

Nevertheless, after 1945, Austria – amid massive pressure exerted by the Allies, above all the United States – had adopted a whole series of statutory measures that aimed at compensating to some extent the Nazi plundering – inconceivable in its dimensions – of foreign and above all Jewish assets.

I will now mention just a few statutory provisions, without expanding on them further: the Annulment Act, the Registration Act,

seven restitution acts, four restitution claims acts. After 1950 or thereabouts, this momentum began to diminish. It was not until 1955, during the course of the State Treaty – which also contained provisions on restitution and compensation of seized assets – and again in 1959, that an agreement was concluded with the United States of America (Exchange of Notes Constituting an Agreement between the United States of America and Austria Relating to the Settlement of Certain Claims under Article 26 of the Austrian State Treaty of 15 May 1955) which aimed to make up for those steps that had not yet been taken: keyword "collection agencies", and other important provisions.

In 1961, the Exchange of Notes with Nahum Goldmann, the founder of the Jewish World Congress "drew a line" under the material claims (with a heavy emphasis on the inverted commas) from the Austrian perspective. The Exchange of Notes contained a waiver of any further claims and the subject did not come up again until sometime during the 1980s. Today, I look back and remember with great unease – I was a young member of the International Law Office at the Foreign Ministry – how we, almost automatically, threw out all such claims with reference to the 1961 Exchange of Notes with Nahum Goldmann.

The 1986 presidential elections and the campaign surrounding these elections gave rise to a fierce debate, as we know, about the wartime record of the officer Kurt Waldheim, which was emblematic of a fundamental debate on the moral responsibility of the Republic of Austria for the crimes of the Nazis. This discussion brought about a shift in how Austria and Austrian society dealt with its own history. The victim theory, which until then had prevailed more or less unchallenged among broad sections of the population, was relativised.

On 8 July 1991, Federal Chancellor Vranitzky acknowledged the moral responsibility of the Republic of Austria before the National Council (it was, incidentally, the troubles in Yugoslavia that gave him cause to do so). He highlighted the importance of facing up to Austria's own recent history. This concession of a certain degree of shared responsibility by the Austrian establishment was a significant step. A short while later, Vranitzky repeated the same sentiment in the Knesset.

The establishment of the National Fund in 1995 brought with it a definitive new doctrine in place of the victim theory, which was also met with acceptance by the broader public. However, and this is sometimes overlooked, this shift in attitude towards the past did not prompt an immediate rethink of the government's stance on resuming the adjudication of unresolved claims of Holocaust victims – of which there were many.

What the National Fund has achieved is both fundamental and important in both a material and an ideological sense. But, as I said, initially, a formal revision of the previous doctrine – that all claims had been satisfied – did not take place. It was not until 1996 or 1997 that there was a shift in the international landscape and this fundamentally changed. Regretfully, because they were very interesting events, I cannot go into them in detail. I can just give you a few keywords: the process against Switzerland, the gold reserves and the dormant accounts; the gold conferences in Brussels and London which led to the creation of the Nazi Persecutee Relief Fund, in which Austria played a leading role by being the first country to forgo the gold reserves that it could have reclaimed; the Washington Conference on Holocaust Era Assets of 1998 and the Stockholm International Forum on the Holocaust and the adoption of the Stockholm Holocaust Declaration. That conference marked the start of Austria's preparedness to enter into negotiations with the victims and discuss open questions, and later on, to follow these words with deeds.

The formal start of the first discussions took place on 4 February 2000. You will recognise this date, it is the date on which Federal Chancellor Schüssel was sworn in as the leader of the People's Party and Freedom Party coalition government. On the same day, just hours before the ceremony, Federal Chancellor Schüssel instructed the International Law Office to signalise to the Jewish victims' organisations in the United States that Austria was ready and willing to enter into negotiations on open questions of compensation for Holocaust victims. I would like to read your two or three sentences from this letter, which led to negotiations being held and completed within the year:

"I would like to reiterate the commitment of Austria to cooperate with all international institutions and bodies to look into all questions relating to Holocaust assets. I fully understand the concern that, in view of the age of the Holocaust survivors, quick solutions are asked for. In this connection I've taken note with interest of the proposal to adopt interim measures which will benefit the surviving victims and help especially those who live in difficult personal circumstances."

This willingness to enter into negotiations was taken up and once more, as had been the case in Germany, the Government of the United States declared itself willing to act as facilitator in the negotiations. Also as with Germany, this role was taken on by Deputy Treasury Secretary Stuart Eizenstat.

By February, the former President of the National Bank Maria Schaumayer had already been appointed special representa-

tive of the Austrian government in charge of negotiating compensation for forced labourers. In May, a special envoy for restitution issues was appointed, the good friend of many of us here who died long before his time, Ernst Sucharipa. The negotiations themselves formally began on 24 October 2000 at 9.30 pm. Why 9.30 pm? It had been agreed with the victims' representatives that the negotiations on restitution and compensation for Holocaust victims would commence immediately after the negotiations on compensation for slave labour had been concluded, and that was the exact time at which the agreement on slave labourers was signed.

Looking back, I can only state that it still seems miraculous that these negotiations, which were enormously complex and difficult, certainly much more difficult than the slave labour negotiations, were able to be concluded within a matter of months. Why were they harder than the negotiations on compensation for slave labour?

There had never been negotiations on compensation for slave labour before, whereas there had been, as mentioned, statutory and administrative measures put in place to compensate Austrian Nazi victims. For this reason, when negotiating compensation for seized – predominantly Jewish – assets, the question was always, had measures already been put in place previously and, if so, had they been adequate and far-reaching enough? I can assure you that this oft-repeated question was often, very, very hard to answer. So, the negotiations were indeed very complex. They were able to be concluded on 17 January 2001 and a short while later they were transposed into Austrian domestic law.

It was not until 2005, so some time after the negotiations had been concluded, that legal closure was achieved and the payments pursuant to the General Settlement Fund Law could be disbursed. Of course, there is still much more I could say, dear Hannah, but my time is up and I thank you warmly for giving me the opportunity to talk a little about events surrounding the negotiations and not just the negotiations themselves. I would like to thank you once more in person for all that you have done, are doing and will continue to do.



DR. HANS WINKLER, former Director of the International Law Office

The Compensation of Assets in Practice

Christine Schwab

The date on which the Washington Agreement was concluded 20 years ago, and which we are remembering today at the presentation of the Final Report of the Claims Committee, was also the date on which the first steps were taken to establish the General Settlement Fund. Even though I, and the other staff members of the National Fund, didn't know any details of the new Fund when the call from General Secretary Lessing came through from Washington, we were aware that the new tasks could not be accomplished with the resources that were available to us at that time. Accordingly, the first instruction from Ms. Lessing, given while she was still in Washington, was to recruit new staff and look for new office space.

While the General Settlement Fund Law came into effect and the filing period commenced on 28 May 2001, the recruitment and training of new staff, the move to a new location and the establishment of an organisational infrastructure had to run in parallel. In addition, informative materials and application forms were developed and sent to potential applicants, a worldwide notice was issued to publicise the Fund internationally and the first applicants were advised and assisted with their applications. The constitution of the Claims Committee also marked the start of an intensive phase of deliberations on

how best to structure the implementation of this compensation measure.

One challenge faced by the General Settlement Fund was the lack of any comparable measure, either nationally or internationally, that could serve as a model. Even if there were similar measures, they generally only provided for compensation in one or two categories of assets. It was therefore clear from the outset to the General Secretariat of the General Settlement Fund and to the Claims Committee that the task of compensating ten completely different categories of assets in two different types of procedure would pose a particular challenge.

Another unpredictable factor was that it was not possible to foresee how many applications could be expected, because in addition to those directly affected, heirs were also entitled to claim. However, it quickly became clear that we would be dealing with a mass procedure, and that the way it was organised would have a significant influence on its duration.

The process was further complicated by the fact that the monetary awards had to be calculated individually and previous compensation measures had to be taken into account. It seemed obvious that this requirement would pose significant problems with a large number of applications. Therefore, as Sir Franklin has already pointed out, the Claims Committee decided to assess losses individually where possible. Where this was not possible, usually because of a lack of evidence, values were assigned in the form of fixed lump sums. In order to calculate these, however, the historians of the Fund first had to establish a basis for the calculations.

Another aspect that was difficult to convey, especially in our communication with the applicants, resulted from the fact that the amounts that would be awarded to individual applicants could not be determined until the procedure had been completed for all applications. In accordance with the Washington Agreement, the General Settlement Fund was endowed with a total of 210 million US dollars. The envisaged proportionate (*pro rata*) distribution and disbursement could only take place once the total of all recognised claims had been determined. At that time, this meant that the amounts to be allocated to the individual claims could only be calculated once all claims had been decided.

Very soon after the work had begun, there was a general consensus that the overall sum available would only cover a percentage of the claims that had been asserted. This gave rise to a difficult discordance between the limited means of the

Fund and the conclusive nature of the compensation measure – the applicants had to submit a waiver before receiving a payment – and the Republic of Austria’s commitment to its moral responsibility that was embodied by the Law. It was within these parameters that the Claims Committee and the Fund Secretariat and its staff had to operate.

One thing that was particularly important to all those involved in the process was the need to take into account the fact that the majority of the applicants would be survivors of Nazi persecution and therefore very elderly. The disparity between their need for a quick resolution on the one hand and the large number of applications received on the other was glaring and could not be resolved despite our best efforts.

Moreover, the Nazi-era seizures and previous compensation measures had taken place a long time ago, and as a result of this and of the persecution they had suffered, the persons affected often possessed no precise information on the losses that they and their families had incurred. Finally, most of the applicants had still been children at the time of the Nazi regime or were descendants of persecutees. Another factor that complicated the implementation of the measure was that the applicants lived all over the world due to persecution-related emigration. The different time zones and the numerous languages used by the persons concerned presented a further challenge in the efforts to provide them with support.

All these factors had to be accounted for during the contact and communication with the applicants – and the applicants’ need for information was great due to the complex legal requirements. In response to this need, the General Settlement Fund set up a separate communication department. The people encountered by the staff of this department were very elderly with tragic life experiences. In many cases, the application process and renewed confrontation with the subject matter caused old wounds to be reopened. The emotionally highly-demanding task of communicating with the applicants therefore required a special degree of empathy. The Claims Committee and the General Secretariat of the Fund attempted to take all of these special requirements into account when creating the legal and organisational basis for the procedure by which the Washington Agreement and the General Settlement Fund Law were to be implemented.

The core principle in processing and deciding on the applications was the equal treatment of cases of the same nature. This initially meant ensuring equal procedural treatment as a prerequisite for equal treatment in terms of content. The decision was

therefore made to standardise the processing of applications (“standardised procedure”): the same processing steps were undertaken for each application received up to the decision by the Claims Committee and thereafter up to the disbursement of the payment.

The actions required in each case were clearly defined. Together with the customised, database-driven application “*SV neu*” developed by the Fund, the standardised procedure ensured both maximum efficiency when preparing applications for decision by the Claims Committee and their equal treatment. It ensured uniform standards of quality when decisions were being prepared by a large number of staff members in accordance with the Claims Committee guidelines and also enabled those Members of the Claims Committee who were not on site in Vienna to carry out their work.

The standardised procedure enabled the secretariat to keep a quantitative record of the individual work steps required to process an application, such as data collection, historical research or the legal processing. All departments worked together to install an internal reporting system, which was intended to accelerate the procedure. The “weekly report” enabled the progress of the work to be continuously monitored and any processing bottlenecks to be identified and eliminated.

Almost 60 years after the war, many claimants, as already mentioned, were simply no longer able to sufficiently document losses and damage that had been incurred. This prompted the General Secretariat of the General Settlement Fund to set up a department to carry out historical research as a fundamental procedural step in the processing of cases. In order to ensure equal treatment of all applicants, a standardised research procedure was introduced so that the same extensive source material and archives were taken into account for each case.

It is also important to mention the complex topic of legal succession under inheritance law, which had two aspects that the Claims Committee and the secretariat had to deal with: firstly, the confirmed legal status as an heir was a requirement for heirs of historical persons to be eligible to file applications, and, secondly, the provisions on legal succession had to be examined in cases where applicants had passed away during the ongoing procedure. In the latter case, the greatest challenge was that due to the worldwide distribution of applicants, staff had to get to grips with the inheritance laws of about fifty different countries.

Two subsequent amendments to the General Settlement Fund Law put the flexibility and efficiency of the standardised procedure to the test:

Both amendments sought to enable payments to be made before all applications had been decided on, as had originally been intended. This was mainly to ensure that as many applicants as possible who had experienced persecution first hand would still be around to receive the payment from the Fund. First of all, in 2005, once legal closure had been achieved and the Fund endowed, the possibility was created for early payments to be made according to determined percentage shares (“advance payments”) to applicants whose applications had already been decided by the Claims Committee. To achieve this, it was necessary to reorganise the Fund’s processing procedure, which until then had been geared towards making payments upon completion of the processing of and decision on all applications. An additional requirement for the advance payments was the – very complicated– determination of the percentage share (“quota”) of the claim amounts recognised by the Claims Committee, which could then be paid out in advance. The 2009 amendment was intended to enable closing payments to be made before all claims had been decided. The aim was to prevent complex cases that were still being processed from delaying closing payments, especially for elderly claimants. For this, the final payment quotas had to be determined.

Even after the last case had been decided by the Claims Committee in 2012 and the Final Report had been submitted in 2015, new challenges emerged: due to the provision on the limitation of claims, which was enacted with the last amendment to the General Settlement Fund Law, efforts to trace applicants with whom contact had been lost, for example because they had changed their address, and to trace the heirs of deceased applicants, continued until April 2019. The people-tracing concept developed by the Fund within the framework of the advance payments proved to be very effective and made it possible to disburse awarded sums that would have become time-barred without these efforts.

Finally, a few figures that give a good picture of the task and activities of the General Settlement Fund:

- In its most intensive phase, about 140 staff members were employed at the Fund. The office space was about 2000 m².
- 20,702 applications were submitted to the Fund within the filing period. They contained claims for property losses of around 38,000 persons. A total of about 152,000 claims

were processed and decided. Compensation was awarded for about 103,000 of them; no compensation could be awarded for about 48,000.

- Around 7,100 heirs were traced for around 4,200 deceased applicants.
- In order to document and evaluate losses, the Fund’s Historical Research Department collected more than 70,000 different documents throughout Austria.
- Together with the archive of the National Fund, the GSF archive now comprises approx. 39,000 individual files across ca. 900 linear metres.
- The Fund processed – advance payments and closing payments combined – approx. 40,000 payment transactions.
- The Claims Committee dealt with claims in the amount of approx. 1.6 billion US dollars.
- In keeping with the fixed endowment of the Fund, 215 million US dollars were paid out.

I would like to close by mentioning what I consider to be the element at the very core of the accomplishment of this compensation measure: namely, the efforts of a committed, creative and flexible team that brought together a great range of experience and qualifications. The reason we succeeded in mastering the myriad challenges involved in supporting the Claims Committee, was the common goal: to process the submitted claims as thoroughly, efficiently and quickly as possible and to bring them to decision. The experiences and lessons learned will continue to have an impact for a long time to come.



MAG. CHRISTINE SCHWAB, former Deputy Secretary General of the General Settlement Fund

The Activities of the Claims Committee

Sir Franklin Berman

The publication of the Final Report of the Claims Committee in book form is to be deeply welcomed. Although the report as such has been publicly available since it was formally acknowledged by the Main Committee of the National Council in 2017, its publication in book form now brings with it the opportunity for its material content to become accessible to a wider audience of both specialists and the general public.

The Claims Committee, which I was honoured to chair for its entire duration, was constantly aware that the very nature of its legally-bestowed task meant that an account of its activities would be due upon completion of its work, something that is automatically entailed in a public task of this nature. Today, however, the focus is a different one. Today is not so much about the objectives of the General Settlement Fund, nor about the means made available to the Fund to achieve these objectives; it is not so much about the timing of its work, nor about the political background against which the Fund was established. Today is more about ascertaining what the lasting significance the entire experience of the Claims Committee, as an organ of the General Settlement Fund, might be. Indeed, it was this second interest that the Claims Committee kept in mind at all times once the scope and extent of its task had first become apparent, and that is why the Claims Committee found it entirely correct that the Austrian legislator required it to prepare a comprehensive final report.

When reflecting on lasting significance, two aspects come to mind: an internal one, in and for Austria, and an external one, for a wider outside world. In this context, it is obvious that reporting of this kind can only be effective if it is also accessible to a worldwide readership. So let me reiterate today the firm intention, especially since the two official languages of the Claims Committee were German and English in equal measure, that an English version – if not of all 562 pages, then at least in an abridged version – will follow the German one.

With regard to the internal aspect, the Claims Committee made the following remarks in its Final Report:

“In order to enable future historians to trace the origins and outcome of the Claims Committee’s work in detail using concrete documents and results, the report is annexed with an extensive collection of legal and historical documents that would not otherwise be available in a single place. Since it

might be helpful for future statisticians and social scientists to analyse the vivid and compelling details pieced together by the General Settlement Fund in the course of its work on the nature of the persecuted groups, their social relations and their subsequent fate, the report contains a statistical appendix that includes much of this material in anonymous form and directs the reader to more detailed sources.”

And, as for the second aspect, the external one, the Claims Committee held as follows: “[Since] those who will be involved in the planning of mass proceedings in the future will find little published literature to guide them, the report provides an objective, in-depth description of the problems the Claims Committee faced and the methods it used to address them, especially those methods that were new and innovative from the Claims Committee’s point of view, and in this context especially, it highlights the fundamental importance of information technology [simply, IT].”

At today’s event, I will only be able to single out a small number of these areas and these are as follows:

1. First and foremost, the design of a standardised procedure and its successful application. This made it possible – with the associated standard research process – to deal with thousands of individual cases increasingly quickly, while guaranteeing the core principle of equal treatment.
2. Secondly, the General Settlement Fund itself, through its Secretariat, was able to collect and centralise an ever-increasing wealth of detailed knowledge about Nazi persecution measures, which could then be applied in individual cases in order to bridge the expected gaps in the victims’ evidence. This made it possible, among other things, to broaden the scope of some applications *ex officio* to include claims for losses that applicants would otherwise never have been able to prove with their own resources or that they had not even been aware of, as heirs of persecutees.
3. Thirdly, the appropriate application of lump sums calculated on the basis of social statistics for the otherwise difficult and time-consuming necessity of attributing a value to each recognised individual claim, even those claims that could scarcely be calculated in monetary terms. This allowed for a remarkable acceleration when it came to completing the case handling process in a way that could also be considered fair and transparent.

And none of this, as I have already mentioned, would ever have been achievable without a well-functioning – I could even say a custom-made – IT system. However, when we began, no

such IT system existed, not in Austria, not anywhere – it had to be developed on site.

So I recommend the Final Report of the Claims Committee to the wider public, convinced that there are many interesting and valuable things to be found in it. But, as I do so, it is incumbent upon me to emphasise once again that everything described in the report reflects the achievement of those at the General Settlement Fund and the National Fund who have supported the work of the Claims Committee faithfully, loyally and creatively and also with great dedication.

And then, last but not least, I would like to add a few words – also on behalf of my American colleague, Jonathan Greenwald – in memory of our esteemed Austrian colleague, Dr Kurt Hofmann, who passed away a few months ago. Dr Hofmann, with his irreplaceable Austrian knowledge, his legal finesse, and his inner sense of justice, contributed invaluable to our work.



SIR FRANKLIN BERMAN, former Chairman of the Claims Committee

2.3. COMPENSATION OF ASSETS: FACTS AND FIGURES

Statistical overview of the proceedings before the Claims Committee

Applications	
Applications received within the deadline	20.702
Persons whose losses were asserted	37.623
Claims ¹	151.949
Application processing	
Historical research	
Files/documents from archives	41.796
Historical land register excerpts	19.624
Inquiries regarding insurance policies	10.902
Applications decided	
Applications decided	20.702
Applications for which compensation was awarded	18.155
Applications for which no compensation was awarded	2.547
Claims for which compensation was awarded	103.425
Claims for which no compensation was awarded	48.524
Recourse (review) ² no longer possible	20.702
Decisions on recourse (review)	551
Decisions after reopening ³	1.523
Co-heirs⁴	
Applicants who extended their applications to include co-heirs	1.769
Co-heirs	3.268
The search for heirs	
Deceased applicants whose heirs ⁵ could be established	4.233
Established heirs	7.132

Payments

Advance payments⁶

Advance payments	18.169
Applicants	13.951
Heirs	1.874
Co-heirs	2.344

Closing payments

closing payments	22.328
Applicants	13.252
Heirs	5.922
Co-heirs	3.154
Applications not fully disbursed involving claims now expired under the statute of limitations	1.124

1. This figure differs to previously published figures due to the application of a revised statistical method.

2. Applications for a renewed decision pursuant to Sec. 17 of the General Settlement Fund Law and Sec. 18 of the Rules of Procedure of the Claims Committee.

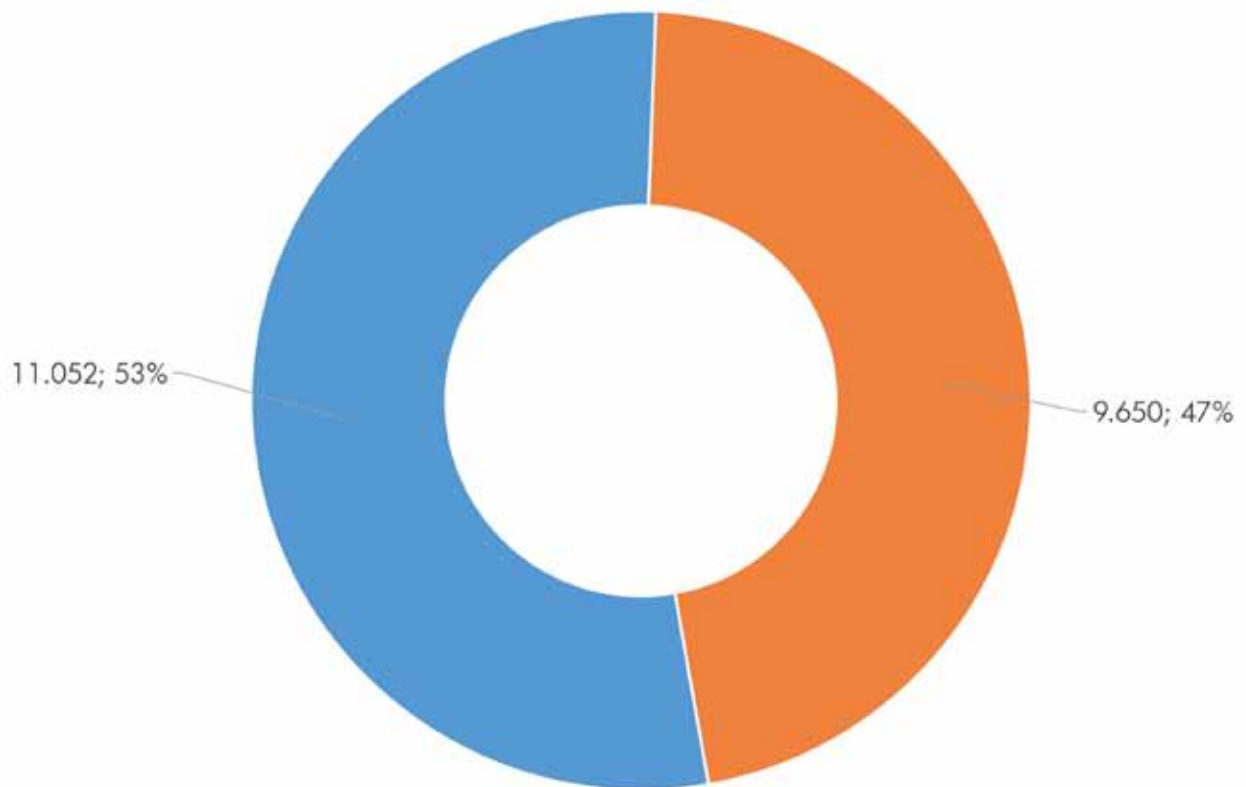
3. Sec. 17 (5) of the Rules of Procedure of the Claims Committee.

4. Applicants could allow claims of their co-heirs – i.e. additional heirs of the people who originally suffered the losses – to be transferred to them and assert these claims before the Claims Committee, insofar as these co-heirs had not filed an application themselves.

5. Heirs and other persons authorised to continue the proceedings (e.g. executors).

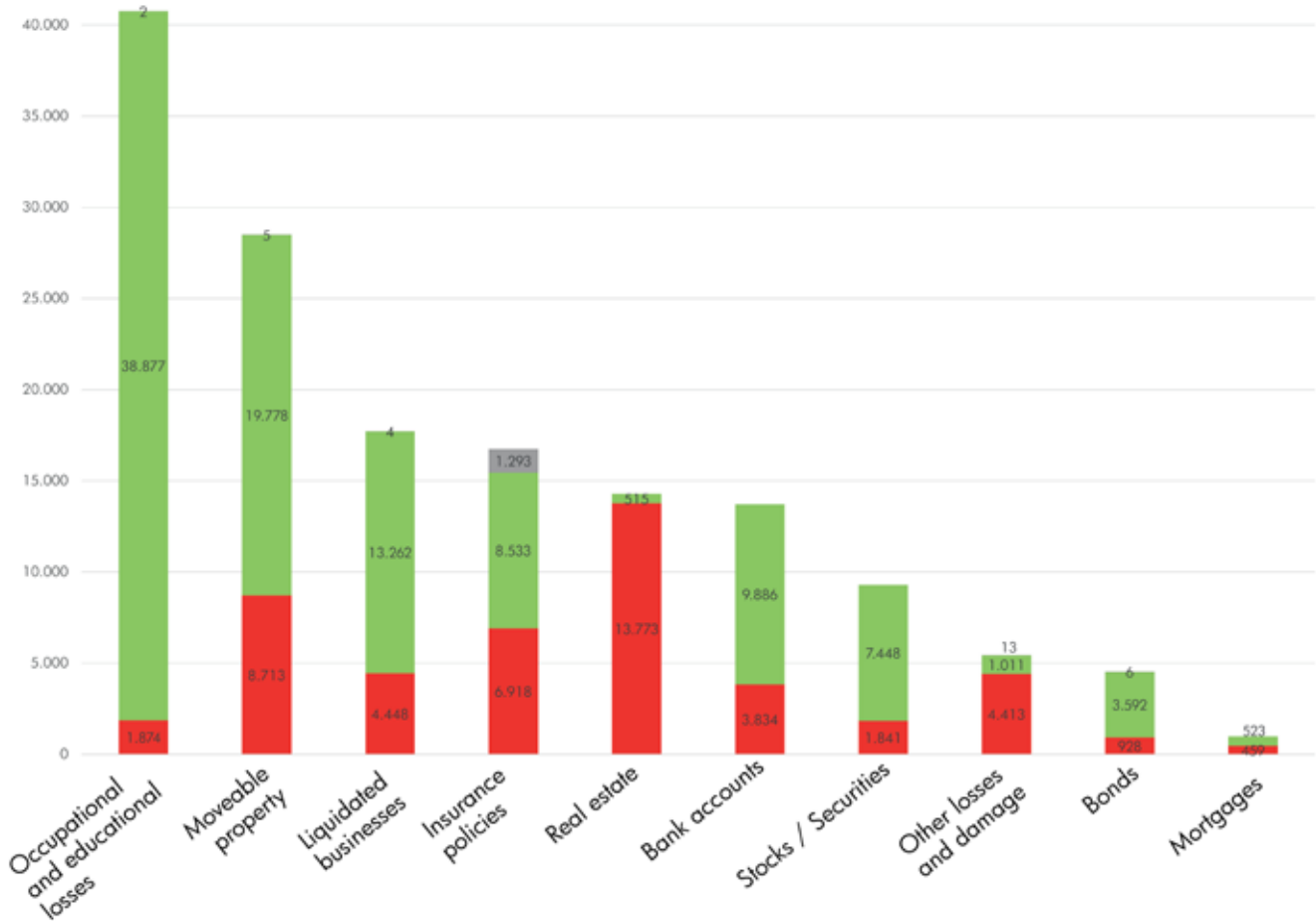
6. Advance payments were made from December 2005 to July 2009. Elderly applicants were prioritised when their claim amounted to a minimum of 500 US dollars. As a result of an adjustment to the counting method for heirs and co-heirs, as of 26 November 2014 the number of advance payments and closing payments slightly increased.

Applicants to the Claims Committee



Applicants to the Claims Committee n=20,702. Applicants as heirs (orange) or who suffered the losses personally (blue). Of 20,702 persons, 9,650 (47 %) filed applications as heirs of persecuted persons, 11,052 (53 %) also filed applications for their own losses.

Categories of assets



The chart shows in which asset categories claims were made and how many of them were recognised (green), rejected (red) or not decided on (grey) by the Claims Committee. Most of the recognised claims were for occupational and educational losses (38,877), moveable assets (19,778) and liquidated businesses (13,262). These results reflect earlier Austrian restitution policy, which after 1945 had followed the principle of only restituting assets that had existed after 1945. Most of the rejected claims concerned real estate (13,773), most of which had already been covered by earlier restitution measures and restituted or compensated by way of a settlement.

3. IN REM RESTITUTION

General information

The independent Arbitration Panel for *In Rem* Restitution was also established at the General Settlement Fund. This committee could recommend the restitution of real estate and superstructures and moveable assets of Jewish communal organisations if they had been seized during the Nazi era and publicly-owned on the cut-off date 17 January 2001. Publicly-owned property comprised property owned (directly or indirectly) by the Federation and by those provinces and municipalities that had opted in to the proceedings of the Arbitration Panel. They were: the City of Vienna, the provinces of Upper Austria, Salzburg, Carinthia, 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.

Further requirements for restitution were that the asset had been seized during the Nazi era in Austria between 1938 and 1945 and that the claim had not previously been decided by an Austrian court or administrative body or settled by agreement. In certain exceptional cases, the Arbitration Panel could recommend a restitution despite the existence of such a decision or settlement by agreement if it reached the conclusion that the prior measure had constituted an "extreme injustice". The same applied if the claim had been rejected in prior proceedings for lack of evidence and the evidence was not accessible then but had since become available. In practice, nearly all of the applications on which the Arbitration Panel decided concerned properties that had already been the subject of restitution proceedings. The last deadlines for filing applications for *in rem* restitution expired on 31 December 2011.

Historical background

After the "Anschluss" of Austria to the German Reich in March 1938, in addition to other assets, real estate was also seized from the racially and/or politically persecuted owners through various avenues. The bureaucratically organised seizure of assets, executed on the basis of discriminatory laws, concerned above all persons who were considered Jewish pursuant to the "Nuremberg Laws", Roma and Sinti, and political persecutees.

Assets belonging to Jewish associations and foundations, including properties but also religious and artistic items, were frequently seized without compensation by the Liquidation Commissar for Clubs, Organisations and Associations.

The registration of Jewish property, as introduced by law in April 1938, was a fundamental requirement for the state-supervised "aryanization". Seizures occurred by means of forced sales or direct confiscation by the state. In many cases assets were forfeited to the German Reich as a result of the escape abroad or 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, and other measures covered a large number of the seized properties.

The research of the Historical Commission shows that although the majority of the seized properties were restituted or the subject of settlements, the restitution proceedings of the 1940s, 1950s and 1960s were considered unsatisfactory by many restitution claimants. The range and complexity of the various restitution acts and deadlines and the lack of state assistance for the victims of the seizures in their attempts to achieve restitution were deciding factors in this regard. This is where the mandate of the Arbitration Panel set out by the GSF Law came into play.

The procedure

The applications were processed 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 required a deep knowledge of the respective organisational and legal frameworks. Moreover, only seldom did the applicants themselves possess the necessary documentation (evidence). In many cases it was not until comprehensive research had 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 was possible to reach the findings regarding the facts of the case which were necessary for legal decision-making.

As an initial step, the applications were examined for the formal statutory requirements of public ownership on the cut-off date, 17 January 2001, and also whether the property was owned by the applicant or his/her predecessors in 1938. If these elements were present, the application was subsequently designated “substantive”. If this was not the case, it was designated a “formal” application.

In a further step for applications in which no specific property was stated, on the basis of the applicants’ submissions the land register, historical address books and registration details and property notices from the Nazi era were investigated in order to determine to which properties the application could apply. The applicants were informed of the outcome of this research in writing and given the opportunity to improve their application.

Each “substantive” application was processed by one lawyer and one historian, who initially determined the necessary research method. The duration of the historical research varied from case to case. On average, a duration of several months was to be expected for the application processing due to the comprehensive research of archives and official departments. The research served to determine eligibility to file an application, the ownership status in 1938, a persecution related seizure and a possible existence of a “prior measure” after 1945.

During the proceedings, both the applicants and the public owners had 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 produced a draft of the decision which was discussed in detail at the meetings of the Arbitration Panel, which were held several times a year.

If necessary, the Arbitration Panel could call a hearing with the parties to the proceedings if new findings going beyond the written submissions could be expected. In total, three hearings were held.

The implementation of the decisions recommending restitution fell under the competence of the public owners. If *in rem* restitution was not practical or feasible (this was the case, for example, with public road areas, schools or municipal residential buildings), the Arbitration Panel recommended that a comparable asset be awarded. Generally, this took the form of the market value of the property, which was determined by the Arbitration Panel on the basis of an independent expert valuation.

Following an amendment to the Arbitration Panel’s Rules of Procedure in 2007, proceedings which had already been concluded could be reopened. If such an application was filed, the Arbitration Panel initially decided whether the reopening of proceedings was granted. This occurred when evidence was submitted that was previously unknown and warranted the assumption that such evidence would have resulted in a different outcome to the previous proceedings. In such a case, the Arbitration Panel made a renewed decision on the subject of the application and repealed its earlier decision.

The publication of the decisions of the Arbitration Panel

Pursuant to Sec. 36 of the GSF Law the recommendations of the Arbitration Panel must be published.

All decisions were published in anonymised form and in English translation in a bilingual (German and English) online database (<https://www.entschaedigungsfonds.org/decisions.html>).

Since 2008 the substantive decisions of the Arbitration Panel have been published in edited form in a bilingual series of books. Seven volumes are currently available, volume 8 will be released soon.



Allgemeiner Entschädigungsfonds [General Settlement Fund], Josef Aicher, Erich Kussbach, August Reinisch (Hrsg.) [(eds)], Entscheidungen der Schiedsinstanz für Naturalrestitution [Decisions of the Arbitration Panel for *In Rem* Restitution], Bd. 1 ff. [vol. 1 ff.], Wien [Vienna]: facultas/Hart 2008 ff. (zweisprachig, deutsch/englisch [bilingual, German/English]).

The Final Report of the Arbitration Panel

In the course of 136 meetings, the same three Members of the Arbitration Panel issued 1,582 decisions. The processing of applications was completed on 30 November 2018, and the last deadline for applications to reopen proceedings expired at the end of August 2020. The total value of the assets recommended for restitution amounts to an estimated 48 million euros, of which 9.8 million euros were awarded in the form of comparable assets (monetary payments).

On 29 June 2021, the Main Committee of the National Council unanimously acknowledged the Final Report of the Arbitration Panel for *In Rem* Restitution, whereby the Arbitration Panel, which was established in 2001 at the General Settlement Fund for Victims of National Socialism, was dissolved.

The Final Report of the Arbitration Panel will be published in book form in English and German. It documents the historical background of the committee, describes the challenges faced during the historical and legal processing of the 2,307 applications for restitution and presents and evaluates the results of the most recent Austrian compensation measure to deal with the Nazi era.



Josef Aicher, Erich Kussbach, August Reinisch (eds), Final Report of the Arbitration Panel for *In Rem* Restitution, Vienna: facultas (coming soon).

3.1. THE DISSOLUTION OF THE ARBITRATION PANEL

Arbitration Panel for *In Rem* Restitution dissolved upon acknowledgement of its Final Report

Press release, 29 June 2021

On 29 June 2021, the Main Committee of the National Council unanimously acknowledged the Final Report of the Arbitration Panel for *In Rem* Restitution, whereby the Arbitration Panel, which was established in 2001 at the General Settlement Fund for Victims of National Socialism, was dissolved. In the Hofburg's Große Redoutensaal the President of the National Council, Wolfgang Sobotka, presented the Austrian Medal of Honour for Science and the Arts 1st Class to the Chairman of the Arbitration Panel, university professor Josef Aicher, and to the Arbitration Panel Member university professor August Reinisch, for their 20 years of work carried out in an honorary capacity.

"Austria is facing up to its historical responsibility and history. The Final Report of the Arbitration Panel for *In Rem* Restitution, which was acknowledged today by the Main Committee of the National Council, is a compelling documentation of the 20 years of work by this independent decision-making body and of the attempt to acknowledge the unprecedented historical injustices of the Nazi regime and to correct 'extremely unjust' decisions on restitution in the post-war period. This not only fulfils an obligation of Austria under international law, but also concludes one of the Second Republic's most significant projects to deal with restitution and compensation for Nazi asset seizures," said the President of the National Council and Chairman of the Board of Trustees of the General Settlement Fund, Wolfgang Sobotka, at a reception in Parliament in honour of the Arbitration Panel for *In Rem* Restitution.

Chairman Josef Aicher explained in his remarks to the Main Committee how it had originally been expected that it would take three to four years for the Panel to complete its work. There were several reasons why it eventually turned out to be 20 years:

On the one hand, the original filing period for applications had been considerably extended by amendments to the law, and an amendment to the Rules of Procedure had created the option to request the reopening of a case in the event of a negative decision. On the other hand, the Arbitration Panel was aware that many applicants – often children and grandchildren of those once persecuted – seldom possessed the necessary documentary evidence: "For that reason, the Arbitration Panel saw it as its task to obtain those documents by undertaking research in domestic and foreign archives in order to prove that the requirements for a claim were met. This archival work

and its evaluation often took months and fortunately also led to success in a number of cases."

Finally, the proceedings before the Arbitration Panel had been "adversarial in nature, so that the local authority against which the case was brought was to be granted the right of reply, which led to an intensive exchange of statements, especially in the case of applicants with legal counsel". Last but not least, the Arbitration Panel had to strive to interpret the key terms of the law such as "persecution-related seizure" and "extreme injustice". The latter in particular had occupied the Arbitration Panel throughout the duration of its work.

August Reinisch followed this up in his acceptance speech at the award ceremony for the Medal of Honour and emphasised that "the task of the Arbitration Panel was not about the first-time restitution of property seized during the Nazi era, but rather about reviewing the decisions of the Restitution Commissions set up at the courts, which essentially worked from the late 1940s to the 1960s. It was therefore primarily a sort of meta-level on which the decision-making practice of the Austrian Restitution Commissions was to be reviewed by an intergovernmental Arbitration Panel. By also including settlements, the pool of potential objects that could be requested was significantly enlarged, as it had been very limited by the requirement that they had been publicly owned on 17 January 2001."

Hannah Lessing, Secretary General of the General Settlement Fund, emphasised the effective cooperation between the Members of the Arbitration Panel: "Not only did they manage to implement the law with outstanding legal expertise and the utmost care, but they also took all decisions in fact-focused, calm discussions with mutual respect, always together and unanimously. It was important for such a delicate historical task to be approached with such great sensitivity." For Lessing, it was also always a pleasure to be able to witness the working methods of the Arbitration Panel "because they were borne by such deep respect for the historical task. They never lost sight of the fact that behind all the applications and legal questions there were people: The victims, their fates in life and persecution, and their families."

The Washington Agreement and the Arbitration Panel for *In Rem* Restitution

In January 2001, representatives of the Republic of Austria, the USA and Nazi victims' organisations signed a joint statement in Washington, D.C. This "Joint Statement" was the basis for the Agreement between Austria and the USA on the Settlement of Questions of Compensation and Restitution for Victims of National Socialism, in short, the "Washington Agreement". Among other things, this Agreement provided for the establishment of an independent Arbitration Panel for *In Rem*



On 29 June 2021 in the *Große Redoutensaal* of the *Hofburg*, National Council President Wolfgang Sobotka (left) presented the Chairman of the Arbitration Panel, university professor Josef Aicher (2nd from left) and the Arbitration Panel Member August Reinisch (3rd from left) with the Austrian Medal of Honour for Science and the Arts 1st Class. On the right is Secretary General of the General Settlement Fund, Hannah Lessing.

Restitution, which was to examine applications for restitution of real estate and assets of Jewish communal organisations.

In 2001, the Arbitration Panel was established at the General Settlement Fund for Victims of National Socialism. One Member of the Arbitration Panel was nominated by the Government of the United States of America and one by the Government of Austria. The Chairman was nominated by these two Members. Professor Josef Aicher became the Chairman; Professor August Reinisch was nominated by the US government, and former Ambassador Erich Kussbach was nominated by the Austrian government.

The Arbitration Panel could recommend the restitution of real estate, superstructures and the movable assets of Jewish communal organisations if they had been seized during the Nazi era and publicly-owned on 17 January 2001.

This included property belonging to the Federation (Bund) and property belonging to the provinces and municipalities that had joined the proceedings of the Arbitration Panel: the City of Vienna, the provinces of Upper Austria, Salzburg, Carinthia, 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. In addition, the municipalities of Bad Vöslau and Schwechat requested the Arbitration Panel to examine two cases.

In the course of 136 meetings, the same three members of the Arbitration Panel discussed 2,307 applications and issued 1,582 decisions on them. The processing of applications was completed on 30 November 2018, and the last deadline for applications to reopen proceedings expired at the end of August 2020. The total value of the assets recommended for restitution amounts to an estimated 48 million euros, of which 9.8 million euros were awarded in the form of comparable assets (monetary payments).

Speech delivered to the Main Committee of the National Council upon the dissolution of the Arbitration Panel for *In Rem* Restitution following acknowledgement of its Final Report on 29 June 2021

Josef Aicher

Dear National Council President,
Dear Second National Council President,
Dear Members of Parliament,
Ladies and Gentlemen,

After nigh on 20 years, the acceptance of the Final Report by the Main Committee marks the formal conclusion of the activities of the Arbitration Panel for *In Rem* Restitution. As of today, the Arbitration Panel is dissolved.

Thank you for this opportunity to provide a brief review of our activities.

The Arbitration Panel was established by the General Settlement Fund Law in 2001, in implementation of the Washington Agreement. The committee comprised three jurists, Ambassador i.R. Professor Kussbach, as the member nominated by the Austrian side, and Professor Reinisch, the member nominated by the US government. Together, these two gentlemen nominated me as chairperson, enabling the Arbitration Panel to hold its constituent meeting on 5 October 2001 and draw up rules of procedure for its proceedings.

According to its statutory mandate it was the task of the Arbitration Panel to recommend the restitution of real estate and moveable assets of Jewish communal organisations that had been seized during the Nazi era and were under public ownership on 17 January 2001. A restitutionable property was publicly-owned if it had been directly or indirectly owned by the Federation, or by a regional administrative body that had opted into the Arbitration Panel proceedings. These were, with the exception of Tyrol, all of the federal provinces and 14 municipalities. As such, the Arbitration Panel did not possess the competence to decide on the restitution of properties owned by private "aryanisers" and their legal successors.

Even if a property had been publicly-owned on the cut-off date and seized from its owner between March 1938 and May 1945 on grounds of persecution, the Arbitration Panel was only able to recommend its restitution (or a compensation

payment in the amount of the current market value) if the restitution claim had not been previously decided by Austrian courts or administrative bodies or settled by agreement in the course of such proceedings in accordance with post-war restitution legislation – unless the Arbitration Panel reached the conclusion that the settlement so reached (and it was generally a settlement) was "extremely unjust", or the claim had been rejected in earlier proceedings due to lack of evidence, but such evidence had since become accessible.

When we took up our honorary roles in 2001, there was talk of a duration of three to four years. So why did it take nearly twenty? There were a number of reasons.

Firstly, and entirely in keeping with the spirit of the Washington Agreement to achieve a comprehensive settlement of open questions of compensation and restitution of assets seized during the Nazi era for the victims of National Socialism, the original filing period was significantly extended by an amendment to the GSF Law in 2007. Also, in keeping with the spirit of the Agreement, in 2007 the Arbitration Panel amended its Rules of Procedure to provide the option of reopening proceedings within two years of a negative decision. The last negative decision was issued in August 2018. Therefore, the decision-making body had to continue to exist until August 2020. It would have been rather embarrassing to provide an option to reopen proceedings which could not be made use of because the Panel established for that purpose no longer existed.

Secondly, the Panel became aware as it was creating its rules of procedure that, although it is incumbent on the applicant – as with any application-based decision – to prove that he or she meets the eligibility requirements, this burden of proof and evidence would expose the applicant to insurmountable obstacles, since those filing the applications – the children and grandchildren of the persecuted – could hardly be expected to possess the documents required to prove their eligibility. Therefore, the Arbitration Panel took upon itself the task of procuring the documents necessary to prove the legitimacy of the claims by carrying out research in Austrian and foreign archives that only historians could be aware of and have access to. The work in the archives and the evaluation of its products often took several months and also, fortunately, resulted in positive outcomes in a number of cases.

Finally, it is important to note that the proceedings before the Arbitration Panel were adversarial, meaning that the regional administrative bodies involved had the right to make their case, leading, especially when applicants had legal representation,

to a flurry of statements back and forth that had to be incorporated into the decisions of the Arbitration Panel.

Last but not least, with the support of its legal staff the Arbitration Panel endeavoured to interpret the key terms of the GSF Law (such as persecution-related seizure and “extreme injustice”) in order to ensure the uniformity of its decisions. Above all, the term “extreme injustice” occupied the Arbitration Panel throughout, the existence of which had to be determined if the requested asset had already been – as in most cases – the subject of a settlement in the course of restitution proceedings conducted pursuant to earlier restitution legislation. This exceptional circumstance was of little significance to the architects of the Washington Agreement since they had assumed that there had been barely any restitution or compensation in accordance with post-war restitution legislation in any case. Our archive documents, however, painted an entirely different picture. The vast majority of requested properties had, in fact, already been dealt with in prior restitution proceedings that had as a rule been concluded with a settlement.

As a result, we first had to give contour to the term, which embodied a concept hitherto unknown to the Austrian legal system and had been adopted from the Washington Agreement. To do this, we developed an “elastic system” in the Austrian civil law tradition. This system took into account the basic principles of the Austrian legal system without losing sight of the nature of compromise manifested in the term by focusing on the fact that a settlement always involves a certain degree of yielding by the claimant. This yielding cannot constitute an extreme injustice if the settlement result was wanted by the claimant, even if there was a large discrepancy in value between the property’s value and the compensation amount agreed in the settlement – unless there had been other factors detrimental to the claimant during the previous restitution proceedings such as extremely lengthy proceedings, tremendous mental anguish or financial hardship. Although we were able to grant a number of restitution applications on the basis of this “formula”, we were harshly criticised for it in the specialist literature. However, we did not hide behind the incontestability of our decisions but instead entered into an intensive written debate in an effort to ensure from the outset the transparency of our decision-making practice and its solid theoretical basis.

We can now look back at 132 meetings in which we dealt with over 2,307 restitution applications and 1,582 decisions. Real estate with a total area of 875,523 m² was recommended for restitution, with a total value of approx. 48 million euros; 9.8 million of this amount was awarded as monetary compensation

in cases where *in rem* restitution was not feasible (for example public roads).

The Arbitration Panel would not have been able to complete its task without the support of a great many people, to whom I would like to express my heartfelt thanks.

I would like to thank the National Council Presidents, who always followed our activities with interest and ensured we were sufficiently staffed.

I would like to thank the Secretary General of the General Settlement Fund, which looked after the organisational aspects of the Arbitration Panel, Ms Mag. Hannah Lessing, for her judicious supervision of the Arbitration Panel, especially when it came to keeping our politically called-for staff reductions within limits.

I would like to thank the Federal Ministry for European and Foreign Affairs for its annual financial backing, which enables us to make our collected decisions available to an interested public in book form, and the publishing houses facultas (Vienna) and Hart (London) for taking on the risk of publishing this series, which has now grown to eight volumes. It is a unique documentation of our decisions, in which we have also endeavoured to trace the individual fates suffered by our applicants’ disenfranchised and murdered ancestors at the hands of the Nazi regime.

My thanks also go to the two members of the Panel, Prof. Kussbach and Prof. Reinisch, who offered up their great expertise and commitment in service of our task and contributed to the fact that we reached every decision unanimously.

My special thanks, however, go to our historians and legal staff who, after months spent carrying out research in the archives and legally appraising of the facts of the case, prepared our decisions. It was a felicitous decision by the management to appoint a team for each potentially restitutionable property, consisting of a historian and a legal case worker, who harmonised superbly despite all the differences in their methodical approach to the facts of a case.

This unique form of teamwork was practical because both the events of the property seizure and the restitution proceedings took place many decades ago and in order to legally appraise them, it was first necessary to determine the exact details of the historical transactions. We would not have been able to fulfil our task without the tireless efforts, commitment and deep empathy of our young staff. You helped us beyond measure.

Thank you.

Ladies and gentlemen, thank you not only for your attention, but also for your support.



Josef Aicher, former Chairman of the Arbitration Panel for *In Rem* Restitution

Speech delivered to the Main Committee of the National Council at the award ceremony for the Medal of Honour for Science and the Arts 1st Class, held in the Große Redoutensaal at the Hofburg on 29 June 2021

August Reinisch

Dear National Council President,
Dear Second National Council President,
Dear Members of Parliament,
Ladies and Gentlemen,

When I was contacted 20 years ago by representatives of the Office of the Legal Advisor to the US State Department and invited for an interview because they were looking to appoint an arbitrator, I was initially somewhat puzzled. Although I had followed the process leading up to the Washington Agreement, I had assumed that the two parties to the Agreement, the United States of America and Austria, would each appoint nationals of their own country to the two arbitral bodies provided for in that treaty.

However, it was seemingly important to the USA to follow the selection criteria of the Washington Agreement and the General Settlement Fund Law based on it, according to which the members of the Arbitration Panel – and I quote Sec. 23 (3) of the General Settlement Fund Law and the Washington Agreement – “should be familiar with the relevant provisions of Austrian and international law, in particular the European Convention on Human Rights”.

It was precisely these selection criteria that were of particular importance to both of the party-appointed arbitrators, Ambassador Erich Kussbach and myself, when we tried to agree on a chairperson within the given timeframe. Since both of us have a clear focus on international law, it was important for us to strengthen the Austrian civil law competency of the Arbitration Panel. And this is exactly what we succeeded in doing with the selection of our chairperson, Professor Josef Aicher, whose profound knowledge of the law and calm, deliberative manner made him the ideal person for this task. In the numerous, mostly monthly and often all-day meetings of the Arbitration Panel over the past 20 years, he has contributed significantly to the – as he also mentioned – consistently unanimous decision-making.

I would therefore like to thank him and of course Ambassador Kussbach for the collegial collaboration on the Arbitration Panel. The constructive dialogue enabled us not only to develop applicant-friendly rules of procedure, but also a decision-making practice that gave definition to the indeterminate term “extreme injustice” from the Agreement and the GSF Law, which is central to most decisions, and in some cases led to a claim being merited even though a settlement had generally existed.

It is often difficult to convey to the public that the task of the Arbitration Panel was not about the first-time restitution of property seized during the Nazi era, but rather about reviewing the decisions of the Restitution Commissions set up at the courts, which essentially worked from the late 1940s to the 1960s. It was therefore primarily a sort of meta-level on which the decision-making practice of the Austrian Restitution Commissions was to be reviewed by an intergovernmental Arbitration Panel. By also including settlements, the pool of potentially restitutionable objects that could be requested was significantly enlarged, as it had been very limited by the requirement that they had been publicly owned on 17 January 2001.

Hundreds of individual applications were analysed in detail in the decisions of the Arbitration Panel, some of which are very extensive and about half of which have now been published in seven bilingual volumes by facultas/Hart. They are also available on the homepage of the General Settlement Fund. Thanks to the work of an excellent team of young jurists and historians who, on the basis of extensive research, worked to establish the individual legal fates of the requested properties, it was not only easier for numerous applicants to substantiate their claims; this work also helped us as the Arbitration Panel to include in our decisions comprehensive factual descriptions of the seizures and restitution rulings or settlements. This made it possible, above all, to present the individual fates of those afflicted by persecution and deprivation and to portray the cruelties of a tyrannical regime on a case-by-case basis.

I, too, would therefore like to express my very special thanks once again to the staff of the General Settlement Fund and reiterate the words of thanks of the Chairman, Professor Aicher.

Ladies and gentlemen, thank you for your attention.



August Reinisch, former member of the Arbitration Panel for *In Rem* Restitution

Note Verbale

 Austrian
Embassy
Washington

Ref. RECHT/0065/2021

NOTE VERBALE

The Embassy of the Republic of Austria presents its compliments to the U.S. Department of State and has the honor to inform that in accordance with the provisions of the Law on the General Settlement Fund (GSF) for Victims of National Socialism (Entschädigungsfondsgesetz) the Arbitration Panel for In Rem Restitution has duly completed its important tasks and submitted a Final Report to the Austrian Parliament.

On 29 June 2021, the Main Committee of the National Council of the Austrian Parliament discussed and unanimously took note of the Final Report of the Arbitration Panel. At a ceremony held on the same day, the president of the Austrian Parliament expressed the gratitude of the Republic of Austria for the personal commitment and tireless efforts of the members of the Arbitration Panel. After having been relieved from its duties, the Arbitration Panel was dissolved. An executive summary of the Final Report as well as a press release by the General Settlement Fund are enclosed for ease of reference.

The Embassy of the Republic of Austria avails itself of this opportunity to renew to the Department of State the assurance of its highest consideration.

Washington, D.C.



August 30, 2021

Encl.: - Executive Summary: Final Report of the Arbitration Panel for In Rem Restitution
- Press Release

U.S. Department of State
Washington, D.C.

3.2. SUMMARY OF THE FINAL REPORT OF THE ARBITRATION PANEL

In 2001, the Arbitration Panel was established by the General Settlement Fund Law on the basis of the Washington Agreement. The Panel was given the legal mandate to decide on applications for *in rem* restitution of real estate, superstructures and movable assets that had been publicly-owned on the cut-off date 17 January 2001. The Panel first convened on 5 October 2001 and, for the entire duration up to its dissolution, comprised the three jurists Josef Aicher (Chairman), Erich Kussbach and August Reinisch. On 29 June 2021 the Arbitration Panel for *In Rem* Restitution was dissolved upon acknowledgement of its Final Report by the Main Committee of the National Council. The General Settlement Fund for Victims of National Socialism, where the Arbitration Panel was established, was dissolved by resolution of its Board of Trustees on 26 April 2022.

The Arbitration Panel was neither an Austrian authority nor a court and acted as an independent and intergovernmental decision-making body that was not bound by instructions. The decisions of the Panel took the form of recommendations. On the whole, the Arbitration Panel had to examine the applications for *in rem* restitution for the same legal requirements as the Claims Committee of the General Settlement Fund, which decided on claims for monetary compensation, although its proceedings and the effect of its decisions differed from those of the Committee.

The content of the Washington Agreement, which was reached between the Austrian Government, the Government of the United States of America and victims' representatives following the Joint Agreement of 17 January 2001 and Exchange of Notes of 23 January 2001, provided for the Arbitration Panel to recommend *in rem* restitution to the previous owners or their heirs. The Arbitration Panel was to examine each application individually and submit its *in rem* restitution recommendations to the competent federal minister. In certain exceptional cases the Agreement also provided for the examination of claims that had already been decided on or settled by agreement in the past. These exceptions existed if the prior measures had constituted a so-called extreme injustice or if the claim had been rejected due to lack of evidence and that evidence had since become available.

The outcomes of the negotiations in the Washington Agreement pertaining to *in rem* restitution were implemented in the General Settlement Fund Law. The Arbitration Panel carried out its quasi adversarial proceedings on the basis of its own procedural regulations that were set out in its Rules of Procedure. Among other things, it took into account the historical nature of the events and the special situation of the applicants, the

majority of whom lived abroad. This was particularly reflected in questions relating to the burden of proof and a greater obligation to provide procedural assistance. The Arbitration Panel played an active role in obtaining evidence and reconstructing the historical events in order to reduce the burden of proof for the applicants.

The decisive question when processing the applications was whether they met the fundamental statutory requirements. For reasons of procedural economy applications were assigned to one of two categories – so-called formal and substantive applications – each of which necessitated its own procedure. The Arbitration Panel developed a complex case law, which, in particular, had to deal with the interpretation of the undefined legal term “extreme injustice”. Due to the individual case examination of the applications, it was usually necessary to conduct an intensive historical and legal examination of questions regarding Nazi persecution, property status in 1938 and 2001, property seizures by the Nazi regime, as well as the case law and practice under the previous restitution legislation. This sometimes resulted in extremely comprehensive decisions, unique in terms of content, which also broke new ground in the legal and historical fields. The processing of applications was completed on 30 November 2018, and the last application deadline to have proceedings reopened expired at the end of August 2020.

In many cases, applicants were no longer in possession of paperwork or documentation regarding either the historical persecution and seizure or the circumstances surrounding the ownership at the time. One of the main tasks of the Arbitration Panel's historians was to undertake research to obtain these documents and interpret them using historiological and, together with the legal staff, legal methodology. In order to achieve this, they consulted the land register, specialist literature (such as the reports of the Austrian Historical Commission) and various archives in Austria and abroad. The applications were processed in interdisciplinary teams.

In accordance with the Rules of Procedure, which stipulated bilingual proceedings, the decisions of the Arbitration Panel were translated into English. The unique character of the decisions at times posed challenges for the translators that required creative solutions.

In addition to the information on its work and statistical data on its progress and the content of the application processing, which the Arbitration Panel disclosed to the public on a regular basis, it also continually published its decisions in order to

ensure a high standard of transparency and accountability in its activities and to comply with the statutory requirement to do so.

For this reason, the Arbitration Panel continually published its decisions online from 2003 onwards, not only meeting the legal requirement but also allowing interested parties worldwide the opportunity to access the full decision texts in anonymous form at any time. Language barriers were minimised by publishing the decisions in both procedural languages, German and English.

Since 2008 the decisions of the Arbitration Panel for *In Rem* Restitution on substantive applications have also been published in a separate bilingual (German/English) book series as provided for by the Rules of Procedure. By publishing this series, the Arbitration Panel provides lasting insight into the broad spectrum of its activities and the diversity of the topics that it had to deal with when examining applications and reaching its decisions. As such it renders an important contribution towards efforts to come to terms with the Nazi period in Austria and its consequences. To date, seven volumes of the series have been published (volume 8 will be published soon) that are available in numerous libraries worldwide.

The written material and the comprehensive procedural files of the Arbitration Panel form an independent archive holding, which is kept on the premises of the General Settlement Fund. A separate archiving concept with guidelines for all archiving processes has been developed for this holding.

The decisions of the Arbitration Panel must be viewed in the context of the previous restitution measures, the outcomes of which it had to take into account. The First, Second and, above all the Third Restitution Act initially played a significant role here and, following the signing of the State Treaty of 1955 in particular, the establishment of the collection agencies was key. A large majority of the real estate that had been seized during the Nazi era was restituted or – in the majority of cases – the subject of settlement agreements on the basis of these measures. As a result, the Arbitration Panel for the most part “only” had to examine whether a prior measure had constituted an extreme injustice.

“Gaps and deficiencies”, a term used in the Washington Agreement, and open questions of restitution and compensation as referred to in the GSF Law, were remedied and/or addressed by various measures, for example the amendment to the National Fund Law providing compensation

for seized tenancy rights, household effects and personal valuables and, above all, by the GSF Law – particularly by the compensation payments in categories of assets such as liquidated businesses, discriminatory charges and insurance policies that had not been taken (sufficiently) into account by prior measures. Fewer gaps and deficiencies were identified in the prior measures dealing with *in rem* restitution than in those dealing with other categories of assets. Nevertheless, within the scope of its decision-making the Arbitration Panel was able to identify a number of deficiencies, particularly in the implementation of the prior restitution legislation, and make provision for them on the basis of a new statutory regulation, the GSF Law.

A statistical evaluation of the activities of the Arbitration Panel presents the following picture: between 2001 and 2020, 2,307 applications for *in rem* restitution were filed with the Arbitration Panel and a total of 1,582 decisions were issued on them. Slightly over one quarter of the applications – 644 – qualified as substantive applications meeting the basic statutory requirements of the GSF Law. The Arbitration Panel was able to recommend restitution for 140 of these applications in 61 decisions, enabling real estate with an area of ca. 876,000 m² and a value of around 48 million euros to be restituted or compensated monetarily. Around 90 % of the recommended areas were restituted *in rem* and for the other 10 % monetary compensation was awarded because *in rem* restitution was unfeasible or impractical. In total, these payments amounted to around 9.8 million euros. Over half of the areas of land recommended for restitution are situated in Vienna. The Arbitration Panel rejected 324 substantive applications and dismissed 147; 33 of the substantive applications were withdrawn. The vast majority of applications to the Arbitration Panel were qualified as formal applications (1,434 or 62.2 %). They were all dismissed or rejected because they did not meet the fundamental application requirements. Thirty-nine of the formal applications were withdrawn. In addition to these, 229 applications were concluded without a decision due to missing powers-of-attorney or eligible applicants, for example.

The following can be said about the dates on which the 2,307 applications were filed with the Arbitration Panel: over half were filed between the fall of 2001 and mid-2003 and a further quarter were filed by the end of 2004. The remaining applications were filed over the course of the subsequent nine years. The 42 applications to reopen proceedings that had already been concluded were, on average, filed within one year of the initial decision.

Virtually all applications for *in rem* restitution (98,4 %) were filed by natural persons who had either incurred the loss of property personally or belonged to subsequent generations. The available data shows a gender ratio of 55.7 % female applicants to 44.3 % male applicants. Around two-thirds of applicants lived outside of Europe, mainly in the USA, followed by Israel, Australia, Canada and Argentina. Just over one tenth of applicants were resident in Austria, followed by United Kingdom, Switzerland, Italy and Sweden. The rest of the applicants lived in a further 34 countries. The applicants' years of birth spanned a period of 82 years, from 1903 to 1984; the largest number of applicants born in a single year were born in 1922. Approx. three quarters of applicants were born before 1945 and approx. one quarter thereafter.

In total, the Arbitration Panel issued 211 decisions on substantive applications. Sixty-one of these were granted (28.9 %), 132 were rejected (62.6 %) and 18 were dismissed (8.5 %). Twenty-five of the 211 decisions, around one tenth (11.8 %), were supplementary decisions containing a recommendation issued pursuant to Sec. 34 of the GSF Law. A further 16 (7.6 %) were decisions on reopening concluded proceedings, four of which resulted in restitution recommendations (1.9 %).

As regards the type of properties requested in an application, a diverse spectrum emerged: just under half of the requested properties were developed land in 1938, with apartment buildings being the most frequently requested property type, followed by properties on which tenanted apartment buildings were built. Furthermore, applications were also filed for properties on which single-family houses, villas, offices or business premises or similar were situated. One quarter of the types of property requested were predominantly undeveloped and used for agricultural purposes (mainly farming or forestry). The remaining quarter was distributed among other types of property, in particular development land, land used for commercial or industrial purposes, and superstructures.

In total, 1,371 decisions were issued on formal applications. Around half of these related solely to real estate or superstructures. Around one quarter of all decisions involved immovable and movable assets and just under one quarter of applications contained requests for *in rem* restitution of movable assets alone.

The law limited *in rem* restitution of movable assets to Jewish communal organisations. However, 99.1 % of these applications for movable assets were filed by natural persons and, as such, did not fall under the scope of the GSF Law or the competence

of the Arbitration Panel. In around 60 % of those applications the requested objects were not specified in detail and could therefore not be identified without undertaking further research. The remainder requested a broad range of movable assets, with requests for furnishings and other apartment contents being particularly prevalent as well as valuables, musical instruments, books and libraries and items related to certain professions.

A review of the date of acquisition of requested properties by public owners – the Republic of Austria and the City of Vienna led the field by far here – revealed the following: in over two thirds of cases investigated, the properties in question had not been acquired by the regional administrative body in question until after 1945; incidentally, three fifths of the *in rem* restitution recommendations involved these properties. In the remaining cases, which comprised two-fifths of the recommendations, the transfer of ownership had occurred between 1938 and 1945.

The 211 decisions on substantive applications contain 19 different grounds for the decisions. The most common grounds for applications to be rejected was "Outside the jurisdiction of the Arbitration Panel or the scope of application of the GSF Law". The second most common ground for a rejection was that the requested property had already been restituted after 1945.

3.3. FACTS AND FIGURES ON *IN REM* RESTITUTION

Procedural statistics of the Arbitration Panel

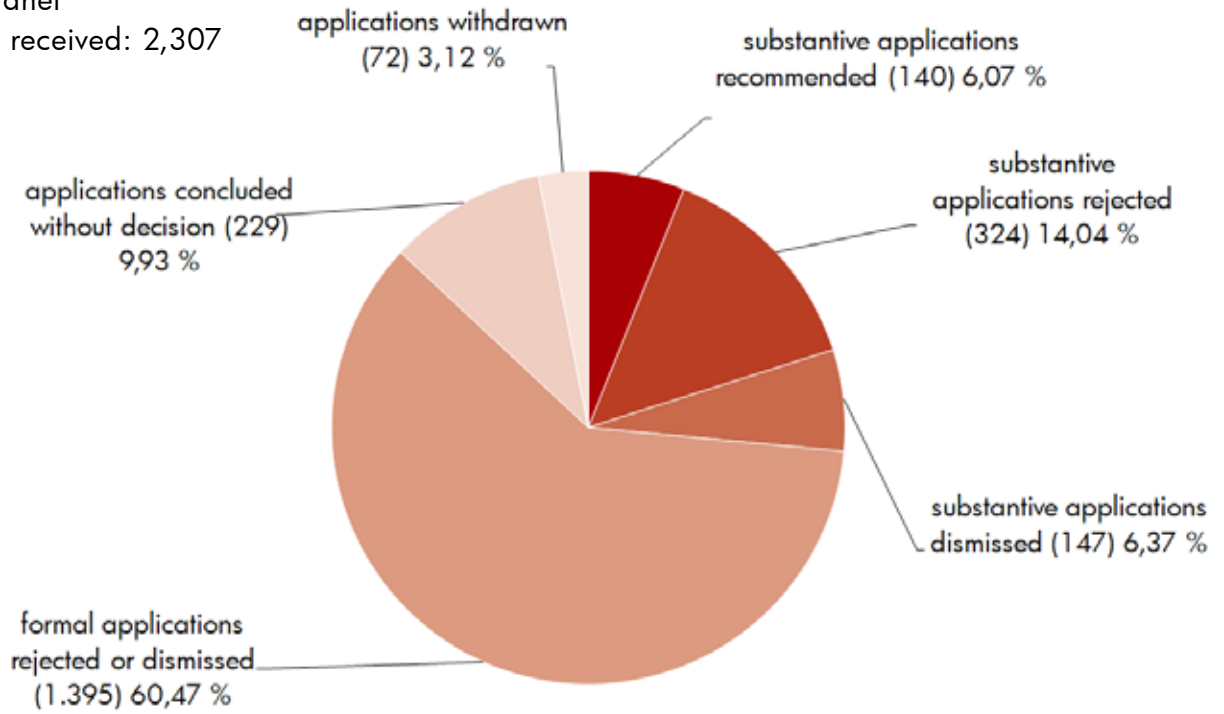
The applications listed here include all individual applications by applicants, whereby several individual applications may relate to the same asset.

Applications	
total number of applications¹	2,307
substantive applications ²	644
of which applications for reopening ³	41
of which applications withdrawn	33
formal applications ⁴	1,434
of which applications for reopening ³	1
of which applications withdrawn	39
decided applications	2,006
substantive applications decided	611
substantive applications recommended ⁵	140
of which applications for reopening recommended ⁶	17
substantive applications rejected ⁷	324
of which applications for reopening rejected ⁸	22
substantive applications dismissed ⁹	147
of which applications for reopening dismissed ¹⁰	2
formal applications decided	1,395
of which applications for reopening dismissed ¹¹	1
applications withdrawn	72
applications concluded without decision¹²	229

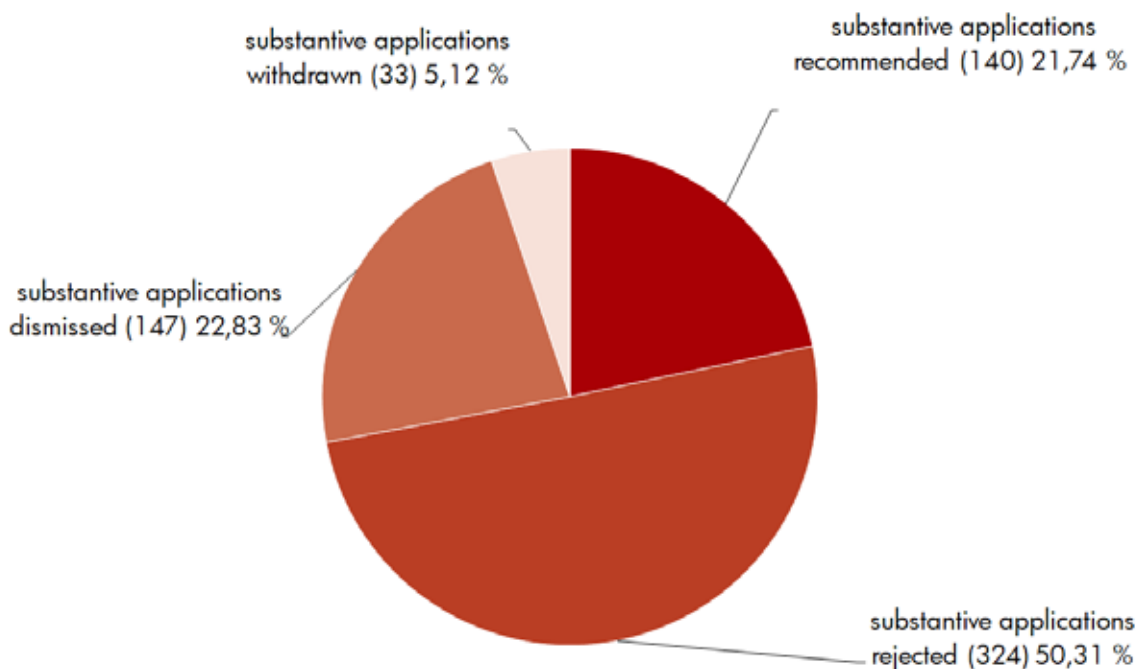
1. These applications were filed by 2,239 applicants.
2. Upon first inspection, these applications met the fundamental requirements, particularly public ownership on the cut-off date, 17 January 2001 and ownership at the time of the seizure between 1938 and 1945.
3. From 2007, Sec. 21a of the Rules of Procedure of the Arbitration Panel provided, under certain circumstances, for the reopening of proceedings that had already been concluded, within a period of two years after the decision has been issued. Proceedings were then reopened if an application for reopening was submitted with evidence that was previously inaccessible and warranted the assumption that it would have led to a different outcome in the initial proceedings. If the Arbitration Panel considered there to be new evidence the proceedings were reopened. In those cases, the previous decision was either repealed or amended/supplemented.
4. Formal applications did not meet the fundamental requirements for *in rem* restitution upon initial inspection, particularly public ownership on the cut-off date, 17 January 2001 and ownership at the time of the seizure between 1938 and 1945. These also included applications which could only have been granted if they had been filed by Jewish communal organisations; they were, however, filed by individuals on their own behalf.

5. Regarding these 140 applications 61 decisions were issued.
6. These 17 applications for reopening (two of which were reopened *ex officio*) resulted in two positive decisions on reopening, whereby the initial decision in each case was repealed, and two (supplementary) recommendations.
7. Regarding these 324 applications 136 decisions were issued. The two rejections that were repealed by reopening, no. 4/2004 and 46/2006, were included in this figure.
8. These 22 applications for reopening resulted in 11 decisions on reopening.
9. Regarding these 147 applications 24 decisions on reopening were issued.
10. Regarding these two applications one decision on reopening was issued.
11. Regarding this formal application one decision on reopening was issued.
12. The processing of these applications was suspended by the Arbitration Panel due to flaws in the applications (missing powers-of-attorney, no eligible applicants known, etc.).

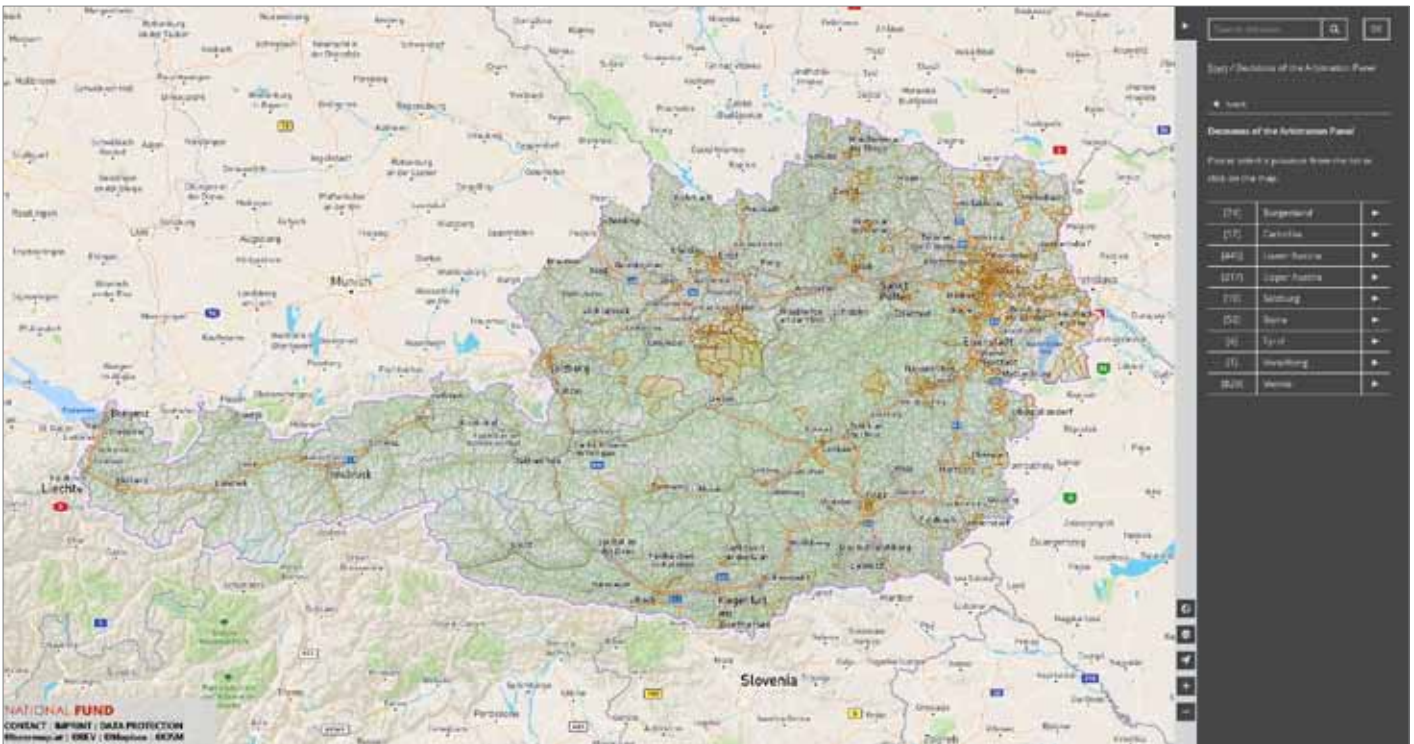
Arbitration Panel
 applications received: 2,307



Arbitration Panel
 substantive applications received: 644



ERRORS IN SHARE TOTALS ARE DUE TO ROUNDING.

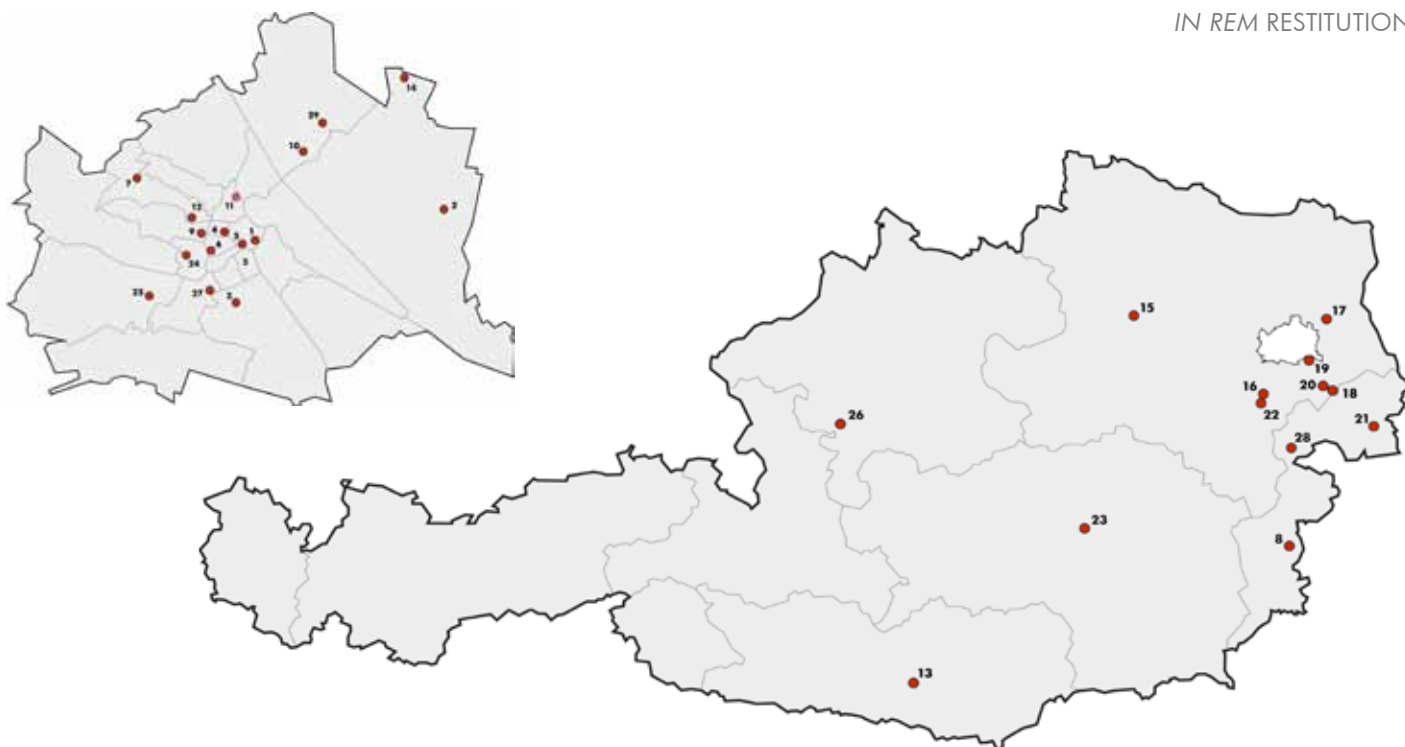


SIGIS

SIGIS stands for Arbitration Panel (Schiedsinstanz) Geo-Information System and visualises on an interactive map of Austria in which cadastral districts properties that have been decided on by the Arbitration Panel for *In Rem Restitution* are located. Since 2019, SIGIS has been integrated into FOGIS – the geo-information portal of the National Fund of the Republic of Austria. On an interactive website (<https://maps.nationalfonds.org>), FOGIS also shows where projects were funded by the National Fund and where Jewish cemeteries or stones of remembrance for Nazi victims can be found in Austria.



<https://maps.nationalfonds.org/sigis>



Recommendations of the Arbitration Panel

In total, the Arbitration Panel for *In Rem Restitution* granted 140 applications for restitution. The total value of the properties that the Arbitration Panel recommended for restitution amounts to approx. 48 million euros. Every one of the recommendations was implemented by the public owners.

The above images of Vienna and Austria show the location of the properties recommended for restitution. The red dots indicate the location of the real estate in question. The numbers correspond with the table below, which lists the corresponding decision numbers chronologically according to decision date with the federal province and cadastral district.

Number	Decision number(s)	Federal province, cadastral district
1	3/2003	Vienna, Innere Stadt
2	24/2005	Vienna, Aspern
3	25/2005, 25a/2005	Vienna, Inzersdorf-Stadt
4	27/2005, 27a/2006, 27c/2008	Vienna, Josefstadt
5	88/2006, 88a/2006, 88b/2007	Vienna, Innere Stadt
6	89/2006, 89a/2006, 550/2009, 550a/2009	Vienna, Neubau
7	206/2006, 206a/2008	Vienna, Neuwaldegg
8	WA1/2007	Burgenland, Althodis, Neuhodis Markt
9	WA2/2007, WA2a/2008	Vienna, Neulerchenfeld
10	481/2008, 481a/2008	Vienna, Donauefeld
11	482/2008, 482a/2009	Vienna, Alsergrund
12	507/2008	Vienna, Hernals
13	533/2009	Carinthia, Steindorf
14	643/2010, 643a/2010	Vienna, Süssenbrunn
15	654/2010, 654a/2010	Lower Austria, Willendorf
16	700/2010, 700a/2011	Lower Austria, Bad Vöslau
17	735/2011, 735a/2011	Lower Austria, Markgrafneusiedl
18	737/2011, 737a/2011	Lower Austria, Sommerein
19	872/2012, 872a/2013	Lower Austria, Schwechat
20	961/2013, 961a/2013	Lower Austria, Sommerein
21	977/2013, 977a/2014	Burgenland, Frauenkirchen
22	1005/2013, 1005a/2014	Lower Austria, Kottlingbrunn
23	1034/2014, 1034a/2015	Styria, Judendorf
24	1106/2015, 1106a/2015	Vienna, Rudolfsheim
25	1121/2015, 1121a/2015, WA14/2016, 1121b/2016, 1121c/2016	Vienna, Hietzing
26	1135/2015, WA13/2015, WA13a/2016	Upper Austria, Steinbach am Attersee
27	1151/2015, 1151a/2016	Vienna, Meidling
28	1160/2016, 1160a/2016	Burgenland, Mattersburg
29	1526/2018, 1526a/2018	Vienna, Leopoldau

ISBN 978-3-9505259-3-9

