

# OVERVIEW OF IMMOVABLE PROPERTY RESTITUTION/COMPENSATION REGIME – AUSTRIA (AS OF 8 MARCH 2017)

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### A. EXECUTIVE SUMMARY

In March 1938, Germany entered Austria and annexed the country to the German Reich (the *Anschluss*). The annexation was later approved by a popular vote of over 99 percent. Almost immediately, Jews, Roma and other targeted groups were excluded from participating in the economic, social and cultural life of Austria. Property was confiscated first by “wild” Aryanizations and then by “official” means. At first, as in Germany prior to 1939, the Nazis adopted a policy of expulsion. Jews were required to register property in connection with obtaining exit visas. With the start of World War II, systematic deportations began in 1939. While many Austrian Jews were able to flee the country before the war, nearly 70,000 of Austria’s prewar Jewish population of 200,000 died during the Holocaust. Roughly 15,000 Jews live in Austria today. An estimated 10,000 of Austria’s 12,000 Roma also died during the Holocaust. Roughly 35,000 Roma live in Austria today.

Austria has perhaps the most complicated World War II history, as it was both officially “victim to Hitlerite aggression” (as was acknowledged in the **1943 Moscow Declaration**) and a Nazi collaborator. Many of the leading Nazis, including Adolf Hitler, came from Austria. After Austria was liberated in 1945 – the Soviet Red Army liberated Vienna and the United States, France and the United Kingdom liberated other parts of the country – it was occupied for another 10 years by the Allied powers. Austria’s independence was re-established in 1955 with the **1955 State Treaty**. While under Allied occupation after the war, Austria passed a number of restitution measures relating to immovable property. However, Austria’s **Historical Commission** found in 2003 that early restitution was slow, complex and contained many gaps. Austria in the 1990s and 2000s (and even earlier) began to come to terms with its role in World War II and acknowledged a moral responsibility to Jews and other targeted groups. Since 1995, Austria has implemented a panoply of measures aimed at remedying past restitution pitfalls.

To date, Austria has legislated or entered into agreements concerning all three (3) types of immovable property: private, communal and heirless.

*Private Property.* In the immediate aftermath of the war, Austria declared property confiscation measures “null and void”. A series of **Restitution Acts** were enacted between 1946 and 1949 addressing the return of private immovable property. The **1955 State Treaty** underscored Austria’s obligation to either return or compensate confiscated property, but Austria was only obligated to grant compensation for losses incurred to the same extent as, or may be, given to Austrian nationals in respect of war damage.

Another flurry of restitution activity took place in the late 1990s and early 2000s. Activities included the convening of the **Historical Commission** (whose report was released in 2003), and the conclusion of the **2001 Washington Agreement** between the United States and Austria, which led to the establishment of the **General Settlement Fund** (that disbursed more than EUR 210 million in compensation for real estate and nine (9) other asset categories) and the creation of the **In Rem Arbitration Panel** (that has the power to restitute property in state hands as of 17 January 2001).

*Communal Property.* Communal organizations also relied upon the **Restitution Acts** for early post-war restitution and the **1945 Constitutional Law on Measures relating to the Constitutional Law of 31 July 1945 on Measures pertaining to Association Law** permitted previously dissolved associations to be reestablished so that they could file restitution claims. The 1960 **Federal Law for the financial support of the Israelite Religious Community** provided for a lump-sum payment to the Jewish community as compensation for damaged synagogues and other Jewish properties, as well as an open-ended annual allocation of EUR 772,177.72 (in 2003 monetary value) for an indefinite period of time. In the early 2000s, communal organizations were also able to file restitution and compensation claims with the **General Settlement Fund** and the **In Rem Arbitration Panel**. In 2005, the Austrian federal provinces and a number of Austrian Jewish communities finalized an agreement for EUR 18.2 million, which was to resolve all remaining questions regarding compensation for Jewish communal assets. In December 2010, Austria enacted the **Federal Law on the Establishment of a Fund for the Restoration of the Jewish Cemeteries in Austria** to address preservation of cemeteries. Under the law Austria will provide the Fund EUR 1 million per year for 20 years.

*Heirless Property.* **Article 26(2)** of the **1955 State Treaty** required that heirless property be used for the “relief and rehabilitation of victims of persecution by the Axis Powers.” Subsequent Austrian laws set up two (2) collection agencies in order to collect and disburse the heirless property.

Austria endorsed the Terezin Declaration in 2009 and the Guidelines and Best Practices in 2010.

As part of the European Shoah Legacy Institute’s Immoveable Property Restitution Study, a Questionnaire covering past and present restitution regimes for private, communal and

heirless property was sent to all 47 Terezin Declaration governments in 2015. Austria sent a response in May 2016.

## **B. POST-WAR ARMISTICES, TREATIES AND AGREEMENTS DEALING WITH RESTITUTION OF IMMOVABLE PROPERTY**

In what has become known as the *Anschluss*, German troops entered Austria on 12 March 1938. Nazi Germany annexed and incorporated the country into the German Reich the next day. The German annexation was retroactively approved a month later via plebiscite, with 99 percent approval from eligible voters. Jews and Roma were not permitted to participate in the vote. As a result of the annexation, German anti-Jewish legislation – the Nuremberg Racial Laws – became applicable to Austria. The goal of this stage was to exclude Austrian Jews from participating in the economic, social and cultural life of Austria. These legal measures included the registration of property, particularly in connection with seeking exit visas from the country.

In November 1938, the extralegal *Kristallnacht* pogrom resulted in most synagogues in Vienna being destroyed, businesses vandalized and thousands of Jews arrested and deported to the Dachau or Buchenwald concentration camps. Austria was also home to Mauthausen forced labor camp, where Nazis sent convicted criminals, “asocials”, political opponents and religious conscientious objectors (e.g., Jehovah’s witnesses), as well as Jews. Large-scale emigration of Austrian Jews took place mainly from Vienna. By mid-1939, nearly half of Austria’s pre-war Jewish population had left the country.

Systematic mass deportations of Jews began from Vienna in 1939 with the start of World War II. Approximately 35,000 Jews were deported to the ghettos in Eastern Europe. More than 15,000 Jews from Vienna were deported to Theresienstadt camp, and thousands more to camps in Germany. By November 1942, approximately 7,000 Jews remained in Austria. In 1945, the Soviet Red Army liberated Vienna. At the same time, the other Allied powers liberated other parts of Austria – the United States entering from the north, France from the west, and the United Kingdom from the south.

In 1938, an estimated **180,000** Jews lived in Vienna. A further **20,000** lived in other parts of the country. Nearly **70,000** Austrian Jews died during the Holocaust. The [Israelitische Kultusgemeinde \(Jewish Community of Austria\)](#) estimates that there are approximately **15,000** Jews currently living in Austria.

An estimated **10,000** of Austria’s **12,000** Roma died during the Holocaust. As of 2012, the Council of Europe estimated there were approximately **35,000** Roma in Austria.

Information in this section was taken from: [United States Holocaust Memorial Museum – Holocaust Encyclopedia, “Austria”](#); [United States Holocaust Memorial Museum – Holocaust Encyclopedia, “Vienna”](#); Martin Dean, *Robbing the Jews: The Confiscation of Jewish Property in the Holocaust, 1933-1945* (2008) (“Dean”), pp. 84-131; [Claims Conference on Jewish Material Claims against Germany, “What We Do – History of the Austrian Jewish Community”](#). Information relating to the Roma in Austria was taken

from: [Genocide of the Roma, “Map – Austria”](#); and [European Commission, “The European Union and Roma – Factsheet Austria”](#) (4 April 2014).

### 1. 1943 Moscow Declaration

In October 1943, the United States, United Kingdom, Soviet Union and China issued the so-called [Moscow Declaration](#). The **Declaration** stated that the aforementioned governments agreed that Austria was “the first free country to fall a victim to Hitlerite aggression” and “shall be liberated from German aggression.” From the perspective of Jews and other targeted groups, Austria would later use the **Declaration** as reasoning why it did not have a legal obligation to redress crimes from the Holocaust.

Notwithstanding that language, the **Declaration** also went on to state that the German annexation of Austria was null and void, and that “Austria is reminded, however that she had a responsibility, which she cannot evade, for participation in the war at the side of Hitlerite Germany, and that in the final settlement account will inevitably be taken of her own contribution to her liberation.”

### 2. 1955 State Treaty

After the war, Austria was occupied by the Allied powers for a period of 10 years. Much like post-war Germany, Austria was divided into four (4) zones of occupation, each zone being governed by one (1) of the Allied powers: the United States, United Kingdom, France, and the Soviet Union. In 1955, the Allied powers and Austria entered into the 1955 State Treaty for the re-establishment of an independent and democratic Austria (“[1955 State Treaty](#)”).

### 3. Claims Agreements with Other Countries

Following the war, Austria entered into lump sum agreements – bilateral indemnification agreements – with at least 10 countries. These agreements pertained to claims arising out of war damages or property that had been seized by foreign states after WWII (i.e., during nationalization under Communism). They included claims settlements reached with: **Bulgaria** on 2 May 1963; **Finland** on 21 February 1966; **Hungary** on 31 October 1964; **Netherlands** on 30 September 1959; **Poland** on 6 October 1970; **Romania** on 4 July 1963; **Czechoslovakia** on 19 December 1974; **German Democratic Republic** on 21 August 1987; **Italy** on 17 July 1971; and **Yugoslavia** on 19 March 1980. (Richard B. Lillich and Burns H. Weston, *International Claims: Their Settlement by Lump Sum Agreements* (1975), vol. 1 pp. 328-334 & vol. 2; Richard B. Lillich and Burns H. Weston, *International Claims: Their Settlement by Lump Sum Agreements, 1975-1995* (1999), pp. 101-103.)

## C. PRIVATE PROPERTY RESTITUTION

Private immovable (real) property, as defined in the Terezin Declaration Guidelines and Best Practices for the Restitution and Compensation of Immovable (Real) Property

Confiscated or Otherwise Wrongfully Seized by the Nazis, Fascists and Their Collaborators during the Holocaust (Shoah) Era between 1933-1945, Including the Period of World War II (“Terezin Best Practices”) for the purpose of restitution, is:

Property owned by private individuals or legal persons, who either themselves or through their families owned homes, buildings, apartments or land, or who had other legal property rights, recognized by national law as of the last date before the commencement of persecution by the Nazis, Fascists and their collaborators, in such properties.

(Terezin Best Practices, para. b.)

The systematic confiscation of Jewish immovable property in Austria began with the 26 April 1938 **Ordinance on the Registration of Jewish Property**. This decree required all Jews whose assets exceeded 5,000 Reichmarks to declare their property with the **National-Socialist Jewish Property Declaration Office**. Property confiscation was carried out by a variety of official and unofficial means and was “in most cases camouflaged by contracts of sale, sometimes by forced judicial sales, gifts and inheritance. Many owners were forced by discriminating National-Socialist taxes to sell their real estate at far below its actual value.” ([Jewish Community Vienna – Department for Restitution Affairs, “Historical Background – Confiscation of Property under NS-regime”](#).)

The exit visa became the means by which large-scale theft took place. The chief architect of this theft was Adolf Eichmann. Eichmann arrived in Austria in March 1938, the same month that the Anschluss took place. He created the Central Office of Jewish Emigration in Vienna. With ruthless efficiency, the Central Office expelled nearly 100,000 Austrian Jews and confiscated their assets. Franz Meyer, a Berlin Jew who visited Vienna, described Eichmann’s thievery operation in Jerusalem during the Eichmann trial in 1961. It was like

a flour mill connected to some bakery. You put in at the one end a Jew who still has capital and has, let us say, a factory or a shop or an account in a bank, and he passes through the entire building from counter to counter, from office to office – he comes out at the other end, he has no money, he has no rights, only a passport in which is written: You must leave this country within two weeks: if you fail to do so, you will go to a concentration camp.

(Eichmann Trial, Session No. 17, 26 April 1961.) Eichmann’s success in Vienna led to the establishment of other such central offices in Berlin and Prague.

### 1. Restitution Measures (1946-1949)

The 10 May 1945 [Law on the Recording of Aryanized and Other Property Confiscated in Connection with National Socialist Seizure of Power \(State Law Gazette 10/1945, and amendments 19/1945, 23/1945, 135/1945, 201/1945, 150/1946\)](#) required holders of confiscated property dating back to 13 March 1938 to register the

property with the government. Registered property would be provisionally administered pending a determination of ownership.

The 15 May 1946 **Annulment Law (Federal Law Gazette 106/1946)** declared “null and void” all transactions and other legal actions carried out by the German Reich that resulted in the confiscation of property or property rights. These laws, however, did not provide for property restitution.

Between 1946 and 1949, while the country was under Allied occupation, Austria passed seven (7) laws pertaining to restoring Nazi-confiscated property (the “**Restitution Acts**”). The first three (3) laws relate particularly to immovable private property restitution. None of the laws conditioned restitution on citizenship or residency (i.e., non-citizens could utilize the **Restitution Acts**).

a. **First Restitution Act**

**Federal Law of 26 July 1946 on the Restitution of Seized Property Administered by the Federation or the Federal Provinces, Federal Law Gazette 156/1946**

(Bundesgesetz vom 26. Juli 1946 über die Rückstellung entzogener Vermögen, die sich in der Verwaltung des Bundes oder der Bundesländer befinden (1. Rückstellungsgesetz), BGBl 156/1946) was also known as the **First Restitution Act**.

This law addressed restitution of movable and immovable property (private, communal and from 1958 by the Collection Agencies also heirless property) confiscated by the German Reich between 13 March 1938 until 9 May 1945, which after the war was under the control of Austria or the Provincial Governments. The law covered immovable property of all victims of political and racial persecution. The law did not cover property confiscated by private individuals or companies. Claims had to be filed by **31 July 1956** (Federal Law Gazette 53/1947; Federal Law Gazette 201/1955). Collection Agencies (*see Section E*) had until **30 June 1961** and in certain cases **30 June 1962** to make claims. (Federal Law Gazette 287/1960 and 133/1961.)

From the time the **First Restitution Act** entered into force and until 30 November 1956, 13,144 claims were filed, 11,969 were decided, 247 decisions were pending on claims and 928 claims were withdrawn or transferred. As of 30 November 1956, 10,021 claims were accepted and 1,948 were denied. As of 2016, all claims have been finalized.

The Austrian government does not have information on the value of the restituted or compensated property under the **First Restitution Act**. (2016 Austria Response to ESLI Immovable Property Questionnaire, pp. 62-64.)

b. **Second Restitution Act**

**Federal Law of 6 February 1947 on the Restitution of Seized Property owned by the Republic of Austria, Federal Law Gazette 53/1947** (Bundesgesetz vom 6. Februar 1947 über die Rückstellung entzogener Vermögen, die sich im Eigentum der Republik

Österreich befinden (2. Rückstellungsgesetz), BGBl 53/1947) was also known as the **Second Restitution Act**.

The law addressed property (private, communal, and from 1958 by the Collection Agencies also heirless property) confiscated and transferred to the state between 13 March 1938 and 9 May 1945 on the basis of property forfeiture (e.g., where the property holder had been a member of the National Socialist regime) and was then owned by Austria. The law did not cover property confiscated by private individuals or companies. Claims had to be filed by **31 July 1956** (Federal Law Gazette 53/1947; Federal Law Gazette 201/1955). Collection Agencies (*see Section E*) had until **30 June 1961** and in certain cases **30 June 1962** to make claims. (Federal Law Gazette 287/1960 and 133/1961.)

From the time the **Second Restitution Act** entered into force and until 30 November 1956, 3,674 claims were filed, 1,369 were decided, 2,057 decisions were pending on claims and 248 claims were withdrawn or transferred. As of 30 November 1956, 876 claims were accepted and 493 were denied. As of 2016, all claims have been finalized.

The Austrian government does not have information on the value of the restituted or compensated property under the **Second Restitution Act**. (2016 Austria Response to ESLI Immovable Property Questionnaire, pp. 89-91 (noting that the “figures provided are of provisional nature, further investigations concerning historical statistics are still being carried out”.)

c. **Third Restitution Act**

**Federal law passed on 6 February 1947, concerning the annulment of property seizure (Federal Law Gazette 54/1947, amended by 148/1947)** (Bundesgesetz vom 6. Februar 1947 über die Nichtigkeit von Vermögensentziehungen (3. Rückstellungsgesetz), BGBl 54/1947) was also known as the **Third Restitution Act**.

The law applied to property (private, communal and from 1958 by the Collection Agencies also heirless property) wrongfully taken from its former owners during the Nazi regime between 14 March 1938 until 9 May 1945 (including forced sale and so-called “Aryanizations”), which had been transferred to private individuals and businesses after the war. The law did not apply to lost tenancy rights. The law assumed property taken from persons persecuted by the National Socialist regime was wrongfully confiscated and put the burden on the acquirer to prove the property was transferred independently.

The law provided for the creation of “Restitution Commissions”, which had exclusive jurisdiction over all claims arising under the law. The Supreme Court of Austria later held that the Restitution Commissions had jurisdiction over all claims relating to the invalidity of property confiscated by the National Socialist regime. The claims process at the Restitution Commissions was a non-adversarial process and a major objective was to reach a settlement. (*See Paul Oberhammer & August Reinisch, Restitution of Jewish Property in Austria, MAX-60 HJIL 737, 750 (2000) (“Oberhammer & Reinisch”).*) Claims

had to be filed by **31 July 1956** (Federal Law Gazette 53/1947; Federal Law Gazette 201/1955). Collection Agencies (*see Section E*) had until **30 June 1961** and in certain cases **30 June 1962** to make claims. (Federal Law Gazette 287/1960 and 133/1961.)

From the time the **Third Restitution Act** entered into force and until 30 November 1956, 39,600 claims were filed, 24,440 were decided, 3,452 decisions were pending on claims and 7,087 claims were withdrawn, and 4,621 claims had been transferred. As of 30 November 1956, 7,989 claims were accepted, 12,025 claims were settled, and 4,426 claims had been denied. As of 2016, all claims have been finalized.

The Austrian government does not have information on the value of the restituted or compensated property under the **Third Restitution Act**. (2016 Austria Response to ESLI Immovable Property Questionnaire, pp. 89-91 (noting that the “figures provided are of provisional nature, further investigations concerning historical statistics are still being carried out”.)

With respect to the overall success of the **Restitution Acts**, the Austrian National Fund has commented that:

The research of the Historical Commission [established in 1998 to assess Austria’s restitution regime] 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.  
(National Fund – September 2015 Media Information, p. 25.)

Information from this section was taken from: *Oberhammer & Reinisch*, pp. 746-752; [Jewish Community Vienna – Department for Restitution Affairs, “Federal laws directly concerned with the issue of restitution”](#); Peter Hayes, “Plunder and Restitution”, in *The Oxford Handbook of Holocaust Studies* (Peter Hayes & John K. Roth, eds., 2010) (“Hayes”), p. 554; [Embassy of the United States Vienna . Austria – News, “10 Years After the Washington Agreement: Background Successes and the Future – Remarks by Ambassador Stuart E. Eizenstat”, 19 January 2011](#); 2016 Austria Response to ESLI Immovable Property Questionnaire.

## 2. **1955 State Treaty**

In 1955, the Allied powers and Austria entered into the 1955 State Treaty for the re-establishment of an independent and democratic Austria (“**1955 State Treaty**”) and agreed to settle all outstanding questions in connection with the annexation of Austria by Hitlerite Germany and participation of Austria in the war as an integral part of Germany. (*See Preamble.*)



In **Articles 23** and **24**, Austria waived all claims on its own behalf and on behalf of its nationals, against Germany and German nationals, and against the Allied and Associated powers. In **Article 25**, Austria committed to measures including the return of all property in its possession belonging to nationals of the United Nations. In **Article 26(1)**, Austria committed to restore or compensate property that had been subject to forced transfer, sequestration, and confiscation on account of the racial origin or religion of the owner. When return or restoration was impossible, compensation was to be granted for losses incurred by reason of such measure to the same extent as is, or may be given to Austrian nationals generally in respect of war damage. Hans-Peter Folz observed in practice:

[P]roperty had to be restituted only in its actual condition irrespective of any deterioration that it might have suffered after the spoliation and before restitution. Therefore, in many cases former owners or their heirs did not successfully claim the restitution of their property at all or suffered losses by receiving damaged property.

(Hans-Peter Folz, “The Arbitration Panel for *In Rem* Restitution and Its Jurisprudence: Extreme Injustice in International Law” in *From Bilateralism to Community Interest: Essays in Honour of Judge Bruno Simma* (Ulrich Fastenrath et al. eds., 2011) (“Folz”), p. 897.)

According to Austria’s 2016 Response to the ESLI Immovable Property Questionnaire, the compensation and restitution requirements in **Article 26(1)** reflect that “the Allied Powers did not regard Austria as a defeated, but as a liberated country [...] Austria was only obligated to grant compensation for losses incurred to the same extent as, or may be, given to Austrian nationals in respect of war damage.” (2016 Austria Response to ESLI Immovable Property Questionnaire, p. 2.)

### 3. Restitution Measures (1961-1999)

Between 1961 and 1999, Austria enacted a number of what Holocaust historian Peter Hayes has termed “stopgap” measures that provided funds and social benefits to Holocaust survivors. (Hayes, p. 554.) The first of such measures was the [Federal Law of 22 March 1961 with which Federal Funds shall be provided for the Establishment of a Fund for the Compensation of Losses of Assets of Political Persecutees \(Federal Gazette 100/1961\)](#) (Bundesgesetz vom 22. März 1961, womit Bundesmittel zur Bildung eines Fonds zur Abgeltung von Vermögensverlusten politisch Verfolgter zur Verfügung gestellt werden (Abgeltungsfondsgesetz), BGBl 100/1961) (“**Compensation Fund Law**”). The **Compensation Fund Law** provided compensation for the loss of bank accounts, securities, cash, mortgage claims and payment of discriminatory taxes – but not real estate. Between 1961 and 1962, 10,666 applications were received and examined by the Fund. (Oberhammer & Reinisch, p. 753.)

#### a. 1995 National Fund

In 1995, in connection with the 50th anniversary of the end of World War II, the **National Fund of the Republic of Austria for Victims of National Socialism**

(“**National Fund**”) was established by [Federal Law of 22 March 1995 by means of which federal funds are provided for the establishment of a fund to compensate property losses of victims of political persecution \(Federal Gazette 432/1995, amended by 183/1998, 131/1999, 11/2001, 14/2001, 19/2003\)](#).

The **National Fund** was authorized to make one-time symbolic payments of EUR 5,087.10 (originally ATS 70,000) to individuals. In cases of social need, additional payments are possible. Individuals entitled to the payment include those persecuted by the National Socialist regime on political grounds, on grounds of origin, religion, nationality, sexual orientation, physical or mental handicap, or of accusations of so-called asociality, or those who had become the victim of typical National Socialist injustice by other means or who left the country to escape such persecution. Between 1995 and 2015, EUR 156 million was distributed through these one-time payments, 31,399 applications were lodged and 30,711 payments were made.

In 2001, the **National Fund** was also entrusted with compensating lost tenancy rights, household effects and personal valuables seized by the National Socialist regime. Compensation was a one-time payment of EUR 7,630, plus a supplemental EUR 1,000. 23,289 applications were received by the **30 June 2004** deadline. 20,209 one-time payments and 19,529 supplemental payments were made.

Information from this section was taken from: *Hayes*, pp. 554; *Oberhammer & Reinisch*, p. 753-756; [National Fund of the Republic of Austria for Victims of National Socialism, “Media Information” \(September 2015\)](#) (“National Fund – September 2015 Media Information”), pp. 6-8; [National Fund of the Republic of Austria for Victims of National Socialism, “20 Years” \(September 2015\)](#) (“National Fund – 20 Years”).

#### **4. 1998 Historical Commission**

In 1998, the Austrian government established the **Austrian Historical Commission** to “investigate and report on the whole complex of expropriations in Austria during the Nazi era and on restitution and/or compensation (including other financial or social benefits) after 1945 by the Republic of Austria.” The **Commission** was headed by the president of the Austrian Administrative Court, Clemens Jabloner. The **Commission’s** activities covered a vast array of subjects, including estimating the total assets of Jewish Austrians in 1938; research on “Aryanization” of Jewish real estate; “Aryanization” in the federal state; expropriation from Roma, Sinti and other ethnic minorities; research on forced laborers; and courts in restitution proceedings. (Clemens Jabloner, “Scholarly Investigation and Material Compensation: The Austrian Historical Commission at Work” in *Restitution and Memory: Material Restoration in Europe* (Dan Diner & Gotthart Wundberg, eds., 2007) (“*Jabloner*”), p.110.)

The **Commission’s** Final Report was issued in February 2003 and it combined the findings of 50 discrete subject reports. The Final Report was divided into two (2) parts, the first of which dealt with the expropriation of property and the second of which dealt with restitution and compensation in historical context. The Final Report asserted that the

“main problem with the restitution was the Austrian refusal to accept any responsibility for Nazi crimes and their consequences” because “[b]eing itself an invaded country, no responsibility was seen as lying with Austria”. ([“Report Tells How Austrians Helped Nazis Rob Jews During War”, NY Times, 25 February 2003](#) (quoting Commission Report).) The situation began to change in 1993 when Austrian Chancellor Franz Vranitzky stated his country had some responsibility for Nazism. (*Id.*)

Austria’s contribution to the 2012 Green Paper summarizes the **Commission’s** findings on historical immovable property restitution:

In a control sample, the Historical Commission arrived at the conclusion that with regard to property “which had been seized on the basis of the Eleventh Decree to the Reich Citizenship Law or as assets hostile to the people and the state and were therefore to be restituted pursuant to the First Restitution Act [...], virtually all property shares had been restituted in their entirety.” In those cases in which a property was not seized by the state but had been “aryanized” by private individuals (under the supervision of the Property Transaction Office), this figure is considerably lower. Around 60 % of the properties subject to an “aryanization” by means of a purchase contract were entirely or partially restituted, in around 30% of cases restitution proceedings were held but concluded without an in rem restitution. In many instances, these cases were dealt with by in-court or out-of-court settlements. In the remaining 10 % of cases, no restitution occurred. In these cases, the Collection Agencies, established on the basis of the State Treaty of 1955, were able to lay claim to the assets such as real estate which had remained “heirless” and use the proceeds to benefit the victims of National Socialism. (Green Paper on the Immovable Property Review Conference 2012, p. 7.) Commission chairman Clemens Jabloner has also stated:

Expectations at the time the Historical Commission was launched were confirmed: it is not true that Austria restituted everything stolen and compensated all who had been exploited. But it is likewise not true, as has been alleged, that Austria avoided any and all responsibility. The truth lies somewhere in between. A system of restitution was built up, but hesitantly, slow-moving, full of gaps and traps. Basically, all of that goes back to the problematic matrix of the beginnings of the Second Republic and the [] thesis of “victimization”. (*Jabloner*, p.108.)

## **5. 2001 Washington Agreement**

The filing of class action lawsuits against Austrian companies in the United States and discussions by other European countries on the issue of restitution, “led Austria to search for adequate measures both to provide compensation for assets plundered from Nazi victims and to make up for gaps and deficiencies in the previous restitution and compensation measures.” (Hannah Lessing and Fiorentina Azizi, “Austria Confronts Her Past” in *Holocaust Restitution: Perspectives on the Litigation and Its Legacy* (Michael J. Bazylar & Roger P. Alford, eds., 2006) (“*Lessing & Azizi*”), p. 230.)

On 23 January 2001, Austria, the United States, the Conference on Jewish Material Claims against Germany (Claims Conference), the Austrian Jewish community, Austrian companies and plaintiffs' attorneys reached a general agreement, followed by an inter-governmental treaty (**Washington Agreement**), which was adopted by the Austrian government later that year as the [Agreement between the Austrian Federal Government and the Government of the United States of America Regulating Questions of Compensation and Property Restitution for Victims of National Socialism \(Federal Law Gazette III 121/2001\)](#).

a. **General Settlement Fund**

Following on from the **Washington Agreement**, the **Federal Law on the Establishment of a General Settlement Fund for Victims of National Socialism and on Restitution Measures (General Settlement Fund Law)**, as well as on an **Amendment to the General Social Security Law and the Victims' Welfare Act, Federal Law Gazette I 12/2001** (Bundesgesetz über die Einrichtung eines Allgemeinen Entschädigungsfonds für Opfer des Nationalsozialismus und über Restitutionsmaßnahmen (Entschädigungsfondsgesetz) sowie zur Änderung des Allgemeinen Sozialversicherungsgesetzes und des Opferfürsorgegesetzes, BGBl I 12/2001) law set up the **General Settlement Fund (GSF)**, which was endowed with USD 210 million.

The **GSF** was tasked with resolving open questions of compensation for victims of National Socialism and recognizing via *ex gratia* payments Austria's moral responsibility for property losses suffered between 1938 and 1945. (National Fund – September 2015 Media Information, p. 18.) Persons personally affected by property seizures and their heirs could file claims by **28 May 2003**. Compensation was paid out *pro rata* in relation to the total available amount (*Id.*) The **GSF** provided compensation for 10 categories of losses: liquidated businesses, immovable property, bank accounts, stocks/securities, debentures, mortgage claims, movable property, insurance policies, occupation and educational losses, and other losses and damages. (*Id.*) The **GSF** covered claims for all types of immovable and communal property. (2016 Austria Response to ESLI Immovable Property Questionnaire, p. 158.) Individuals regardless of nationality could lodge a claim with the **GSF**.

The **GSF** had two (2) types of procedures for examining applications: the claims-based procedure, and the equity-based procedure. In the claims-based procedure, applicants had the right to appeal rejections of claims and the Claims Committee was permitted to reopen proceedings on its own initiative. ((National Fund – September 2015 Media Information, p. 18.), p. 19.) For the equity-based procedure, the standards of proof were lower than the claims-based procedure in order to take into account the lengthy passage of time since the confiscation. (*Id.*) In the equity-based procedure, decisions could not be appealed, but as with the claims-based procedure, the Claims Committee could reopen a matter if new evidence (in particular concerning inheritance) had been produced.

Both persons and associations were permitted to file a claim in the claims-based procedure provided they were persecuted by the National Socialist regime on political grounds, on grounds of origin, religion, nationality, sexual orientation, or of physical or mental handicap or of accusations of so-called asociality, or who left the country to escape such persecution, and who suffered losses or damages as a result of or in connection with events having occurred on the territory of the present-day Republic of Austria during the National Socialist. (2016 Austria Response to ESLI Immovable Property Questionnaire, pp. 19-20.) Heirs (as stated in the Austria General Civil Code) were also eligible to apply.

Since payments were *pro rata* in relation to the whole, an amendment to the law was made in 2005 to permit advance payments on those claims that had already been established, and another amendment in 2009 permitted final payments to be made before decisions had been made on all applications. As part of the **2001 Washington Agreement**, disbursement of funds was contingent upon achieving “legal peace” between the United States and Austria. In practical terms, this meant the dismissal of a class action filed in the United States in 2005, *Whiteman v. Dorotheum GmbH & Co. KG*, 431 F.3d 57 (2d Cir. 2005) (*see Section C.6*).

As of July 2009, for the claims-based procedure, successful claimants received payments of 10.56% of the accepted claim. For the equity-based procedure, successful claimants received payments of 17.16%. (National Fund – September 2015 Media Information, p. 20.) The Claims Committee evaluated 151,949 individual claims across all 10 categories and awarded compensation for 18,155 of the 20,702 applications received and 103,425 of the asserted claims. (National Fund – 20 Years, p. 136.) As of July 2015, the Claims Committee accepted claims amounting to USD 1.6 billion and USD 211,976,344.98 had been disbursed in advance and final payments for all categories of losses. (*Id.*, p. 138.) As of March 2016, the **GSF** has paid USD 1.2 million in compensation for immovable property based on decisions of the Claims Committee. (2016 Austria Response to ESLI Immovable Property Questionnaire, p. 20.)

In September 2015, the Claims Committee submitted its Final Report, marking the completion of its activities.

#### **b. Arbitration Panel for *In Rem* Restitution**

A separate feature of the **GSF** is the **Arbitration Panel** for *In Rem* Restitution. The **Arbitration Panel** can recommend restitution or compensation of real estate, super structures, and movable assets belonging to Jewish communal organizations if they were seized during the National Socialist period (13 March 1938 to 9 May 1945) and were state-owned as of 17 January 2001. Other public authorities have the right to opt in to the arbitration proceedings and the following have done so: 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.

Both individuals and communal organizations (regardless of nationality) have the right to seek restitution (or compensation when restitution is not possible) from the **Arbitration Panel**.

The **Arbitration Panel** is made up of one (1) person selected by the Austrian government, one (1) by the United States government, and a chairperson selected by the other two (2) persons. The claim-filing deadlines depended on who owned the property (e.g, the federal government, provinces or municipalities) and ranged between **31 December 2007** and **31 December 2011**. Nearly all of the claims the Panel decided concern properties, which have already been the subject of restitution proceedings. (National Fund – September 2015 Media Information, p. 24.) All Panel decisions are published in an [online database and as edited volumes by HART/Facultas](#).

As of 21 March 2016, a total of 2,283 applications had been filed with the Panel (of which 578 were substantive applications, 1,400 were formal applications, 63 applications were withdrawn, and 242 were concluded without a decision (meaning there were flaws in the application, such as missing powers-of-attorney or no eligible applicants known)); 377 applications are currently being processed (9 substantive and 368 formal); and 1,601 claims have been decided (of which 137 substantive applications were decided (137 recommendations, 287 rejections, and 145 dismissals)) and 1,464 application were denied). ([General Settlement Fund for Victims of National Socialism “In Rem Restitution – Statistics”](#).) As of 21 March 2016, 41 applications for reopening a claim have been made (3 are currently being processed, 17 applications were granted and 21 applications were rejected). (*Id.*)

As of March 2016 the value of properties that have been restituted by implementing the **Arbitration Panel’s** recommendation amounts to roughly EUR 47.1 million, of which EUR 9 million was awarded as monetary payments (where *in rem* restitution is not feasible or practical, the Panel recommends a monetary payment of 100 percent based upon an expert report of the actual market value). (2016 Austria Response to ESLI Immovable Property Questionnaire, p. 20.)

Information in this section was taken from: *Lessing & Azizi*, pp. 226-236; *Folz*, pp. 895-907; [General Settlement Fund for Victims of National Socialism “In Rem Restitution – Statistics”](#); National Fund – 20 Years, pp. 126-138; National Fund – September 2015 Media Information, pp. 18-31; and 2016 Austria Response to ESLI Immovable Property Questionnaire.

## 6. Notable Restitution/Compensation Cases

### Austria

**Fürth Sanatorium Case.** In 2005, the **GSF Arbitration Panel** recommended restitution of a property in Vienna. The property had been owned by Lothar Fürth and was used as a sanatorium until 1938. The owner thereafter committed suicide with his wife after being

subject to serious anti-Semitic discrimination. Because they had no “Aryan” heirs, the property was sold to the German Wehrmacht. After the war, the Collection Agencies filed a claim for the property as heirless property. The Collection Agencies settled the claim for 700,000 Schillings, even though the property was worth millions. The **Arbitration Panel** reviewed the settlement as being “extremely unjust” because of the difference in settlement amount and value of the property. In decisions [27/2005](#), [27a/2006](#) and [27b/2007](#), the **Arbitration Panel** recommended restitution to eligible heirs. In 27a/2006, restitution was extended to Dr. Helene Templ. The sanatorium was transferred to the heirs in 2009 and 2010 and was subsequently sold. ([Supreme Court of Austria, decision 150s133/13t](#); *see also* [General Settlement Fund for Victims of National Socialism, “Frequently Asked Questions about Events Surrounding the Restitution of the Fürth Sanatorium/Stephan Templ”](#) (contains FAQ section on the case, most recently updated 23 February 2016).)

#### United States

***Whiteman v. Dorotheum GmbH & Co. KG*, 431 F.3d 57 (2d. Cir. 2005).** A class-action suit was brought against Austria and her instrumentalities relating to Nazi-era property looting, expropriation, Aryanization, and liquidation. Putative members of the class would be eligible for compensation from the **General Settlement Fund**. The action was dismissed in 2005 as nonjusticiable under the political question doctrine where the court “defer[red] to a United States statement of foreign policy interests *in this particular case*, which is the one remaining litigation obstacle to the implementation of the G[eneral] S[ettlement] A[greement].” (emphasis in original).

***Anderman v. Federal Republic of Austria*, 256 F.Supp.2d 1098 (C.D. Cal. 2003).** Plaintiffs brought an action against Austria and other entities for relief from Holocaust-era property confiscations, including real estate. Claims were dismissed as nonjusticiable under the political question doctrine because the claims fell within the claims procedure of the **General Settlement Fund**, which was within the executive branch’s foreign affairs power.

#### **D. COMMUNAL PROPERTY RESTITUTION**

Communal immovable (real) property, as defined in the Terezin Best Practices for the purpose of restitution, is:

Property owned by religious or communal organizations and includes buildings and land used for religious purposes, e.g. synagogues, churches[,] cemeteries, and other immovable religious sites which should be restituted in proper order and protected from desecration or misuse, as well as buildings and land used for communal purposes, e.g. schools, hospitals, social institutions and youth camps, or for income generating purposes.  
(Terezin Best Practices, para. b.)

The main Jewish communal organization in Austria is the [Israelitische Kultusgemeinde Wien \(IKG or Israelite Religious Community\)](#).

## 1. Confiscation of Communal Property

Prior to 1938, there were 34 Jewish communities in Austria. In Vienna – home to the vast majority of Austrian Jews – there were an estimated 440 synagogues, prayer houses, organizations, clubs and associations. When Austria’s entire Jewish population was ordered to concentrate in Vienna shortly after the *Anschluss*, their communal organizations were disbanded and their property liquidated. During the *Kristallnacht* pogrom in November 1938, most of the synagogues in Vienna were destroyed.

The property of the Jewish community was first administered by the Liquidation Office. In 1939, some of the property was put in a “Trust Fund for Jewish Welfare”. Much of the property was either sold or given away. However, historian Martin Dean notes “from the available evidence, it appears that at least some of the income raised by the liquidation of Jewish communal property was made available to the [Israelite Religious Community] for the support of emigration and urgent welfare needs.” (*Dean*, p. 106 (emphasis added).)

## 2. Restitution/Compensation Measures

### a. The Restitution Acts

The **Restitution Acts** (*see Section C.1*) were also used for post-war communal property restitution. Under these laws, communal organizations were entitled to lodge claims for restitution or compensation by 31 July 1956 (**Federal Law Gazette 53/1947; Federal Law Gazette 201/1955**), for their property confiscated between 13 March 1938 and 9 May 1945.

With respect to Jewish associations, societies and sports clubs which were dissolved during the Nazi regime, the **1945 Constitutional Law on Measures relating to the Constitutional Law of 31 July 1945 on Measures pertaining to Association Law, State Law Gazette 102/1945**, provided that the dissolved associations could be reestablished and then they could file restitution claims under the **Restitution Acts**. (2016 Austria Response to ESLI Immovable Property Questionnaire, p. 3.)

### b. Federal Law for the Financial Support of the Israelite Religious Community

The 26 October 1960 **Federal Law for the financial support of the Israelite Religious Community (Federal Law Gazette 222/1960, amended 317/1996)** provided for a one-time payment of EUR 10.4 million (in 2003 monetary value) as compensation for damaged synagogues, prayer houses, and other properties owned by the Jewish Community. The law also provided for an annual allocation of EUR 772,177.72 (in 2003 monetary value) to be paid for an indefinite time period, commencing in 1958.



### c. General Settlement Fund

The **General Settlement Fund (GSF)** – both the claims-based or equity-based procedure as well as the *In Rem Arbitration Panel* (see **Section C.5**) – has also been used to seek restitution of communal properties.

In addition, on 12 June 2002, the Austrian federal provinces, along with the Jewish communities of Vienna, Graz, Linz and Salzburg, concluded an agreement meant to resolve all remaining questions of compensation for assets destroyed/looted between 12 March 1938 and 9 May 1945, which belonged to Jewish communities, associations and foundations. According to the **IKG**, under the agreement, the properties had to have “existed in the territory of what is today known as Austria and are not the object of corresponding statutory or contractual regulations on compensatory payment from the federal government, Austrian municipalities with the exception of Vienna or Austrian companies.” ([Jewish Community Vienna – Department for Restitution Affairs, “Historical Background – Measures Since 1995”](#).) The payment amount (EUR 18.2 million) was finalized on 25 June 2005 after the **IKG** withdrew over 700 pending claims with the **GSF** and withdrew *amicus curiae* support for a pending class action suit in the United States against Austria and her instrumentalities. (See *Whiteman v. Dorotheum GmbH & Co. KG*, 431 F.3d 57 (2d Cir. 2005).)

The Austrian government does not have data on the amount of communal property that has been returned, but none remains in the possession of the Austrian state. (2016 Austria Response to ESLI Immovable Property Questionnaire, p. 33.)

Information in this section was taken from: *Dean*, pp. 106-107; Claims Conference – Austrian Jewish Community; [Jewish Community Vienna – Department for Restitution Affairs, “Historical Background – Measures Since 1995”](#); [Austrian Embassy Washington, “Letter to the Editor’ submitted on behalf of the Austrian Federal Government by Bundespressdienst \(Federal Press Services\)”, 9 July 2003](#); Claims Conference on Jewish Material Claims against Germany, “What We Do – History of the Austrian Jewish Community”; and 2016 Austria Response to ESLI Immovable Property Questionnaire.

### 3. Fund for the Restoration of the Jewish Cemeteries in Austria

In addition to addressing open private property issues, the **2001 Washington Agreement** underscored Austria’s obligation under international law to restore and maintain known and unknown Austrian Jewish cemeteries. (National Funds – September 2015 Media Information, p. 32.) In December 2010, Austria enacted **Federal Law on the Establishment of a Fund for the Restoration of the Jewish Cemeteries in Austria (Federal Law Gazette 99/2010)** (Bundesgesetz über die Einrichtung des Fonds zur Instandsetzung der jüdischen Friedhöfe in Österreich, BGBl I 99/2010) to address the preservation of cemeteries.

An estimated EUR 40 million is needed to restore all of the Jewish cemeteries. Austria pledged EUR 1 million/year to the **Fund** for 20 years. The law requires cemetery owners to match Austria's contributions so that renovation work is financed equally by the state and cemetery owners. The **Fund** maintains a [website](#) with information about current restoration activities.

#### **E. HEIRLESS PROPERTY RESTITUTION**

The Terezin Declaration states “that in some states heirless property could serve as a basis for addressing the material necessities of needy Holocaust (Shoah) survivors and to ensure ongoing education about the Holocaust (Shoah), its causes and consequences.” (Terezin Declaration, Immovable (Real) Property, para. 3). The Terezin Best Practices “encourage[s] [states] to create solutions for the restitution and compensation of heirless or unclaimed property from victims of persecution by Nazis, Fascists and their collaborators.” Heirless immovable (real) property, as defined in the Terezin Best Practices for the purpose of restitution, is:

property which was confiscated or otherwise taken from the original owners by the Nazis, Fascists and their collaborators and where the former owner died or dies intestate without leaving a spouse or relative entitled to his inheritances. . . . From these properties, special funds may be allocated for the benefit of needy Holocaust (Shoah) survivors from the local community, irrespective of their country of residence. From such funds, down payments should be allocated at once for needy Holocaust (Shoah) survivors. Such funds, among others, may also be allocated for purposes of commemoration of destroyed communities and Holocaust (Shoah) education.  
(Terezin Best Practices, para. j.)

**Article 26(2)** of the [1955 State Treaty](#) – which reinstated the sovereignty of Austria following the 10-year period of Allied occupation – addressed the issue of heirless property in Austria. It provided for transfer of heirless property or property unclaimed for six (6) months after the Treaty came into force – whose owners were the object of racial, religious or other Nazi measure of persecution – to be used for the “relief and rehabilitation of victims of persecution by the Axis Powers”.

Austria addressed this heirless property obligation in a number of laws including: the 13 March 1957 [Receiving Organizations Act, on the creation of receiving organizations pursuant to Article 26 Sec. 2 of the State Treaty \(Federal Law Gazette 73/1957, amended by 285/1958, 62/1959, 306/1959, 287/1960, 149/1966\)](#); the [17 May 1961 Law concerning registration of claims by receiving organizations for the restitution of property under the Restitution Acts \(Federal Law Gazette 133/1961\)](#); [Federal Law of 5 April 1962 for the Distribution of Funds of “Collection Agencies” \(Federal Law Gazette 108/1962\)](#); and the [7 July 1966 Act concerning compensation of claims of “Collection” \(Collection Agencies Settlement Act\) \(Federal Law Gazette 150/1966\)](#).

The **Receiving Organizations Act** provided for the creation of two (2) “Collection Agencies”, A and B. All property confiscated by the National Socialist regime in Austria that was determined to be heirless was transferred to a Collection Agency. Collection Agencies could assert claims under the **Restitution Acts** (*see Section C.1*), where the owner failed to make a claim within the designated deadline. Where individual claimants had until 1956 to file claims under the **Restitution Acts**, the Collection Agencies had until **30 June 1961** and in certain cases **30 June 1962** to make claims. (Federal Law Gazette 287/1960 and 133/1961.)

Collection Agency A collected heirless Jewish property and Collection Agency B collected heirless non-Jewish Property. Collection Agency A received 80% of the proceeds from the sale of heirless property. Proceeds were used to provide compensation to Jewish victims of National Socialism or went to Jewish charitable organizations.

After completing their work the Collection Agencies were dissolved in May 1972. (2016 Austria Response to ESLI Immovable Property Questionnaire, pp. 31-32; Oberhammer & Reinisch, p. 752.) As of October 1971, the Collection Agencies had distributed unclaimed and heirless proceeds in the approximate amount of ATS 307 million (current value as of March 2016, ATS 1.27 billion or EUR 92.15 million). (2016 Austria Response to ESLI Immovable Property Questionnaire, p. 32.)

Information in this section on heirless property was taken from Oberhammer & Reinisch, p. 752; [Jewish Community Vienna – Department for Restitution Affairs, “Historical Background – Measures Taken Between 1945-1995”](#); and 2016 Austria Response to ESLI Immovable Property Questionnaire.

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