

BELATED JUSTICE – EXPERIENCES WITH RESTITUTION IN AUSTRIA

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During the last two decades Austria has avowed a shared moral responsibility for the participation in National Socialist atrocities. The process of re-evaluation is still ongoing. The National Fund of the Republic of Austria for victims of National Socialism (est. 1995), the General Settlement Fund for Victims of National Socialism (est. 2001) and the Fund for the Restoration of Jewish Cemeteries in Austria (est. 2011) are responsible for restitution and commemoration. The National Fund is dedicated to the recognition and commemoration of victims of Austrian origin. It supports needy survivors and has disbursed 175 million Euros as compensation for seized tenancy rights. It is sponsoring projects conveying historical awareness and is involved in the restitution of looted art and the renewal of the Austrian exhibition at Auschwitz. The General Settlement Fund awards ex gratia payments in order to close the gaps in previous restitution and compensation measures. It has disbursed 211.5 million US Dollars. An independent Arbitration Panel decides on In Rem Restitution of publicly owned assets. It has so far issued 93 recommendations for restitution. The discussion on historical responsibility started late in Austria, but progress made has shown that an evaluation of the past can start a healing process for society.

Key words: restitution, Austria, National Socialism, Holocaust, commemoration, immovable and movable property, Findbuch

*L*IKE MANY OTHER EUROPEAN COUNTRIES, A few years ago, Austria also began to face up to the more difficult chapters of her recent history. Efforts to finally undertake an honest appraisal of these initiated a learning curve profiting Austrian society in a wide variety of ways. In a Europe which is becoming ever more closely intertwined, a mutual exchange of experiences makes sense and is important. Jointly reflecting on our interwoven histories and being willing to learn from past injustices can, without doubt, bring the people of Europe even closer together. I believe that an active evaluation of the past has the power to contribute to a strong – national and European – identity. It can play a vital role in the growth of a shared European narrative. With this in mind, I can only welcome the idea of this conference.

In Austria, I have been heading three Funds responsible for restitution and commemoration for over 18 years: The National Fund of the Republic of Austria for victims of National Socialism, the General Settlement Fund for Victims of National Socialism and the Fund for the Restoration of Jewish Cemeteries in Austria. These three funds are administratively linked – their operations are subject to the supervision of one Board of Trustees chaired by the President of the National Council, Barbara Prammer are led by one Secretary General and.

A common mission of the Funds is to “combat the historical amnesia” in Austria. Of course, the confrontation with the National Socialist past has often not been easy. I would like to begin with a look back through history: Austria has been dealing with the issue of restitution since the end of World War II – but in the early years, the reconstruction of a country in ruins was of primary importance. Although in 1946 and 1947 numerous legal transactions carried out under the Nazis were annulled and several Restitution Acts were adopted and enforced, due to gaps and deficiencies many problems remained unsolved.

Austria relied on the Moscow Declaration of October 1943 in which the Allies stated that

Austria was “the first free country to fall victim to Hitlerite aggression” (O’Connor 2012, 230).

As a country officially occupied by Nazi Germany and liberated by the Allies, post-war Austria could, as a consequence, not be held legally responsible for the criminal acts carried out by the Nazi regime on Austrian territory – a regime which was supported by many Austrian citizens. For decades, the so-created victims

paradigm prevented society to deal with its past. As a consequence, it took the country a long time to assume responsibility for the dark sides of its past.

It is only during the last two decades that the political landscape has started to change: In 1991, the Austrian Federal Chancellor Franz Vranitzky's avowal of a shared moral responsibility for the participation of so many Austrians in National Socialist atrocities marked a watershed and led to a more refined view of historical events. It was a long and difficult process of re-evaluation – a process which is still ongoing.

One important step towards restitution was the establishment of the *Austrian Historical*

Commission in 1998. The Commission carried out thorough research on property seizure under National Socialism, on restitution and its deficiencies after 1945.

In 2000, the *Austrian Fund for Reconciliation, Peace and Cooperation* was established. It disbursed the voluntary payments made by the Republic of Austria to victims of Nazi slave labor – in total some 132,000 men and women from all over the world. Austria has – together with 46 other signatory countries of the 2009 *Terezín Declaration* (WJRO 2009)– actively participated in the elaboration of the 2010 Restitution Guidelines (WJRO 2010) and has since made further progress in the field of restitution.

One of the first expressions of this new historical awareness was the creation of the *National Fund of the Republic of Austria for Victims of National Socialism* in 1995. The National Fund was the first organization in Austria explicitly dedicated to the recognition and active commemoration of the victims of the National Socialist regime. Today, the Fund is an important partner in international efforts to come to terms with the Holocaust.

We offer material assistance as well as personal recognition, expressed through a symbolic “gesture” payment of around 5,000 Euros. Since 1995, we have distributed over 150 million Euros to nearly 30,000 persons who today live in more than 75 countries around the world. Additionally, the National Fund has also disbursed over 175 million Euros as compensation for seized tenancy rights since 2001; the undisbursed residue is dedicated to programs benefitting the victims of National Socialism. Behind every single payment stands a person who has suffered. We remain aware that no payment, regardless of the amount, can ever compensate

for this immeasurable suffering. Payments can only ever be a symbolic expression of regret and respect.

I would like to point out that the payments are made to persons of Austrian origin who suffered injustice under National Socialism – regardless of their nationality or their residence today. The National Fund has several further tasks: Since 1998, when the *Federal Law on the Return of Works of Art from the Austrian Federal Museums and Collections/ Rückgabe von Kunstgegenständen aus den Österreichischen Bundesmuseen und Sammlungen* (*Bundesgesetzblatt für die Republik Österreich* 181/1998) was passed (which is also the basis for provenance research carried out in institutions such as the National Library), the Fund has been involved in the restitution of looted art: The Fund's online art database enables the search for looted objects decades after their seizure. The proceeds from heirless "looted art" are used to benefit the victims of National Socialism. The Fund is coordinating the renewal of the Austrian exhibition at Auschwitz. The National Fund supports needy Holocaust survivors from Austria all over the world.

The conveyance of historical awareness is an essential part of our mission – one of our main tasks is sponsoring projects which build a bridge from the past to the present: So far, the National Fund has sponsored around 1,200 projects with around 22 million Euros (as at: October 2013) We lay a strong focus on school projects which educate the young. The National Fund also publishes the life stories of Holocaust survivors – on our website as well as in anthologies which are used in schools throughout Austria.

It is important to transfer the lessons from the past into the future.

In the years following the establishment of the National Fund, discussions on the issue of restitution took place in neighboring countries, and class action lawsuits were filed against Austrian companies in American courts. As a result, Austria also sought an acceptable solution to provide compensation for assets plundered during the Nazi regime.

Experience has taught us that a society sometimes requires external impetus, perhaps in the form of political pressure or public attention, to initiate or accelerate processes of reflection.

In 2001, after protracted negotiations conducted between the governments of the United States and the Republic of Austria and representatives from various victims' organizations, Austria signed the Washington Agreement, which was intended to close the gaps and deficiencies in previous restitution and compensation

measures. Two outcomes of this Agreement were the establishment of the General Settlement Fund in 2001 and the establishment of the Fund for the Restoration of Jewish Cemeteries in Austria in 2011. The General Settlement Fund was endowed with 210 million US Dollars. Persons affected by the National Socialist property confiscation as well as their legal successors were entitled to file applications. When the filing period ended in May 2003, 20,702 applications had reached the Fund.

The General Settlement Fund offers two forms of compensation: An independent Arbitration Panel decides on applications for *In Rem* Restitution of publicly owned assets, above all real estate. Possible objects of restitution are real estate – in the case of Jewish communal organizations also movable property – that had been seized from its owners during the National Socialist period. The Arbitration Panel can recommend an *actual restitution* of such property.

An independent Claims Committee decides on applications for monetary compensation in ten different categories of losses:

1. Liquidated businesses;
2. Immovable property;
3. Bank accounts;
4. Stocks/Securities;
5. Debentures;
6. Mortgage claims;
7. Moveable property;
8. Insurance policies;
9. Occupational and educational losses and
10. Other losses and damages.

In comparison to other national or international compensation measures, according to which only a few categories of assets could be claimed or the compensation took place in the form of a lump sum payment, the remit to make individual payments for damages in so many categories is far more complex.

The disbursement of the funds required an elaborate procedure – close cooperation between lawyers and historians, high levels of dedication, a creative approach and the use of specially developed procedural software, which has proved to be very helpful. In 2005, at its peak, the General Settlement Fund had a staff of over 140.

When processing the 160,000 individual claims, the principle of equality was paramount – we were striving for maximum efficiency in processing the applications as well as for transparency in the various procedural stages. It is understood that – more than 60 years after the war – we cannot expect the survivors to be in the possession of all documents relating to their families' losses. I remember: When I was appointed Secretary General in 1995, I had talks with then-President of the National Council Heinz Fischer (1938), today Austria's Federal President. He asked me what I would need most to get the Fund up and running. I asked him for three things: I would have to travel to find and meet with survivors; I would need enough staff to listen to them, and I would need historians, taking up the often very arduous and meticulous historical research in various archives, finding out the circumstances of persecution.

As a result, over the years, we have obtained copies of over 75,000 different documents

proving persecution and losses. One byproduct of this historical research is the *Findbuch* – an online database we have launched which facilitates the search for files on Nazi property seizures and on post-war restitution and compensation measures that are held in Austrian archives. The *Findbuch* is a useful tool for historical and other academic researchers. Its publication is also in line with an emerging international trend to digitally record and provide access to archive material surrounding National Socialism on an international scale. It also helps survivors from Austria and their descendants find links to their families' history. As such, the *Findbuch*¹ is one of the most comprehensive collections of data in Austria on this subject. All compensation payments rendered by the General Settlement Fund are calculated according to the extent of the determined losses and are disbursed on a *pro rata* basis.

Despite these efforts, we have to acknowledge the fact that only a fraction of the losses suffered can be compensated with the Funds available. In total, the General Settlement Fund has so far disbursed 211.5 million US Dollars – including additional funds provided by the Austrian government – to 20,700 people.

The Arbitration Panel has so far decided on 1,334 of over 2,000 applications received, including 93 recommendations for an in rem restitution (as at: September, 2013). Roughly estimated, the total value of the real estate recommended for

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restitution comes to around 42 million Euros. Only time will tell whether these restitution measures were successful. It is up to historians and society of the future to assess the worth our efforts. I would like to end with some personal thoughts, which result from 18 years in the field of compensation. The great Austrian writer Ingeborg Bachmann (1926–1973) once said: “History teaches many lessons but finds no pupils”. This was true in the years after the war, when many people wished to draw a line under the dark sides of the country’s past because the need to suppress memories was still too powerful. But in recent years – also due to a change of generations – many people in Austria as well as other European societies have opened their minds to a new understanding: History is a continuum and the past continues to have an effect on the present. It is only by learning from the past that we can pave the way to a better future. This means, society as a whole must assume responsibility for the deeds of the past and develop a conscious awareness of its own history. All citizens, regardless of their generation, must share this responsibility – this is an important social and political challenge. One conclusion I would draw from our experiences in the field of restitution in Austria is this: Even though the discussion on historical responsibility started very late in our country, progress made in recent years has shown that it is never too late to take action to come to terms with history. This discussion may not be easy but it can start a healing process for the whole society.

Payments alone cannot achieve justice. But – as the Austrian Ambassador to the United

States, Peter Moser once put it: “Restitution must take place before wounds can be healed.” (See also Moser 2002)

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Rezime:

ZAKASNELA PRAVDA – ISKUSTVA SA RESTITUCIJOM U AUSTRIJI

U Austriji postoje tri povezana fonda odgovorna za restituciju i komemoraciju: Nacionalni fond Republike Austrije za žrtve nacionalsocijalizma, Generalni fond za žrtve nacionalsocijalizma i Fond za obnovu jevrejskih groblja u Austriji. Austrija se oslanjala na Moskovsku deklaraciju iz 1943, prema kojoj je ona prva slobodna zemlja koja je postala žrtva na hitlerovske agresije. Kao zemlja koju je okupirala nacistička Nemačka, a oslobodili su je saveznici, posleratna Austrija mogla je da ne bude pravno odgovorna za krivična dela nacističkog režima na austrijskoj teritoriji. U poslednje dve decenije svest o političkoj odgovornosti počela je da se menja: tek je 1991. austrijski savezni kancelar Franc Vranicki priznao moralnu odgovornost za učešće toliko Austrijanaca u nacističkim zločinima. Važan korak ka restituciji jeste uspostavljanje Austrijske istorijske komisije 1998. godine i Austrijskog fonda za pomirenje, mir i saradnju 2000. Izvršene su dobrovoljne uplate Republike Austrije žrtvama nacističkog robovskog rada. Austrija je potpisala Terezin deklaraciju 2009. i aktivno je učestvovala u izradi Smernica za restituciju 2010. Nacionalni fond Republike Austrije za žrtve nacionalsocijalizma osnovan je 1995. kao prva organizacija u Austriji isključivo posvećena prepoznavanju i aktivnoj komemoraciji žrtava nacionalsocijalizma. Od 1995. godine 150 miliona evra isplaćeno je na ime 30.000 osoba koje danas žive u više od 75 zemalja širom sveta, kao

i preko 175 miliona evra od 2001. kao naknada za oduzeta stanarskih prava; ostatak novca posvećen je programima posvećenim žrtvama nacionalsocijalizma. Uplate mogu samo biti simbolični izraz žaljenja i poštovanja bez obzira na nacionalnost ili mesto boravka žrtava danas. Od 1998. godine, kada je donet Savezni zakon o povratku dela iz austrijskih saveznih muzeja i zbirki, Fond je bio uključen u proces restitucije ukradenih umetničkih dela, a ujedno koordinira obnavljanjem austrijske izložbe u Aušvicu. Do sada je sponzorisano oko 1.200 projekata sa oko 22 miliona evra. Nacionalni fond takođe utiče na podizanje svesti o žrtvama Holokausta u školama. Godine 2001. Austrija je potpisala Vašingtonski sporazum namenjen za prevazilaženje nedostataka u prethodnim povraćajima i merama obeštećenja. Dva ishoda ovog sporazuma bila su osnivanje Fonda za žrtve nacionalsocijalizma u 2001. i osnivanje Fonda za obnovu jevrejskih groblja u Austriji 2011. godine. Mogući oblici restitucije su vraćanje oduzete nekretnine. Arbitražna komisija odlučuje na osnovu poslatih prijavi i formiranih kriterijuma o prioritetima. Kao rezultat detaljnog istorijskog istraživanja arhiva dobili smo kopije preko 75.000 različitih dokumenata koji dokazuju progon i gubitke, i formirana je 'Findbuch' – elektronska baza sa datotekama nacističke zaplene imovine, veoma korisna za istraživače. Time se omogućava potomcima žrtava da pronađu podatke o istoriji svojih porodica. Do sada je ukupno isplaćeno 211,5 miliona dolara za 20.700 ljudi. Budućnost će proceniti vrednost ovih napora, iako je bolje preuzeti društvenu odgovornost za postupke ikad, nego nikad.

Ključne reči: Austrija, restitucija, nacionalsocijalizam, Holokaust, pokretna i nepokretna imovina, komemoracija, 'Findbuch'

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