

Frequently Asked Questions about Events Surrounding the Restitution of the Fürth Sanatorium/Stephan Templ

04 Jun 2014

Supplement to the FAQs, 15 and 23 February 2016:

Was the Arbitration Panel aware of the existance of Stephan Templ's aunt?

Regarding the question as to whether the Arbitration Panel or the General Settlement Fund had been aware of the existence of Stephan Templ's aunt as a further heir and/or whether her existence had been disclosed by to the Panel or the Fund Stephan Templ, the following statement is issued:

As the proceedings at the General Settlement Fund are subject to strict data protection laws (to protect our applicants), applications for in rem restitution filed with the Arbitration Panel and applications for monetary compensation filed with the Claims Committee are treated with the strictest confidence. Without the applicant's consent it is only possible to provide general information and information that is already publicly available.

In the proceedings before the Arbitration Panel, Stephan Templ, acting as his mother's representative, submitted no documents and made no statements that indicated the existence or identity of his aunt. Please refer to the decision of the Arbitration Panel no. 27a/2006 of 23 January 2006 for information on all documents and statements available to the Arbitration Panel for its examination of Stephan Templ's mother's application (see also decision no. 27d/2012 and FAQs regarding the case).

As can be gathered from numerous decisions of the Arbitration Panel, when examining an application for in rem restitution, the Arbitration Panel consults all documents that are already in the possession of the General Settlement Fund and lists these under "Evidence" in its decision. It goes without saying that this procedure was also followed for the application of Stephan Templ's mother.

Please refer to the relevant decision of the Arbitration Panel, no. 27a/2006 of 23 January 2006 (margin notes 6 and 7), which shows that no such documents were available at this time. Had this been the case they would have been listed as evidence.

Also, Stephan Templ himself did not claim that he had ever disclosed the existence of his aunt to the Arbitration Panel (or to the General Settlement Fund) in the criminal proceedings regarding this matter, as can be inferred from the Supreme Court ruling.

Was Stephan Templ granted access to the relevant files at the General Settlement Fund?

Applicants are entitled to view the procedural files of the Arbitration Panel and Claims Committee relating to their cases (in analogous application of the provisions of the Austrian Code of Civil Procedure). Once the GSF has received a request to review case files, efforts are made to arrange an appointment at the earliest opportunity.

Thus, the representatives of Stephan Templ's mother were able to review the case files within three weeks of making their request.

Supplement to the FAQs, 18 November 2015:

Did the Arbitration Panel fail to disclose one of its decisions?

In a press release issued by Stephan Templ's legal representative and published on 9 November 2015 via APA OTS, it is alleged that a 2007 decision of the Arbitration Panel for In Rem Restitution has "only [been publicly-accessible] for the last few weeks" and "according to this decision, applicants are under no obligation to name other potential heirs". It was further alleged that in the criminal proceedings against Stephan Templ "the Arbitration Panel had maintained that the opposite was the case and therefore brought about Templ's conviction". In a paid advert published in *Der Standard* on 26/27 September 2015, the National Fund was accused of "repeatedly portraying the Restitution Law in an illegal light and covering up facts". In this context, it had ruled "in one of its own decisions" (meant is decision of the Arbitration Panel WA/RO 1/2007), "that Templ's conviction has no basis in law" and this very decision had been "the sole decision to be kept secret".

These allegations are refuted as follows:

1. The Arbitration Panel for In Rem Restitution was **established with the General Settlement Fund for Victims of National Socialism in 2001, not with the National Fund**. The Arbitration Panel is a three-member decision-making body that works **independently**.

2. The recommendations of the Arbitration Panel are subject to publication as stipulated by Sec. 36 of the GSF Law. All decisions are published in anonymous form in a bilingual (German/English) online database on the website of the General Settlement Fund. In addition to this, since 2008 the "substantive" decisions of the Arbitration Panel have been published in a bilingual series of books. **Decision WA/RO 1/2007 is printed in German and English in volume 4 of the series "Decisions of the Arbitration Panel for In Rem Restitution", p. 282–345, which was published and has been available since 2011, and was therefore not "kept secret".** Decision WA/RO 1/2007 has been published in the online database of the Arbitration Panel since 2007. During the relaunch of the website in late June 2015 a technical error meant that no German

language decisions on applications for reopening (WA/RO decisions) were imported into the new website. This problem affected several decisions and not one particular decision. The error has now been rectified and the decisions in question are once more accessible.

3. Under no circumstances did the Arbitration Panel rule in decision WA 1/2007 "that Templ's conviction has no basis in law". This would be impossible for the simple reason that Templ was convicted of serious fraud by the court of first instance in 2013 and the Arbitration Panel's decision was issued in 2007. The pertinent margin note no. 149 of decision WA/RO 1/2007 deals with a juridical probate proceedings and not the proceeding before the Arbitration Panel:

> *"There was no evidence at the time and there is little today that Edith Sch. fraudulently obtained the settlement as constantly emphasized by the applicants and/or their representative. In this regard, it should merely be mentioned that a criminally (or otherwise) sanctioned obligation of an heir to reveal in probate proceedings the existence of other heirs does not exist.* ***Only a wrong statement during a formal questioning in the matter, as for instance during the recording of the death, could have had relevance*** *(see Sec. 288 of today's Austrian Strafgesetzbuch ["Criminal Code"]). According to the files, Edith Sch. did not provide an oral statement in the course of the three probate proceedings nor during the death declaration proceedings.* ***The Arbitration Panel does not consider it to be its task to conduct a criminal investigation of historical events****, especially when criminal proceedings before the competent authority have already taken place and were quashed."*

As such, the Arbitration Panel did not undertake a legal appraisal of a criminal case. In contrast, the Supreme Court held in its decision 150s133/13t on Stephan Templ [translation]:

> *"The defendant claimed that for deception by omission to be rendered a punishable offense a legal obligation pursuant to Sec. 2 of the Penal Code would have to exist to avert financial damages arising from lack of information; he, however, had not been obliged by law to name other potential applicants or to support them in the application process. What the appellant for nullity fails to recognize is that in accordance with the findings he* ***was not incriminated merely on grounds of deception by omission but also of deception by intentional actions (submission of an incorrect "family tree", untruthful verbal statements on the number of children per generation, submission of an incomplete application form)****. (Cf. also RIS-Justiz RS0120597; Kirchbacher in WK² Penal Code § 146 margin note 22)."*

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04 Jun 2014

Following several media reports relating to the restitution of the former Fürth Sanatorium at Schmidgasse 14, in Vienna's Josefstadt District, and the criminal proceedings against Stephan Templ, the Arbitration Panel has provided answers to some of the questions which have frequently arisen in this context.

1) Is the Arbitration Panel for In Rem Restitution an Austrian authority?

The Arbitration Panel for In Rem Restitution is neither an authority nor a national organ of the Republic of Austria. It is an intergovernmental institution based on the Washington Agreement. Therefore, its decisions do not constitute binding orders in accordance with Austrian administrative law but are recommendations to the public owner of the property in question (see the decision of the Supreme Administrative Court B 783/04-15).

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2) Is the Arbitration Panel obligated to comply with instructions from a higher body?

The Arbitration Panel is a three-person decision-making body which works independently in its examination of applications. It is supported by a business apparatus. The staff of this apparatus largely comprises lawyers and historians, who process the applications in interdisciplinary teams and prepare them for decision by the Arbitration Panel. The three members, who act in an honorary capacity, are the sole persons responsible for reaching the decisions.

As the Arbitration Panel is not an Austrian authority, the members of its staff are therefore not public officials but employees of the General Settlement Fund (with contracts under private law).

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3) What is the history of the Fürth Sanatorium?

The building at Schmidgasse 14 in the 8th District of Vienna was built as a sanatorium in 1886; in 1895 it was purchased by Dr. Julius Fürth. His son Dr. Lothar Fürth took over the – by this time highly reputable – sanatorium in 1925. In April 1938, Dr. Fürth and his wife Susanne – both of Jewish descent – became targets of the Nazis' anti-Semitic acts of persecution. The spouses took their own lives on 3 April 1938.

Relatives of the childless couple who would have been eligible to inherit from them were deemed Jewish by Nazi legislation and could therefore not accept the inheritance. Some of them managed to flee abroad, others were deported and murdered.

The trustee of Dr. Fürth's estate sold the property to the German Armed Forces in March 1939. The majority of the proceeds from the sale, which amounted to 310,000 Reichsmark, was used to pay off the estate's debts.

After the war, the building was confiscated by the authorities of the US American occupying power. In 1946, John Henry Davis, to whom Dr. Lothar Fürth had bequeathed a legacy, sought to gain restitution of the property. However, in accordance with the provisions of the restitution legislation, he was not recognized as Dr. Fürth's rightful legal successor. Upon the conclusion of the State Treaty of 1955, the former sanatorium

passed into the ownership of the Republic of Austria.

The collection agencies were established in 1957 in implementation of the State Treaty as a receiving organization for heirless property. In 1960 they filed an application for restitution of the sanatorium. According to valuation reports of the time, it was worth over 6 million Schilling. Following protracted proceedings, in December 1965 the Republic of Austria and the collection agencies reached an agreement, whereby the Republic of Austria paid 700,000 Schilling in compensation for the property. This agreement was reached as part of a broader settlement amounting to 22,700,000 Schilling for claims of the collection agencies against the Republic for restitution of assets which had remained heirless but had previously belonged to persons who had been subjected to Nazi persecution. The proceeds of this settlement were used to benefit the victims of National Socialism.

The building remained under the ownership of the Republic of Austria and continued to be rented by US American institutions, which used the former sanatorium until 2007.

From 2003 onward, numerous heirs of Dr. Lothar Fürth filed applications for restitution of the building with the Arbitration Panel. In 2005 the Arbitration Panel – having assessed the 1966 settlement as "extremely unjust" – recommended the restitution of the property in decision no. 27/2005.

In 2009 and 2010 the former Fürth Sanatorium was transferred to the heirs, who subsequently sold it.

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4) What was the course of events in the proceedings before the Arbitration Panel regarding the former Fürth Sanatorium?

a. Applications and decisions of the Arbitration Panel

The initial decision, no. 27/2005 – restitution to nine heirs

In its decision no. 27/2005 of 15 November 2005 the Arbitration Panel for In Rem Restitution recommended the Austrian Federal Government to restitute the property in Vienna, Schmidgasse 14, which was owned at the time by the Republic of Austria (in concreto the *Bundesimmobiliengesellschaft* or Federal Real Estate Company).

Nine persons from the USA, Switzerland, Great Britain and Germany – all descendants of the grandparents of the original owner, Lothar Fürth – had filed applications with the Arbitration Panel for restitution of the property in 2003 and 2004.

Supplementary decision no. 27a/2006 – a further heir

In late 2005, a further applicant requested restitution of the property in Schmidgasse. She was represented by her son Stephan Templ. As the Arbitration Panel had already determined in decision no. 27/2005 that the other requirements for restitution were met, it limited its examination to the eligibility of the new applicant. With the submission of documents relating to personal status Stephan Templ proved that his mother was a descendent of the grandparents of the property's historical owner. When filing his application, he did not mention any other eligible heirs. On 23 January 2006 in decision no. 27a/2006 the Arbitration Panel extended its restitution recommendation to include the new applicant.

Supplementary decision no. 27b/2007 – no augmentation of the claim

On behalf of his mother, in late December 2006 Stephan Templ filed another application relating to the building in Schmidgasse. He asserted that his mother was entitled to a further claim, derived from a maternal aunt of Lothar Fürth. In decision no. 27b/2007 of 26 February 2007 the Arbitration Panel rejected the application as the applicant was not related to this aunt.

Decision no. 371/2007 – area of road did not form part of the property to be restituted

An application was submitted to the Arbitration Panel by several applicants for restitution of an area of road bordering the former sanatorium, which the applicants believed belonged to the property. In decision no. 371/2007 the Arbitration Panel rejected the application as Lothar Fürth had not been the owner of this road area.

Decision no. 27c/2008

On 23 June 2008 in decision no. 27c/2008 the Arbitration Panel recognized the eligibility of 29 further applicants from abroad. They were descendants of paternal aunts of Lothar Fürth, who were previously unknown to the proceedings.

Reopening WA/RO 6/2009 re 27c/2008

Additional proceedings relating to the in rem restitution of the property Schmidgasse 14 were concluded by the Arbitration Panel for In Rem Restitution with decision WA/RO 6/2009 re 27/c/2008 on 20 May 2009. On behalf of his mother, Stephan Templ had filed for the reopening of the proceedings which had been concluded with decision no. 27c/2008, as he disputed the eligibility of nine descendants of Pauline Fürth, a late aunt of the former property owner, Dr. Lothar Fürth. However, as the documents he submitted did not disprove their eligibility, the Arbitration Panel rejected the application for reopening.

Following several years of discussions, representatives of the Republic of Austria and the heirs managed to come to an agreement regarding the transfer of the property. In accordance with this agreement, the step-by-step transfer of the real estate was completed between July 2009 and May 2010. The property was transferred to the 39 applicants according to their respective inherited share and they then sold on the property.

Decision no. 27d/2012

On 10 January 2012 an applicant of whom the Arbitration Panel had previously been unaware – the sister of Stephan Templ's mother – requested restitution of the property at Schmidgasse 14. She stated in her application that she was also an heir of Lothar Fürth. The Arbitration Panel dismissed the application with decision no. 27d/2012 as the deadline for filing applications for restitution of assets owned by the Republic of Austria had already expired in 2007. This notwithstanding, the Arbitration Panel ruled that on the basis of the submitted documents the applicant was an entitled heir of her late mother and, as such, was also eligible to inherit from the original owner of the property at Schmidgasse 14, Dr. Lothar Fürth.

b. Why was restitution recommended? What factors were subject to examination?

Restitution was recommended because in its decision no. 27/2005 the Arbitration Panel was able to confirm that the first nine applicants were eligible heirs and that the other requirements were met. For the 30 further heirs only their eligibility was examined and confirmed (decisions no. 27a/2006 and 27c/2008).

Eligibility (Sec. 27 of the Entschädigungsfondsgesetz ["General Settlement Fund Law – GSF Law"]) – no calculation of inheritance shares:

Pursuant to the GSF Law persons (and associations) who (which) were subject to Nazi persecution and their legal successors are eligible applicants, applying mutatis mutandis the provisions of Austrian civil law.

All applicants to the Arbitration Panel were able to demonstrate their right to the inheritance as descendants of either the paternal or maternal grandparents of Lothar Fürth. For this reason, the Arbitration Panel confirmed their eligibility in decisions no. 27/2005, 27a/2006 and 27c/2008. It did not rule on the inheritance shares as the public owner is responsible for determining what share of the inheritance each applicant is entitled to.

Further requirements for restitution (Secs. 28–32 of the GSF Law): public ownership in 2001 – ownership by the aggrieved person in 1938 – seizure on grounds of persecution:

In addition to the applicants' eligibility, the following questions must also be addressed when examining applications for in rem restitution: Had the property been owned by the legal predecessor in question in 1938? Does the property constitute publicly-owned property as defined by the GSF Law (i.e. did the property belong to the state on the cut off day of the Washington Agreement in 2001)? Was the property seized on Austrian territory during the National Socialist era on grounds of persecution? Was the property restituted after 1945 or was it subject of a settlement agreement? Was compensation received for it in any other form? If so, did this prior measure constitute an "extreme injustice"?

The Arbitration Panel determined that all of the statutory requirements were met in the "restitution matter Fürth Sanatorium" (see decision no. 27/2005).

c. Did any time constraints exist for filing applications in 2005?

Stephan Templ filed the application for his mother over a period in late November/early December 2005. At this time no time constraints existed because the deadline for filing applications for assets owned by the Republic of Austria had already expired. However, a statutory deadline extension of an additional two years was already in the pipeline at this point and entered into legal force on 13 December 2005. As such, with retroactive effect this application was deemed to have been filed in time.

Pursuant to Sec. 29 of the GSF Law the original deadline for applications for assets owned by the Republic of Austria ended on 27 January 2004, one year after the submission of the Historical Commission's Final report (Federal Law Gazette I no. 12/2001). It was extended until 31 December 2004 by amendment to the Law (Federal Law Gazette I no. 108/2004). At the end of 2005, the legislator decided to once more provide the opportunity for further applications and extended the deadline with retroactive effect for the year 2005 to 31 December 2006 (Federal Law Gazette I no. 142/2005). Finally, the deadline for filing applications was again extended, by a year, meaning applications could be filed until 31 December 2007 (Federal Law Gazette I no. 20/2007).

- Application deadlines

d. What steps were taken in order to implement the restitution recommendation?

The respective public owner is responsible for implementing the Arbitration Panel's recommendations of restitution. On the cut off day stipulated by the Law, 17 January 2001, the property at Schmidgasse 14 was owned by the *Bundesimmobiliengesellschaft* ("Federal Real Estate Company"). Its sole shareholder was the Republic of Austria.

The Federal Minister of Economy, Family and Youth was responsible for implementing the restitution of the property.

Due to disagreements among the heirs, it was not possible to transfer the whole property from the *Bundesimmobiliengesellschaft* to the heirs in a single move. Therefore, the property was ultimately transferred in stages between July 2009 and May 2010.

The inheritance shares were determined by mutual agreement between the heirs and the public owner.

In November 2009 the *Bundesimmobiliengesellschaft* transferred a 1/12 share of the property to Stephan Templ's mother. She sold this share of the property to the "*Schmidgasse 14 Entwicklungs GesmbH*" ("Schmidgasse Development Company Ltd.") for 1.1 million Euro in March 2010.

By 10 May 2010, the property at Schmidgasse 14 had been transferred to all applicants.

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5) Heirs in restitution proceedings before the Arbitration Panel

a. Does the Arbitration Panel search for heirs?

The proceedings before the Arbitration Panel are conducted on the basis of submitted applications, i.e. the statutory remit of the Arbitration Panel is to examine applications which have been received to establish whether they meet the legal requirements. It is not within the remit of the Arbitration Panel to search for possible heirs.

In order to reconstruct historical events the employees of the Fund assist the applicants in their research in archives and databases. However, proof of legal succession (eligibility/right to the inheritance) must be brought by the applicants, particularly due to the fact that the necessary information and documents are usually in the applicants' possession.

If the Arbitration Panel became aware of specific eligible persons during the course of its research or application processing, i.e. their names and addresses, it informed them of the opportunity to file an application.

b. Were applicants obliged to state other heirs?

Yes, if they were aware of them. In this event they were requested to enter their name, address and telephone number, if known. They were not required to search for heirs.

c. Did applicants have to be represented by a lawyer in proceedings?

No.

d. What measures are in place in the event that heirs only belatedly learn of the opportunity to apply for restitution?

New applicants can assert their claims up to six months after a recommendation has been issued.

e. Who are the 39 applicants in the Schmidgasse case?

The applicants in the case "Schmidgasse" are all living descendants of the grandparents of Lothar Fürth.

The 39 applicants live in several different countries. Due to the fact that the relatives are scattered throughout the world, some only learnt of the existence of others during the course of filing their applications with the Arbitration Panel.

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6) Why do proceedings before the Arbitration Panel sometimes last several years?

The majority of applications to the Arbitration Panel are incomplete. It is seldom the case that the applicants are still in possession of documents relating to the period 1938 to 1945. On the whole they are descendants of the originally persecuted persons. Only few can remember the property owned by their parents and grandparents in any detail. Without the active research of the historians and lawyers of the Arbitration Panel, the majority of the applications would have to be rejected.

In order to resolve the often very complex historical and legal questions which differ from case-to-case, comprehensive research is carried out in various Austrian and, as required, international archives and specialist literature is consulted, for example the Reports of the Austrian Historical Commission.

To ensure a fair hearing, all case-relevant documents are delivered to the parties to the proceedings and they are provided with the opportunity to submit a statement. As a result of this adversarial procedure and the mentioned research involved, proceedings can on occasion be ongoing for a period of several years.

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7) Did an obligation exist for the General Settlement Fund to publish the "In Rem Project - Republic" online?

The Republic of Austria and the General Settlement Fund commissioned the Austrian Historical Commission to undertake a scientific documentation of the seizure and restitution of all properties which were owned by the Republic of Austria on the cut off day pursuant to the GSF Law, 17 January 2001 (In Rem Project). An obligation to publish the database did not exist for the Republic of Austria, the General Settlement Fund or the Historical Commission.

The Arbitration Panel consulted the In-Rem-Documentation as one of the sources for processing the applications. It also provided the applicants with the documents from the project which were relevant to their cases. Natural persons and research institutions could also view the documentation on request.

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8) What is the Arbitration Panel's stance towards the criminal proceedings against Stephan Templ?

The Arbitration Panel does not wish to comment on the criminal proceedings and refers inquirers to the publications of the Supreme Court.

- Supreme Court notice "Fraud in a Restitution Matter" [English translation]
- RIS Decision of the Supreme Court (full text – in German)

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