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

29 Jun 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 course 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* 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 sessions, 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).

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