

**Or. German**

**REPUBLIC OF AUSTRIA**

**HISTORICAL COMMISSION**

**WORK PROGRAMME**

## I. GENERAL

### I.1. Appointment of the Historical Commission

1. On 1 October 1998 the Austrian Federal Government approved the following "Joint Proposal to the Cabinet" by the Federal Chancellor and the Vice-Chancellor:

*On 29 September 1998 Federal Chancellor Mag. Viktor Klima, Vice-Chancellor Dr. Wolfgang Schüssel, National Assembly Speaker Dr. Heinz Fischer and Deputy National Assembly Speaker Dr. Neisser achieved a full consensus on the further procedure in setting up an autonomous and independent Commission.*

*This Commission of the Republic of Austria will be appointed jointly by the Federal Chancellor, the Vice-Chancellor, the Speaker of the National Assembly and the Speaker of the Federal Council and will do its work on their behalf.*

*The Commission's mandate is: To research and report about the whole complex of "Looting of property in the territory of the Republic of Austria in the Nazi era and acts of restitution and/or compensation (including economic and social benefits) by the Republic of Austria after 1945".*

*The Commission will consist of a total of 6 members. It will be chaired by the President of the Administrative Court, Univ.-Prof. Dr. Clemens Jabloner. The other members of the Commission will be the Director-General of the Austrian State Archives, Hon.-Prof. Dr. Lorenz Mikoletzky, one internationally reputed foreign expert and 3 Austrian scholars.*

*The appointments of the foreign experts and of the three Austrian scholars will be made by the Federal Chancellor, the Vice-Chancellor and the Speakers of the National Assembly and of the Federal Council.*

*The Institute "Yad Vashem" (Jerusalem), the Holocaust Memorial Museum (Washington D.C.) and Mr. Simon Wiesenthal will be invited to submit a joint three-name short list for an internationally reputed foreign expert.*

*The Directors of the Departments of Economic and Social History of the Universities of Vienna, Linz, Innsbruck and Graz and the Director of the Department of Economic and Social History of the Economic University of Vienna will be invited to submit a joint two-name short list for an Austrian economic and social historian.*

*The Directors of the Departments of Contemporary History of the Universities of Vienna, Linz and Innsbruck, the Director of the Department of History of the University of Salzburg, the Director of the Contemporary History Division of the Department of History of the University of Klagenfurt, the Director of the Division of General History of the Department of History of the University of Graz and the Directors of the Boltzmann Institute for Research into the Consequences of the War and of the Documentation Archive of Austrian Resistance will be invited to submit a joint four-name short list for two Austrian experts on contemporary history.*

*These short lists should be submitted within two weeks.*

*The Commission is invited to elaborate a work programme within three months after its constitution and to make proposals on its methodical approach, organisational requirements, time frame and budget. The Commission's budget will then be included in the parliamentary budget.*

*The Commission's Secretariat will be established in the Austrian State Archives.*

*Thereby another vital step has been initiated for an objective, transparent, independent and comprehensive clarification of one of the most painful chapters of our history.*

*We therefore make the*

**P r o p o s a l**

*that the Federal Government approve the above report.*

1. October 1998

[sgd.]  
KLIMA  
SCHÜSSEL

2. After the completion of the procedure of proposals and appointments, the Commission held its constituent session on 26 November 1998. At that time, the Commission's members were:

President of the Administrative Court ao. Univ.-Prof. Dr. Clemens JABLONER (Chairman), Vienna,

Mag. Dr. Brigitte BAILER-GALANDA, Vienna,

Dr. Avraham BARKAI, Kibbutz Lehabath Habashan, Israel

Gen.-Dir. Hon.-Prof. Dr. Lorenz MIKOLETZKY, Vienna,

Dr. Bertrand PERZ, Vienna,

o. Univ.-Prof. Dr. Roman SANDGRUBER, Linz.

As a result of the constituent session, the Commission adopted the following declaration signed by the Chairman, which was transmitted to the Federal Chancellor, the Vice-Chancellor, the Speaker of the National Assembly, the Speaker of the Federal Council and the Deputy Speaker of the National Assembly and which was also published:

*The Historical Commission of which I am Chairman held its constituent session on 26 November 1998. A consensus was reached on the rules of procedure, and the Commission's approach for the coming months was agreed upon. Before that, an intensive exchange of views took place on the general framework of the Commission's work. In particular, the following two points were made:*

*1) The Commission understands that all relevant public archives will be made accessible to it. These include - apart from the Austrian State Archives - inter alia provincial archives, archives of local communities, municipal archives, archives kept by official professional organisations and archives kept by social*

*security institutions. If necessary, the appropriate statutory, including constitutional, foundations will have to be created.*

*As regards the inspection of foreign archives, support from the Federal Ministry of Foreign Affairs is expected.*

*Further, the Commission expects institutions close to the government such as organisations representing professional and other interests or political parties and, lastly, all private documentation services, especially business companies, to make documents relevant to the Commission's work available to the latter.*

*Finally, it is suggested that a statutory provision be enacted to prohibit the destruction of relevant material, wherever in Austria it may be.*

*2) The Commission is of the opinion that its extensive work programme cannot be accomplished without calling in permanent experts, who should take part in the Commission's regular sessions.*

*The Commission will meet for its next session before the end of this year in order to start the elaboration of its programme. This will be ready by early March 1999.*

*Dr. Bertrand Perz will represent the Commission at the conference on "Nazi Assets" in Washington D.C. next week.*

*On behalf of the Historical Commission, I have the honour to request you, dear Mr. Federal Chancellor (Mr. Vice-Chancellor, Mr. Speaker of the National Assembly, Mr. Speaker of the Federal Council), to take the steps which seem*

*appropriate within your area of responsibility to create the framework referred to in para. 1.*

Furthermore the basic principles of the Commission's rules of procedure were adopted at that first session.

3. On 30 November 1998 Dr. Avraham Barkai informed the Chairman that he was leaving the Commission for personal reasons. On the basis of the Commission's rules of procedure, which provide that the Commission shall continue to exist provided it has at least four members, a substitute nomination was made in accordance with the rules contained in the Proposal to the Cabinet and Dr. Robert KNIGHT, Loughborough, United Kingdom, was appointed as a member of the Commission.

In accordance with the declaration quoted above, the Commission from its second session coopted the following "Permanent Experts":

ao. Univ.-Prof. Dr. Georg GRAF, M.A., Salzburg,  
Univ.-Prof. Dr. Karl STUHLPFARRER, Vienna, and  
Prof. Dr. Alice TEICHOVA, FRHS, C.Sc., Cambridge, UK.

4. After the formal approval of the rules of procedure and after the election of Mag. Dr. Brigitte Bailer-Galanda and Gen.-Dir. Hon.-Prof. Dr. Lorenz Mikoletzky as Deputy Chairs, the Commission met on 17 December 1998, 21 January, 28 January, 4 February, 11 February, 25 February, 27 February und 4 March 1999.

At these meetings, the "Work Programme" to be found hereunder and proposals on working methods, organisational requirements, time frame and budget were worked out.

5. As stated in the Proposal to the Cabinet quoted above, the Commission was established in organisational terms at the Austrian State Archives. The Commission is assisted by a Secretariat consisting of the following staff:

Dr. Reinhard BINDER-KRIEGLSTEIN, M.A.I.S.,  
Secretary to the Historical Commission

Mag. Eva BLIMLINGER,  
Research Coordinator to the Historical Commission

Irene ELSNER

Anita HEIDEGGER

## **I.2. The Commission's mandate**

Generally it has to be understood that, in the light of the mission entrusted to the Commission, its remit is historical research rather than the evaluation of legal claims or of the question whether lump-sum compensation may have been reasonable. Nor can the Commission take any decisions on such issues in general, let alone in the case of individuals or specific groups. This is true notwithstanding the fact that some of the Commission's member are lawyers and that lawyers may be asked to do some work for the Commission.

In order to delimit its mandate, the Commission considers it essential to distinguish between two groups:

1. persons who sustained losses as a result of specific Nazi policies, i.e. people who suffered outright persecution or other types of coercion on racial and/or political grounds for typical Nazi motives; and
2. those individuals and categories of people who indirectly lost property because the Nazi regime existed (e.g. through forced saving) or who sustained other kinds of losses (war damage through bombing, military operations etc.).

The current state of research in the Commission's various fields of investigation, as reflected in the literature and the availability of sources, varies enormously. In some areas, extensive research will be necessary to see whether property was in fact looted, and if so, how much and whether this happened in the territory of the Republic of Austria. In other areas, we shall have to use the results of other Commissions. This refers to work done in the private sector (e.g. the VOEST steel company or the PSK Postal Savings Bank) as well as the activities of other

public bodies (such as the Commission for research into the provenience of works of art set up by the Federal Ministry of Education and Cultural Affairs). Nevertheless, the Commission reserves the right in each of these cases to make up its own mind on whether these researches answer its questions fully and finally. If so, the Commission will formally endorse these researches and make appropriate reference to them.

This point of view is also essential to the question of how best to delimit the research projects: the Commission will primarily embark on those researches which other groups are unlikely or unable to undertake. This means that we expect an already observable trend to continue, viz that several organisations have already started research in this field, hence a number of independent projects is in progress. In view of some unconfirmed press reports, the Commission would like to emphasise that contractual agreements between such organisations and third parties, such as the CA banking concern, must not result in any obstruction of access to sources for the Commission. But as we have noted, the Commission reserves the right to decide which projects can be treated as a reference and where additional research is required. It follows that the Commission will need a measure of flexibility as its work proceeds.

In some areas, the state of research is already so clear and unambiguous that the Commission's activities will merely have to aim to dig somewhat deeper. Hence the Commission proposes a research strategy which, in a mutually complementary and controlled procedure, should enable it to cover as comprehensively as possible all questions implied in its mandate. Paying due regard to the state of research, we shall proceed step by step in covering each of the questions which arise in our research. But given the limited resources available and the need to finish the project in good time, the Commission does

not consider it as its task to completely cover all problems posed. In principle it should be noted that the work of the Commission, in its own perception, should serve the purpose of making some difficult and sensitive problems of recent Austrian history comprehensible to as many people as possible. Of course, in addition to providing such information to nonspecialists, the Commission's work may also help to prepare the ground for legal measures and can support their acceptance. But it would be a misunderstanding to make political decisions entirely dependent on the Commission's findings. In some important fields, political decisionmakers are in a position here and now to open political discussions with certain groups of victims, thereby maintaining a momentum which has been reflected lately in the establishment of the National Fund of the Republic of Austria for Victims of National Socialism (Federal Law Gazette 1995/432).

In the light of the Commission's terms of reference as a scholarly body, two major areas of themes are to be examined. These two areas will have to be complemented by a third field in order to achieve maximum completeness and an appropriate mutual harmonisation and control of the various projects. Hence the three areas will be the following:

1. Looting of property in the period of Nazi rule in the territory of the Republic of Austria;
2. Restitution and compensation after the end of Nazi rule in Austria and financial and social benefits to persons who suffered loss or damage; and
3. The institutions involved in these activities.

In order to arrive at a precise delimitation of these fields of research, it is necessary to ensure that the terms used are as uniform as possible. This means, in the first place, the geographical area and period of time which the Commission's research is supposed to cover and the definitions of "looting of property", "restitution" and "compensation". Secondly, the classes of persons affected should be delimited and the necessary conclusions as to institutions and sources are to be drawn. Finally, we should define the individual research projects, including the concrete questions they are supposed to answer and the order in which they are to be accomplished.

### **Geographical delimitation ("in the territory of the Republic of Austria")**

The boundaries of the territory which became the "Land of Austria" by the law of 13 March 1938 on the reunification of Austria with the German Reich and of the "Alpine and Danubian Gaue of the Reich" established in that territory in March 1940 are not exactly identical with what today is the Republic of Austria. Certain areas to the north, east and south of Austria were annexed, under different legal arrangements, to the Reichsgaue in 1938, 1941 and 1943. Considerable assets were confiscated from their lawful owners in these annexed areas, but they do not come within the Commission's terms of reference.

By contrast, the Commission considers that it does not matter where the property was physically located, if confiscation was ordered in Austria and the Nazi authorities were able to enforce it outside Austria. The same applies to looted property taken to the present territory of the Republic of Austria and industrial plants relocated there.

### **Time**

a) "during the Nazi era"

Even though the "Law on the Reunification of Austria with the German Reich" is dated 13 March 1938 and the movement of German troops into Austria started in the early morning hours of 12 March 1938, the Commission considers that, given the significance of the run-up to the Nazi takeover of Austria, its period of reference should start on 11 March 1938, . The end of the period to be covered is to be placed between March and May 1945 as the liberation of Austria by the Allied forces progressed.

b) for the subsequent developments, the reference period is the time between the date of the Austrian declaration of independence (Proclamation on the Autonomy of Austria), 27 April 1945, and the present.

### **"Looting of property"**

Under the Commission's terms of reference, looting of property means the taking of any goods and entitlements as a result of action by the Nazi regime, its representatives or individuals availing themselves of the general conditions created by the Nazi regime.

In this context, the Commission will, at first, leave the question open how far expropriations for military purposes (to provide training grounds for troops, barracks and other military facilities), for purposes of developing infrastructure (transport and the power industry) and for business purposes (new industries etc.) were the result of typical Nazi activities or could also have happened in democratic countries enjoying the rule of law.

In respect of the looting of property we have to distinguish between:

1. Confiscation under general law (but with specific intent) or specific emergency legislation;
2. Forced legal transactions covered by general legislation;
3. Action by the police;
4. Reinterpretation of previous legislation by the courts; and
5. Acts which were illegal even under the law as it then was.

### **Compensation and restitution**

Compensation and restitution are different but overlapping areas which relate to legal, moral and political aspects. At certain junctures, compensation may result from the compensator's liability (legal, moral or political) but this does not always have to be the case. Restitution, on the other hand is an attempt by a state (new or re-established) or an individual or an institution to restore the status quo ante as far as possible by returning the stolen property.

In the Commission's view, "compensation" is to be understood as providing some sort of equivalent of the damage suffered. This may be loss of property (inasmuch as not made good by restitution) or loss or damage of other kinds (e.g. damage or loss caused by imprisonment or lasting mental impairment).

## **Nomenclature**

Physical persons, classes of persons or legal persons that were persecuted by the Nazi regime and were subject to typical Nazi violence and coercion were categorised by the Nazis in the respective context. Of course such categorisations frequently clash with the self-image of the persons affected in those years as well as with our present ideas. Nonetheless, the Commission retains these categories in order to facilitate its research. For the same reasons we shall also use terms like "aryanisation".

### **I.3. Archives and sources**

The results of the Commission's work will primarily depend on how much of the files has been preserved and, of course, on the extent to which they are accessible. Hence the Commission's most urgent desideratum is that all material relevant to our subject matter should be made accessible, wherever it may be located. Any embargo on or withholding of such materials could distort the Commission's findings, thus frustrating our mission, which is to establish the truth.

The Commission will therefore approach each of the institutions and private individuals that may hold such materials with requests to allow the necessary access. In fact, a number of organisations have already stated spontaneously their favourable attitude and readiness for close cooperation. Since the files involved will not only be Austrian, similar assurances will have to be obtained from foreign sources.

As regards the proposed new Protection of Personal Data Act, currently in the stage of a government bill (Data Protection Act 2000, Fed. Chancellery, No. 810.026/9-V/3/99, 16 Feb. 1999), the Commission understands that its Section 46, which specifically covers data which serve purposes of academic research, provides a sufficient legal basis for untrammelled research by the Commission.

In this context the Commission takes note of the new draft federal legislation on safeguarding, keeping and using archival materials, (Federal Archives Act, Fed. Chancellery, No. 180.310/9-I/8/99, 25 January 1999). The Commission considers that such legislation will facilitate its tasks. However, the Commission would like to warn that the data protection provisions in the new legislation should not be stricter than those contained in the Data Protection 2000 Bill. If Section 46 of the proposed Data Protection Act tries recognises the needs of research into recent history, the new Archives Act should not place more stringent barriers in the way of such researches.

## **II. LOOTING OF PROPERTY IN THE TERRITORY OF THE REPUBLIC OF AUSTRIA UNDER NAZI RULE**

### **II.1. Who was deprived of property?**

#### **(Persons, groups, organisations)**

It is a fact that not all victimised persons and groups were persecuted by the Nazis with the same degree of intensity and not all their property in Austria was looted to the same extent by the Nazi regime. Hence the following enumeration should be read neither in the sense of a juxtaposition on the same level nor as reflection a gradation.

### **II.1.1. Looting of Jewish property ("aryanisation")**

In terms of the intensity and consistency of expropriation and persecution, Jewish people were the main victims of Nazi rule in Austria. Jewish people holding foreign nationality were at first relatively better off than Austrian Jews, as long as their countries protected them and did not come under Nazi domination. Jewish people who had acquired Austrian citizenship after World War I were often deprived of their citizenship by the Nazi authorities: they became stateless persons and were therefore particularly vulnerable.

The expropriation of Jewish property in Austria extended to every type of asset. It proceeded through a number of stages and was carried out under different formal pretences. Simple robberies by greedy antisemitic individuals to which the authorities turned a blind eye may be contrasted with systematic looting organised by the authorities themselves under appropriate legislation and administration regulations. Add to this the personal enrichment of Nazi functionaries and activists who misused their powers (Gestapo officials etc.). Directly after the Nazi takeover in 1938, "aryanisation" and the liquidation of Jewish enterprises started on a haphazard private basis, but the authorities soon saw to their own profit, and having registered Jewish property under a special decree ("Vermögensanmeldeverordnung"), they proceeded to set up their own office ("Vermögensverkehrsstelle") in order to direct expropriations into regular channels which made sure that the Nazi regime itself pocketed a substantial part of the "aryanisation profits". The "aryanisation" of many large companies was entrusted to the "Kontrollbank". The 1938 November pogroms were followed by the complete elimination of Jewish people from economic life, and through an enormous number of administrative decrees all objects of any value at all were

taken away from the rest of the Jewish population. The next step was the sale of the possessions which deportees had left behind. This was done under the 11th implementing decree to the Reich Citizens Act by an organisation specially set up by the Gestapo for this purpose: "Vugesta" ("Verwaltungsstelle für Umzugsgüter jüdischer Emigranten bei der Gestapo Wien" - Administrative Office for the Property of Jewish Emigrants at the Gestapo of Vienna).

As early as 1938, Jewish people lost their homes and jobs and had to pay discriminatory taxes. School attendance by their children was made difficult and finally altogether prohibited. The "Central Office for Jewish Emigration" founded in August 1938 coordinated the plundering of Jews who were trying to flee the country. In addition to the official taxes and fees, many of them had to bribe Gestapo officers and other officials in order to actually receive the documents to which they were theoretically entitled.

The "Israelitische Kultusgemeinde" (Jewish Community) was dissolved in 1943 and transformed into the "Council of Elders of the Jews in Vienna". The assets of Jewish associations, institutions and clubs had already been seized previously.

The beneficiaries of this largescale looting were individuals, official institutions of the Nazi government as well as banks, auction houses (such as the "Dorotheum") and other companies. Historical researchers will therefore have to inquire into the specific patterns of expropriation, the institutions which handled the looting operations, where the money actually went in the end, and what parts of these assets remained in the territory of today's Republic of Austria.

But losing one's job, forced retirement, withholding of pensions and other social benefits, and the refusal to honour entitlements to such payments also amounted

to loss of property. Not the least factor to be taken into account here are prohibitions from attending schools and other training programmes, which meant that those affected had a considerably less good start in their later life.

What will also have to be highlighted is the way in which "aryanisation" was integrated into the Nazi system, for example through the reallocation of jobs, private homes and assets to benefit "aryan co-nationals".

### **II.1.2. Victims of "euthanasia"**

By a personal decree (postdated to 1 September 1939) Adolf Hitler gave the Nazi authorities the power to kill physically and mentally handicapped people from the German Reich and the areas occupied by Germany. The property of the people murdered in this way was distributed: clothes went to NSV ("Nationalsozialistische Volkswohlfahrt", the Nazi welfare service), money and other valuables including dental gold had to be surrendered to the government, although some of these things were stolen by the personnel of the killer institutions. In some cases, life insurances owned by the murder victims were cashed in. Moreover Nazi statistics point to "savings" in social service expenditure through these mass killings.

### **II.1.3. National minorities**

#### **a) Roma and Sinti (Gypsies)**

The Roma who lived in southern Burgenland had always been underprivileged as regards work and homes. Nomadic groups of Roma and Sinti were hindered in following their way of life. On the whole, Nazism meant that discrimination

turned into persecution. In the end, the members of this ethnic group were detained in "collection camps", where they were subjected to forced labour, and subsequently they were deported to concentration and extermination camps. Hence the expropriations to be investigated here will have to include the withholding of opportunities to work to earn a living and their exclusion from education as well as the actual confiscation of their possessions.

#### b) Slovenes

Slovene people, mainly living in southern Carinthia, were subjected to heavy pressure to forsake their nationality and become German soon after the "referendum" of April 1938. Slovene institutions were shut down. The authorities used their powers to pursue an increasingly radical anti-Slovene policy (through the planning of settlements, restrictive measures against schools, associations and cooperatives etc). After the German invasion of Yugoslavia and the annexation of that country's Slovene areas (under "CdZ", the Chief of the Civilian Administration of Krain and Carinthia) the situation escalated considerably (expulsion of Carinthian Slovenes in 1942, prohibition to use the Slovene language, prosecutions by special courts etc.).

#### c) Czechs in Vienna

The Czech minority in Vienna had many clubs and associations including schools and kindergartens, and some media presence. As early as 1938 Czech associations were dissolved. By 1942 the Czech Ethnic Council had been disbanded and Czech newspapers were made illegal. Members of the Czech minority suffered financial losses through dismissal from their jobs, discontinuation of subsidies and seizure of movable property, arrests and the

confiscation of assets of the Czech School Association. Some of their assets seem to have been taken over by Slovakian associations. Jewish people of Czechoslovak nationality were particularly badly affected.

#### d) Croats and Magyars in the Burgenland

The "Volkstumsstelle Eisenstadt" (Ethnic Office Eisenstadt) set up in August 1938 took charge of the control and supervision of the Burgenland's ethnic minorities, Croats and Magyars. While the Croats had their own organisational structure, the Magyars, a socially much less homogeneous group, were hardly organised; in view of the political alliance between Germany and Hungary and Germany's patronage of the German minority in Hungary, the Hungarians for a long time remained relatively undisturbed. Plans for their relocation were not implemented. Nevertheless both ethnic groups were subjected to strong Germanisation pressure, which took the form of a deterioration of the quality of instruction in their languages, attempts to exert influence on their organisations and, at a later stage, the closure of Croat newspapers.

#### e) Other national minorities

Before the Nazi takeover, there had been a large number of other relatively small national groups in Austria. To what extent these groups suffered damage from Nazi policies should be investigated.

### **II. 1.4. Opponents of the regime**

Opponents of the regime, both in the context of their organisations and as individuals, were liable to be subjected to a host of repressive measures. They

were arrested by the Gestapo, sent to concentration camps and prosecuted for treason. Immediately after the "Anschluss", many civil servants at the national, regional and local level were dismissed or forced to retire. Functionaries of the authoritarian "Corporative State" were arrested. In the course of these waves of arrests, Nazi officials (mostly Gestapo officers) seized property, and searches of the homes of suspects often resulted in the destruction of property. Research will be necessary into the extent to which the property of resistance fighters was confiscated and into the question of financial losses resulting from the application of the principle of family liability ("Sippenhaftung") by the Nazis, which led to arrests of relatives of opponents of the regime after 20 July 1944.

The "Fatherland Front", the Corporative State's political mass organisation, had to some extent taken over the confiscated property of the Social Democratic workers' organisations banned in 1933 and 1934. Like the the Fatherland Front's property, the assets of the other organisations of the defunct Corporative State were confiscated and some of them were handed over to Nazi organisations.

The seizure of assets of politically undesirable individuals or families or of people who had fled the country for political reasons was also part of the pattern of political persecution. Thus the restitution of property to the Habsburg-Lothringen family ordered by the Schuschnigg government was rescinded.

Another question to be addressed is the manner and extent of confiscation of property practised in respect of deserters from the German Wehrmacht and persons convicted of incitement to disaffection in the armed forces.

### **II.1.5. German-speaking resettlers**

Nearly a million so-called Ethnic Germans were resettled in the period 1939-1944 under SS control. Several ten thousands of them moved to what is today Austria under intergovernmental treaties. They included people from South Tyrol and the Kanal Valley, from Dobrudja and the Bukovina and from Yugoslavia. Depending on the treaty provisions and their nationality, they were subjected to different kinds of constraints. They had to leave their homes and hand over their assets to the German resettlement agencies, which were supposed to make restitution at their new German place of settlement. Not infrequently this restitution took the form of being allotted assets which had been confiscated from other groups. But resettlers were liable to suffer financial losses as a result of transfer regulations, undervaluation of property and the modes of disbursement chosen by the authorities.

#### **II.1.6. Homosexuals**

Homosexuality had been a criminal offence in the Weimar Republic before 1933. The Nazi government stepped up the persecution of homosexuals considerably by amending Section 175 of the Reich's Penal Code in 1935 and by setting up a "Central Reich Agency for Fighting Homosexuality and Abortion" in 1936. While under the German Section 175 only homosexuality between men was an offence, the Austrian Penal Code (Section 129 I/b) also prosecuted female homosexuality. This provision remained in force in ex-Austria after the "Anschluss", a fact which led to arrests of female homosexuals by the Gestapo. Later, demands by the SS and the Reich Justice Ministry for stricter treatment of homosexuals by the courts led to the adaptation of Austrian case law to German practice under Section 175 of the Reich Penal Code.

After the "Anschluss", the Nazi authorities also made use of the hounding of homosexuals as a pretence for justifying their persecution of and smear campaigns against the Roman Catholic Church.

Homosexuals were not only convicted and sentenced by the courts. After having served their sentence, and sometimes in lieu of a conviction, they were sent to concentration camps. The Commission will have to investigate whether or not, and if so, to what extent, the property of convicted homosexuals or homosexuals sent to concentration camps was seized.

### **II.1.7. Churches, other religious communities and private associations**

The "Holding Commissioner" appointed by Ganleiter Bürckel immediately after the "Anschluss" on 18 March 1938 had nearly unlimited powers. A great many associations were dissolved and their assets confiscated. This ranged from private clubs to Church societies, the existence of which was an obstacle to the organisational monopoly sought by the Nazi government. The receivers appointed by the Nazis not infrequently used the assets of these associations to give donations to Nazi organisations. The Nazi party and government quarrelled about how these assets were to be exploited.

There can be no doubt that the policies on which the Nazis embarked right after the "Anschluss" to undermine the Roman Catholic Church's economic basis were rooted in differences of philosophical outlook between the Nazis and the Church. But financial motives are also perceptible to a considerable extent behind the policy of "deconfessionalisation". The Church Contributions Act meant that previous government cash flows to the Church (from the Religious

Fund, other government commitments and the cultural budget) were stopped and fell to the charge of the membership of the Church.

The wave of expropriations, which started as early as April and May 1938 with the attempted takeover of the Archbishop of Salzburg's residence by the Nazi authorities, finally led to the confiscation of much of the Church's property.

The work of Austria's Protestant churches also suffered under the Nazi regime's hostility to religion. Their work with young people was stopped, some real property was confiscated and some of their vicars were persecuted.

In addition to seizing the property of religious associations, there was a growing tendency for the state to take over the property of monasteries and other ecclesiastical institutions. Denominational schools and kindergartens were closed and became state property.

We know little about the situation of other churches and religious communities. Smaller groups such as Jehovah's Witnesses or the Adventists refused to submit to the exigencies of the Nazi government. Their official structure had already been dismantled before 1938. Their members were arrested and some of them were executed. These persecutions must also have led to financial losses.

#### **II.1.8. The special problem of expropriations on military and economic grounds**

The ways in which assets were expropriated or people resettled for the purpose of setting up new industries or military facilities differed over time. While many of the persons affected by the first of these expropriations were paid adequate

financial compensation by the Nazi government or received other pieces of land in compensation, this indemnification later took the form of the allocation of "aryanised" property or of extremely paltry payments which did not suffice to buy adequate replacements, especially as the war dragged on. In the case of these expropriations, then, one has to distinguish in relation to the scale of compensation received. One will also have to consider that many of these cases may not have involved typical Nazi acts, since expropriation *pro bono publico* is generally permitted even in democratic systems under the rule of law, although normally adequate compensation has to be paid.

### **II.1.9 The question of the looting of Austria as a country**

The expropriation and seizure of Austrian property after the "Anschluss" and right up to the breakdown of the Nazi system constituted one of the shortest but also most radical and extensive processes of redistribution of property in Austrian history. Both the state as such and all classes of the population were affected. With its large reserves of foreign exchange, its raw materials, its unexploited hydroelectric power, its industrial potential, much of which was lying idle because of the world economic crisis, and its manpower reserves, Austria offered the Reich exactly the resources which Germany lacked and without which the pursuit of the "Four-Year Plan", the Nazi policy of "autarky" and thus the arms buildup for the coming war were in jeopardy. Thus the "Anschluss" deprived the Austria as a nation state (i.e. the federation, the constituent states and local communities) of considerable assets. This included the federation's shareholdings, later vested in the "Land Österreich", and the management of state-owned industries. In addition, the Reich took over Austria's gold and foreign exchange reserves and appropriated the country's financial assets located in other countries. When the new administrative units, the

"Reichsgaue", were set up in Austria, complicated wrangles started in some cases between the Reichsgaue and the German agencies over the distribution and modes of transfer of these assets. But their seizure alone did not guarantee the complete integration of the Austrian economy into the German economy. In order to exploit Austria's economic potential, considerable investments were necessary. Hence the German Reich invested considerable sums with an eye on the needs of the arms industry (a policy which had a distorting effect on the Austrian economy). After 1945 this led to the vexed question of "German property" in Austria, especially in the context of reparation payments.

#### **II.1.10. Seizure of foreign property in Austria, sequestration of "enemy property"**

Already under the "Anschluss" itself in 1938, some foreign property was seized in Austria. As a result of the growing internationalisations of business in the interwar years, substantial assets owned by nationals of enemy countries were located in the German Reich, including Austria. On 15 January 1940, the Reich Justice Ministry issued an ordinance on enemy property which did not provide for the outright confiscation and expropriation of such assets but placed them under trusteeship, i.e. ordered their sequestration. "Enemy property" did not only mean possessions of foreign nationals located in German territory but also property owned in Germany by Germans, including of course Austrians, resident in enemy territory. For the purpose of sequestration in accordance with international law, a special agency, the "Reichskommissariat für die Behandlung feindlichen Vermögens" (Reich Commission for Handling Enemy Property - RKV) was established. Later, in November 1941, the 11th implementing ordinance to the Reich Nationality Law explicitly removed the property of German (and thus Austrian) Jews resident abroad from the purview of the

enemy property ordinance, to which it had been subject. This meant that such property could be seized by the authorities.

### **II.1.11. Forced Labour in Austria**

The term "forced labour" only means work exacted by extra-economic coercion; it does not mean cases where a person was forced to take a job to survive as a result of social factors such as impoverishment. Forced labour in this sense must also be distinguished from jobs for which the authorities were empowered to conscript German nationals on a temporary (war) basis but which, given the circumstances, do not qualify as forced labour.

In autumn 1944, the number of persons doing forced labour in Austria was probably around 700,000. Most of them were foreign nationals or came from territories occupied by Nazi Germany.

The living conditions of these workers depended largely on the Nazis' racial standards. Widely different rules in terms of police supervision, conditions of work and social services applied to them depending on their national origin, category and gender. The status attributed to them by the Nazis determined their rations, accommodation, working hours and pay. As soon as they were assigned to specific employers, their status underwent further differentiation by region - urban or rural -, industry and even individual company.

Even outside the concentration camp system, German and Austrian Jews were liable to compulsory labour. As a part of their systematic persecution which set in after the November pogroms, compulsory work assignments were introduced at first for jobless and indigent Jews, then for all Jewish people. These work

assignments were organised by local work exchanges under the auspices of the Reich Employment Service.

From summer 1944 onwards, over 65,000 Jewish people from Hungary were deported to Austrian territory where they were employed as slave labourers. Many of them were assigned to work on the German "Südostwall", a last-ditch defence line in the Southeast. When the Soviet forces approached, these prisoners were forced to walk to Mauthausen and Gunskirchen in a number of death marches.

Most of the 200,000 concentration camp inmates in Austria were foreigners. They were imprisoned in Mauthausen and its subcamps. In the west of Austria, there were a number of smaller subcamps of the big Dachau camp. Depending on nationality and race, their working and living conditions differed. Not until 1942-43 did forced labour in concentration camps become more than a method to kill off prisoners: from then on, it was transformed into an efficient machinery to exploit the work potential of inmates in the interests of the German war economy, especially the building sector and manufacturing industry.

Until they were deported to ghettos, concentration camps or extermination camps, thousands of Roma and Sinti had to do forced labour in special "gypsy camps" on Austrian territory. And at least 130,000 men and women were selected by the Nazis from among the German army's POWs as slave labourers. The biggest groups of these came from Poland, the Soviet Union, France and Yugoslavia. They were employed in many industries, especially in agriculture and the building industry. After Italy left the war in September 1943, a not yet exactly known proportion of the about 600,000 Italian military personnel

interned by the Germans were brought to Austria. They were forced to work here with virtually no legal status.

The biggest group of forced labourers had the status of civilian workers of foreign nationality. They came from all countries within the German Reich's sphere of influence and, as has been stated, were subject to widely different working and living conditions.

## **II.2. What was taken? (Categories of property and income)**

If one intends to study Nazi looting, one has to distinguish between various categories of property and income. The following categories seem meaningful, and each of them requires a different evaluation:

- 2.1. Business capital and business current assets
- 2.2. Real property and rights connected to land
- 2.3. Leases and tenancies
- 2.4. Movable property (such as household furniture and equipment, jewellery, works of art and religious objects, books etc.)
- 2.5. Life insurances and all other types of insurance policies
- 2.6. Securities
- 2.7. Savings deposit passbooks and bank accounts
- 2.8. Cash
- 2.9. Other claims
- 2.10. Industrial property rights and copy rights
- 2.11. Positions and entitlements under public law
- 2.12. Unlawfully withdrawn or unhonoured entitlements under employment contracts

2.13. Claims under annuity and pension schemes

2.14. Assets of trusts and foundations

Also to be taken into account are material losses sustained as a result of forced labour. Basically, what should be done is to draw up a total inventory and estimate of the assets taken by the Nazi regime. This should show the amount and extent of these assets, their type, the percentage which they represented of total possessions of the depredated groups (total confiscation, partial or insignificant expropriation, including the question of compensation in money or kind), and the proportion of these assets in terms of total national product and national wealth. It will, however, only become clear as the Commission's researches progress whether or not this aim can be achieved in any adequate proportion.

### **II.3. Who were the perpetrators and the profiteers?**

In order to analyse the looting which went on, the people who carried it out have to be investigated. We have to distinguish between the persons and institutions who were involved in taking the assets and the "profiteers" with whom the stolen property ended up. These two categories were not always identical. In particular it is important to note that the "profiteers" over the period till 1945 need not be identical with the persons and organisations to whom the stolen property fell after 1945. The following categories of persons and organisations who benefited from the stolen property have to be distinguished in respect of their different degrees of involvement:

1. the state and state-owned enterprises
2. Nazi party organisations, professional groups etc.

3. Austrian companies
4. private Austrian citizens
5. non-Austrian organisations, companies and persons

#### **II.4. Forms of looting**

1. Looting on the basis of general but specific legal regulations or special legislation falling within their purview; this includes:

1.1. General confiscations, for example, under the implementing decree No. 11 to the Reich Citizens Act of 25 November 1941. This ordered the forfeiture to the Reich of the property of Jews who had lost their German nationality as a result of residing abroad (including, for example, deportation); or individual measures such as the decree of 17 March 1938 ordering the takeover of the Austrian National Bank by the German Reichsbank.

1.2. Indirect expropriation directed in particular against Jewish people, such as the decree of 16 April 1938 requiring the reporting of Jewish property; or general confiscatory measures such as the law of 29 March 1935 allowing the expropriation of land for the purposes of the Wehrmacht.

1.3. Legal statutes used to push forward with the economic penetration of Austria by the German Reich, e.g. the Bitumen Act (GBIÖ 1938/375).

2. Legal transactions under duress within the framework of general regulations. As an illustration one can mention the practice, which became general without being based on any specific legal norm, of pressurising Jewish people who were on the point of emigration to relinquish their property "voluntarily" to an

Emigration Fund set up in Vienna, before they were handed their passports. These assets were later transferred to the "Emigration Fund for Bohemia and Moravia."

3. Police action: this includes all acts of direct and immediate coercion by the police even if carried out under general regulations.

4. Reinterpretation of laws through court rulings. This kind of "creative interpretation" may be illustrated by the case law of the German courts on the non-application of the decree of 7 April 1938 (RGBl. I., 378) which provided some protection against distraint on wages and salaries.

5. Acts which were illegal even under the standards prevailing at the time: this includes all forms of outright theft and robbery, especially the first phase of "aryanisation" after Austria's "Anschluss" in March 1938.

## **II.5. Questions of valuation and monetary conversion**

The German Reich's capture of Austrian resources was helped by the conversion of the Austrian currency to German Reich marks (abbreviated RM). The Austrian National Bank's reserves of gold and foreign exchange were particularly valuable for the German economy, which suffered from a chronic lack of foreign exchange. The German Reich's foreign assets were also fattened by the holdings of foreign securities in the hands of Austrian nationals and by taking over the receipts from exports of Austrian goods to other countries. The fixing of the conversion rate from schillings to marks played a central role since it had a strong influence on the valuation of any expropriated assets.

### **III. COMPENSATION AND RESTITUTION: FIELDS OF RESEARCH**

#### **III.1. General observations**

Under the terms of the Austrian Declaration of Independence of 27 April 1945, the "Second Republic" perceived itself legally and politically as a country occupied by Germany and now restored as a democratic republic. On the other hand, the "Moscow Declaration on Austria" of 1 November 1943, by recalling Austria's share of responsibility for the war and by calling on Austrians to resist, had implied a certain ambivalence caused by the conduct of the Austrian people under the Nazi regime. Despite the activities of the Austrian resistance movement, this ambivalence had not been entirely allayed when the war ended. It continued to be reflected in the Second Republic's restitution and compensation practices.

As long back as early 1943, the Allied Powers had notified their general intention to reverse Nazi confiscations of property in the occupied countries. In the "Inter-allied Declaration against Acts of Dispossession committed in Territories under Enemy Occupation or Control" ("London Declaration" of 5 January 1943) the signatories (17 governments and the French National Committee) issued a formal warning to all concerned and especially to the neutrals that they would do everything to frustrate the methods of expropriation practised by the enemy. They reserved the right to declare null and void all transfers of property effected under enemy occupation. This applied to obvious robbery as well as pseudolegal, pretendedly voluntary transfers. At the time when that declaration was published, the restoration of Austria had not yet been decided on, so Austria was not treated separately from the enemy German

Reich. Hence the question of what stand the reborn Republic of Austria was to take on this principle involved, among other things, the perception which Austria's postwar society was to develop of Austria's relationship to National Socialism and of the role which Austrians had played in the Nazi system.

After the end of the Nazi regime, the provisional Austrian government was faced with the question of how to cope with the consequences of Nazi crimes and with the associated problems of compensation. Although a law on the registration of "aryanised" property and other assets expropriated in connexion with the Nazi takeover had been passed as early as the beginning of May 1945, it was only after lengthy discussions that the Republic of Austria in January 1946 declared itself ready in principle to indemnify former owners by making restitution, thus endorsing the principles of the London Declaration. Though the Nullification Act enacted as a result of this policy decision stated that all legal transactions and other legal acts effected during the German occupation of Austria were null and void (if they had been effected in the course of the political and/or economic penetration of the country by the German Reich in order to deprive natural or legal persons of property or equivalent assets to which they were entitled on 13 March 1938), its Section 2 provided at the same time that special federal legislation would be passed to determine the manner in which claims based on the above general rule could be filed, and the extent of such claims. This meant that until such legislation was enacted, the nullity *per se* had no legal consequences at all (apart from an obligation to report claims).

### **III.2. Interests and power constellations**

Traditions of the rule of law, traditions of anti-Fascist and anti-Nazi resistance but also, at the same time, the continuing survival of anti-Semitism and of other

social, political and racist prejudices against the victims of the Nazi regime are factors which must be perceived, assigning them their correct relative weight and noting their ambivalence and their mutual tensions.

The adoption of the specific legislative foundations to permit restitution and compensation was only accomplished after some delays. Especially the Third Restitution Act passed in February 1947 led to political debates well into the fifties, and several attempts to amend it at the expense of claimants failed not least because they were resisted by the Allied Powers, while some of them were abandoned on diplomatic considerations. Other problems, such as the restitution of rented apartments and shops, had reached the stage of a government bill but did not in the end make it to the statute books. More steps to indemnify former owners did not follow until the fifties and early sixties. Research projects will have to lead to a detailed analysis of the political influences and decisionmaking processes - including an analysis of the positions of the country's political parties - which influenced, accompanied, obstructed or frustrated the legislation relevant to restitution and compensation.

As the domestic political level, electioneering played an important role (former Nazis were regaining their civic rights and were becoming a pool of votes), as did the unwillingness of the beneficiaries of expropriations to give up their gains, lobbying within the political parties (by industry, the farming community etc.) and the clout of the press, the Chambers (i.e. the official business and professional organisations), the banking and insurance industries and others.

Other relevant factors are likely to have been the social and political acceptance enjoyed by the dispossessed groups and their possibilities to exert political pressure. An analysis and weighting will have to be made - including an account

of the stands taken by the Allied Powers - in order to come to a correct evaluation of the internal processes in Austria. A comprehensive survey will have to include the Nazi victims living in Austria, their organisations, their political clout and, closely associated therewith, their social position, the acceptance they enjoyed and their social situation. It was in particular the leadership of the "Israelitische Kultusgemeinde", the official religious Jewish Community reduced to a few thousand members, whose relationship to the country's political forces was beset by tensions and who found it difficult also to defend the interests of those Austrian Jews who had been forced out of Austria by the Nazis and most of whom had not returned. Other groups of victims, such as the Roma and Sinti, had no effective avenues at all to protect their interests, whereas the people who had suffered persecution because of their political views bore post-war party-political labels and thus had hardly any possibility to voice their concerns against the wishes of the leadership of their parties.

On the opposite side, certain forces lined up to oppose compensation, such as the "Verband der Rückstellungsbetroffenen", an organisation of people who would have to give up property under the restitution legislation. These groups found allies and support at the political level.

The constraints under which the reborn Republic of Austria was labouring, since its sovereignty was limited until 1955, constituted another important factor for the whole problem of indemnification. For instance, Soviet claims to "German property" were often used as an argument to reject Jewish claims. The repeated failure of diplomatic negotiations to produce a peace treaty (or "State Treaty") with Austria was also argued as a reason for the standstill of negotiations on property issues (e.g. intestate assets).

### **III.3. The law**

Although an historical analysis of restitution and compensation cannot exclusively follow the course of legislation enacted on these matters, nevertheless that legislation threads through the whole range of themes of the present research project, and this is why we list the most important legal norms hereunder. This survey also shows how complex the patterns of restitution and compensation were and it makes clear how frequently and over what a long stretch of time these legal foundations underwent repeated "repair work".

#### **III.3.1. Legislation relating directly to the restitution problem**

Law on the appointment of public administrators and public supervisors of 10 May 1945; State Law Gazette/StGBI 1945/9 (last amended in Federal Law Gazette/BGBI 1967/11).

Law on the registration of aryanised and other assets seized in connection with the assumption of power by the National Socialists, 10 May 1945; State Law Gazette/StGBI 1945/10 (as amended by the 4th Seized Property Registration Amendment).

Repatriation Act: Law on the repatriation of public property of 10 May 1945, State Law Gazette 1945/11.

Nullity Act, Federal law of 15 May 1946 concerning the declaration of nullity of legal transactions and other legal acts during the German occupation of Austria; Federal Law Gazette 1946/106.

First Restitution Act: Federal law of 26 July 1946 concerning the restitution of seized property at present administered by the Federal Government or the Provincial Governments; Federal Law Gazette 1946/156.

Second Restitution Act: Federal law of 6 February 1947 concerning the restitution of seized property at present held by the Republic of Austria; Federal Law Gazette 1947/53.

Third Restitution Act: Federal law of 6 February 1947 concerning the nullity of property seizure; Federal Law Gazette 1947/54.

Fourth Restitution Act: Federal law of 21 May 1947 concerning company names altered or deleted under National Socialist coercion; Federal Law Gazette 1947/143.

Fifth Restitution Act: Federal law of 22 June 1949 concerning the restitution of property seized from legal persons in business which lost their legal personality under National Socialist coercion; Federal Law Gazette 1949/164.

Sixth Restitution Act: Federal law of 30 June 1949 concerning the restitution of industrial property rights; Federal Law Gazette 1949/199.

Seventh Restitution Act: Federal law of 14 July 1949 concerning the assertion of claims arising from service contracts with private employers; Federal Law Gazette 1949/207.

First Restitution Claims Act: Federal law of 19 November 1947 concerning the assertion of restitution claims of the dissolved Austrian consumer cooperatives; Federal Law Gazette/ BGBI 1947/156 (last amended by Federal Law Gazette 1955/201).

Second Restitution Claims Act: Federal law of 11 July 1951 concerning the transfer of claims for the restitution of assets of certain legal persons which lost their legal personality during the German occupation of Austria and later regained it; Federal Law Gazette/ BGBI 1951/176 (last amended by Federal Law Gazette 1955/201).

Third Restitution Claims Act: Federal law of 16 December 1953 concerning the transfer of claims for the restitution of assets of further legal personalities who lost their legal personality during the German occupation of Austria and did not subsequently regain it, and on the amendment and supplementation of the Second Restitution Claims Act; Federal Law Gazette 1954/23 (last amended by Federal Law Gazette 1954/252).

Fourth Restitution Claims Act: Federal law of 17 May 1961 concerning the registration of claims by receiving organisations for the restitution of property

under the Restitution Acts; Federal Law Gazette/BGBI 1947/13 (last amended by BGBI 1952/199).

First Return of Assets Act: Federal law of 6 February 1947 concerning the restoration of property of dissolved or prohibited democratic organisations; Federal Law Gazette 1947/55.

Second Return of Assets Act: Federal law of 22 June 1949 concerning the claims for restoration of dissolved or prohibited democratic organisations as leaseholders; Federal Law Gazette 1949/165.

Third Return of Assets Act: Federal law of 14 July 1949 concerning the assertion of claims arising from private service contracts and which were lost between March 1933 and March 1938; Federal Law Gazette 1949/208 (last amended by Federal Law Gazette 1953/180).

First Artistic and Cultural Assets Settlement Act: Federal law of 27 June 1969 concerning the settlement of ownership of works of art in the custody of the Federal Monuments and Fine Arts Service; Federal Law Gazette 1969/294.

Second Artistic and Cultural Assets Settlement Act: Federal law of 13 December 1985 concerning the release and disposal of formerly unclaimed works of art held by the Federal Government; Federal Law Gazette 1986/2.

War and Persecution-Related Material Damage Act: Federal law of 25 June 1958 concerning the award of compensation for damage to household equipment or professional utensils incurred as a result of war or political persecution; Federal Law Gazette 1958/127.

Insurance Indemnification Act: Federal law of 26 June 1958 concerning the settlement of life insurance claims confiscated by the German Reich; Federal Law Gazette 1958/130.

Insurance Reconstruction Act: Federal law of 8 September 1955 concerning the reconstruction of the contractual insurance system; Federal Law Gazette 1955/185.

Federal law of 4 December 1998 concerning the return of works of art from Austrian federal museums and collections; Federal Law Gazette 1998/I/181.

### **III.3.2. Measures taken under the State Treaty**

Compensation Fund Act, Federal law of 22 March 1961 providing federal moneys for the establishment of a fund to compensate property losses of victims of political persecution; Federal Law Gazette 1961/100.

Receiving Organisations Act: Federal law of 13 March 1957 on the creation of receiving organisations pursuant to Article 26, para. 2, of the State Treaty, Federal Law Gazette 1955/152; 1957/73 (last amended by Federal Law Gazette 1966/149).

Law on the distribution of funds held by "collecting points": Federal law of 5 April 1962; Federal Law Gazette 1962/108.

Collecting Points Settlement Act: Federal law of 7 July 1966 concerning the settlement of claims of "collecting points"; Federal Law Gazette 1966/150.

### **III.3.3. Compensation going beyond restitution**

Victims Welfare Act: Federal law of 4 July 1947 concerning the provision of welfare assistance to victims of the struggle for a free and democratic Austria and victims of political persecution; Federal Law Gazette 1947/183 (last amended by Federal Law Gazette 1995/830).

Public Servants Compensation Act: Federal law of 18 July 1952 concerning awards of compensation for political victimisation in the public service; BGBl 1952/181.

Assistance Fund Act: Federal law of 18 January 1956 providing federal funds to assist victims of political persecution not residing in Austria; Federal Law Gazette 1956/25.

Financial Settlement Treaty; also known as Bad Kreuznach Agreement: Treaty concluded between the Republic of Austria and the Federal Republic of Germany to indemnify displaced persons, resettlers and victims of persecution, and concerning further financial and social issues; Federal Law Gazette 1962/283.

Honorary Grants and Assistance Fund Act: Federal law of 23 March 1988 concerning non-recurring honorary grants and gifts to resistance fighters and victims of political persecution on the occasion of the 50th anniversary of Austria's occupation, including amendments to the Federal Finance Act 1988 and the Victims Welfare Act; Federal Law Gazette 1988/197.

Federal law to Establish the National Fund of the Republic of Austria for Victims of National Socialism; Federal Law Gazette 1995/432.

#### **III.4. The practice of restitution**

What is significant in this context is the extent to which the time lag between the end of the Nazi regime and the enactment of provisions permitting the legitimate owners to enforce their claims for restitution enabled illegal holders of assets, i.e. mostly the "aryanisers" themselves, to shift such assets or major parts of them. This is because the restitution laws, the core of this whole body of legislation, were entirely directed towards restitution in kind, making no provision for compensation where the property concerned no longer existed. It was only at a very late point that the question of indemnification was addressed through lump sum compensation payments.

The practical implementation of the restitution legislation by the restitution commissions set up for that purpose must be viewed from several different angles and with cross-references to an analysis of the laws themselves. The commissions were given a certain latitude of interpretation, which is likely to

have been used in different ways both regionally and in terms of the various groups of claimants (Jews, Roma and Sinti, victims of political persecution, the Roman Catholic Church, national minorities et al). At the same time, the various groups of Nazi victims had unequal chances of enforcing their rights because of social and political factors lying outside the field of adjudication. Survivors of the Shoah and people returning to Austria after forced emigration had to face antisemitic prejudice as well as the loss of their old social networks due to expulsions and killings. Moreover it was difficult to pursue claims from abroad. The return of these persons, often called "emigrants" with a pejorative connotation, was frequently impeded by political decisionmakers in Austria; serious obstacles were opposed to their political integration - e.g. in the case of the many people who had been politically active prior to 1934 and 1938. Ethnic minorities like the Roma and Sinti had to contend with social barriers and with reservations and prejudices the roots of which went back to the pre-Nazi era. The Roman Catholic Church, the political parties and the restored professional organisations, on the other hand, had much more power and larger spheres of influence. This inequality of opportunities and the resulting differences in the possibilities to get what was one's right will have to be investigated by specific research projects.

As regards the confiscations ordered by the "Corporative State" in 1933-34, mostly of the property of the political parties affiliated with the labour movement and of the trade unions, special restitution laws were enacted without much discussion. But these assets plus the property of the "Fatherland Front" seized in 1938 had been handed over by the Nazi government to Nazi organisations, and subsequently "aryanised" property and assets from other sources had been added. To what extent this led to a confusion of claims under

restitution legislation after 1945 and thereby to difficulties in actually returning the property will be an important subject for researchers.

A special range of problems is constituted by those cases where restitution was made on a voluntary basis without resorting to the help of the authorities: what is of interest here is mainly the extent of voluntary restitutions and the question whether the law as it was facilitated them or made them more difficult.

### **III.5. Art. 26 of the State Treaty as a provision of particular relevance to restitution and compensation**

Art. 26 obligated Austria to carry out restitution proceedings, and to furnish compensation in those cases where return or restoration was impossible. As regards compensation, Austria took the official stand that Art. 26 was not directly applicable. Hence the filing of such claims for compensation was only possible if the necessary implementing legislation was enacted. This legal position had important consequences for the whole question of restitution.

The implementation of Art. 26 was the subject of negotiations which went on for many years between the Austrian federal government, the powers underwriting the State Treaty and the various Jewish organisations, especially the Claims Conference, which acted as their umbrella organisation. Finally implementation was effected through the Compensation Fund ("Abgeltungsfonds") for Bank Deposits, Securities and Discriminatory Imposts (1961) and the War and Persecution-Related Material Damage Act concerning the award of compensation for damage to household equipment or professional utensils incurred as a result of war or political persecution (1958). As regards the "Abgeltungsfonds", the following fact seems important: a lump sum of 6 million

dollars was supposed to satisfy the following categories of claims: bank deposits, discriminatory imposts (Flight from the Reich Tax, Jewish Property Impost) and securities. It would be useful to compare this figure with official and private estimates and the scale on which assets were actually looted. On the basis of these two laws, lump sum compensation payments were effected for assets which could not be found, but these payments unlikely to have reached the actual value of the lost assets. The way in which the two laws were applied in practice is yet to be investigated. What remained unsolved in this context was the question of businesses "aryanised" in 1938 and later liquidated; for these no restitution was provided, and neither for jewellery, libraries and other valuables which could not be found.

For the purpose of implementing Art. 26 para.2, collecting points were set up, called A (for unclaimed property which belonged to persons "who were members of the Israelitic religious community on 31 December 1937") and B (for unclaimed property which belonged to persons "who were subjected to religious or other Nazi persecution"). The collecting points attempted as far as possible to register and realise the assets unclaimed by heirs. But as in the case of earlier restitutions, registration of these assets was essentially restricted to immovable property. The ratio of distribution of the assets realised by the collecting points was 80:20, i.e. 80% of the net profit went to Jewish victims (collecting point A), 20% to political victims (collecting point B). A question which will have to be examined is for what reasons and with what justification the ratio between the two collecting points was fixed at 80:20.

### **III.6. Further restitution and compensation measures**

#### **III.6.1. The Assistance Funds**

It was not until 1953 that negotiations began between Austria and the "Committee for Jewish Claims on Austria" on the question of compensation. Immediately after the signing of the Vienna State Treaty, planning work started for setting up the 1st Assistance Fund in 1956. It was endowed with ATS 550 million and provided for graded non-recurrent payments depending on the applicants' age and health to persons who had been compelled to leave Austria and who were not entitled to regular payments under the Victims Welfare Act because they no longer held Austrian nationality. In the Bad Kreuznach Agreement concluded with the Federal Republic of Germany in 1961, the Republic of Austria undertook to create a ATS 600 million fund (the New Assistance Fund, set up in 1962) out of which forced emigrants from Austria were to receive compensation for losses suffered in their careers and education: these losses had been made good to Austrian Nazi victims by the 12th amendment to the Victims Welfare Act. In 1976 the Assistance Fund structure was reactivated in response to demands also raised by the associations of political victims for a "final" settlement of the compensation issue. Again graded on social criteria, Austrians and ex-Austrians who had been victims of political or racial persecution were once more eligible for a non-recurrent payment. This Assistance Fund was endowed with ATS 440 million. The scheme was last reactivated in 1988 in connection with the Honorary Grants Act. Payments were made to distressed Nazi victims not eligible to receive money from the "Ausgleichsfonds" (Equalisation Fund), especially ex-Austrians.

### **III.6.2. Measures in the field of social security**

Compensation in this field was to a large extent the result of pressure by the Committee for Jewish Claims on Austria, supported by some of the Allied

Powers, primarily the US and Great Britain. Important research remains to be done on the following subjects: the fact that old-age pensions were not paid to former Austrians living abroad until 1953; the fact that it was only in the early sixties that victims of persecution received arrears of pensions that had been withheld in the period 1938-1945; and still ongoing amendments to the provisions on benefits.

### **III.6.3. Compensation for losses of income**

Income losses suffered by public employees who were forced into retirement or dismissed in 1938 for racial or political reasons were compensated by various pieces of indemnification legislation for public servants, about the concrete effects of which neither qualitative nor quantitative studies exist. For income lost due to Nazi persecution of private individuals there was very scant compensation under welfare laws for victims and the Second Assistance Fund. No reference was made to the actual amounts lost. When the person's income had been cut by more than fifty percent over three and a half years, he or she was eligible for a non-recurrent lump sum payment. Unhonoured claims like severance pay etc. were dealt with by the 7th Restitution Act.

### **III.6.4. Payments from the National Fund**

The Federal Act on the National Fund of the Republic of Austria for the Victims of National Socialism, Federal Law Gazette No. 1995/432, provides the basis for financial benefits to a specifically defined category of Nazi victims. Since its inauguration, the National Fund has disbursed non-recurrent payments of ATS 70,000 each to 25,119 persons (as of 31 December 1998).

### **III.6.5. The problems of tenancy rights**

In view of the fact that tenants had enjoyed very far-reaching legal protection in Austria ever since the First World War (it was difficult to get rid of a tenant and many rents were controlled), forced termination of a lease was a particularly hard blow for a tenant. Hence already the 3rd Restitution Act held out the hope that leases would be restored. This would have covered not only private homes but also rented business premises. However, a government bill to this effect (615 d. BlgNR, V. GP) was shelved after having been referred to the parliamentary committee dealing with "securing the nation's assets", notwithstanding insistent calls for the necessary legislation especially by the US authorities in Austria. A particular hard problem to tackle were cases where homes of fugitive Nazis were assigned to victims of the Nazi regime immediately after the war; in the following years the courts often ordered the eviction of the new tenants at the request of the Nazis who had returned or their wives.

Eventually, the restitution of tenancy rights was also an item on the agenda of the negotiations for the State Treaty. The Federal Government took the view that their restitution was "not possible" within the meaning of Article 26 of the State Treaty on internal political grounds. This viewpoint seems to have been largely accepted even by the Western powers.

### **III.6.6. Restitution of works of art, libraries, etc.**

As a result of the handing over of confiscated works of art, libraries and other collections to public museums, offices and libraries or even private individuals, these persons and institutions and their legal successors became liable for restitution after 1945, which constitutes another important field of research.

While there was of course a clear obligation to return these looted objects, their restitution was often obstructed and delayed, and in some cases they have still not been restored to their legitimate owners. It was not until 4 December 1998 that the Austrian Parliament passed the Federal Act on the Restitution of Artworks from Austrian Federal Museums and Collections (Federal Law Gazette No. 1998/I/181).

### **III.6.7. The problem of resuming Austrian citizenship**

The loss and resumption of Austrian nationality poses a problem *sui generis* and needs also to be examined in connection with entitlements and eligibilities for example under the Victims Welfare Act. Especially after the expiry of the deadline set by the Nationality Transition Act, Austrians returning from abroad faced great hardships. The latest legislative steps in this field were not taken until 1993(!) (the 1993 Amendment to the Citizenship Act, Fed.Law Gaz.No. 1993/521).

### **III.6.8. Problems encountered by other groups of victims**

#### **a) Slovenes in Carinthia**

Researchers should look at the restitution of agricultural and forestry holdings to Slovenes evicted by the Nazis as well as of assets to Slovene businesses and associations, and in general at the way in which victims of political persecution lost their property. The restoration of cooperatives liquidated by the Nazis was a controversial topic in the post-war era, leading to litigation with their successor organisations and the federal ministry in charge of "securing the nation's assets".

The Austrian government made provision for some payments out of its budget but this was not explicitly handled as compensation.

#### **b) Roma and Sinti**

Here and there Gypsies from the Burgenland tried to get their looted property back after 1945 but ran up against the old racial and social prejudices. The attitudes of the welfare authorities which were supposed to help victims of the Nazis were not much different.

#### **c) Victims of political persecution, organisations dissolved by the regime and persons persecuted because of alleged "antisocial" behaviour**

In many cases, property seized from opponents of the Nazi regime or from dissolved clubs and other organisations could simply be returned as such. Where the persecution of anti-Nazi resistance fighters was concerned (among whom we have to number "Bible Students", as Jehovah's Witnesses used to be known), however, most of their looted property was no longer tangible after 1945. An interrupted education, lost income, time spent in prison and deterioration of health due to persecution were compensated outside the area of restitution proceedings. To "social misfits", homosexuals and victims of Nazi eugenics policies, restitution probably had little relevance, and from all other compensation measures they were excluded until 1995.

#### **d) The Roman Catholic Church**

The Roman Catholic Church was able to get back most of its assets seized by the Nazi government quickly by way of restitution. To what extent movable property was also returned needs to be examined.

#### **e) Slave workers**

Since as long back as 1946, some private organisations have been trying to get compensation for Nazi slave workers. As yet, however, these efforts have remained fruitless. Only a few forced labourers, who had been Austrian nationals, were allowed to apply for compensation of income losses under specific conditions within the framework of the Victims Welfare Act.

#### **III.6.9. The Lebedenko Donation**

In Vienna, furniture seized from Nazis was handed over to victims under the so-called "Lebedenko Donation" of 12 January 1946 (Lieutenant-General of the Guards H. F. Lebedenko was Soviet commandant of Vienna from October 1945 to May 1948). In the years thereafter rent had to be paid for these pieces. After the "Nazi Amnesty" (which lifted the confiscation of property in 1957), these pieces of furniture (even though they may have included things "aryanised" by the Nazis) had to be returned to their former Nazi owners, and the same applied to allotment gardens confiscated from them.

#### **III.6.10. The treatment of "aryanisers" and the restitution of property to former Nazis**

Much light would be shed on the political climate in which the debates on restitution and compensation took place by looking at the treatment meted out

by Austrian courts of justice to "aryanisers". Technically they were liable to punishment under the War Criminals Act. Detailed research on this matter, however, is still outstanding. In this context, wider studies on the social reintegration of ex-Nazis would be a desideratum. This was achieved at considerable expense to the public purse. It involved the return of property originally declared forfeit under post-war anti-Nazi legislation. In many cases this probably included property illegally acquired during the Nazi era.

### **III.6.11. Social questions of compensation (victims welfare legislation and the ways in which it was implemented)**

The Commission's mandate also refers to the social dimension of compensation: probably this means in the first place the legislation on welfare work for the victims and the way in which these provisions were put into practice. While the genesis of the Victims Welfare Act has been clarified, at least in the sense of a first overview, efforts to arrive at a detailed analysis of the implementation of that law have been frustrated by the restrictive way in which access to the files has been allowed, especially access to the biggest corpus of these files, the one in Vienna. The Commission's mandate requires that this area be investigated as well. So far as one can say in the current state of research, the authorities interpreted the Victims Welfare Act restrictively to the detriment of those eligible for benefits; in fact their hierarchical superiors, the Federal Ministry of Social Administration, seem to have instructed them to adopt this kind of interpretation. Researchers should look how far these welfare regulations were appropriate or not. Also, the question of the employment of medical experts still remains open, with former Nazi physicians possibly deciding to what extent the health of Nazi victims was impaired by Nazi persecution.

## **IV. SOURCES**

The extremely wide spectrum which the Commission's work will have to cover requires very different approaches to each of the fields to be examined. The farther away one moves from the sphere of government, the more difficult do the avenues of access become.

The following is a list of institutions - which does not claim to be complete - that should be used for the work of the planned research teams:

### **IV.1. Austria**

Austrian State Archives including their General Administrative Archive and Archive of the Republic, plus the holdings of the Ministries

The archives of each of the nine constituent states (sometimes called "Provinces") of Austria and the materials still in the files of various regional government departments

Municipal and local archives

The archives of the national Parliament and of the regional parliaments (including documents held by party caucuses)

Courts of justice

Regional internal revenue directorates

Regional security directorates

Regional employment services

Public registry offices

Pharmaceutical salary handling departments

Social security bodies

Insurance archives

Jewish Community ("Kultusgemeinde")

Ecclesiastical and monastic archives

Archives of the Council ("Oberkirchenrat") of Protestant Churches (Lutheran and Reformed)

Jehovah's Witnesses

Archives (if any) of other religious communities

University and college archives

Archives of trade unions and "Chambers"

Archives of banks, savings banks and cooperatives

Archives of political parties

Archives of publishers

Archives of ethnic groups

Archives of business concerns

Mauthausen concentration camp memorial site

Files and papers (including those left by deceased persons) kept in the Military History Museum

Archives and collections of private individuals

#### **IV.2. Other countries**

As regards holdings of foreign archives and other organisations, primary sources will be the German Bundesarchiv (Koblenz and Berlin), the archives of the four occupying powers (US, USSR, Britain and France) and the archives of Israel, Poland, the Czech Republic, Slovakia, Hungary, Slovenia and Italy. As neighbouring countries of Austria, Liechtenstein and Switzerland could have

certain materials (especially referring to the final phase of the war). Hence the following countries with their archives, collections and other relevant organisations are of importance: Croatia, the Czech Republic, Britain, France, Germany, Hungary, Israel, Italy, Liechtenstein, the Netherlands, Poland, Russia (including the successor states of the former member republics of the Soviet Union), Slovakia, Slovenia, Switzerland, the United States and Yugoslavia.

## V. METHODS OF RESEARCH

### **Preliminary remarks**

The questions posed to the Commission and the tasks which it has to fulfil are so numerous and at the same time complex, given the large number of fields to be dealt with and the numerous individual cases to be taken into consideration, that a wide variety of methods of historical as well as juridical research will have to be employed. Above all, the amount of data to be absorbed is huge and time presses, hence it will be necessary in some cases, simply to save time, to proceed on the basis of the criteria of statistical representativeness.

The methods to be applied will depend on the fields and on the aims of the researches as well as being predicated on the data available and the resources which the researchers have.

What the Commission has been asked to supply in the first place is a census and estimate of the property looted by the Nazi regime in qualitative and quantitative terms both in relation to the total assets of the deprived groups (total dispossession, considerable degree of dispossession or slight losses, including the question of compensation and indemnification granted, if any) and in relation to the overall growth of national product and national wealth during the period in question.

Ideally, this would have to be complemented by a similar estimate and census of all restitutions and compensations, again in relation to the total property of the groups affected and in relation to the national wealth and national product in 1945 and in the following postwar years.

The Commission's terms of reference secondly include an evaluation of the conduct of the authorities and of the specific situation of the victims, especially in those fields where deficiencies in restitution and compensation are to be found.

To what extent the Commission will be able to answer all these questions in their totality can only be seen when the researches are in a more advanced stage.

## **V.1. Historical research**

### **V.1.1. Sifting through the sources**

As a first step, this means surveying the available contemporary records, documents and statistics (including estimates) about the extent of the dispossessions, and in similar format, the restitutions and compensations made after the end of the war.

At the same time, the primary sources, to the extent that they are still available, will have to be sifted in such a manner that an adequate strategy for handling the materials can be chosen: whether to survey all the data or use sampling procedures with subsequent extrapolation. From this, a specific project design will have to be developed in each case to permit a scientifically reliable answer to the questions posed.

### **V.1.2. Samples**

Where the parent populations are very big, it is useful to resort to sampling. A sample may be very small if variance, in relation to the facts under investigation, is very small in the parent population.

Even a search of the total population would certainly not lead to an error-free result since the data themselves are likely to be defective and incomplete. It is true that one cannot state with certainty at what point the sampling error becomes negligible in relation to the errors in the sources. But it is clear that in many cases a point will soon be reached where more cases no longer mean a significant improvement of the result.

### **V.1.3. Completeness of archival sources as regards numbers of cases**

The data which the Commission has to use are incomplete in many different respects, partly because some files were discarded or otherwise destroyed, and partly because some facts were not recorded at all. If, as in the case of the census of Jewish property in spring and summer 1938, a part of the population, viz. people with no property or property of less than 5,000 Reich marks, was left out of consideration, there remains no other way than to make up for the missing part by statistical methods. This can be done relatively easily and accurately in the case of the reporting of Jewish property by constructing a distribution curve, because the distribution was cut off at a certain point and moreover the number of missing cases is known.

If in the case of other questions the missing data are randomly distributed, an extrapolation can be made from the existing data to the whole aggregate.

The situation is difficult for the restitution files, where routine discarding of files frequently was neither random nor done on systematic criteria.

#### **V.1.4. Completeness and reliability of the existing data in respect to individual components**

The completeness of the data on assets, as far as they could be ascertained in 1938, is assured to different degrees. Immovables, assets of business enterprises, claims arising out of insurance contracts, bank deposits and other claims on banks (such as giro accounts, savings accounts and securities portfolios) as well as mortgage claims tend to be fairly complete.

For other categories of property, there were some possibilities to withhold them from registration: this was true of securities not deposited with banks, movable property including jewellery and similar objects and non-collateralised claims. For these categories, the registers must be expected to be incomplete, (a) because owners had an interest in avoiding their registration, and (b) it was easier for confiscators to conceal them.

The completeness of registered liabilities may be assumed where somebody had an interest in letting the net assets appear as small as possible.

#### **V.1.5. Reliability of the valuation of the assets listed**

Valuations are not equally reliable for all categories of assets. They are largely reliable only for cash, stock-exchange-traded securities and, normally, bank deposits and claims arising from insurance policies.

Other claims, which are not sufficiently documented, may be trustworthy to different degrees.

What is in principle trustworthy is the valuation of business assets on the basis of the firm's balance sheet. Nevertheless, the margins of discretion in valuing these assets were still considerable. In all valuations based on estimates the essential question is whether they reflected opposing interests.

#### **V.1.6. Oral history, depth interviews, and interviews of experts**

Finally it will be necessary to conduct interviews with surviving victims, other witnesses and experts in different fields. In this respect researchers can also resort to existing private or public national and international collections.

Precisely these parts of the research programme will be vital, (a) because many facts are reflected in the files in a biased or muddled way, and (b) because what the whole project is about are not only questions of money but also some central problems of mentality history.

#### **V.1.7. Audiovisual sources**

In some areas of the project it will be necessary to use audiovisual sources, for example, contemporary sound recordings, photographs or newsreels.

#### **V.1.8. A note on the workload involved**

It is common experience that the amount of work necessary is the smaller, the more systematic and homogeneous the sources are. Questionnaire-type and systematically generated sources are comparatively quick to work up. In the

present case, however, the major part of the sources will have a more complex structure, (a) because many additional enquiries will have to be made, and (b) because the sources will be unstructured or imperfectly structured.

### **V.1.9. Inter-country comparisons**

In order to evaluate and assess Austrian restitution and compensation legislation and practice in depth, comparisons with other countries will have to be made with regard to some aspects.

#### **a) Federal Republic of Germany**

Given the fact that postwar political systems were similar and that the "normalcy" of the Nazi era was perceived subjectively in similar ways in Germany and Austria, it is plausible to use developments and policies in West Germany as a standard of comparison (this includes the policies of the occupying powers and of the constituent states of Germany before the foundation of the Federal Republic). But attention has to be paid not only to the different attitude to the question of legal succession but also to the fact that Austrian authorities had more freedom of action, at least initially.

#### **b) German Democratic Republic**

The "DDR", on the other hand, is suitable for comparison as a state under Communist dictatorship, although the evolution of compensation legislation until the foundation of the DDR in 1949 showed some similarities to developments in Austria. Again, after 1949 some parallels appear due to the fact that the DDR professed to be an "anti-Fascist state", which however blocked off

any deeper analysis of the Nazi past going beyond stage-managed commemorations chiefly of the victims of political (i.e. Communist) resistance. This could lead to some interesting comparisons.

### **c) The Netherlands**

The Netherlands would appear to be suitable as a standard of comparison for a number of reasons. They are a country of about the size of Austria which was occupied by force by the German Reich, with Austrians (for instance Arthur Seyss-Inquart) playing an important role in the German administration. Moreover, in the case of the Netherlands, researchers can use the already existing reports of the Dutch Historical Commission.

## **V.2. Juridical analyses**

In the methodical considerations leading to the analysis of the legal aspects of restitution and compensation, two levels, and thus two different subjects of research, should be distinguished.

The first level is the legislative programme for restitution, i.e. all laws and regulations by which the legislators and the issuers of implementing ordinances regulated restitution. These are more or less abstract norms. The second level are the proceedings conducted on the basis of that abstract programme: these were about specific individual cases. The two levels have to be distinguished because they pose different problems and therefore require different methods of investigation.

At the legislative level, one can ask in a relatively abstract mode what the content of the laws was and then make a legal evaluation of that content.

In this kind of study one will, for example, ask how far the legislation was in accord with other values enshrined in the country's legal order. Thus it is conceivable that exceptions were allowed from general rules such as the provisions to prevent undue enrichment - exceptions to the detriment of applicants for restitution. There were also certain deviations from the General Civil Code with regard for example to the restriction of succession by inheritance. This analysis should already be made with an eye to the application of the laws in question. It is common experience, after all, that many problems which a law raises only become apparent when it is applied. Hence already in the course of these studies, concrete decisions will have to be taken into account at least where they are available in published format.

Moreover, the intentions pursued by the legislators should be discovered, i.e. the formal aims and objectives stated when these laws were passed. This will enable researchers to look at the question of how far the substance of these laws did justice to their professed intentions. One may have to look, for example, whether there may not have been certain contradictions between what the legislators said was their purpose and what they wrote into the provisions of the laws, which were sometimes full of verbal complexities.

In analysing the proceedings conducted on the basis of the legislation, the general principles governing the implementation of statutes will have to be consulted. For example, one will have to ask: Did the authorities observe the laws relevant in the context? Were the laws interpreted to the disadvantage of applicants or to the disadvantage of the people who should have returned the

property in question? Were the proceedings conducted in accordance with the procedural standards accepted at the time? In the light of all these questions, did the proceedings produce the "correct" results? This is a very delicate question since in contentious proceedings - and most restitution proceedings were contentious - what really happened, i.e. the alleged "aryanization", can only be discovered from what the plaintiff said.

## **VI. RESEARCH PROJECTS AND EXPERT OPINIONS**

### **V.I.I. Dispossession**

#### **VI.I.1. "Aryanisation"**

"Aryanisation" means the forced expropriation of Jewish property during and after the Nazi takeover of Austria either within the framework of the law as it then was or outside that framework. It does not matter in this context whether these assets were transferred to non-Jews ("Aryans") or organisations owned by such persons or whether they were liquidated or destroyed. This process of "aryanisation" extended to all persons who were defined as Jewish by Nazi standards and legislation and were thus liable to aryanisation. Hence it also involved persons who were not members of the "Kultusgemeinden", i.e. the official Jewish religious and cultural communities.

The area of dispossessions of Jewish people and of restitution and compensation is so big that it surely cannot be covered by a single project, simply because of the large number of cases and the variety of questions which arise with respect to restitution and compensation in each category of assets.

Nonetheless, the various subprojects should proceed in close cooperation, not only in order to avoid overlapping and duplication but also to permit overall assessments of the Jewish assets involved, of the total amount of expropriations and of the scale of restitutions.

We therefore suggest (a) to establish a general overview on a sample basis of the registered Jewish assets or to obtain these data in close cooperation with projects already underway, and (b) to let the various subprojects proceed on this data basis.

#### 1. Basic project: Amount of Jewish assets and scale of confiscations

The Jewish property in the sense of industrial and business concerns subject to compulsory reporting in the whole of Austria was found to have been 320 million Reich marks. More than half a billion was stated for real property, 266 million for securities, and about 900 million for other property: the total being about 2 billion Reich marks. This is a lower limit. 2.5 billion was an estimate made in 1952. According to other sources, the Jewish property in Austria has been estimated at more than 10 billion Reich marks.

#### 2. Subproject: Immovables

The fundamental data on how much real property was owned by Jewish persons in 1938 should be ascertained by the basic project in a first step.

To what extent these data must be complemented from other sources should then be determined.

In a second step, the project should document both the Nazis' norms and their practices with regard to expropriating Jewish owners of buildings and land, and selected individual cases should be studied.

Point three is the legal position after 1945 and the relevant practices and decisions. The result should be an estimate of restituted real property in relation to the original possessions: how much was not returned, what the reasons and justifications were, and what problems of evaluation result from this situation.

On these considerations, a specific project design will have to be developed in each case to permit a scientifically reliable answer to the questions.

### 3. Subproject: Business enterprises

Of the about 33,000 business concerns described as "Jewish", one-fifth were dissolved or destroyed during the "Anschluss" itself. More than 80% of about 26,000 remaining companies and shops which had been Jewish-owned were liquidated, especially in the trading, handicrafts and private banking sectors. "Aryanisation" proper only took place in about 5,000 cases. All individual firms, partnerships and incorporated firms in the private sectors whose owners or shareholders were Jewish were "compulsorily aryanised" or liquidated. This included businesses, farms and forestry concerns, private banks etc.

The formal legal basis for the elimination of Jewish business people comprised three variants: sale/purchase, confiscation and dissolution (liquidation).

The project should document both Nazi norms and practices in expropriating enterprises, and should also look at select sample cases: the institutions

involved, big industries, banking etc. The considerable scope for discretion in valuing these assets should also be investigated. Finally, the legal position after 1945 is of interest, as are the then current practices and decisions.

The result should an estimate of the restituted enterprises in relation to the original assets: How much was not returned? On what grounds? What problems of valuation result therefrom?

In order to make a realistic valuation of "aryanised" enterprises and of businesses that had to be sold under political pressure, it is necessary first to look at them individually. All discoverable cases of this kind should be subjected to valuation in terms of purchase price, share values, balance sheets and profit and loss accounts. Special attention should be paid to the specifics of stock corporations ("Aktiengesellschaften") and limited liability companies ("Ges.m.b.H.").

#### 4. Subproject: Private homes

Taking existing studies as a point of departure and making additional investigations, the "aryanisation" of tenancy rights should be researched on regional lines in an approach highlighting typical examples. Obviously these researches will lead to the question of restitution and compensation, especially in the light of the government legislative bill for a 5th Restitution Act (615 BlgNR, V. GP) and of the policies followed in allocating residential accommodation (a) by the occupying powers and (b) by the Austrian authorities.

#### 5. Subproject: Movable

Ownership of movable property is the hardest to prove and therefore occupies a special position. For one thing, such ownership is not documented in the declarations of property or is only documented for very narrow sectors. Second, this is one of the fields where restitution left much to be desired, from works of art through jewellery to various types of collections. Furniture and other household articles, vehicles and personal possessions were hardly ever restituted.

The project should document both Nazi norms and Nazi practices in seizing movables, and should look at selected cases in depth. A second aspect will be the legal position after 1945 and relevant practices and decisions. The result should be an estimate of restituted movables in relation to the original possessions: How much was not restituted? What were the real and stated reasons? What problems of valuation result?

#### 6. Subproject: Money

Money was documented in the declarations of assets as of the date fixed by the authorities. Hence one cannot be sure that money looted beforehand or sums that would have accrued on the basis of claims realised later were fully accounted for, e.g. claims under insurance policies, bank deposits or other claims on banks (giro accounts, savings accounts or securities portfolios) and other debts secured by mortgages.

The project should document Nazi norms as well as actual practices in seizing expectancies of insurance benefits, cash, savings passbooks and bank deposits, insurance policies and securities; it should also examine some randomly selected individual cases.

The last part relates to documenting and assessing the legal position created after 1945 and the proceedings and decisions connected therewith.

#### 7. Subproject: Dismissals (exclusion from practising professions)

Immediately after the Nazi takeover in Austria, a wave of racially and politically motivated dismissals of civil servants started. The new Nazi Minister of Justice at once ordered the dismissal of Jews and so-called "half-Jews" from the judicial service. The step-by-step removal of Jewish officials from the rest of the public service followed. Very soon Jews were deprived of their right to practise liberal professions. Many Jewish employees were dismissed from private businesses or lost their jobs as companies were "aryanised". They were protected only if their work was essential to the maintenance of business activity or exports, but not for long. At the time of the 1939 general census, only 4% of the Jewish people counted were still working.

#### 8. The "Zentralstelle für jüdische Auswanderung" as a looting institution

In August 1938 the "Danube" SS security service's division II-112 was transformed into the "Central Agency for Jewish Emigration in Vienna". Formally headed by Security Service Leader, SS Sector Danube, Franz Stahlecker, but actually directed by Adolf Eichmann, the "Zentralstelle" had two interrelated functions. In the first place, its purpose was to centralise all official channels required for Jewish persons to be allowed to leave the country and thus to speed up the virtual expulsion of Jews; secondly, this bureaucratic setup was aimed at reaching the highest degree of efficiency in completely dispossessing

would-be refugees. Pressure and various sorts of humiliations were a prime instrument in achieving these purposes.

In order to legally leave the German Reich, Jewish people needed the so-called "Unbedenklichkeitsbescheinigung" (certificate of unobjectability): this was only issued on proof of having paid all outstanding taxes and fees, from actual or fictitious tax arrears through the discriminatory charges imposed on Jews, such as the Reich Flight Tax and the Jewish property tax, to allegedly unpaid telephone bills and the like. Further, would-be emigrants had to sign a "voluntary" waiver of all their property. The "Zentralstelle's" operating and personnel costs were financed by a special surtax imposed on Jewish emigrants.

#### 9. The "Gildemeester-Aktion"

"Aryanisation" also covered persons who were not registered members of the Jewish communities. With special reference to these people, the so-called "Gildemeester-Aktion" was launched to speed up forced emigration. Frank van Gheel Gildemeester had previously helped the Nazis in various ways, thus gaining their confidence. The idea behind the "Aktion" was to use 10% of the assets seized to finance an emigration fund for impoverished Jewish people. Hence the "Gildemeester-Aktion" can be used as an illustration of the development of the techniques of robbing Jews willing to emigrate. The project should study the genesis, activities, organisation and effects of the "Aktion".

#### 10. "Aryanisation", confiscation, restitution, compensation: comparisons between the Federal provinces

There were considerable regional differences in Austria as regards looting of Jewish property, as well as subsequent restitution and compensation. One reason was the very unequal distribution of the Jewish population over Austria, with a high degree of concentration in Vienna. Another reason were the different practices adopted in the various "Gaue", the Nazi territorial units which replaced the old provinces, and after 1945 in the Allied occupation zones with respect to restitutions and the extent to which looted property was claimed.

## **VI.I.2. National minorities**

### **1. Slovenes**

Looting of property may include acts by which the Nazi regime tried to prop up itself, its terrorist machinery and its war effort as well the Nazis' activities to ensure a homogeneous German area of settlement. In particular all questions should be researched which relate to the displacement of Slovenes and the confiscation of the assets of Slovene welfare and cultural organisations and of the property of Slovene victims of political persecution. The foreign policy context should always be borne in mind as a retarding or accelerating factor. All questions concerning restitution and compensation should form an integral part of the project.

### **2. Roma and Sinti**

Roma and Sinti were prevented to pursue their traditional way of life and were constantly subjected to discrimination. They were detained in "collecting camps", assigned to forced labour and later deported to concentration and extermination camps. Hence the deprivations to be covered by researchers

include steps which prevented these people from earning a living or getting an education as well as the theft of their property. The project should also include all questions relating to restitution and compensation.

### 3. Other national minorities

Members of various national minorities were also victims of deprivations and violence, for example, Czechs in Vienna or Croats and Magyars in the Burgenland. They suffered dismissal from their jobs, payment of financial benefits was stopped, there were arrests, goods owned by them were taken away, the assets of their organisations were confiscated and some of them were imprisoned in concentration camps. Questions of looting, restitution and compensation will have to be examined in one project.

#### **VI.I.3. Victims of political persecution**

Where resistance fighters were convicted by a court, the property which the defendant had used to carry out his or her resistance activities was often forfeited. In the course of arrests, Nazi officials (mostly from the Gestapo) seized property and destroyed things during searches of the homes of suspects. The extent to which the property of resistance fighters was seized is yet to be researched, as is the question of losses of property sustained by their family members under the principle of "family liability" which after 20 July 1944 led to the arrest of family members of opponents of the regime. Another field for research are the financial losses caused by dismissals and forced retirement of public servants.

#### **VI.I.4. The Roman Catholic Church**

Immediately after the "Anschluss", the Nazis started to undermine the economic basis of the country's churches - in Austria mainly the Roman Catholic Church. Finally this led to the seizure of the major part of the Church's property: 26 large abbeys and priories, 188 smaller monasteries, buildings owned by religious orders and over 1,000 other ecclesiastical premises were confiscated under various pretences, numerous religious foundations were dispossessed, the denominational school system was dismantled and a number of economic enterprises owned by the Church were privatised or closed down. These activities also include the numerous private organisations which, though not church property in the narrower sense, had been sponsored by the Church and were now dissolved, their property being confiscated.

Research into the material dimensions of the expropriations to which the churches were subjected is yet to be done. The project should not limit itself to an enumeration of confiscated abbeys, monasteries, buildings, movables, savings pass books, securities and foundations. The assignment is not only to arrive at a sum total but also to make a structural analysis.

The question of restitution will have to include the practice of returning the property seized; when and to what extent of the assets were returned, broken down by categories; and losses which were caused by the dissolution and liquidation of companies, overexploitation of enterprises, damage to buildings, loss of movables and seizure and destruction of money and the assets of religious foundations. Very little information has been forthcoming so far on the assets of the numerous clubs and other organisations affiliated to the Church .

### **VI.I.5. The "Stillhaltekommissar" (receiver) for associations and organisations**

The files of this Nazi agency active in Vienna in 1938 and 1939 are kept in the Austrian State Archives (Archive of the Republic) where there is a card file and register of them. These files should be used to trace looted assets of the very diverse organisations affected, such as student fraternities, professional organisations, women's clubs and Jewish clubs and welfare organisations. At the same time, to the extent possible, the history, organisation and staff structure of the "Stillhaltekommissar's" office should be investigated. Researchers could also try to find out what happened to the staff members of the dissolved organisations and to what extent they were deprived of their possessions or suffered financial losses. Questions of restitution and compensation should again form an integral part of the project.

### **VI.I.6. The influence of currency conversion on the value of assets**

The subject here are the economic and political effects of the introduction of the Reich mark and of the fixing of the exchange rate - effects on the German Reich and subsequently on the Second Austrian Republic right to the present. Calculations will have to be made on the basis of exchange rate comparisons, purchasing power, comparative wage and price indexes and cost of living indexes including rents. In addition, currency conversion should be analysed in the light of inter-country comparisons.

### **VI.I.7. Forced labour**

#### **1. Basic project: Forced labour**

In order to study the question of financial losses and unpaid wages of Nazi slave labourers the following problems should be worked out:

- Give a conspectus of the present state of research in terms of financial losses, taking account especially of the extensive German literature.
  
- How many workers were employed on forced labour in Austria over the years between 1939 and 1945? How did their numbers change? Break them down by country of origin, sex and categories used by the Nazis. What was the status in terms of labour law and social services law (especially health and pension insurance) of the various classes of workers, and to what extent did their everyday treatment differ from their official status?
  
- Describe the various forms of coercion exercised on the various groups (pay special attention to women: for example, forced abortions and babies taken away from their mothers in special maternity homes for East European women); highlight the question of police coercion as compared to on-the-job coercion by employers.
  
- Analyse the various forms of pay or withholding of pay for the different groups: special taxation, charging excessive costs for food and accommodation in the camps, deductions from wages when savings of workers were transferred under government control to their home countries. Estimate financial losses suffered by slave labourers as a result of interrupting their education and their careers. Estimate the long-term medical consequences of forced labour.

- Economic effects of employing slave labourers for companies and the economy as a whole.

The project will require quantitative as well as qualitative methods. Apart from making overall estimates, some questions will have to be answered by case studies. This will depend to a considerable extent on the sources available.

## **2. Subproject: Forced labour in agriculture**

Much of the problem of the employment of POWs and civilian slave labourers in the Reich's war economy relates to agriculture and forestry, and so does the question of how these matters were treated after 1945 and to what extent compensation will have to be paid. Yet it is precisely in this area that research has been very laggard.

After the "Anschluss", a heavy exodus of workers from agriculture set in almost immediately and gained momentum quickly. When the war started, this labour shortage became worse and worse through the conscription of agricultural workers as well as of growing numbers of independent farmers into the military. The government tried to make this up by increasingly using women and children, members of the compulsory Nazi Labour Service, foreign workers and POWs.

The employment of slave labourers, other foreign workers and POWs reached its climax in 1944 in the German economy as a whole and in agriculture and forestry in particular. By contrast to industry, there has been little research on the detailed structure and conditions of forced labour in agriculture. Hence work

on this problem is of high priority, simply because of the scale of the problem, and should be done on the basis of interregional comparative studies.

The questions to be studied are the methods of recruiting and assigning forced labour to family farms and agricultural estates, types of work assignments, treatment of the workers, accommodation, food and pay, supervision and discipline, the extent of social exclusion or integration, and how the problem was perceived and dealt with after 1945.

## **VI.II. Restitution and compensation**

### **1. Research project: The history of restitution and compensation legislation**

This project should look at the whole domestic and foreign political background, positions taken by various persons and groups, debates, influences and the foundations and processes of decisionmaking connected with restitution and compensation legislation.

### **2. Expert opinion: Legal analysis of Austrian restitution legislation especially from the viewpoint of civil law**

This should include an analysis of the technical legal construction of restitution legislation and its evaluation in terms of legal policy. Another point to be analysed is the way in which these laws were applied insofar as this is reflected in general administrative acts and in published case law.

### **3. Expert opinion: Legal analysis of compensation law from the viewpoint of social welfare law**

This should include an analysis of the technical legal construction of compensation legislation and its evaluation in terms of legal policy. Another point to be analysed is the way in which these laws were applied insofar as this is reflected in general administrative acts and in published case law.

### **4. Research project: Legal and foreign policy analysis of the international legal aspects of restitution and compensation legislation**

Find out in particular what connection there was between obligations undertaken by the Republic of Austria in international law and/or positions adopted by Austria in the field of international law and restitution and compensation legislation. Add an analysis of Austrian foreign policy in the relevant areas.

### **5. Expert opinion: Legal analysis of nationality law and of other legal matters not otherwise covered**

The core area is an examination of the legal conditions for Nazi victims who wanted to obtain or resume Austrian nationality. This means a legal analysis of relevant legislation (including general administrative acts and the case law of Austria's supreme courts of justice) after 1945 and an evaluation of legislation in terms of legal policy and legal technique. In order to provide a complete picture, the study should start with an analysis of Art. 80 of the Treaty of St. Germain (on the right of opting, see the implementing ordinance in StGBI. 1920/1937) and it should also look at loss of citizenship in the Nazi era.

Relevant areas of administrative law should also be examined where they are not already covered by other expert opinions (e.g. tax law).

### **6. Research project: Analysis of the practical application of the relevant provisions of social welfare law**

This project can be carried out with the help of the surviving files, which appear to be complete and are easily accessible. The project should examine what interpretation of the law the Federal Ministry of Social Administration (as it then was) prescribed in its capacity as the highest authority on social welfare, and what the general principles of practical implementation were which the authorities followed when they acted on behalf of the Federal Government.

Query: What were the differences, if any, in the treatment, by the authorities applying the law, of the various groups of victims? Were there regional differences from 1945 to the present? It would be desirable to quantify the number of applications broken down by groups of victims, and to calculate the ratio of applications allowed to applications rejected.

### **7. Research project: Analysis of the practical application of restitution legislation**

This is a project which should be carried out on the basis of the files to the extent that they survive. The archival situation is unclear, especially in the area of the restitution laws administered by the country's regular courts. Hence the first step will be to see what files are available. Then the following questions will be relevant: How did the courts and administrative authorities involved (such as the federal fiscal service) implement the restitution laws and what

general principles and structures of implementation can be perceived? Query: Were distinctions made in implementing the legislation in respect of the different groups of victims? Were there regional differences from 1945 to the present? Special attention should be paid to practices of amicable settlement.

### **8. Research project: Practices in applying nationality legislation and other matters**

As in 6 and 7 above, the project should be based on surviving files. In the context of nationality law, the way in which the discretion allowed by the law was exercised by the authorities is of particular importance. It would be useful to extend the examination of administrative practices under this heading to those matters which are not analysed under other headings. Merging this project with the expert opinion referred to in No. 5 above might be considered.

## **VII. ORGANISATIONAL REQUIREMENTS**

### **1. Personnel**

The Commission's Secretariat, which has been established within the Directorate-General of the Austrian State Archives, should be maintained.

### **2. Equipment**

Development of the EDP system as regards hardware and software to meet the Commission's specific requirements with special reference to the researches

resulting from its tasks. The Federal Chancellery's technical service responsible for these matters has been approached.

### 3. Opening hours at the central building of the Austrian State Archives

For the purposes of the Commission it is necessary to make the opening hours of the central building of the Austrian State Archives more flexible. Ongoing efforts to arrange this by the Director-General of the Archives, Prof. Lorenz Mikoletzky, promise that a modification of the opening hours will materialise soon.

### 4. Increasing the personnel of the Archive of the Republic

For the purposes of the Commission, and especially for the researches required, more personnel will be needed at the Archive of the Republic. There have been discussions about this with the Federal Chancellery.

## **VIII. BUDGET AND TIME FRAME**

In historical researches envisaged on this scale, it is unrealistic to predict the budget and time frame required with absolute precision. This is because it is only as each project pursues its course, that one can see how deeply one has to dig. Moreover - as has been pointed out in another context - the Commission's research assignment has to be placed in a meaningful relationship to researches pursued by other organisations. On present estimates, the Commission expects to finish its work in the course of the year 2002. Considering the actual start of

the project - mid-1999 - and on the assumption that the year 2002 will be devoted to the preparation of the final report, this means a period of two and a half years for the research work. The Commission will publish regular interim reports on the basis of the progress reports filed by each of the research projects.

In the following budget proposal, the Commission tries to estimate the cost and time of the projects and expert opinions considered essential at the present point in time. For technical reasons, the Commission must reserve the right at a later point to propose additional projects that may be found essential.

The estimates are based on general experience in cultural and social science research, including the work of historical commissions in other countries, especially the Swiss Historical Commission (UEK) appointed by the Swiss government to look into the Second World War. As regards personnel costs, the Commission assumed two different standard professional fees: ATS 520,000.- and ATS 750,000.- per person year. Two standard rates are advisable because personnel of different degrees of specialisation has to be taken on.

The following rates were used as standards of comparison: Austrian Scientific Research Promotion Fund - Fonds zur Förderung der wissenschaftlichen Forschung (FWF) (research projects : ATS 504,000.-), Austrian Academy of Sciences(e.g. APART: ATS 620,000.-), Federal Ministry of Science and Transport (up to ATS 560,000.- for specially commissioned research), Federal Ministry of Science and Transport (Universities)(salaries of assistants after qualification as lecturers: roughly between ATS 950,000.- and 1,050,000.- )

On the strength of the information which the Commission has, our rates are lower than those of comparable commissions, such as UEK. For legal expert opinions, we looked at comparable contracts, e.g. those offered by the Commission on the Reform of Social Security Legislation. Again, our rates are lower than those scales.

The cost of the project as a whole should also be seen in the light of other research projects of this magnitude, for example, "research focuses" sponsored by the FWF (up to ATS 7 million per year for up to 5 years) or "special research areas" (ATS 10 to 15 million per year for up to 10 years).

On these considerations, overall funding requirements will be as follows: ATS 19,751,500.- for 1999, ATS 30,846,000.- for 2000, ATS 13,780,500.- for 2001 and ATS 2,960,000.- for 2002. The relatively steep rise in 2000 is because that year will see the main focus of the whole project. The amount for 2001 is correspondingly lower. There is no explicit research budget for 2002 apart from the Commission's Permanent Experts, although the final report will have to be written in that year.

In order to work on the projects as now planned, the Commission will need on average 20 staff members per year, including the Permanent Experts.

The costs of infrastructure will run to ATS 3,050,000.- in 1999, ATS 3,280,000.- in 2000, ATS 3,380,000.- in 2001 and ATS 3,130,000.- in 2002.

