



REPUBLIK ÖSTERREICH  
HISTORIKERKOMMISSION

## INFORMATION

### I. Preliminary remarks

The Historical Commission of the Republic of Austria was set up on 1 October 1998 with the following remit: “. . . to investigate and report on the whole complex of expropriation in Austria during the Nazi regime and on restitution and/or compensation (including other financial or social benefits) after 1945 by the Republic of Austria.” The Historical Commission has already submitted two preliminary reports, on the subjects of forced labour, the development and significance of restitution law, restitution cases, etc. With the submission on 24 January 2003 of the final report to its commissioners, (the Federal Chancellor, the Vice-Chancellor and to the Presidents of the lower and upper houses of Parliament, (the *Nationalrat* and the *Bundesrat*)), the Historical Commission has now fulfilled its task.

After four years of research, the Historical Commission now presents its final report to the public. This series of 54 reports – available in the Internet – contains the results of separate research projects and expert reports for which 160 researchers have worked in 47 projects. **At their head is this “final report”, which contains the findings, evaluations and summaries of the Historical Commission and its permanent experts.**

The final report is divided into two parts; the first deals with various aspects of the expropriation of property focusing on the groups affected, primarily Jews, as well as on the categories of property expropriated. The second part deals with the period after 1945 and presents political, economic and legal aspects of restitution and compensation in their historical context. The Historical Commission has based its conclusions on the wide range of approaches, interpretations and conclusions contained in the different research projects.

The following remarks are intended as a preliminary orientation, offering a kind of **“introductory guide”** to the material. The particular complexity of the material means it can in no way be a substitute for reading the reports themselves.

## II. Expropriation of Property

### 1. “Aryanisation” – expropriation of Jewish property

1.1 The economic damage done to Jews – bans on employment and training, expropriation of moveable and immovable property – destroyed their social and individual existence. This destruction was associated with the expulsion and was also – in retrospect – a preliminary stage in the deportation and annihilation of those Jews who stayed within areas of Nazi rule.

The motives behind this unprecedented expropriation of property were complex, and it took place with the broad involvement of the Austrian population. Individual, group and state interests were linked to the expropriation of Jewish property. Alongside traditional stereotypes, anti-semitism and racism, immediate enrichment, socio-political considerations (e.g. the provision of housing) and economic interests (company takeovers, capital concentration, exclusion of competition, financing the war) should also be taken into account.

Opportunities for emigration became increasingly limited in the course of 1941. Instead of being allowed to emigrate the remaining Jews were deported to ghettos and extermination camps in eastern Europe. Now the bureaucratic obstacles that had previously acted as obstacles to Nazi looting and expulsion also ceased. Now one single regulation, the 11th decree on the Reich Citizens Act [*Reichsbürgergesetz*] of 25 November 1941, was sufficient to declare forfeit the complete wealth of all Jews who had been forced into emigration. This includes those removal goods stored in the port of Trieste, which had belonged to Jews who had already emigrated or been deported. In the ghettos and extermination camps any personal effects which the deportees had been able to keep with them were systematically plundered, including the gold teeth of those who had been murdered.

1.2 The 1934 census recorded **191,481** Jews in the whole of Austria. The introduction of the “Nuremberg Laws” as a result of the *Anschluss* extended the number of those to be considered Jews to people who, though themselves no longer of the Jewish faith, were descended from Jewish grandparents. In March 1938 these amounted to an estimated **201,000 to 214,000** people. This group was highly heterogeneous. As well as an established upper-middle-class and middle-class stratum there were a large number of relatively poor Jews, including above all those who had migrated from the eastern parts of the monarchy at the turn of the century and during the first world war.

With the Decree on the Registration of the Property of Jews of 26 April 1938, all Jews and their spouses were obliged to value their total domestic and foreign assets, and to register them if their net value exceeded RM 5,000 [Reichsmarks]. On 1 February 1939 Walter Rafelsberger, State Commissar in the Private Sector, submitted a report on the registration of assets and on “de-Jewing” in the territory of Austria. [*“Entjudung in der Ostmark”*]. In it he estimated the registered assets of the Jews at around **RM 2.042 billion**. In the Commission’s research projects estimates were made on the basis of the still extant 1938 registration documents, which are the most important sources for all research and analysis of Jewish property. Depending on methods and assumptions, these estimates were between **RM 1.842 billion and RM 2.9 billion**. The difference results from the – ultimately unresolvable – uncertainty about how many Jews were obliged to register and how many were actually present in April 1938. Apart from this it is impossible precisely to establish the margin of error – for example the un-declared or wrongly valued assets.

Not all Jewish assets registered in 1938 were subject to immediate expropriation by the Nazi regime and the present state of research does not permit even an approximate estimate of the ratio of property previously existing to property plundered. The question also arises of whether property that had to be sold as a result of the increasing limitations on the ability to earn money and to finance escape should be assessed as being expropriated, for example the redemption of life insurance policies, the sale of valuables and other possessions.

**1.3** Historical research has not previously been able to provide a reasonably precise total number of **Jewish businesses** in Austria in 1938 and still cannot do so. The figures vary from 25,000 and 36,000. According to Nazi sources, out of 25,440 businesses – excluding banks – a total of 18,800, or around 75%, were liquidated by 1940. The number of private banks is equally uncertain. It can be assumed that there were approximately 140 private banks, of which approximately 100 were considered to be Jewish. Eight of these were “Aryanised”. All other **Jewish banking houses** were closed, liquidated and expunged from the commercial register by the appointed administrator. This was done at varying speeds, in some cases finishing after 1945. At least 16 non-Jewish private banks were also closed or liquidated their businesses voluntarily. At least 26 Jewish bankers were at least temporarily arrested. Almost every residence and every company was searched and its business papers impounded. 22 bankers were deported and lost their lives.

**1.4** The “Aryanisation” of **real estate** took place soon after the *Anschluss*. It was the result of the structural constraints caused on the one hand by a ban on employment and the destruction of livelihoods, and of on the other by the necessity of finding the means to pay Nazi discriminatory taxes to finance escape. The “Aryanisation” of real estate generally took the form of a contract of sale, generally of a questionable nature. The proceeds from the sale had to be deposited in a blocked bank account. On the basis of the 11th decree on the Reich Citizens Act of 25 November 1941 the real estate of exiled Jews as well as of those deported to concentration camps fell to the German Reich, although the change of ownership was not always entered in the real-estate register. The most important beneficiary of the expropriation of real estate was the Nazi state, which profited immediately from the purchasers, who were subject to a *Entjudungsauflage* [“de-Jewing levy” ] as well as from the *Reichsfluchtsteuer* [Tax on Flight from the Reich] and Jewish assets tax, which were calculated on the basis of the purchase price.

**1.5** Straight after the *Anschluss* **Jewish tenants** were driven out of their apartments. The “wild Aryanisation” of apartments started as spontaneous actions. All the reports of those affected tell of looting and violent break-ins, usually by armed Nazi party members but also by neighbours in the same house. At this point however tenancy protection still applied in law to Jewish tenants.

On 10 May 1939 the eviction of Jewish tenants by “Aryan” landlords became legal as a result of the Decree for the Introduction into the *Ostmark* of the Law on Tenancies with Jews. Until then, between March 1938 and May 1939, i.e. within 14 months, some 44,000 apartments in Vienna had already been “Aryanised”. Even after the introduction of the decree, however, no landlord was compelled to evict Jewish tenants. After the “Aryanisation” of their apartments Jews who did not manage to escape or emigrate were allocated apartments. They often had to change accommodation several times, and ultimately found somewhere to stay in group apartments, where several families often lived together in a highly confined space. As a last stage before deportation, they were driven into holding camps. More than 59,000 rented apartments in Vienna were “Aryanised” up until April 1945.

**1.6** The looting and seizure of **Jewish moveable property** began immediately after the *Anschluss* – often accompanied by violence against Jewish owners – and continued over the following weeks, initially without any decree or regulation. NSDAP, SS and SA members took part as well as sections of the local population.

There is hardly any area for which the extent of the seizure of various categories of moveable valuables can be quantified even approximately. The exceptions are for example motor vehicles, for which a figure of 1,700 confiscated vehicles as of 10 August 1938 was given.

In July 1938, the State Police in Austria were empowered to auction moveable property which had been confiscated from Jews. The sale of the more valuable objects usually took place by way of the Dorotheum auction house. Household goods were also put up for sale. The involvement of the Dorotheum – which had acquired a monopoly in the *Ostmark* – in the expropriation of property can be seen substantially in the sale of effects at all stages of persecution, with the exception of the final one of murder.

The VUGESTA, *Verwaltungsstelle für jüdisches Umzugsgut der Geheimen Staatspolizei* [Gestapo Administration Point for Jewish Removals] combined private economic interests with efforts to carry out the “de-Jewing” of society in a way which would profit the “Aryan” population, as the poorer sections of society were to be the prime beneficiaries of the sell-offs. At the same time high-ranking representatives of the Vienna NSDAP and of various other bodies profited from the realisation of these assets. The activity of the VUGESTA was completed shortly before the end of the war. The total proceeds are estimated at **RM 13m - 14m**, of which RM 8m was used to cover removal costs and other expenses. The remaining profit was initially remitted to the *Oberfinanzpräsident* (OFP), [Chief Finance President], of Berlin-Brandenburg or the Finance Office of Moabit-West in Berlin, and from mid 1942 to the OFP whose area of responsibility had covered the last residence of the Jew concerned.

Alongside the Dorotheum, other auction houses who profited from the realisation process included numerous auction houses and private antique dealers. Particularly valuable art and collectors’ items were offered to public museums and academic institutes (the University of Vienna for example) or to the National Library. On the other hand numerous private individuals were also able to buy things particularly cheaply from the VUGESTA because of their connections to the Gestapo or to influential Nazi officials.

**1.7** Employment bans, the destruction of livelihoods and the need to acquire the financial means for emigration led Jewish holders of **life insurance policies** to redeem them. The insurance industry profited from the redemption penalties which were incurred as a result. Tax Offices also instigated there the impounding of insurance policies to pay the - actual or fictitious - tax debts of the policy-holders. On the basis of the 11th Decree on the

Reich Citizens Act, all life insurance policies went to the German Reich. In addition the insurance companies had to register Jewish policy-holders and, as with impounding by the tax authorities, to pay the redemption value to the Reich treasury.

**1.8** One of the main forms of expropriation was the **raising of taxes and special levies on a discriminatory basis**: these were essentially the Jewish Property Levy (JUVA) and the *Reichsfluchtsteuer* (Tax on Flight from the Reich). The JUVA initially amounted to 20% and from October 1939 it was increased to 25% of registered assets. The figures for the sums raised by it are contradictory and incomplete. According to Provincial Finance Directorate (1946) **RM 143m** was raised in the Vienna and Lower Danube *Gaus* (and in the whole of Austria a total of RM 147.3m). These figures represent what was actually collected, not what was stipulated.

*Reichsfluchtsteuer* had to be paid on leaving the German Reich, including on forced deportation to a concentration camp outside Reich borders. It was 25% of the assets that had to be registered to the Nazi authorities in 1938. Here too the figures of the Provincial Finance Directorates are contradictory. They record that in the area of the *Ostmark* [i.e. Austria], RM 181m was raised; but in 1957 the provincial finance directorate calculated the amount at around RM 39.655m.

Further taxes were the *Passumlage* (“passport fee”) the *Auswanderungsabgabe* (“emigration levy”) and the *Sozialausgleichsausgabe* (Social Adjustment Disbursement).

**1.9** Nazi legislation led to the total expropriation of **Jewish securities**. This took place through the interaction of three legal complexes; foreign currency law, tax law (*Reichsfluchtsteuer*) and anti- Jewish measures.

**1.10** In the course of the November pogrom (1938) there was also a considerable expropriation in respect of **glass breakage and similar insurance policies**. Jewish policy-holders were unable to obtain compensation from the insurance companies for destroyed shop window displays, windows and the contents of destroyed synagogues and houses of prayer. The insurance companies had to pay the German Reich not the actual insurance policy holders. The latter were nevertheless still obliged to continue paying their insurance premiums.

**1.11** After March 1938 Jews and other groups persecuted by the Nazis had their **citizenship** taken away. Either they were denaturalised or the naturalisation they had acquired before 1938 was revoked. This could take place through individual notification or collectively, for example through the 11th decree on the Reich Citizens Act.

**1.12 Damage to professional life** by the Nazi regime affected Jews as well as opposition groups and other political ‘undesirables’. The first occupational group affected by **employment bans** and dismissals were civil servants. On the basis of an ordinance of 15 March 1938 they had to take a new oath of allegiance to Hitler. Jews within the meaning of the Nuremberg Laws as well as those of so-called “half-castes” (*Mischlinge*) were excluded from this and lost their positions as a result. Anyone who refused the oath on political grounds was likewise dismissed or retired, usually on reduced income. Political “cleansing” and restructuring was widely carried out in the public services. In other areas, primarily in the private sector, not yet centrally directed sackings of Jewish workers and employees took place in the first weeks after the *Anschluss*. A guideline of June 1938 encouraged companies to dismiss Jews and “half-castes” and employees married to Jews. It was forbidden to pay out statutory redundancy pay, and individually established redundancy payments were not to exceed RM 10,000. The same limit applied to the payment of pensions. It is not possible to quantify the total number of people affected by damage to their careers. In 1953, the Committee for Jewish Claims on Austria estimated the extent of occupational damages to Jews at around \$300m at the 1953 exchange rate. Calculations by the Federal Ministry of Finance in 1947 on the basis of a rather arbitrary and superficial survey put the damages in the public services and the private sector at a total of one billion Reichsmarks.

**1.13** The systematic exclusion of Jews from business and society also extended to the **removal** of Jewish pupils and students from **all educational institutions**.

## **2. Roma and Sinti**

According to varying estimations, Gypsy victims numbered **approximately 11,000 people**, of whom approximately 9,000 to 9,500 lived in the province of Burgenland. Only some 1,500 to 2,000 of these survived Nazi rule. Not only the ancestors of the Roma and Sinti currently living in Austria were persecuted as “Gypsies”, but also travelling people living “in a Gypsy manner”. The Nazi regime did not develop a specifically racial category for this group; the “Gypsies” as a marginal social group were also discriminated against and arrested for supposedly being “asocial”. In this respect the regime was able to build on the discrimination and stigmatisation which had existed before 1938. After 1938 Roma and Sinti children were banned from attending school, existing welfare benefits were withheld and trading licences were withdrawn. As early as spring 1938 Burgenland “Gypsies” were being forced to work on public construction works. From 1940 they were kept in camps and

compelled to do forced labour. Whereas many Roma and Sinti clearly did live on or below the poverty line, others, particularly in Burgenland, owned houses and had modest smallholdings. In Burgenland the total extent of these can be estimated at a total of 42 hectares [104 acres]. The property of those imprisoned in forced-labour camps and of those deported to Łódź and Auschwitz was sold by local councils, the “Gypsy settlements” were razed to the ground, and the demolition scrap was sold off. Similarly the caravans and horses belonging to travelling “Gypsies”, the value of which can be estimated at around **RM 360,000**, fell to the German Reich.

### 3. Slovenes

The number of Carinthian Slovenes in 1938 is estimated at **20,000 to 30,000 people**. Actions against the Slovenes in Carinthia did not follow immediately after the Nazi take-over of power. Instead the authorities followed a policy of avoiding obvious repression. At most it was (initially) directed only at prominent nationally conscious Slovene individuals. The situation changed fundamentally in April 1941 when Yugoslavia was invaded by Nazi Germany and its allies and then dismembered with Slovenian areas being attached to Carinthia and Styria. All Slovenian associations, which despite repression had largely remained untouched after the *Anschluss*, were now dissolved. In April 1942 within a deadline of a few hours 1,075 Carinthian Slovenes had to leave their property. After a short stay in a holding camp in Klagenfurt/Celovec 917 of them were transferred to camps run by the *Volksdeutsche Mittelstelle*. A new “resettlement” wave took place from the second half of 1944 as a reaction to partisan activities. Up to 1944/45 there were further expropriations, arrests and internments in concentration camps, and death sentences.

The 43 Slovenian co-operatives and the Association of Carinthian co-operatives / Zveza Koroških Zadrug were initially placed under official administration and were to be “wound up.” Ultimately 22 of them were merged with “German” co-operatives in the area and thus lost their legal status. 12 were “taken over”, i.e. put under “German” management, but were maintained as firms. Four co-operatives (three and the Association itself) were to be liquidated subsequently. At the end of the war they were still in the process of liquidation.

## 4. Czechs

According to the 1934 census, **51,866 people** of Czech or Slovak nationality were living in Austria. The majority of the Czech minority in Austria were wage earners, worked as artisans or ran small businesses. In Vienna there were between 300 and 400 Czech associations. These associations were “germanised” and forced into line politically (*gleichgeschaltet*) and some of their assets were impounded by the *Stillhaltekommissar* (Liquidation Commissar) but in general they were preserved.

By far the biggest and most important Czechoslovak national company to be closed down was the Vienna branch of the *Živnostenská banka, akciová společnost, Praha* (Commercial Bank plc, Prague), which had been active in Austria since 1898 and was liquidated after 1938.

For nationally oriented Czechoslovak manufacturing and trading cooperatives “re-ordering” and “rationalisation” meant “germanisation.” None of the large nationally oriented Czechoslovak businesses in Vienna were liquidated or expropriated.

## 5. Croats and Hungarians

Although germanising pressure was exerted on Croats and Hungarians living in the province of Burgenland – school instruction in Croatian and Hungarian was abolished for example – they were not persecuted on national or racial grounds. There was a **limited amount of expropriation**, primarily in the field of associations and foundations, which was subject to the measures of the Liquidation Commissar.

## 6. Victims of political persecution

The total number of people who were politically persecuted within Austria during the Nazi period is still not known. Damage to assets of this group was inflicted in two ways: on the one hand as a result of politically motivated redundancy, dismissals, demotions and reduced career opportunities, and on the other hand as a result of court sentences for oppositional activities. Those sentenced by the Higher Court of Vienna (*Oberlandesgericht*) or the “People’s Courts (*Volksgerichtshof*) were not punished by a general loss of assets. There was confiscation of “tools of crime” such as radio sets, copying machines and financial

donations. In the course of house searches and arrests the Gestapo confiscated jewellery, cash or other valuables, as well as objects which might be directly relevant to resistance activity

There was, however, repeated confiscation of considerable assets on political grounds, above all those of some former aristocrats. For example, the extensive landholdings of the former *Heimwehrführer* Ernst Rüdiger Starhemberg were placed under an appointed administrator in 1938 and then in October 1939, after Starhemberg then living in France had called for people to fight against Hitler, declared forfeit to the Reich.

## **7. Homosexuals**

The situation of male and female homosexuals is different from that of most other victim groups because they were prosecuted both before and after Nazism. At the time of the *Anschluss* the persecution of homosexuals had already been taken so far in the German Reich that it was possible to apply it immediately to Austrian territory. A rise in the number of convictions went hand in hand with an increase in the severity of the sentences imposed. In all Viennese courts prosecuted 700 out of the total of more than 3,000 for the whole of Austria.

The persecution of homosexuals did not include any systematic confiscation of assets. No general confiscation of property was implemented either on sentencing or on imprisonment in concentration camps. Economic damage arose from the ban on employment, forced labour, imprisonment in concentration camps.

## **8. “Euthanasia” victims**

The murder of the mentally or physically disabled was carried out in the name of saving the nursing and accommodation costs as well as social expenditure. The valuables and clothing of those murdered were distributed among the workers in the murder institutions and among Nazi organisations, such as the National Socialist People’s Welfare (NSV). The doctors whose expertise decided the fate of the patients gained a considerable extra income from their activity as experts. Members of the family of those murdered and their local councils continued to be charged nursing fees even after the victims had been killed.

## 9. Associations, foundations and funds

The first seizures of associations' assets and buildings was implemented immediately after the *Anschluss* by local holders of power such as council officials or mayors as well as Nazi officials and organisations. On 18 March 1938 the office of the *Stillhaltekommissar [Liquidation Commissar] for Associations, Organisations and Societies* was set up, which existed until the end of 1939. The *Stillhaltekommissar's* interventions did not just cover associations, but also other types of organisations, for example Chambers of Trade and Commerce, trade unions, guilds and trade associations, religious communities (above all the Jewish Community (*Israelitische Kultusgemeinde*)), the *Vaterländische Front*, Catholic congregations, insurance associations, professional organisations or interest groups. Associations could be dissolved and all their assets transferred to other - usually Nazi - organisations, but they might also be exempted through the exercise of NSDAP influence. Each association had to pay an administration charge, based on the size of its assets, to finance the office of the *Stillhaltekommissar*, and a "redevelopment levy" (*Aufbauggebühr*) that went to the NSDAP. Where associations were dissolved all the assets were confiscated under these headings. In all it can be assumed that around 70,000 associations and organisations – including foundations, funds and others – were wound up by the *Stillhaltekommissar*. Around 60% of these associations were dissolved and 40% exempted. In all some 25% of the assets of the dissolved associations were transferred to Nazi organisations. The total assets of Austrian associations confiscated by the *Stillhaltekommissar* is estimated on the basis of projections at **RM 236m and RM 253m**. This amounts to more than two thirds of the total assets of Austrian associations and organisations. The beneficiaries were the NSDAP and its subsidiary organisations such as the German Labour Front, the Nazi women's organisation or the Hitler Youth as well as existing former Austrian umbrella organisations that had been recreated or reorganised along Nazi lines, such as for example the Vienna Chamber of Commerce, but also the municipalities.

Around 600 Jewish associations and 325 Jewish foundations were dissolved. Their assets were used either for emigration and welfare or were appropriated by the *Stillhaltekommissar*. A range of real estate and moveable property belonging to welfare associations was transferred to the Jewish Community as well as to other tolerated umbrella organisations and to the General Foundation for Jewish Welfare. Welfare, emigration, and deportation were financed from these – and other - assets.

## 10. Churches and religious communities

**10.1** The dense network of organisations which made up the **Catholic church** and its deep roots within Austrian society were in competition with the Nazi aim of achieving total control over people's lives. The flexible attitude of the leadership of the church towards the Nazi takeover did not prevent the regime from energetically reshaping the relationship between church and state. At the top of its list was the ending of church influence on education. Next came the seizure of the church assets. Here the Nazi regime also exploited the fact that (in its view) the Concordat between the Vatican and Austria was no longer valid, while the application of the Concordat with the German Reich did not need to be extended to Austria, so that Austria was a "concordat-free area".

The reshaping of the Catholic church finances took the form of moving from the system which had been developed since the time of Joseph II to a system of Church contributions, which meant that considerable funds were taken from the Catholic church. This affected the religion fund created in 1782 in particular. Its assets were now transferred to the German Reich, its individual *Gaus* and cities. As in other areas associations were liquidated, assets transferred to the *Stillhaltekommissar* or other associations, and foundation assets impounded. The Church contribution law imposed on the church meant that it lost state subsidies for such costs as the endowment of bishops, equalisation payments for priests (*Kongrua*) and maintenance of buildings, which had amounted to about 16 million Austrian Schillings in the 1938 federal budget.

**10.2** After the immediate closure and arrest of the officials of the **Jewish Community** in Vienna (*Israelitische Kultusgemeinde* (IKG)) on 2 May 1938 the IKG was reopened and on 3 May the Palestine Office was set up under Josef Löwenherz. The original area of competence of the IKG was considerably extended, particularly with regard to the organisation of emigration. The community experienced a fundamental change of function: if before the *Anschluss* its tasks had concentrated on religious, social and cultural issues, it now became almost exclusively an institution for organising Jewish emigration and also by necessity a welfare organisation. Whereas in the "old Reich" [i.e. Germany] from summer 1939 both religious and assimilated Jews (*Glaubensjuden* and *Nichtglaubensjuden*) were compulsorily enrolled in the "Reich Association of Jews in Germany" in the "Ostmark" there was until 1942 second organisation working alongside the IKG: the *Gildemeester Aktion*, representing assimilated Jews, and after its dissolution at the end of 1939 the "Emigration Assistance Office for Assimilated Jews". Both the IKG and the *Gildemeester Aktion* or the

Emigration Assistance Office for assimilated Jews were subject to the strict control of the Central Office for Jewish Emigration (*Zentralstelle für jüdische Auswanderung*) headed by Adolf Eichmann and after him Alois Brunner. The status of the Vienna Jewish Community (IKG) as a public legal body continued until autumn 1942.

For the Vienna IKG, which had to cope with a wide range of tasks under extremely difficult financial circumstances, the need to have the use of at least a part of its own assets as well as those of the 33 dissolved Jewish communities in the provinces and those of Jewish foundations and associations was a constant economic necessity.

As of 1 November 1942, the affairs of the Vienna IKG were taken over by the “Council of Elders of Jews in Vienna” (*Ältestenrat*), to which all remaining Jews in Vienna, including now the “non-mosaic Jews”, had to belong. The “Emigration Assistance Action for Non-Mosaic Jews in the *Ostmark*”, likewise dissolved on 31 October 1942, after fulfilling all its obligations had placed its entire assets at the disposal of the “Council of Elders”.

On the dissolution of the Jewish Community, the following amounts were put at the disposal of the “Council of Elders”: as a “grant” from the Emigration Fund for Bohemia and Moravia, Prague, a post-office account of some RM 232,000, cash amounting to almost RM 25,000 and a total of RM 26,000 in securities (*Kautionen*) and expense charges (*Spesenerlag*). The remaining assets of the IKG, approximately RM 6.5m, had to be paid into the emigration fund. On the dissolution of the IKG Josef Löwenherz demanded the reimbursement from the “Central Office” of the outstanding costs of RM 738,000 which it had paid out for deportations. At the same time it referred to the balance of the “liquidation account” held for the “Central Office” at the *Länderbank*. Löwenherz estimated the IKG assets at this time at around RM 7m (not including this account).

## 11. Forced labour

We can speak of forced labour under Nazi rule where non-economic pressure is the deciding factor in forcing a person to work, in other words on directly racist, national, ethnic, religious and/or political grounds. Forced labour was involved in particular where special discriminatory conditions of employment-law were imposed which forced a defined group of people to work as a punishment. (On the groups and numbers of forced labourers on Austrian territory see the press information on forced labour at <http://www.historikerkommission.gv.at/>).

The living conditions for those foreigners who were forced to work by the Nazi authorities varied widely. A hierarchical system of racist categorisation which subjected individuals to the a wide range of police, work and welfare conditions according to background, nationality, age, gender and reasons for persecution determined their living conditions. So did the degree of difficulty of the work, material provision, nutrition, type of accommodation, and working hours as well as the form and level of payment and the treatment given by German and Austrian superiors, guards and fellow workers. In addition to this there were aggravating circumstances for women, such as punishments and forced abortions.

The research into agricultural work undertaken by the Historical Commission shows that the form of employment was decisive for the social situation: whether it involved working as an individual or as part of a gang; whether accommodation was in camps or in a farmer's house, whether it involved isolation or cooperation with indigenous workers, short-term harvest work or long-term employment. In comparison to work in industry, however, there was a broader range from "good" to "bad" treatment. For all the variations in individuals' situations it can be assumed that as a rule forced labourers in agriculture and forestry were better fed and better cared for and not worse accommodated than those in the armaments industry.

Because of their working conditions the productivity of forced labourers was probably generally lower than that of the ordinary indigenous workers. As a result there was in this respect no advantage for industrial enterprises in employing foreign workers. However, forced labourers – above all Soviet prisoners of war and concentration-camp inmates – were often working in conditions that could not be expected of Austrian workers if only on grounds of labour regulations. The advantage was primarily the fact that without forced labourers production would have had to be cut, or would have come to a complete standstill. The "profit" from forced labour cannot be estimated exactly, because production in the arms industry in the second half of the war was based less and less on profit-maximisation and concentrated instead on maintaining machinery regardless of the cost while heavy indebtedness in a purely business management sense, was accepted.

A similar point applies to farmers as producers. As they were often subject to the constraints of compulsory deliveries they were hardly able to make great profits from forced labourers. The money made from them could hardly be invested or used for consumption. Nevertheless in agriculture too, forced labourers ensured the continuation of production and

of the business. In addition to this were personal services which were to the farm owners' immediate benefit which could be consumed by them directly.

For the state forced labour was a means of stabilising society and of maintaining the war economy. The state or the Nazi regime profited from it in numerous ways: through taxes and duties, through the utilisation of workers and through the general stabilisation effect which forced labour brought the regime.

In respect of infrastructure investment forced labour played an essential role in the implementation of individual projects (housing developments, power-station building) even if activity on most projects had to be stopped in an early phase of the war. Nevertheless values were undoubtedly created here that benefitted the Austrian economy after 1945.

Where forced labourers rendered private services there was an immediately consumable benefit for the recipient, above all because they could not have spent their money in any other way, and after 1945 it was in any case more or less worthless.

### III. Restitution

#### 1. First Steps

Fundamentally, Austria saw responsibility for Nazi crimes and thus any obligation to compensation for it as lying with the German Reich; a state which itself had been a victim under the terms of the Moscow Declaration could not be held responsible in this respect.

The provisional state government under Chancellor Karl Renner – which until autumn 1945 was recognised only by the Soviet Union – took the first steps towards registering property that had been expropriated between 1938 and 1945. After the recognition of the Renner government by the western Allies and the parliamentary elections in November 1945 nation-wide action was possible, although it was not until Autumn 1946 that the Assets Confiscation Registration Decree made actual registration possible.

Until 1946 there was no clear conception at all about how if at all assets plundered by the Nazis were to be returned. The social democrats (SPÖ) and communists (KPÖ) proposed the creation of a “restitution fund”: only needy victims of the Nazis would have received payments; the original owners would have received no restitution.

The main problem with restitution was the Austrian refusal to accept any **(co-) responsibility** for Nazi crimes and their consequences. Early 1946 the basic decision was made to apply the principle of restitution in kind – that is, only what was there could be returned – and Austria initially refused to pay indemnification or compensation. Only with the 1955 Vienna State Treaty was this principle breached. For the time being, it was decided to proceed which in its more important areas was based on civil law, and otherwise on administrative law. This necessarily put the victim in the position of plaintiff, applicant and complainant. Even if this may have been an unavoidable technical necessity after this kind of upheaval, it meant that as a result the victims had to suffer serious disadvantageous consequences.

The **restitution system** was a confusing and partly **contradictory** web. It is made up of numerous laws and regulations, of the conflicting interests of political parties, economic associations, victims’ organisations and the Allies. Numerous problems were outside the scope of the restitution acts; for example the question of concessions for businesses or banks, cooperation with public administrators, the occupying powers and other bodies, etc. Penetrating this labyrinth required an act of both financial and mental strength. For the

victims of Nazism who had escaped with their lives and who wanted their plundered possessions back in order to be able to ensure some form of survival, it was extremely difficult to orient themselves. In Federal Germany, where in principle two laws regulated restitution and compensation, access to the law was easier.

## 2. The Restitution Acts

The **First Restitution Act** was not passed until July 1946. However it only covered expropriated property which had been expropriated by an act of authority and was now in the hands of the state. Nine months later, in February 1947, the **Second Restitution Act** was passed, which standardised the restitution of property which had fallen to the Republic as a result of the Nazi-prohibition or war-crimes law. On the same day parliament passed the **Third Restitution Act**, which is the key one for the victims of Nazism and also the most politically controversial one. It created the legal basis for the reclaiming of property that had not been subject to expropriation by an act of authority or was not in the hands of public bodies. The Third Restitution Act limited the extent to which claims for restitution could be inherited. The justification given for this problematic limitation was that no aim of no “restitution profiteers” should be created. Instead property for which only very remote heirs existed should be made available to successor organisations. It would be their task to compensate people to whom expropriated property could not be returned because it could not be traced or no longer existed.

Even the drafts of the Third Restitution Act were challenged by business interest groups. Their main argument was that restitution introduced uncertainty into the economy and should therefore be limited as far as possible. This line was pursued in the course of subsequent legislation up to the 1960s and to a large extent led to **delays** in the legislative process. It was the western **Allies**, in particular the US, who continued to push for the restitution of expropriated property. In the end between 1947 and 1949 four further restitution acts were passed. They concerned a broad range of issues – from the restitution of expropriated trade marks and patents to company names which had been changed or deleted.

It is generally true that the seven restitution acts did largely fulfil the intended objective – the restitution of expropriated property. Difficulties arose however in the **judgements** of the Restitution Commissions, acting under the terms of the Third Restitution Act. In the early phase of restitution proceedings (late 1947 to early 1948) rulings tended to

interpret the legal provisions in favour of the applicant for restitution but by the early 1950s an increasingly restrictive attitude to the victims of Nazism is evident.

Some of the terms which the law had left undefined were interpreted to the disadvantage of the applicants for restitution and led to decisions that had not been intended by legislature. An example of this is the phrase “the purchase price which had been obtained for free disposal” (*zur freien Verfügung erlangter Kaufpreis*). In many cases the decision went against the clear intention of the lawmakers, in that payments that had never actually reached the “injured owner” (e.g. payments into blocked accounts) were to be seen as being at their “free disposal”.

On the other hand, the Restitution Commissions did interpret the term “expropriation of property” (*Vermögensentziehung*) very broadly, which was in favour of restitution applicants.

No restitution act was passed for expropriated tenancy and leasehold rights. After several draft laws, some which were even introduced into parliament as government bills, this was thwarted by the resistance of business organisations and the Ministry of Trade and Reconstruction, as well as for reasons of party-political advantage. The failure to restore expropriated tenancy and leasehold rights is also a clear case of the non-fulfilment of the 1955 State Treaty. Only with the amendment act to the National Fund in 2001 was a lump-sum payment made in settlement of tenancy and leasehold rights.

Likewise there were no restitution acts for copyright and licensee rights or for concessions – even though this had been envisaged in the Third Restitution Act.

### **3. The Procedures of the Restitution Commissions**

Any statement about implementation must carry the proviso that its investigation **comes up against considerable, source-related limitations**, because in the second half of the 1980s the restitution files in the Vienna Provincial Court for the years 1947 to 1955 were officially destroyed. The analysis of the files for 1956 and from 1958 to 1966 is thus of only limited validity because the majority of restitution cases took place in precisely the period for which the files are no longer available. The conclusions are not therefore representative of all restitution cases since 1947.

With regard to the **length of time** taken for restitution cases since 1947, a legal historical investigation of the files of the Highest Restitution Commission revealed no general

tendency on the part of the Restitution Commissions to drag cases out or to deny legal rights. In normal cases the Commission's worked in a relatively speedy fashion (even in periods of the maximum workload). The fact that many proceedings were nevertheless very time-consuming is partly due to the longer duration of the legal cases involving investigation - inherent in private legal disputes with the right of appeal. It is also related in part to the specific circumstances of post-war history.

From a legal history point of view, the picture often drawn of “**generally unfavourable out of court settlements**” should be qualified somewhat. The final settlement (in particular when taking into account the costs of continuing legal proceedings and trial risk) might represent a thoroughly accommodating settlement of the case in the interests of the applicant for restitution. Admittedly there were also cases that ended with a settlement which was to the disadvantage of the restitution applicant. The restitution settlements of the Federal Law Office (*Finanzprokurator*), which functioned as both the representative of the Federal state and as a party in the case, run like a red thread through the cases. The greater the time which elapsed since the act of expropriation, the more frequent the agreement to settle, in particular after the State Treaty. In some cases, even when all the facts were against the state, the Federal Law Office conducted restitution negotiations with maximum toughness and often used the greater staying power of the state as a form of pressure. There was no discussion of the possibility of interpreting the public interest differently – in the interest of the restitution applicant.

One of the greatest problems lay in the **application deadlines**. These were admittedly, albeit against the will of the Federal Law Office or the *Finanzlandesdirektion* [Provincial Financial Directorates] were repeatedly extended. But it is questionable whether all those affected by the extensions received notification in good time. As a whole, the injured owners had in every case more than the three years that the ABGB [the general civil code] envisages for contesting a contract that has been drawn up on the basis of a threat. However, the deadlines were clearly shorter than the 30-year period that the ABGB envisages for contesting an illegal or unethical contract.

#### **4. Proceedings in the Provincial Financial Directorates**

In 1945 the Provincial Financial Directorates (FLD) took over the accounts of the Senior Financial President, who had responsible for expropriated property under the Nazi authorities. From 1946, the FLD was responsible for implementing the First and Second

Restitution acts. In most cases the responsible authority was the Vienna FLD, which was completely understaffed in relation to its workload and whose structure was quite inadequate. At the beginning, all the authorities were surprised by the high number of restitution applications. This can be ascribed to a gross underestimation of the extent of expropriation which had taken place. Bearing in mind the fact that **many cases remained open for years**, the settlement of cases under the First Restitution Act was as a whole **predominantly positive**: 77% of all restitution applications were granted; 15.5% were rejected. The remainder were withdrawn or transferred. Generally however it can be said that the files show the Vienna FLD to have shown mistrust towards Jewish restitution applicants.

## 5. The Restitution of Property to Parties and Trade Unions

At the same time as it passed the Second and Third Restitution Acts, parliament agreed the First Restoration Act (*Rückgabegesetz*). In all Three Restoration Acts governed above all the return of property that had been expropriated between 1933 and 1938 from disbanded or banned democratic organisations. From 1946 the SPÖ pressed for compensation for its losses in 1934 and it made its agreement to the restitution acts (which it saw as a principle aim of the People's Party (ÖVP)) conditional on measures in favour of its own organisations. The ÖVP, however, was not pursuing the restitution acts as its own aim at all, but did regard their enactment as imposed by the Allies and as necessary for the rapid conclusion of the State Treaty. On the basis of the Restoration Act **four restitution funds** were established (for social-democratic organisations, for free trade unions, for the Central Commission of the Austrian Christian Workers' and Employees' organisations and for the communist organisations). In the Second Restitution Claims Act, the democratic organisations dissolved between 1933 and 1938 certainly did have the right to restitution of tenancy and leasehold rights – a **glaringly unequal treatment** in comparison to tenants of those rented apartments which had been “aryanised” - approximately 59,000 in Vienna alone.

## 6. Employment Law

Restitution measures in the field of employment law led to only partial restitution of expropriated rights. Here too steps to remedy injustice were taken only slowly after 1945, for example with the Re-employment Act, the Civil Servants Compensation Act, and the Seventh Restitution Act, which governed claims from private employment contracts that had been

either withdrawn or not fulfilled between 1938 and 1945. Here too there was an unjustified advantaging of those who had suffered injury from the pre-*Anschluss* authoritarian corporate state in contrast to the victims of Nazism. Employees whose rights were interfered with between March 1933 and March 1938 were far better treated: the Third Restoration Act envisaged the government meeting these claims **in any case**, regardless of whether a person obliged to pay existed or not.

## **7. Real estate**

Real estate assumed a pivotal role in restitution. Out of all the confiscated real estate covered by a sample of selected Vienna districts, 68.6% was completely returned, and 1% incompletely (i.e. a part remained the property of the “Aryaniser” in lieu of a settlement payment by the applicant for restitution), in 19.7% of the cases examined proceedings had been started but no restitution of property took place, and in 10.7% the real-estate registry (*Grundbuch*) showed no evidence of any restitution at all – in these cases there may however have been an out of court settlement. Where the German Reich was the (first) “Aryaniser”, in 99.1% of the cases examined full restitution took place. Where the “Aryaniser” was a private person this ratio fell to 54.4%, where it was a businesses it was 32%. Whereas in 40.6% of the cases of confiscation by a business no restitution is documented in the real-estate registry, for private “Aryanisers” this is only true for 11.2%. A survey of Jewish real-estate ownership in Burgenland came to largely similar results.

## **8. Businesses**

In comparison to real estate, the restitution of companies and businesses was less important in the implementation of restitution legislation. A survey of cases dealt with by the Vienna restitution commission (which because of source limitations cannot be taken as representative) showed that in 18.1% of the cases surveyed companies were the objects of restitution. In the application of the First and Second Restitution Acts, companies played no role worthy of mention. In view of the incompleteness of extant sources and evaluation problems referred to elsewhere, no overall comparison of the value of “Aryanised” enterprises and those of businesses returned after 1945 can be made. In large and medium-sized companies crass or systematic discrimination against the applicant for restitution is not visible. Neither is any systematic tendency towards frustrating restitution. The situation with

small businesses, often liquidated after the *Anschluss*, is completely different. These were not the subject of restitution legislation, which was only geared to the return of assets that still existed. Compensation payments going beyond this, for confiscated goods that could no longer be traced, were only included in Austrian legislation after the conclusion of the State Treaty, primarily under pressure from the western signatory states.

In 1945 the proceeds of liquidation, in Nazi terminology “winding-up proceeds” („Abwicklungserlöse“) from numerous Jewish business were still on the accounts of the Vienna Chief Finance President, which were then administered and converted into Schilling accounts by the Provincial Finance Directorates of Vienna, Lower Austria and Burgenland. In the view of the Finance Ministry, these proceeds were legally still the property of the Jewish businessmen concerned, and could therefore in the case of a claim be paid back directly on the basis of the First Restitution Act, provided that the proceeds could still be assigned to their business. There are specific figures for the accounts held at the *Creditanstalt* bank. Of the approximately ATS 930,000 deposited with the court in 1952/53 in 1,110 individual amounts, only ATS 31,000 was still in the accounts in 1960. There is no evidence about other liquidation proceeds.

## **9. Trade licenses and franchises**

“Subjective” Public Rights (*Subjektive öffentliche Rechte*) which give a right to carry out particular economic activities, were also withdrawn by the application of Nazi measures. For example the Historical Commission has investigated the withdrawal and “restitution” of trading licenses and bank and pharmacists’ franchises. Although those who drew up the restitution laws clearly saw the problem, since the Third Restitution Act contains specific provisions for the regulations of this area, for example for driving-school franchises, regulations to compensate for it were insufficient. In other areas the former holder of the franchise or their successor faced the problem of having to regain the relevant entitlement, which was often not possible or only possible under difficult circumstances.

## **10. Foundations and Funds**

The Foundations and Funds Reorganisation Act, only passed in 1954 and essentially a restructuring measure, governed the re-establishment of foundations and funds on the one hand, and the restitution of their property on the other. Last not least it was also used to

dispose of the problem of the Family Provisions Fund of the **Habsburg-Lothringen** family. Incomplete sources mean that the extent of the restitution of expropriated assets of associations, foundations and funds cannot be quantified. The Provincial Financial Directorate refused to return “redevelopment levies” and administration charges to the associations, foundations and funds because it argued that these charges had been “functional” and not imposed for racist, national or political reasons. Large organisations or religious communities could claim for the restitution of the assets of associations ascribed to them.

## 11. The State Treaty of Vienna

The 1955 State Treaty is significant for compensation and restitution in many ways. On the one hand, the history of the emergence of the restitution acts shows that many ultimately positive developments for the victims can only be understood if one keeps in mind that the conclusion of the State Treaty was the prime objective of Austrian foreign policy. On the other hand, the State Treaty of Vienna contains the Republic of Austria’s **obligations under international law** in the area under examination. This means that it is important to analyse the extent to which the Republic of Austria has or has not fulfilled the obligations it assumed in the State Treaty. Article 26, which contains a particular restitution obligation in favour of the victims of Nazi persecution, is worthy of particular notice. These measures were to be carried out by the legislature. Analysis shows non-fulfilment in the area of restitution in kind for the return of tenancy and leasehold rights. Further, the State Treaty provisions on deadlines were implemented inadequately and there is no provision for legally enforceable claims against the Collection Points for the release of expropriated property.

The State Treaty of Vienna was of particular importance for the final settlement under international law of the question of **German property**. At this point admittedly it was only German assets in the Soviet occupation zone that were contested. The western Allies had already handed over former German foreign assets to the control of the Austrian administration in 1946. Subject to the payment of reparations to the Soviet Union, all the German property was awarded to Austria, which was however simultaneously obliged to waive any claims on the Federal Republic of Germany.

## **12. The War and Persecution Material Damages Act (KVSG)**

On the initiative of the two governing parties (SPÖ and ÖVP), in order to fulfil Article 26 of the State Treaty, the KVSG envisaged uniform compensation for those damaged by the war and for victims of persecution. State compensation was paid for damages caused by political persecution between 1933 and 1938 and between 1938 and 1945, but also for damages caused by the effects of war on household objects and those need for professional life. For the compensation, payments made under the Restitution Acts, the Victims Welfare Act and the Civil Servants Damages Act as well as payments from the Assistance Funds were taken into account. A maximum amount of ATS 10,800 was envisaged. If an injured party earned more than ATS 72,000 per year (in 1958 and after), nothing at all would be paid. **The actual damage was thus only partly compensated for, or not compensated at all.**

## **13. Claims on Life Insurance and other Insurance Policies**

It was not until 1958 and after pressure from the western Allies that legal settlement for compensation for claims arising from life insurance policies was made. These policies had been expropriated from their policy-holders in a manner which involved the insurer having to pay the German Reich. Only a few people registered claims on the basis of this law and their compensation was only partial. Those who had “voluntarily” bought back their life insurance after 1938 in order to be able to subsist received no compensation.

After the November pogrom of 1938 the insured were unable to assert any claims arising from other insurance policies, such as those against theft, burglary, glass breakage etc. These claims were not compensated after 1945 either. Only through the establishment of the General Settlement Fund did lump-sum compensation payments become possible.

## **14. The Collection Points (Die Sammelstellen)**

In 1957 **Collection Points** were established, albeit only in fulfilment of Austria’s obligation under Article 26, paragraph 2 of the State Treaty, for those assets that could not be or were not reclaimed, or which remained without inheritors. Their task consisted in effecting a **restitution claim** in relation to this type of property, realising the value of the property and ultimately distributing the proceeds to the victims of Nazism in Austria. Collection point A

was responsible for registering property whose owners had been members of the Jewish Community (IKG) on 31 December 1937, and Collection Point B for the unclaimed property of other persecuted people. The Collection Points were only able to make restitution claims under the first three restitution acts, not under the fourth to the seventh.

In total the Collection Points raised **ATS 326,157,203.40**. The value of heirless property was thus more than ten times the ATS 25m that the federal ministry of finance had assumed as its maximum value at the beginning of the 1950s. Not least because of this dramatic underestimate of heirless assets, the Jewish Community had been granted a loan of ATS 5m in 1950 instead of the requisite ATS 25m.

### **15. Settlement Fund (*Abgeltungsfonds*)**

The 1961 Settlement Fund Act, which had been enacted solely under the pressure of the western Allies, envisaged compensation for expropriated assets in bank accounts, securities, cash, mortgage claims and for the means that were used to meet Nazi discriminatory taxes. The law provided no norms for the actual criteria of compensation payments. There was no legal right to compensation. Maximum payments were envisaged and **the total amount of \$6m was not sufficient to cover all damage.**

### **16. The State Treaty and the religious communities**

The Vatican, too, raised claims on the basis of the State Treaty. In 1955 the Religious Funds Trust Office was established to regulate the assets of the Religious Fund in order to avoid the assets falling unclaimed to the Collection Points. The unsolved question of the continuing validity of the 1933 Concordat was not solved until June 1960 in a treaty with the Vatican. Austria now committed itself to an annual payment of ATS 50m to the Catholic church and to taking over the annual costs of 1,250 church employees. Equivalent agreements were concluded with the Protestant church (ATS 3.25m p.a. and 81 employees) and the Old Catholic church (ATS 150,000 p.a. and four employees). The Jewish Community was awarded a single payment of **ATS 30m** for the destruction of devotional items as well as an annual payment of ATS 900,000 and the assumption by the state of the cost of 23 employees, (with the ATS 5m that the IKG received as a loan in 1950 deducted).

### III. Further essential matters for the victims of Nazism

#### 1. Citizenship

The transferral of citizenship in 1945 carried on from 13 March 1938 and simulated the fiction of the continued validity of the 1925 Austrian Citizenship Law. This meant that only expellees who were Austrian citizens on 13 March 1938 and who had not adopted foreign citizenship between 1938 and 1945 were Austrian citizens on 27 April 1945. Anyone who had been a citizen on 13 March 1938 was now a citizen again as long as they had not adopted foreign citizenship. Thus although a formal restitution of citizenship was achieved the actual consequences of the expatriation were overlooked – since expatriated Austrians whose only chance had often been to apply for a foreign citizenship were now unable to regain Austrian citizenship. The 1945 Austrian citizenship law thus attempted to turn back the wheel of history.

A series of amendments to the citizenship law was admittedly intended to improve the legal situation, but owing to their faulty construction, they did not in fact succeed or succeeded only partly in doing so. **It was not until 1993** that a situation was established which can to some extent be regarded as **satisfactory**. Since then former Austrians have no longer been obliged to give up foreign citizenship, and the residency condition – that is, of living in Austria – has also been dropped. And only in 1993 were the expellees exempted from the relatively high naturalisation fees. The completely inadequate regulation of citizenship provisions had their principle effect above where Austrian citizenship was a precondition for compensation measures, such as victims' welfare.

Another problematic aspect of the continuation of the 1925 Austrian citizenship law was its restrictive application in the First Austria Republic. On the basis of a particular interpretation of the 1919 State Treaty of St Germain, Jews from the eastern Crown Lands of the former Austro-Hungarian monarchy were denied Austrian citizenship on racial grounds. As the citizenship transferral of 1945 only covered those expellees who had been Austrian citizens on 13 March 1938, an anti-semitic injustice of the First Republic was perpetuated. This omission was only closed with the 1998 Citizenship Law Amendment. However, a fee has to be paid for this kind of naturalisation.

## 2. Social security

For most victims of Nazism, persecution by the regime also meant social security disadvantages. The loss of livelihood and/or a job, a forced break in education, arrest, escape and deportation but also living a life in hiding involved the loss of social security benefit or pension entitlements and made it impossible to acquire the insurance contribution periods needed for them. Numerically the largest persecuted group and thus also those most affected by disadvantages in social security rights were Jews.

The social security legislation of the Second Republic had to react to these damages. It did so within the framework of a *Begünstigungsrecht*, “**right to preferential treatment**”, the core of which had been created in the transfer of law of 1945 and which since 1956 has primarily been in section nine of the Social Security Law (ASVG paras. 500 to 506). Typical of this area of law, a concentration of the material on a few regulations threw up many questions of interpretation, which then made numerous amendments necessary and led to a widely ramified dispensation of justice. These amendments brought a gradual extension of the system of preferential treatment and ultimately, even if only after several attempts, led to a legal situation that can largely be seen as satisfactory. Primarily this applies to those who are to be treated favourably under social security law, which in the early stages of the law were dealt with extremely restrictively. The extensions, resulting from the increasing understanding of the historical background, were in the end implemented but they often came late, sometimes too late.

“Acts of damage” which were given particular recognition were: denaturalisation, specific kinds of loss of freedom, unemployment as well as the particular area of what in Austrian Social Security Law (ASVG) is called “emigration”. Here extensions by way of amendments to the law and judgements of the Administrative Court played a particular role. To mention just one example of the complex problems which arose: in 1973 the retroactive acquisition of pension insurance periods was made possible, provided that the emigration had taken place before 1950 and had not been possible before for reasons that those affected had not been able to influence. However this extension of the range of beneficiaries did not cover victims who for lack of money had not been able to escape because savings had been used up by for the flight of their directly threatened Jewish partner. Neither did it cover those who after 1945 following internment in the Soviet Karaganda or the Shanghai ghetto only definitively emigrated after a temporary return to Austria.

Apart from this there are two particular aspects of procedural law worthy of note: firstly, in the legislation itself as well as in its implementation (and judicial interpretation) latent if not almost tangible reservations can be seen concerning emigrants, whose (supposed) receipt of privileges was clearly to be avoided or at least restricted. Secondly the complication and opaqueness of Social insurance law was increased precisely in respect of the right to preferential treatment. This thicket repeatedly ensnared not only the legislators themselves – and, even more frequently, the administrative bodies and even the judiciary. There are also grounds to assume that a not insignificant number of people who had suffered disadvantages in their social security rights for political or religious reasons or on the basis of their descent, were caught in this web and thus (at least temporarily, i.e. until the appropriate legal amendments had been passed) were unable to receive the claims they could have expected.

For those who succeeded in surmounting these obstacles, the benefits envisaged were on the whole basically adequate and led to considerable compensation. Being embedded in social security law meant that the spectrum of the benefits accessible for beneficiaries corresponded (and corresponds) to the usual standards, in particular in regard to pension insurance. From a present-day viewpoint, the prerequisites for which these benefits are granted must be characterised as being largely favourable and generous. This, however, has to be seen against the very unfavourable terms on which – and then not until the early 1960s – benefits withheld in the Nazi period were repaid, particularly so as in this area the regulations of civil service compensation, part of civil-service employment law, had provided much more extensive benefits.

### **3. Victims Welfare Act**

The 1947 Victims Welfare Act (OFG) has been amended 62 times (!) with most changes and extensions stemming from pressure from the Nazi Victims' associations or Allied interventions. Up to the present day, the OFG's selective definition of "victim" has favoured those involved political resistance over victims of Nazi persecution, although since 1949 some groups of victims of persecution have also been able to receive continuing pension payments. However victims of persecution who only received a Victim Identity Card are still excluded from maintenance pensions even if they are not in a position to ensure their own maintenance. The guidelines for recognition under the OFG have been strictly and formally applied. This has meant that those with atypical histories of persecution, groups such as the Roma and Sinti, were only recognised with difficulty, and homosexuals not at all. Judicial and

administrative action has consolidated the selective concept of the victim. Those persecuted on the basis of their sexual orientation or for being supposedly “asocial” have to this day been excluded from the OFG.

Entitlement to OFG payments is inconsistent. Thus there is no uniform inheritance concept. Family members such as divorced spouses who, under family law, have the right to maintenance, do not have a claim under the OFG. Furthermore the close relationship to Austria demanded in the OFG is not consistent. A particularly restrictive interpretation has been applied in cases of a criminal sentence, where a possible abuse of the OFG certification is held against the victim in a kind of advance mistrust in order to deny them benefits. Whereas petty offences were held against the victims, the circumstance of former membership of the Nazi party increasingly receded into the background as grounds for exclusion in OFG proceedings. The underlying tendency seems to have been that the dispensations and practice in the area of the OFG were also more inclined to give former Nazis the benefit of the doubt, while other comparatively unimportant aspects were relatively rapidly deployed in order to reject a claim. Furthermore these regulations are still essentially stricter than the War Victims’ Welfare Act (KOVG) or social security law. The legislature also required stricter rules of procedure for the OFG than it did for the KOVG.

In particular the OFG’s repeated typification or schematisation of evidence or, for example, the drawing up of lists of camps recognised as detention centres, which makes it more difficult for those held in non-recognised camps to gain recognition encouraged the practice of selective recognition. OFG cases often lasted a disproportionate length of time, which was also the result of the administrative structure. The ability of the representatives of the victims to participate is also more limited in respect of the OFG than of the KOVG. In assessing all these aspects, the formal conditions for access to justice in the OFG sphere required of (presumed) victims or others with claims must on the whole be classified as rather unfavourable – and not just from the point of view the procedural standards of current social welfare rights. There were particular problems for access to the OFG for Roma and Sinti.

#### **4. Taxation law**

It is necessary to point out that the view which, even today is widespread, that Jews did not have to pay tax after 1945 or enjoyed considerable privileges, is false. The fact that the restitution according to the Third Restitution Act was completely tax-free for those entitled to restitution was only natural. Above and beyond this, there was, and still is, a

modest tax-free allowance for those in possession of an official certificate or Victim Identity Card under the Victims Welfare Act. Apart from this, the legislature took little initiative in respect of tax law. This posed numerous problems of detail for the administration and dispensation of justice. Even if satisfactory solutions were found in the area of income tax it cannot be denied in the application of the special transfer taxes in relation to restitution and compensation matters there was some “petty-mindedness”. The fact that not even mitigation was considered in respect of inheritance tax for legal heirs of the victims of the Nazi rule should be criticised. There was nothing worthy of particular note in the respect of property tax. Finally it should be noted that with regard to tax law in particular, the rulings of the Constitutional Court have further developed the principle of equality quite fundamentally. This explains why some constructions that today seem questionable, above all the absence of rules to take account of the specific situation of the victim, were not questioned some decades ago.

## **IV. Concluding remarks**

The key question underlying the remit of the Historical Commission is directed towards quantities - combined with the intention of being able to make a value judgement as to whether Austria has behaved “well” or “badly” towards the injured parties. Quantities were to be established from a comparison of confiscated property on the one hand with the restitution and compensation on the other. However, if a serious, scholarly procedure is adopted, such a balance cannot be drawn up. The amount of assets confiscated cannot be enumerated. Nor can the sum of restitution and compensation be given an even approximately accurate monetary value.

For various reasons, the quantification of payments to victims of Nazism which is often called for, cannot in this sense be undertaken. For restitution there are neither contemporary details nor statistics for restitution values returned: on the one hand a considerable number of files relevant to restitution are missing, and on the other hand a historical assessment is bound to founder on basic methodological problems. Additional uncertainties resulted from the numerous out of court settlements of restitution cases, where payments by the purchasers were set off against the restitution claim of the injured party.

An aggregation of other payments by the Federal State on the basis of a variety of measures can indeed be partially undertaken, but again it faces the difficulty that numerous laws lumped victims of Nazism together with political victims of the “authoritarian corporate state” and no information is available as to which contributions benefited which of these two groups of victims.

Drawing up a balance-sheet is sometimes linked to the idea that Austria might achieve “closure” in respect of restitution and compensation or even of National Socialism itself. For many reasons this idea is mistaken. Last not least there is the serious objection to recent developments in the restitution debate which arise from a concern that the monetarisation of history, the conversion of guilt into debts, however justified it is to enable the victims of Nazi crimes to receive compensation, may itself ultimately be involve deflecting guilt and attempting to draw a line under the issue.

The findings of the Historical Commission are thus a starting point for further scholarly work. They are also the basis for a fundamental and wide-ranging debate.