Bundesdenkmalamt

Wien, I., In der Burg, Reichskanzleitrakt, Marschallstiege

Geschäftszahl: 2631 - /48

Vorzahl: 159, 437, 589, 643, 1017, 1391, 1672/1716/1768/1886/48

Nachzahlen: 2832/48, 2936/48

Miterledigte Zahlen:

Bezugszahlen:

Genehmigungs-, Dringlichkeits- und Verschlußvermerk:

Gegenstand: Bloch - Bauer Sammlung.

bei d. Gal. v. 2.4.48 Zl. 33.

Frist: zu betreiben am / neue Frist

Zur Einsicht vor Genehmigung, Abfertigung, Hinterlegung

Durch Nachsichten erledigt, Einlegen 5.IX.49

P.O. Int. Rintelen ersuchen die Ausfuhrbewilligung für die Bilder, welche aus der Slg. Bloch-Bauer/München stammen und bei der Galerie verbracht wurden, zu erteilen.

12 Gem. sind durch Einzahlung Vermögensabgabe abgeschrieben worden.

Es kommen nur jene Bilder in Betracht, welche separat gemeldet wurden, nicht aber jene, welche als Zubehör geschätzt wurden.

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Geschäftszeichen: I. 59

Grundzahl: 159 / 119

Reing. / Vergl. / Begl. / Besi.

January 17, 2001

Stuart E. Eizenstat
Deputy Secretary of the Treasury
1500 Pennsylvania Ave., N.W.
Washington, DC 20220

Dear Deputy Secretary Eizenstat,

This is to confirm that the Exchange of Notes concerning the establishment of the General Settlement Fund, the Joint Statement of January 17, 2001, and any provisions concerning "legal closure" therein, shall not affect or pertain to the matter of Maria Altman v. Republic of Austria et al., currently pending before the United States District Court for the Southern District of California, because it is a matter of art restitution under the Austrian law. The United States Government has indicated to the Austrian Federal Government that it will not file a Statement of Interest in the above matter.

Sincerely,

Hans Winkler
Legal Adviser
Austrian Federal Ministry for Foreign Affairs

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UNITED DISTRICT COURT
CENTRAL DISTRICT OF LOS ANGELES

MARIA ALTMAN, Plaintiff, vs. THE REPUBLIC OF AUSTRIA, et al., Defendants.	Case No. 00-08913 FMC

Volume II
Pages 134 to 270

DEPOSITION OF MARIA ALTMAN
Los Angeles, California
May 30, 2002

George A. Haas, CSR 5939

UNITED DISTRICT COURT
CENTRAL DISTRICT OF LOS ANGELES

MARIA ALTMAN,
Plaintiff,
vs.
THE REPUBLIC OF AUSTRIA, et al.,
Defendants.

Case No. 00-08913 FMC

Deposition of MARIA ALTMAN taken on behalf of Defendant at 2049 Century Park East, Los Angeles, California, commencing at 10:00 A.M., Thursday, May 30, 2002, before George A. Haas, CSR No. 5939, pursuant to Order.

A-P-P-E-A-R-A-N-C-E-S

FOR THE PLAINTIFF:
LAW OFFICES OF E RANDOL SCHOENBERG
BY: E. RANDOL SCHOENBERG, ESQ.
12121 Wilshire Boulevard
Suite 800
Los Angeles, California 90025
(310) 826-4944
randols@schoenberglaw.com

FOR THE DEFENDANTS:

PROSKAUER ROSE LLP
BY: SCOTT P. COOPER, ESQ.
JONATHAN E. RICH, ESQ.
249 Century Park East
Suite 3200
Los Angeles, California 90067
scooper@proskauer.com

ALSO PRESENT:
GOTTFRIED TOMAN
KATHLEEN PATERNO
DALE PETERSON, Videographer

I-N-D-E-X
Volume II

W-I-T-N-E-S-S

MARIA ALTMAN Page

Examination By Mr. Schoenberg: 140, 265
Examination By Mr. Cooper: 141

UNANSWERED QUESTIONS:

PAGE:LINE

Q. 251:14
Q. 257:20

INFORMATION TO BE INSERTED:

(NONE)

EXHIBITS:

ALTMAN Identified
56..... 197:12
57..... 199:25
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LOS ANGELES, CALIFORNIA
10:15 A.M.; THURSDAY, MAY 30, 2002
* * * * *

VIDEOGRAPHER: We are going back on the record for Volume 2 of the videotaped deposition of Maria Altman. 10:11:28

Today is May 30, 2002. The time is 10:15 A.M. This is the matter of Altman versus the Republic of Austria, et al., Case No. 00-08913 FMC. This is filed in the United States District Court, Central District of California. This deposition is been taken at 2049 Century Park East, Los Angeles, California. 10:11:41

I'm Dale Peterson, videotape operator and public notary retained by SuperVision Video Services, located in Los Angeles, California. 10:12:00

Would counsel present please identify yourselves, starting with plaintiff's counsel.

MR. SCHOENBERG: I'm Randy Schoenberg, S-C-H-O-E-N-B-E-R-G, attorney for the plaintiff Maria Altman. 10:12:15

MR. COOPER: Scott Cooper, counsel for the defendants Republic of Austria and the Austrian National Gallery.

MR. RICH: John Rich, I work with Scott Cooper as counsel for the defendants Republic of Austria and Austrian National Gallery. 10:12:32

MR. TOMAN: Gottfried Toman, engaged by the Austrian Office of the State Attorney and represent the Republic of Austria. 10:12:45

MR. COOPER: Also present is Kathleen Paterno, a summer associate with our law firm.

//

MARIA ALTMAN,
having been first duly sworn,
was examined and testified as follows:

EXAMINATION
BY MR. SCHOENBERG:

Q. Mrs. Altman, I have a few remaining questions for you, then we'll hand it over to Mr. Cooper for cross-examination.

You testified yesterday that you arrived in the United States in May 1940; is that correct? 10:13:20

A. Correct.

Q. Did you apply for U.S. citizenship?

A. Yes, I did.

Q. When did you receive your U.S. citizenship? 10:13:31

A. In the spring of 1945.

Q. In the spring of 1945?

A. Yes.

Q. When did you come to Los Angeles? 10:13:38

A. In the fall 1942.

Q. Have you resided in Los Angeles continuously since that time?

A. Ever since.

MR. SCHOENBERG: I have no further questions. 10:13:50

MR. COOPER: Thank you.

//

EXAMINATION
BY MR. COOPER:

Q. Good morning, Mrs. Altman.

A. Good morning.

Q. How are you feeling today?

A. I'm feeling fine.

Q. If there is any point in the day at which you become tired or just want a break in the proceedings, just please let me know and we'll take a break. 10:14:03

A. I will. Don't worry.

Q. Did you do anything to prepare for your deposition? 10:14:13

A. No.

Q. Did you review any documents prior to your testimony yesterday?

A. Not yesterday. I did review some documents before. 10:14:15

Q. Prior to yesterday?

A. Yes.

Q. At what time did you do that?

A. Oh, I would say I went through it about a week ago. 10:14:22

Q. About a week ago?

A. Yes.

Q. Which documents did you review at that time? 10:14:30

A. The case. It was before the first court in Los Angeles.

Q. The Complaint in this action?

A. Yes.

Q. Anything else? 10:14:37

A. No.

Q. That's the only thing you looked at --

A. Yes.

Q. -- before your deposition?

A. Yes. 10:14:49

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Q. Did you look at any of the documents that Mr. Schoenberg had presented to you yesterday, prior to the deposition, to refresh your recollection? 10:14:54

A. I don't think I needed it. 10:15:04

Q. But you don't recall doing it either?

A. No.

Q. Did you have conversation with anyone prior to your deposition yesterday regarding the matters on which you testified? 10:15:15

A. No.

Q. You didn't have any conversation with any of your relatives on any of these topics prior to your deposition?

A. No, nothing. 10:15:26

MR. SCHOENBERG: You are meaning immediately prior?

MR. COOPER: Yes, and in connection with.

THE WITNESS: Well, I have a son living with me. My oldest son lives with me, so 10:15:33 occasionally I tell him what is going on, but that's it.

Q. BY MR. COOPER: You didn't have any conversation with him about what you expected to be testifying to? 10:15:44

A. Not really. 10:15:45

Q. Well, tell me what you do recall saying.

A. Well, he just said you don't have to be nervous, and just say what you feel like saying, 10:15:52 and that's it.

Q. It was about the process, not about the things you were testifying to?

A. No, no, just about the process. I have never taken a deposition before, so he just 10:16:04 told me not to worry.

Q. And when I ask you a question about whether you had a conversation with somebody during my questioning today, if you can, please answer yes or no, rather than giving me the substance of the 10:16:18 conversation. If I think I'm entitled to the substance of the conversation, I'll ask you specifically for that.

A. Fine.

Q. The reason I preface my next question 10:16:26 with that, I want to ask you whether you had a conversation with Mr. Schoenberg prior to your deposition, and I don't want you to tell me what he told you. Okay? Just tell me whether or not you had such a conversation. 10:16:46

Did you speak with Mr. Schoenberg prior to the deposition? 10:16:46

A. Yes, I did, about a week ago.

Q. Did you meet with him to prepare for the deposition? 10:16:48

A. Yes.

Q. How long was your meeting?

A. I would say a couple of hours.

Q. And that was the only preparation you did other than the review of the Complaint? 10:16:57

A. The only preparation.

Q. That and the review of the Complaint?

A. Correct.

Q. To your knowledge, is there anyone still alive who has direct knowledge of 10:17:08 Dr. Rinesch's dealings with Austrian officials with your family after the war?

A. I'm afraid not. I was the youngest, so all my siblings died years ago.

Q. Are you aware of anyone who is still 10:17:27 alive who has direct knowledge of your Aunt Adele's intentions with respect to her bequest of the paintings?

A. Not really. I was nine when she died, and I'm already the youngest, so -- 10:17:43

Q. And all of the attorneys that 10:17:46 represented the family during that time period, to your knowledge, are also dead?

A. I don't know why you say all the attorneys. I just know of Dr. Rinesch. 10:17:55

Q. I'll ask you a couple of more questions about this in greater detail later.

Your father represented the family from time to time as an attorney as well; did he not? 10:18:10

A. Yes, he did represent -- he was executor of the will of Adele, as far as I know.

Q. Other than Dr. Rinesch and the role that you father played, are you aware of anyone else who represented the family during the period 10:18:29 from --

A. No, no.

Q. -- from Adele Bloch-Bauer's death until now?

A. No. 10:18:37

Q. I take it that you are not aware of anyone who is still alive who can testify from direct knowledge about your uncle's intentions with respect to --

A. No, I wish. 10:18:52

Q. -- the paintings either? 10:18:54
A. I wish there were, but there is nobody alive any more.
MR. SCHOENBERG: Make sure you let him finish the questions. 10:19:02
THE WITNESS: I'm sorry.
Q. BY MR. COOPER: Let me say as well, if you have questions about what I mean in any of my questions, please just tell me --
A. I will. 10:19:10
Q. -- and I'll try to rephrase them.
A. I will.
Q. And it is important, what your counsel just suggested, that you let me finish first.
A. Yes. 10:19:18
Q. It is a courtesy to the court reporter in particular, who has to write down everything that we both say.
It also will give Mr. Schoenberg an opportunity to interject any objections he may 10:19:25 have. Okay?
And you'll need to answer audibly as well, when you intend to answer one of my questions. All right?
A. Yes, I will. 10:19:36

Q. Thank you. Are you aware what 10:19:37 happened to your Uncle Ferdinand's papers and personal effects after he died?
A. I don't quite understand what you mean by acquire. I know about his last will, and I 10:20:01 know -- see, I was years and miles away from the time where he died, so I don't know too much about it.
Q. Let me ask you whether you are aware that your Uncle Ferdinand, at the time of his 10:20:22 death, had in his possession copies of his personal records, correspondence that he sent or received during his life, or other kinds of records that would have been personal to him rather than belonging to the business? 10:20:47
A. I wouldn't know.
Q. You are not aware whether your brother Robert ended up with any such documents?
A. No.
Q. Mr. Schoenberg showed you a document 10:21:11 that I believe you identified as Adele Bloch-Bauer's will, Exhibit No. 13, during yesterday's questioning. I actually have a copy, if that's all right.
MR. SCHOENBERG: I have it right here. 13 10:21:25

is the transcript that was produced. You are 10:21:32 talking about Page Nos. 21 and 22?
MR. COOPER: That's right. That's the transcript.
THE WITNESS: I know that pretty well. 10:21:44
MR. COOPER: Okay.
Q. You had never, I assume, never discussed with Adele Bloch-Bauer her intentions with respect to the paintings?
A. No, I was just nine when she died. 10:22:29
Q. And you had no involvement with the probate of her will?
A. None.
Q. And had no discussions at that time with any of the other family members regarding the 10:22:40 will or Adele Bloch-Bauer's request of the Klimts; is that correct?
A. Never.
Q. Did you at any time subsequent to the death your aunt, and prior to 1998, have discussion 10:22:57 with any of your family members regarding Adele Bloch-Bauer's will?
A. No.
Q. Did you ever have any discussions with any of the members of your family or Dr. Rinesch 10:23:11

regarding Adele Bloch-Bauer's intentions with 10:23:15 respect to the Klimt paintings at issue in this lawsuit?
A. No, I didn't.
Q. When was the first time you had such 10:23:25 discussions with anyone?
A. The first time was when I, for the first time, saw the will, which was in 1999.
Q. For clarity purposes, the will has been identified as Exhibit No. 12. Can I ask you 10:23:42 to place that before the witness, please.
A. Yes, I know that very well.
Q. The first time you saw Exhibit No. 12 was in 1999; is that correct?
A. Yes. 10:24:05
Q. How did you receive this document?
A. My niece Nelly Auersperg showed it to me when I went to Vancouver after my sister died.
Q. May I draw your attention to the fax trail on what is the left margin of this document. 10:24:27 If you turn it sideways, do you see there is certain typewritten material at the top of that document?
A. Yes.
Q. Do you see the name Czernin-Molden? 10:24:40

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A. Czernin. 10:24:47
Q. Excuse my pronunciation of European words.
A. That's perfectly all right.
Q. This is Mr. Czernin, whom you have spoken on matters related to this lawsuit? 10:24:55
A. Mr. Czernin is a very sick man. I saw him very briefly in Vienna.
Q. Did you obtain certain documents from Mr. Czernin at some time in 1999? 10:25:09
A. Not directly. I got them through Mr. Schoenberg.
Q. What is your understanding of how these documents came into your possession?
A. I didn't get your question. 10:25:32
Q. What do you understand about the circumstances under which Mr. Czernin sent these documents?
A. The circumstances were that in March, I think it was March, for the first time came the 10:25:50 question whether this will was interpreted the way it was written. And so my relatives in Vancouver were called by Dr. Sturm. And then he just unfolded slowly that we got these papers that told us things that I wasn't aware of before. 10:26:27

Q. To the best of your knowledge, 10:26:31 Mr. Czernin was contacted, requested to send some documents, and these are among the documents that he sent?
A. Correct. 10:26:44
Q. During March 1998, when you were having the conversation with your relatives in Vancouver, do you recall whether your relatives had a copy of Adele Bloch-Bauer's will at that time?
A. You know, there was so much confusion, 10:26:57 I would -- I don't think they did.
Q. So to the best of your recollection, the first time you saw Exhibit No. 12 would have been sometime in or about January 1999, after receipt from Mr. Czernin? 10:27:15
A. That's correct.
Q. Is the same true of Exhibit No. 13, the transcript of Adele Bloch-Bauer's will that you identified yesterday?
A. Yes. 10:27:25
Q. I take it from your testimony that you have no personal knowledge that would allow you to interpret the intention of Adele Bloch-Bauer as expressed in this document? And by this document be I mean Exhibit No. 12. 10:27:50

MR. SCHOENBERG: Objection, vague and 10:27:52 compound.
Q. BY MR. COOPER: You can answer the question, Mrs. Altman.
A. Excuse me. You wanted to know if I 10:28:01 had personal knowledge?
Q. Of anything that would allow you to interpret the will, other than what you have already testified to.
MR. SCHOENBERG: I restate my objection. 10:28:10 It's a very vague question.
THE WITNESS: I can read the will, and it's perfectly clear. She's requesting her husband to leave the paintings after his death to the gallery.
Q. BY MR. COOPER: Yes, ma'am. I was 10:28:24 just wondering if you had any personal knowledge that gave you the ability to provide any special interpretation of those words?
A. No. I mean, I can read it, and I understand what I read, but that's it. 10:28:36
Q. Let me ask you to look at what was marked yesterday as Exhibit No. 11.
A. Yes.
Q. I understand this document has been identified as a document regarding the death Adele 10:29:13

Bloch-Bauer? 10:29:19
A. Correct.
Q. I understand you to have testified yesterday this was one of the documents you received from Nelly Auersperg in early 1998? 10:29:29
MR. SCHOENBERG: Objection, misstates the testimony yesterday.
Q. BY MR. COOPER: Is that not your recollection?
A. I don't remember whether Nelly gave 10:29:42 that to me.
See, I remember that I went there after the death of my sister and twice while she was dying and then for the funeral. Then we sat together and she gave me, showed me some papers. 10:29:54 Whether it was exactly at that time or whether it was -- I'm there every summer, so I don't know exactly when I saw that paper.
Q. It is your recollection that you received this document, Exhibit No. 11, from Nelly 10:30:11 Auersperg -- by the way, how do I pronounce her name correctly?
A. You did perfect.
Q. Fine, thank you.
Did you receive this document at some 10:30:25

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time from Nelly Auersperg? 10:30:27
A. I saw it there, yes.
Q. And you took a copy at that time?
A. Yeah, I -- there are so many papers that I have boxes and boxes. I don't know exactly 10:30:40 when I got this one, but I'm sure I got it at that time. I don't know.
MR. SCHOENBERG: If you don't know, that's fine.
MR. COOPER: That's fine. Counsel, if you 10:30:57 would like to at any point in time go off the record and engage in a colloquy with me, I'm happy to do it with respect to any document. I'm not looking to lead the witness into any errors. I think I was careful to point out earlier I want her 10:31:18 best testimony.
THE WITNESS: I have to admit the second page, where it says about my grandfather Morritz Bauer, I don't quite remember that I have seen this. 10:31:24
MR. SCHOENBERG: I'll just state for the record, on page -- especially the pages that have the fax number of Czernin on the top or bottom, very likely she saw those only after Mr. Czernin faxed them to us in January 1999. I think we went 10:31:38

through most of the ones yesterday that I believe 10:31:42 she had prior to us receiving documents from Mr. Czernin, and I don't think this is one of them, but --
MR. COOPER: Fair enough. The copy I had 10:31:52 doesn't have the fax line on it, and it was exactly that that caused me to understand that it may be a question of xeroxing.
MR. SCHOENBERG: It probably is. If you look at the one I placed in front of the witness, 10:32:13 it has a little bit of a line left there.
MR. COOPER: Okay.
Q. Mrs. Altman, you don't have a recollection of when you saw this document?
A. There were so many documents, and I 10:32:27 tried very hard to follow exactly seeing when I got it. I know I have seen it. I don't know exactly if it was through Mr. Schoenberg or through -- I mean Mr. Czernin, or if I got it through my niece. But I think it's more Mr. Czernin than her because 10:32:45 I don't recall that I saw the actual will of Adele at the Auerspergs.
Q. Fair enough.
A. I may have; I may have not.
Q. Would you turn to the last page of 10:33:03

Exhibit No. 11. 10:33:05
A. To the last page?
Q. Yes, ma'am.
A. Yes.
Q. The signature on the left-hand -- 10:33:08
A. That's my father.
Q. On the left-hand side of the document. That's what I thought.
Could you read that? Is that Gustav Bloch-Bauer? 10:33:21
A. Gustav Bloch-Bauer.
Q. What are the words below it?
A. Erben Machthaber.
MR. SCHOENBERG: You have to spell it for the reporter. 10:33:33
THE WITNESS: It's a representative of the heir.
MR. SCHOENBERG: Spell German for the reporter. Erben Machthaber.
THE WITNESS: E R B E N, A F U N A H M E -- 10:33:48 this?
MR. SCHOENBERG: Where you were reading from --
THE WITNESS: Excuse me. E-R-B-E-N, M-A-C-H-T-H-A-B-E-R. It's a horrible language. 10:34:13

MR. COOPER: Thank you. 10:34:26
Q. Your father was acting as the executor of the estate?
A. Yes.
Q. He also represented your uncle as his 10:34:30 attorney before the court when your aunt's will was probated; is that your understanding?
A. Yes, I suppose so. Yes.
Q. Do you understand that your father held a position of trust with your uncle? 10:34:51
A. Yes, he did.
Q. That your uncle relied on him for advice and counsel for legal matters?
A. In legal matters and matters of art. My father helped choose all those collections, 10:35:08 collections of art.
Q. I didn't know that.
What was your father's background with respect to art?
A. Pardon me? 10:35:16
Q. Your father's background with respect to art.
A. By the time he was 60, I was six, so I remember he -- I don't remember him working. He spent most of his time in art shops, galleries and 10:35:26

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antique shops. He loved art and music. I don't remember him working.
Q. And he advised your uncle in connection with your uncle's collection?
A. Yes. 10:35:49
Q. Are you aware of any circumstances where your father acted contrary to your uncle's interests in connection with any of the matters in which he represented him?
A. No, not at all. 10:36:02
Q. Let me ask you to take a look at the document marked yesterday as Exhibit No. 15.
Do you remember seeing this document yesterday?
A. I guess so. There were a lot of documents. 10:36:47
Q. Yes, there were.
A. What would you like me to say about that?
Q. I understand this document is a transcript of the probate proceedings in January 1926 of your Aunt Adele's estate? 10:37:01
A. Correct.
Q. Is this among the documents, to the best of your knowledge, that were received from 10:37:25

Mr. Czernin? 10:37:28
A. Yes.
Q. And is the first time that you saw a copy of this document, to the best of your recollection, sometime in January 1999? 10:37:39
A. Correct.
Q. Would you draw your attention, please, to the first paragraph of text that appears on the first page of Exhibit No. 15, which is marked in the bottom right-hand corner 000024. 10:38:04
A. Yes, correct.
Q. That paragraph appears in German in this document. Would you be kind enough please to tell me in English what that paragraph says, to the best of your understanding? 10:38:21
MR. SCHOENBERG: I'm going to object.
THE WITNESS: Yes.
MR. SCHOENBERG: Having her translate a long paragraph like that. I think -- she can do it, but the paragraph has been translated, I think. 10:38:30 If it hasn't, we'll have a translation made of it. I'm not sure what relevance also it would have what her translation is, but I'll let her.
MR. COOPER: I'm actually not interested in her translation as a translation. I have 10:38:47

absolutely no objection to my reading into the record my understanding of what it says and then asking her whether she disagrees with it. I simply wanted to be able to engage in questioning regarding its substance, which I'm only capable of doing in the English language. 10:38:52 10:39:04
MR. SCHOENBERG: Why don't you read in the translation you --
THE WITNESS: I can translate it.
MR. SCHOENBERG: Let her translate it. She wants to. Go ahead. 10:39:13
THE WITNESS: It says that the Klimt paintings are not mentioned in the -- in her personal holdings. The Klimt paintings are not mentioned. The widow of Mr. Ferdinand Bloch-Bauer residing at Elisabethstrasse 5 were presented by Gustav Bloch-Bauer, declares that the Klimt paintings are his property. On the other hand, he says he would be glad to fulfill the requests of his wife, though they do not have the character of an actual inheritance. 10:39:42 10:40:09
Q. BY MR. COOPER: Let me tell you what I understand that last phrase says, and you can tell me whether you agree with this.
It says that the widower of the 10:40:41

testatrix, Mr. Ferdinand Bloch-Bauer, industrialist of Vienna, Elisabethstrasse 18, represented by Gustav Bloch-Bauer, Attorney at Law, at Vienna, Stubinstei No. 2, as the heir's representatives, declares to be the owner of the Klimt paintings. 10:40:51 10:41:14 However, on the other hand, in a submission, he declares that he will fullfil the testatrix's requests even if they should not have the binding character of a testamentary disposition.
A. No, it says though they do not have -- excuse me. I think there is a difference between "even" and "though." They do not have the force and character of a -- 10:41:32
Q. Testamentary?
A. -- testamentary, yeah. 10:41:53
Q. When did you first become aware of that statement on your uncle's behalf with respect to the property?
A. In the early spring of 1999.
Q. And you were not aware prior to that time whether or not your uncle had made any written submission with respect to his intention regarding Adele Bloch-Bauer's mention of the Klimt paintings in her will? 10:42:08
A. No. As a matter of fact, definitely 10:42:29

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no. He never did make a written remark in regard to the paintings.
Q. You understand this is a written remark made on his behalf in the probate proceedings during January 1926, correct? 10:42:31 10:42:44
MR. SCHOENBERG: Objection, you asked if Ferdinand had written anything, not whether his attorney had said or written anything.
MR. COOPER: Would you read back my question for the witness. 10:42:57
(The record was read by the reporter as requested.)
THE WITNESS: No, I was not aware.
Q. BY MR. COOPER: And you understand that this is a written statement made on behalf of your uncle by his attorney, your father, Gustav Bloch-Bauer, correct? 10:43:12
MR. SCHOENBERG: Objection. What are you referring to now?
MR. COOPER: This document the witness just read into the record. 10:43:24
MR. SCHOENBERG: I'm sorry. The document, the first page of Exhibit No. 15, you are testifying that that is written by Gustav Bloch-Bauer, counsel? 10:43:38

MR. COOPER: I see the distinction you are making. 10:43:40
Q. Are you making a distinction, when you say you are not aware that your uncle ever made a statement with respect to your aunt's intentions in her will regarding the Klimts, are you saying that this probate record is not a submission by Ferdinand Bloch-Bauer, and therefore, you are not aware that he ever made a statement with respect to this subject matter? 10:43:50 10:44:17
MR. SCHOENBERG: Object again, you are referring just to the first page now, which is a transcript of the handwritten document of the court on the probate order which is attached as the second and third page. 10:44:29
MR. COOPER: Object to your characterization, and there is no evidence that that is what this evidence is.
MR. SCHOENBERG: The document came from your clients as a transcript prepared by the Austrian government in the late '40s, if you don't think it says what it says, we can talk about it. It's an ambiguous question because you are not clear whether you are referring to the first page or the second page or the third page. 10:44:37 10:44:52

MR. COOPER: We'll make it clear. 10:44:55
Q. Mrs. Altman, do you have personal knowledge with respect to what this document is?
A. I beg your pardon?
Q. Do you have any personal knowledge regarding this document, other than what you have already testified to? 10:45:05
A. No.
Q. You only know about this document that you received it from Mr. Czernin through your counsel, correct? 10:45:12
A. Correct.
Q. This document on its face, the words which are all in German, the heading of this document, the first page -- 10:45:34
A. Yes.
Q. -- of Exhibit No. 15?
A. Yes.
Q. It was marked for identification purposes by your counsel in connection with the production of this document to us. It has 000024 on the lower right-hand corner. 10:45:40
That's the page to which I'm making reference. Do you understand that?
A. 000024, yes, that's the page. 10:45:59

Q. And the heading at the top of this page, the first words below the fax transmission trail identifying it has having come from Mr. Czernin, the printed words at the top line; what do those say? 10:45:59 10:46:15
A. This?
Q. Yes, ma'am.
A. Bloch-Bauer Klimt paintings.
Q. And below that?
A. I beg your pardon? 10:46:25
Q. Below that?
A. Below that it says this is in regard to the document of his -- the English language is so much easier -- the acknowledgment of his belongings from -- the belongings. 10:47:00
MR. SCHOENBERG: He's asking you to give your best translation.
THE WITNESS: Yeah, well, this is a transcript of his declaration of his owings.
MR. SCHOENBERG: Is there a date? 10:47:31
THE WITNESS: The date was January -- 7th January 1926.
Q. BY MR. COOPER: And the next line?
A. And it says handwritten remarks on Page No. 1 of the original. 10:47:44

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Q. Now, do you understand that this is a document created by the probate court in the course of the probate proceedings of Adele Bloch-Bauer's will? 10:47:48

MR. SCHOENBERG: Objection, that misstates what the document completely. 10:48:02

You are saying it's a transcript of that or that is what it is?

MR. COOPER: Read back the question, please, for the witness' benefit. 10:48:16

(The record was read by the reporter as requested.)

MR. SCHOENBERG: Objection. Again, it's unclear whether you are asking whether this is a transcript of the document you are asking about or whether this is an actual document that was written, handwritten by the probate court. 10:48:30

Q. BY MR. COOPER: Would you please answer my question?

A. Yes. Would you mind repeating your question. 10:48:45

(The record was read by the reporter as requested.)

THE WITNESS: Yes, of course. Yes, I can see that. 10:49:00

MR. SCHOENBERG: I'm going to move to strike the answer. It's confusing and vague the way you have -- 10:49:01

Do you understand this actual page is the document that the probate court -- 10:49:09

MR. COOPER: Counsel, you will have an opportunity to redirect the witness.

MR. SCHOENBERG: You are misleading her.

MR. COOPER: That's preposterous.

THE WITNESS: I do not really -- I try very hard to understand what you want to say. This is all a very difficult legal language which is even hard for me, though I spoke German fluently, to understand. I'd like to find out what you want me to understand here. 10:49:21 10:49:42

Q. BY MR. COOPER: All I've asked, Mrs. Altman, is your understanding of what the document is.

MR. SCHOENBERG: Are you asking her what this particular typed document is or what it is a transcript of, counsel? 10:49:51

THE WITNESS: I can translate this for you, but I really don't know -- I did translate for you that the person who is inheritor declares that the Klimt paintings are his property. 10:50:17

MR. SCHOENBERG: Mrs. Altman is clearly not understanding your question. 10:50:20

He's asking you, do you know what this particular document is, this typed document, not what it is a transcript of. 10:50:28

MR. COOPER: Counsel, please do not coach the witness in her responses. The record couldn't be clearer in what I said and what she said. That's why it's being taken down.

MR. SCHOENBERG: That's why you are obviously misleading her. It can't possibly be correct. 10:50:41

THE WITNESS: I have seen it over and over. All I know, it says here the paintings are his property. Sie auch nicht. 10:50:51

MR. SCHOENBERG: Can we take a break, please?

MR. COOPER: No, I'd like to finish this line of questioning.

MR. SCHOENBERG: Can you read back the question and have her answer it again. 10:51:03

MR. COOPER: Please, Mr. Schoenberg.

Q. Mrs. Altman, all I was asking is what you understood what the document was. You already answered that question. I'm not looking for 10:51:13

anything further on a pending question. 10:51:15

Let me ask you this: Do you understand from this document that Ferdinand Bloch-Bauer expressed to the probate court in January 1926 his intention to fulfill the request of Adele Bloch-Bauer, to give to the National Gallery the six Klimt paintings, even though her bequest in her will did not have a binding character of a testamentary disposition? 10:51:29

MR. SCHOENBERG: Objection. Can you clarify whether you are talking about Ferdinand Bloch-Bauer personally or through his attorney Gustav Bloch-Bauer? 10:52:15

Q. BY MR. COOPER: I'm not making that distinction, Mrs. Altman. 10:52:24

MR. SCHOENBERG: Then I object to the question as vague and ambiguous.

Q. BY MR. COOPER: Do you understand the question, Mrs. Altman?

A. He says the Klimt paintings are his property. However, he says he will fulfill a wish if the moment comes. 10:52:36

He never had the paintings any more. He couldn't fulfill it even if I had wanted to.

MR. COOPER: We can take a break now. 10:53:12

MR. SCHOENBERG: I would like to take a break. 10:53:14

VIDEOGRAPHER: Going off the record at 10:567 A.M.

(A brief recess was taken.) 11:03:31

VIDEOGRAPHER: Going back on the record 11:07 A.M.

Q. BY MR. COOPER: Mrs. Altman, during our brief break, your counsel and I had a conversation regarding Exhibit No. 15 and where 11:03:42 your copy of this document comes from and something of its provenance. Let me see if I can ask you a couple of follow up questions with respect to your knowledge on this document.

Other than understanding that this 11:04:07 document was provided through your counsel by Mr. Czernin sometime in January 1999, do you have any personal knowledge regarding its provenance?

A. No.

Q. Without asking you to interpret 11:04:30 whether this is a transcript of the January 7, 1926 probate proceedings of your aunt's will or whether it is itself a document created by the probate court -- I'm not asking you to make that distinction, and I take it, by the way, that you 11:04:58

don't know which this is, whether it's a transcript 11:05:01 or itself a court created document?

A. Exactly, correct.

Q. The only thing I was interested in in making reference to this particular document in my 11:05:20 prior questions was whether you were aware from this document of the statement attributed to your Uncle Ferdinand about which I was questioning you. And you are aware of the statement from this document, correct? 11:05:39

A. I was aware of it, but that's when I said that in his -- yes, I was aware of it, but it's meaningless because he didn't have the paintings.

Q. Without regard to any interpretation 11:05:56 you or I may place on this document today, this document is the only knowledge you have with respect to any statements your uncle made in connection with the probate of your Aunt Adele's will with respect to the Klimt paintings; is that 11:06:18 correct?

A. Yes.

Q. And you understand that however one interprets this statement, this statement is attributed to your Uncle Ferdinand in connection 11:06:31

with those probate proceedings; is that correct? 11:06:34

MR. SCHOENBERG: Objection, calls for a legal conclusion.

Q. BY MR. COOPER: You can answer.

A. Would you repeat the question. 11:06:46

Q. Let me rephrase the question instead.

Do you have any reason to doubt that your Uncle Ferdinand made the statement attributed to him on Page No. 1 of Exhibit No. 15?

A. Made the statement in '23, but a lot 11:07:02 changed until he died in 1945.

Q. I believe the statement, at least this document suggests it was dated January 7, 1926.

A. Yes.

Q. You just said '23. Were you -- 11:07:20

A. I'm sorry. I thought he died in '23, but I was confused with '23 and '26.

Q. Fair enough.

Would you please put Exhibit No. 20 before the witness. 11:07:49

MR. SCHOENBERG: Certainly.

Q. BY MR. COOPER: I don't believe you were asked yesterday, and forgive me if I'm in error, when the first time you saw this document was. 11:08:23

Do you recall when you first saw it? 11:08:31

A. I think, I mean, I couldn't swear on it. I think I only saw it after my sister died, because she had all those papers. I had none.

Q. To the best of your recollection, it 11:08:45 would have been sometime in or after March 1998?

A. My sister died -- yeah, correct.

Q. Your sister died in April 1998; is that correct?

A. Yes. 11:08:58

Q. So either just before or just after her death?

A. No, after, not before.

Q. You, to the best of your recollection, received this document from Nelly Auersperg? 11:09:08

A. I do think so.

Q. You do think so?

A. I do think so.

You see, it's very difficult for me -- I have a good memory -- to distinguish between the 11:09:19 papers I received through Monica Mayer, Mr. Czernin, and the personal papers that I received from my niece.

Q. Who was Monica Mayer?

A. I think she worked with Frodl, if I 11:09:35

recall. She was working for the gallery. 11:09:40
Wasn't she? I think so.
Q. Can you tell me, to the best of your recollection, what role Monica Mayer had in connection with any of the records relating to this 11:09:54 lawsuit?
A. She provided with us some written material at the session in Vienna that Professor Bacher told me, "We did supply you with all necessary information, didn't we?" And I said yes. 11:10:14 You sent all the papers to me -- I mean to Mr. Schoenberg.
Q. Monica Mayer was someone who collected some documents?
A. I met her at the dinner party. That's 11:10:28 all. I never had more than two friendly social words with her.
Q. Let me ask you as a foundational question. Are you able to read the handwritten words that appear on, I think what you have before 11:10:56 you is the second page of Exhibit No. 20?
A. 20, yes..
Q. It's the page that is marked for identification purposes 000305.
A. Correct. I have it in front of me. 11:11:17

Q. Are you able to read what is on that 11:11:18 page?
A. Yes, I do.
Q. You can read it?
A. Yes. 11:11:31
Q. That's interesting.
Between the difficulty of handwriting, the copy and the language differences, I find it virtually impossible to read.
A. I don't blame you. 11:11:35
Q. So I appreciate that.
MR. SCHOENBERG: I believe that, Mr. Cooper, we provided in our production --
THE WITNESS: It's difficult for me, though I was born in Austria, it's difficult for me to 11:11:45 read it, and --
MR. SCHOENBERG: I have made a transcript of this. I think there were one or two words that were, for me at least, illegible, but I believe that's part of the production, maybe very near the 11:11:59 end there was a --
THE WITNESS: Her handwriting is not --
MR. SCHOENBERG: Hold on one second.
There is something called a Summary Transcript of Relevant Documents. I think it's 11:12:10

included this that. I believe I also quoted it in 11:12:12 a letter to Minister Gehrer in July 1999. I think you have that also.
MR. COOPER: That's fine. I actually wasn't making any objection at all. The document 11:12:22 is what it is.
MR. SCHOENBERG: What it says --
MR. COOPER: I understand what it says. I just said I can't read it, and I was wondering if the witness could. 11:12:36
MR. SCHOENBERG: All right.
Q. BY MR. COOPER: My understanding, Mrs. Altman, this is, A, the last will and testament of Ferdinand Bloch-Bauer?
A. Correct. 11:12:44
Q. Dated October 8, 1942?
A. Yes. He died in --
MR. SCHOENBERG: Wait a second.
THE WITNESS: Excuse me.
Q. BY MR. COOPER: I don't want you to 11:12:53 draw conclusions or get ahead of me.
A. Yes.
Q. I do not have the understanding that this was his final will. I believe that I will be able to show you in a few minutes, and 11:13:04

Mr. Schoenberg showed you yesterday, a will that is 11:13:07 dated subsequent to this document. I actually just wanted to draw your attention to the primary bequest, as I understand it, in the document.
I understand that the first sentence 11:13:21 after the preamble, the preamble saying of sound mind and memory and without being forced, I dispose as follows in the event of my death.
Then I understand the next sentence to say I appoint my niece Louise Baroness Goodman nay 11:13:40 Bloch-Bauer my universal inheritrix, and in case she is not able to accept the inheritance, I appoint her two children, Natalie and Franz, in equal shares.
Is that approximately what it says, as 11:13:59 you understand it?
A. Yes, it was the first will.
Q. When did you first become aware that, at least as of October 1942, your uncle had made your sister Louise his primary heir? 11:14:15
A. I saw that later, much later. This is a letter I saw much later.
I was familiar with the last will he wrote before he died, within months or a week before he died. 11:14:42

002633

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Q. Let me ask the question a little differently. 11:14:43

Were you aware, prior to your uncle's death, that at some point in time, apparently in 1942, he had made your sister Louise his primary heir? 11:14:53

A. No, I was not aware of that.

Q. This will provided a bequest to you of 10,000 American dollars; is that your understanding? 11:15:11

A. Yes, but that -- I don't recall when I saw that because I was familiar with the second will.

Q. I understand that. I'm just asking whether you had any understanding, from October 1942 through the death your uncle, that at some point in time he had a will which made your sister Louise his sole primary heir and you the recipient of a $10,000 bequest? 11:15:24

A. I was not aware of that. 11:15:49

Q. Are you aware of any special relationship your uncle had with your sister Louise that might have caused him to declare her his universal heir at that time?

A. Yes, because my sister Louise was the 11:16:03

only one among us siblings that was still in Europe at that time, so she had contact with him. I understand she visited him, but she was the only one there. The rest of us were in Canada and America. 11:16:05 11:16:19

Q. Did you have contact with your uncle between the time that you left Austria in 1938 and the time he died in 1945?

A. Only while I was in England, following my escape to England and no more after I left for America. At the beginning of the war. 11:16:36

Q. You testified yesterday, Dr. Rinesch was retained and entrusted by your uncle to recover your uncle's property after the war; is that correct? 11:17:16

MR. SCHOENBERG: You are asking for personal knowledge other than what she learned from the documents?

MR. COOPER: Let me ask the question again, thank you. 11:17:22

Q. Were you aware, during the period after the war, that your uncle had retained Dr. Rinesch to assist him in connection with the recovery of your uncle's property?

A. No, I was not really aware of that. 11:17:42

Q. You are aware of that today through documents that have been presented to you in connection with this deposition, among other things? 11:17:42

A. Yes. There was also another lawyer that he mentions, Lowatschek, that was supposed to bring his last instructions, but I never met him, and I don't know anything about him. 11:17:45

Q. You have no personal knowledge regarding Dr. Rinesch's representation of your uncle in the post war period? 11:18:03

A. Well, as I said yesterday, Rinesch was a friend and lawyer of the family, so I had no reason to doubt that if he did work for him.

Q. You had become familiar with Dr. Rinesch prior to your departure from Europe; is that correct? 11:18:24

A. Oh, I have known him since I was a child. He was the best friend of my brother Robert. 11:18:39

Q. What do you know of his reputation in the Austria legal community?

A. I couldn't tell you. He was a very decent man. What he was as a lawyer, I wouldn't know. I had no discussions with him in that way. 11:18:54

Q. You had no understanding of his prominence this the Austrian legal community? 11:18:57

A. No.

Q. You mentioned yesterday briefly that Dr. Rinesch had some involvement in assisting members of your family to escape from Austria. 11:19:14

Would you please describe for me what his involvement was.

A. He tried to help my husband and me to get a passport, but it didn't work. He made an attempt to help us to leave, and it failed totally, but luckily they never found out. But what it actually was, I don't know. I do think that he tried to help us to get passports, but it never materialized. 11:19:33 11:19:58

Q. I understood from someone that he also was involved in actually helping to transport members of the family in his personal car?

A. Oh, I think it was the mother of my sister-in-law, Robert's wife, Robert's first wife, who helped her mother to get out, but I wouldn't have known. I heard that only since seeing it on the paper. I didn't know. 11:20:14

See, we were not in any contact. My sister was in Yugoslavia. We were in England. 11:20:34

Part of the others were in Canada. I wouldn't know. 11:20:39

Q. After the war your brother Robert was the family's representative in connection with efforts to obtain restitution of the family's property; is that correct? 11:20:49

A. Correct.

Q. Did he play any direct role, while he was in Europe, in matters relating to the sugar factory? 11:21:03

A. Well, he tried his best to recover some of the things that, whether they belonged to my uncle, but I don't know any details.

Q. Did there come a time when your brother Robert actually took on any official role with respect to the business of the sugar factory after World War II? 11:21:22

A. I think my brother Poldi went there and helped, too.

Q. You are not aware whether Robert had any official role with respect to the company? 11:21:49

A. I don't think he accomplished a lot there. He tried, but he failed quite a bit.

Q. You mentioned that your brother Leopold also went to Europe and engaged in some 11:22:05

efforts to obtain restitution of property? 11:22:11

A. Yes.

Q. What do you know about his activities?

A. Not much because actually, from what there had been and what came out of it, it was just a fraction. So they both tried, but I really don't know the amount to which they accomplished anything. 11:22:21

Q. Are you aware whether your brother Karl also was in Europe and engaged in some of the efforts to obtain restitution of the property after the war? 11:22:37

A. Yeah, I guess he tried to. Yeah.

At the time I was very busy. I had three little kids and worked, and so I wasn't involved much in these matters. 11:22:53

Q. Did you correspond with your brother Karl at all after the war?

A. Oh, I saw him every year when I went to Vancouver, but we didn't correspond. 11:23:10

Q. He wrote you no letter after the war regarding any matters pertaining to the efforts to obtain restitution of the property?

A. Not that I know of because he wasn't even in the will of my uncle. Charles -- neither 11:23:33

Charles or Poldi were in the will of my uncle. 11:23:39

Q. Neither of them wrote to you during the post war periods regarding any matters relating to the efforts to recover property?

A. No. Poldi never wrote, and Charles didn't write much either. 11:23:52

Q. Do you understand that Charles -- Charles is how you refer to your brother?

A. My oldest brother, yes.

Q. He's also referred to from time to time as Karl; is that correct? 11:24:05

A. Karl was his actual German name. Then he changed it to Charles, like to have a translation of the name.

Q. So is it best that I refer to him as Charles as opposed to Karl? 11:24:18

A. It's fine. Whatever you prefer.

Q. As long as we understand who it is I'm referring to it's all right.

A. I understand. It's fine. 11:24:29

He also kept the name Bloch-Bauer, despite the others that called themselves Bentley.

Q. He changed his first name to anglicize it and kept his last name out of spite?

A. Correct, yeah. 11:24:44

Q. Do you understand that Charles was involved in effecting the return of one of the Klimt paintings to the National Gallery at some point after World War II? 11:24:51

MR. SCHOENBERG: Object. You are asking her -- 11:25:08

THE WITNESS: I have no idea. I couldn't even tell you. I have no idea.

MR. SCHOENBERG: I was wondering whether you were asking personal knowledge or something she gleaned from the document, but I guess the answer is in. 11:25:14

THE WITNESS: No, I have no idea what he did.

Q. BY MR. COOPER: You mentioned yesterday during the course of his activities in connection with the attempt to obtain restitution of -- 11:25:23

A. Excuse me. "His activities" you are talking about Charles? 11:25:36

Q. My question was too long. Let me start over. I'm now referring to Robert.

A. Robert, yes.

Q. In connection with Robert's activities after the war to obtain restitution of property to 11:25:46

the family, you mentioned that he communicated to you regarding his efforts by telephone and letter? 11:25:52

A. Yes.

Q. I wonder if you can tell me, to the best of your recollection, how often you had conversation with Robert by telephone? 11:26:10

A. Not much. Not much at that time. The telephone was not as inexpensive as it is now. We didn't talk much.

Q. Do you know what happened to the letters that Robert sent you during that time period? 11:26:22

A. What happened to letters?

Q. Yes. You testified he communicated by telephone and in writing, by letter. I'm wondering if you know what happened to the letters he sent you? 11:26:34

A. Oh, I'm not a very good keeper of materials. I don't -- I'm quite sure I haven't got one letter left of his. 11:26:50

Q. Were you aware, during that time period, that Robert also was writing to your sister Louise regarding his activities in Europe on behalf of the family?

A. Yeah -- 11:27:05

MR. SCHOENBERG: Object. Can you be a little more precise on what time period? For a portion of the time after the war, Louise was in Yugoslavia, then she moved to Israel and Canada. 11:27:06

MR. COOPER: Fair enough. 11:27:19

Q. Let me ask you, when did Robert first commence his activities on behalf of the family and the efforts to obtain restitution?

A. I couldn't tell you exactly when. I do know that he tried to send packages to my sister to Yugoslavia, which was just food packages; care packages he called them. And the thing was far from my mind to be involved in all that because I left it to him to try what he can do. I was not involved at all with it. 11:27:31 11:27:56

Q. You don't recall when he started these activities?

A. Well, I'm sure he tried to start soon after my uncle passed away.

Q. You don't have any specific recollection? 11:28:15

A. No, I don't.

Q. You mentioned that your brother Robert had acted for a time as the personal secretary to your Uncle Ferdinand? 11:28:56

A. Correct. 11:28:58

Q. Can you describe for me the types of activities that Robert had in connection with that role?

A. I wish I know more about it. I'm afraid I don't. 11:29:11

I went to the office there. Their offices were on Elisabethstrasse, and he worked there, but you see, I was a girl of 16, 17, 18. The last thing in my interest was what type of work he did there. I couldn't tell you. 11:29:27

Q. Perhaps then I can get your understanding of the type of position it was.

Personal secretary can mean anything from a clerical position to a position of some responsibility or authority that goes beyond the kinds of things that one might think of as secretarial. 11:29:46

Do you have a sense of what kind of role it was? 11:30:03

A. I don't think my uncle gave any big authority to Robert whatsoever. He was an incredibly forceful man. Robert was -- I think Robert was a little bit afraid of his uncle, and he was not a very strong person. And I -- the work he did, I really couldn't tell you. 11:30:20 11:30:27

Q. I suspect I know the answer to the next question I'm going to ask you based on that, but let me ask, please, that you take a look at what was marked yesterday as Exhibit No. 24. 11:30:42

A. Yes.

Q. Do you know what this document is?

A. It's the last will of my Uncle Ferdinand in October 22, 1945.

Q. May I see the document that you have. 11:31:23

MR. SCHOENBERG: Is it my fault.

MR. COOPER: It's as likely my fault as any. I have two numbers on this document.

Let me ask for 23, please.

MR. SCHOENBERG: Okay. 11:31:45

THE WITNESS: This says 24.

MR. COOPER: Yes. I think the error was in my transcription of this document.

MR. SCHOENBERG: I hope that is right because chronologically 23 comes before 24, so I probably did it in that order. 11:32:01

MR. COOPER: That's the document I have in mind.

MR. SCHOENBERG: Okay.

Q. BY MR. COOPER: Let me ask you what 11:32:08

that document is, if you know. 11:32:09
A. It just seems -- yeah, it names some of the paintings that -- the top one, as a matter of fact, I received and sold it. The Schindler document with brook and bridge. 11:32:38
Q. You received that document as part of the return of property to the family after the war?
MR. SCHOENBERG: Objection. Can you ask that question again or repeat the question? I'm not sure I heard it. 11:32:57
(The record was read by the reporter as requested.)
MR. COOPER: My mistake.
Q. You received the painting, the Schindler painting referenced as the first item on 11:33:10 Exhibit No. 23, as part of the return of the family's property after the war?
A. Yes. I don't remember any of the others.
Q. That was going to be my next question. 11:33:31 Do you recall seeing this document before yesterday?
A. I'm sure I must have seen it, but I wouldn't remember.
Q. I take it you have no personal 11:33:48

knowledge regarding the creation of this document? 11:33:51
A. No.
Q. The handwriting on the bottom of this page --
A. The handwriting of my brother Robert, 11:34:00 and he says it's a copy of a letter to my uncle.
Q. It says this is a copy of a letter to Uncle Ferdinand?
A. Yes.
Q. Below that what does that say? 11:34:22
A. It's a date, 28th September 1945.
Q. Do you know whether Robert was in Europe in September 1945?
A. I know he was in Europe, but I couldn't tell you exactly if it was 1945. 11:34:47
Q. He was no longer in your uncle's employ in 1945 as his personal secretary?
A. No, certainly not. My uncle died in November '45, and Robert was in Vancouver, Canada.
Q. You have no understanding of the 11:35:11 circumstances under which Robert might have been --
A. None.
Q. -- creating a report for your uncle regarding any of this property?
MR. SCHOENBERG: Objection to the extent 11:35:21

you are suggesting that Robert created the report, 11:35:22 it assumes a fact not in evidence and probably never will be.
Q. BY MR. COOPER: Let me ask this question first: Do you have any understanding from 11:35:37 the face of this document whether this represents any portion of a report Robert created for your uncle?
A. I must tell you this is very confusing here. It gives all sorts of names to whom the 11:35:51 things were sold. Verk means verkauf, and he names these people, so I really couldn't tell you.
Q. So you have no way of telling what this document is from the contents of the document and the handwritten notation on the bottom from 11:36:13 Robert?
A. No. All I remember is that this one Schindler painting was returned to me. I got two Schindler paintings and sold them.
Q. Now, would you please put Exhibit No. 11:36:39 24 before the witness.
Would you please, I know did you a moment ago, would you please, for the clarity of the record, identify what Exhibit No. 24 is?
A. The last will of my uncle, written in 11:37:32

October 22, 1945. 11:37:36
Q. Would you turn to the second page of the document.
Do you have an understanding of what that second page represents? 11:37:54
A. The second page. It's just -- this?
Q. Yes, ma'am. This is the page marked 000317.
A. Yes, it's a confirmation.
000317? 11:38:15
Q. Yes.
A. It just says it's a confirmation of the court in Zurich that this is his last will.
Q. Would you turn to the third page, please, 000318. 11:38:30
A. Yes.
Q. And do you have an understanding of what that page consists of?
A. Yes. It says all former testaments are no longer in -- no longer -- I don't know the 11:38:43 English word for ungueltig. No longer correct. That this is his last will, and that it gives half of his last will to my sister, who was at that time in Yugoslavia, and a quarter to me, and a quarter to Robert. 11:39:11

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Q. Is it your understanding that this is a typed description of what appears on the first page of Exhibit No. 24? 11:39:12

A. Correct. The first page is his handwriting, and the last page is the typed. 11:39:27

Q. To the best of your recollection, you received this document for the first time sometime after your uncle's death?

A. Yes.

Q. In November 1945; is that correct? 11:39:46

A. Yes.

Q. How soon after his death did you receive the copy of this document?

A. Oh, I'm sure within weeks. I really couldn't tell you exactly when. 11:40:05

Q. Did you ever learn the circumstances under which your Uncle Ferdinand changed the bequest that he left from the bequest set forth in Exhibit No. --

A. No, I don't know. You mean from his first will? 11:40:28

Q. From his first will, Exhibit No. 20.

A. No. I guess he just changed his mind.

Q. You never spoke to him about that?

A. No, I never spoke to him any more. 11:40:49

Q. Did any of the other members of your family ever speak to you regarding any information they had regarding his reasons for changing? 11:40:49

A. No.

Q. You were aware that your brother Robert retained Dr. Rinesch, after your Uncle Ferdinand's death, in connection with matters relating to the will and the restitution of the property? 11:41:12

A. I was aware of this. 11:41:29

Q. Were you also aware that your brother Robert gave to Dr. Rinesch your brother Robert's power of attorney in connection with those matters?

A. Yes, I learned that.

MR. SCHOENBERG: You are asking whether she was aware then or aware now? 11:41:50

MR. COOPER: Yes. The question was was Mrs. Altman aware then that he conferred the power of attorney in Dr. Rinesch.

THE WITNESS: Yeah, I guess so. 11:42:01

MR. SCHOENBERG: We don't want you to guess.

THE WITNESS: What?

MR. SCHOENBERG: Absolutely none of us want you to guess. 11:42:06

Were you aware in the 1940s that your brother Robert had given the power of attorney. 11:42:07

THE WITNESS: I had, as I said before, at the time I had small children. I had no time for anything and was glad that my brother Robert acted on my behalf. 11:42:18

MR. COOPER: Fair enough.

Let me ask the reporter to mark next in order, which I believe is Exhibit No. 56, a one-page document which is marked for identification purposes A 0057. 11:42:46

(Altman Exhibit 56 was marked for identification by the reporter and is attached hereto.)

Q. BY MR. COOPER: Please review that document.

A. I don't remember that I have seen this before. October 1945. This is the first time I have seen that. 11:43:39

Q. This document is in German.

Do you understand this document to appear to be a power of attorney by your brother Robert Bentley to Dr. Gustav Rinesch?

A. Yeah, this is correct, but I must say, 11:44:02

I haven't seen it before. 11:44:04

MR. SCHOENBERG: Object, also there is again an ambiguity in the question. This is a transcript of a power of attorney, not the actual power of attorney. 11:44:14

THE WITNESS: Yeah, it says Abschrift.

Q. BY MR. COOPER: Are you aware, during the time period October 1945, that your brother executed such a document?

A. No, I was not aware of it. I never saw that before. 11:44:32

Q. Do you recall ever executing such a document yourself?

A. No. I mean, I may have, you know. This is a long time ago, and I trusted my brother Robert. As I said, the last thing in my mind was handling business affairs at that time, so whatever he did was okay with me. 11:44:47

This one I haven't seen before.

Q. It's possible, I take it, that you had seen an original power of attorney executed by your brother in favor of Dr. Rinesch? 11:45:12

A. It's very possible.

MR. SCHOENBERG: I'm sorry. What was the question? You are talking about -- can you read 11:45:28

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back the question. 11:45:32
(The record was read by the reporter as requested.)
THE WITNESS: I didn't think I actually -- you mean I would have had to see this? No, I did not see that. 11:45:47
Q. BY MR. COOPER: I understood you to have said you didn't recall whether you had seen this document. I asked about the original power of attorney. 11:45:59
A. No, I don't remember that.
MR. COOPER: Let me ask that we have marked as next in order, Exhibit No. 57, a one-page document bearing the identification number in the lower right side A 0058. 11:46:15
THE WITNESS: This is 57.
MR. SCHOENBERG: The number at the bottom of Exhibit No. 16 is A 0056, but we are going to mark the next Exhibit No. 57. Unfortunately confusing. 11:46:39
MR. COOPER: I'm going to add to the confusion. The next document has as its identification the No. A 0058. I ask this document be marked as Exhibit No. 57.
(Altman Exhibit 57 was

marked for identification by the reporter and is attached hereto.)
Q. BY MR. SCHOENBERG: Let me ask you first whether you recall seeing this document previously? 11:47:21
A. Well, I see it now, and I suppose I must have seen it before, but I can't remember.
Q. Does this refresh your recollection whether you executed, during 1945, in favor of Dr. Rinesch, a power of attorney? 11:47:36
A. I see it now, so I must have known about it, but I don't recall it.
Q. Do you have any reason as you sit here today to doubt that you executed such a power of attorney in favor of Dr. Rinesch? 11:47:59
A. No, I mean, I must have given it, but I don't recall it.
Q. Do you recall an event on the last day of December 1945 in which you and your husband Frederick Altman executed any documents before a notary public? 11:48:41
A. I told you yesterday, I have such a good memory, but I think it fails me right now. I see it here, but I don't recall it. 11:49:07

Q. You have no reason to doubt that it occurred? 11:49:09
A. No.
Q. This document indicates that you gave Dr. Rinesch authority to conduct legal proceedings on your behalf and empowered him to represent you in all matters relating to tax matters, before courts, to institute lawsuits, and to do a wide variety of other legal acts on your behalf. 11:49:33
Do you see that? 11:50:14
A. Yes.
Q. Do you any doubt that you conferred that authority on Dr. Rinesch at the end of December 1945?
A. I was never in direct correspondence with Dr. Rinesch. I saw him years after the war for the first time when I visited Austria with my daughter. 11:50:16
Q. But you have no doubt as you sit here today that you conferred that authority on Dr. Rinesch in or about the end of December? 11:50:33
A. By or about my brother Robert, yes.
Q. You have no doubt; is that correct?
A. That's correct.
Q. Do you recall hearing of a meeting between your brother Robert and your sister Louise in Prague in 1948 to discuss your uncle's estate? 11:51:18

A. I have no idea.
Q. You never heard of such a meeting having occurred? 11:51:20
A. Robert met Louise in Prague? In what year? 11:51:31
Q. 1948 is the event to which I'm referring.
A. No, I have no idea. 1948. 11:51:42
Q. When did Louise move from Czechoslovakia to Canada?
A. Excuse me. She was in Yugoslavia, she was not in Czechoslovakia.
Q. My apologies. When did she move -- 11:52:48
A. She became a widow. My brother-in-law was shot on my 30th birthday, which was February 1946, and then she had some -- I would say some horrible two years in Yugoslavia. But I would think that she left Yugoslavia '48, '49. I wouldn't know exactly. And I had no communication with her at the time. She was in Israel then for a short while. Then she came to Vancouver, Canada with the help of my brother Poldi. 11:53:08
Q. Once she resided in Vancouver, did you 11:53:31

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communicate with her more frequently thereafter? 11:53:41
A. Yes, of course.
Q. That was approximately when that she arrived in Vancouver?
A. That's a problem. It might easily be 11:53:47 '49. I wouldn't know exactly, 1950. She was in Israel for several months, but I don't know exactly when she came to Vancouver.
Q. Do you have any sense of whether Robert was able to communicate with her after the 11:54:15 war in 1945 up to the time that she began residing in Vancouver in 1949?
A. I know he sent her care packages of food from Vancouver, but what business correspondence he had with her, I wouldn't know. 11:54:39
Q. One of the documents that were identified yesterday was Exhibit No. 28. I'll just ask you to take a look at that again.
I understand you to have testified yesterday you had not seen this document until at 11:55:13 or about the time of your sister Louise's death in early 1998; is that correct?
A. Yes, it's definitely correct.
Q. Do you recognize the handwriting in the upper left-hand corner of this document, the 11:55:30

first page of which is 363? 11:55:33
A. No, this is neither Robert nor Louise. I don't know that handwriting.
Q. There is a reference there to from file, Louise's trip to Prague 1948. 11:55:52
Does that reference have any meaning to you?
A. No.
Q. When you --
A. I don't know. The letter is from 11:56:05 Robert, but no, I'm sorry.
Pardon me?
Q. You mentioned that you received boxes of documents from Nelly Auersperg at some point in time, at least that's what I understood you to have 11:56:20 said?
MR. SCHOENBERG: Objection, there was no testimony about boxes.
MR. COOPER: I thought there was. The record will speak for itself. I'm not trying to 11:56:27 put words in the witness' mouth. I was merely wanting to put us back to the point.
THE WITNESS: When Louise died, they gave me some papers that I hadn't seen before, that's all. 11:56:41

Q. BY MR. COOPER: Over the time period 11:56:43 from the point in March 1998, when you went to Vancouver to attend your sister Louise in her illness, until today, what is the volume of documentation that you have received from any of 11:57:05 the family in Vancouver?
A. Not that much.
Q. Can you give me your best approximation of what the volume is in total?
A. The letters we were able to get 11:57:23 through Czernin and the documents that Nelly gave me, I mean, how would you want me to measure it?
Q. Any way that is convenient for you. One way I can think of would be in the thickness by inches, or if that's -- if it's a very small amount 11:57:41 of documentation, you can make a reference to any of the piles that are on the table.
I'm trying to get a frame of reference. I take it it was not several boxes?
A. You see, my problem is I don't know 11:57:56 what exact see Nelly gave me, and what were all these transcripts from Czernin, Dr. Bacher, all these things.
I would say from Nelly I didn't get that much. 11:58:22

Q. Perhaps -- you gestured with your 11:58:22 hand, perhaps an inch and a half to two inches? I'm just getting a frame of reference.
A. Does it help you if it's two inches or one and a half? I really wouldn't know. 11:58:27
Q. It doesn't matter. In any case, it's not a full box?
A. No.
Q. To the best of your knowledge, have all of the documents that you received from Nelly 11:58:37 Auersperg been provided to me and the other counsel for the Republic of Austria and the National Gallery?
A. I'm sorry. I didn't understand that.
Q. Have we received copies of everything 11:58:56 you received from Nelly?
A. I suppose so. That you have it.
Q. You don't know one way or the other?
A. No.
MR. SCHOENBERG: I believe you have 11:59:06 received copies of everything, and I previously sent your client copies of everything that we received from Nelly, including some of the photographs, for example, came from her.
MR. COOPER: You are not aware of anything 11:59:17

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we don't have? 11:59:18
MR. SCHOENBERG: I'm not aware of anything. If I had anything else, you would see it, and I would see it. I'm not aware of anything more, and I have asked repeatedly, I think I have 11:59:25 told you, Dr. Auersperg.
THE WITNESS: She's a scientist and totally involved in her work.
Q. BY MR. COOPER: Let me ask you exactly about your understanding of where these 11:59:39 documents came from.
Is it your understanding that the documents you received from Nelly Auersperg were documents that her mother Louise had had prior to her death? 11:59:55
A. I suppose so.
Q. That's your understanding?
A. Yes, I suppose so.
Q. Are you aware of what happened to Robert's records of the same type? 12:00:02
A. See, with the divorce of Robert, part was left with his first wife, part was left with his second wife, who was the most unorganized person I ever met, so I don't know what was where.
Q. Have you made efforts to obtain any 12:00:26

records that Robert may have had? 12:00:29
A. No, I did not. I left it all to my sister in Vancouver. She lived there and she --
MR. SCHOENBERG: He's asking -- you are asking during the course of this litigation? 12:00:42
MR. COOPER: Not necessarily in the course of this litigation. I don't want to limit to it that.
Q. I wonder if, at any time before or after his death, you tried to -- 12:00:52
A. After who's death?
Q. Robert's.
Let me try it differently.
A. Excuse me.
Q. Before or after Robert's death, at any 12:01:03 time did you attempt to obtain copies of any documents he had --
A. No, I didn't.
Q. -- that related in any way to the matters of your uncle's estate? 12:01:12
A. No, I didn't.
Q. In connection with obtaining records for this lawsuit, are you aware of whether efforts had been made to obtain any records that may still exist from Robert and his activities on behalf of 12:01:31

your uncle's estate? 12:01:35
A. No. I mean --
Q. That's no?
A. No, I mean nothing I recall was made until all these things popped up, so I don't 12:01:45 remember.
Q. Do you have any reason to believe that any of Robert's heirs or representatives would decline to provide copies of documents if they still existed? 12:02:03
A. His second wife, as I said before, was a nice, but totally unorganized, messy person. His son, with whom Robert was nothing tremendous with the relationship, also I don't -- it's -- I don't think that there is anything I can help you in that 12:02:30 regard because I don't think there is anything more than what you have.
MR. SCHOENBERG: If I can interject.
I have made inquiries. My understanding from Trevor Mandel, who is the heir 12:02:41 of Robert's second wife, is everything was thrown away. I have asked Robert's first wife. I believe you have copies of the letters she sent me that she still had from Robert from the 1950s time frame, and his son didn't have anything either. So we 12:02:59

have made efforts. I have made efforts on 12:03:03 Mrs. Altman's behalf and haven't come up with anything more than what you have.
Q. BY MR. COOPER: Forgive me if I'm asking you to repeat something you said yesterday. 12:03:15
What was the name of Robert's first wife?
A. Thea, T-H-E-A.
Q. And her last name?
A. Her last -- at the beginning it was 12:03:26 Bloch-Bauer. Her maiden name was Stern, S-T-E-R-N, but then she was Bloch-Bauer, and then she was even Bentley.
Q. Is she still alive, to your knowledge?
A. Yes, she's a couple of years younger 12:03:42 than I am.
Q. Do you know where she lives?
A. Yes, in Pinecrest in Vancouver.
Q. Do you know her current address?
A. I think 3924 Pinecrest. 12:03:54
MR. SCHOENBERG: It's the same as the address in 1947 on Exhibit No. 28.
THE WITNESS: Is it 3924? Pretty good.
Q. BY MR. COOPER: The name again, please, of Robert's second wife? 12:04:20

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A. Hylda, H-Y-L-D-A. 12:04:24
Q. Are you also aware of her current address?
A. She died.
Q. She died. 12:04:33
MR. SCHOENBERG: I should add, I also talked to the lawyer who did their estate, John Dobbin. You have all these records. I had to send them to Dr. Braun initially in 1999. He also said he didn't have anything. 12:04:47
MR. COOPER: We have been going for sometime now. Why don't we take a short break here. Then what I would propose to do is we go -- take just a five minute break, let's go to then to about 12:30, and we'll take a lunch break, and then 12:05:13 we'll resume and hopefully conclude by mid afternoon.
MR. SCHOENBERG: That's fine.
VIDEOGRAPHER: Going off the record at 12:09 P.M. 12:05:27
This is the end of Videotape No. 1.
(A brief recess was taken.)
(At the hour of 12:05 P.M., a luncheon recess was taken, the deposition to resume at

1:15 P.M.)

(At the hour of 1:24 P.M., the deposition of MARIA ALTMAN was resumed at the same place, the same persons being present.)

VIDEOGRAPHER: Back on the record at 1:24 P.M. This is the beginning of Videotape No. 2

EXAMINATION (Resumed)

BY MR. COOPER:
Q. Are you ready to proceed?
A. Yes.
Q. Are you still feeling well?
A. Yes, I do. 13:21:34
Q. I understand from Mr. Schoenberg that you are interested in trying to conclude this afternoon so you can go visit a friend who is in the hospital. So we'll try to move along as quickly as we can. 13:21:48
A. It's fine. Perfectly all right.
Q. I also understand that in addition to your friend's illness, you had a friend who recently died the day before yesterday?
A. Yes. 13:21:59

Q. And you have my condolences on both of those. 13:22:00
A. Thank you very much.
Q. I take it that neither of those events is creating any distraction for you? 13:22:08
A. No, it doesn't.
Q. It doesn't impair your ability --
A. No, not at all.
Q. -- to give us your best testimony?
A. Not at all. 13:22:19
Q. Let me see if I can just complete the questions I had regarding your receipt of documents from Nelly Auersperg.
What was the reason that she provided these documents to you? 13:22:42
A. It was after my sister's death.
Q. And you requested them?
A. No, I didn't.
Q. She provided them to you in connection with what, as understand it? 13:22:51
A. We had a meeting after she died. And after dinner, her brother was there, too, and so she and her husband informed us of -- and read some of the letters to us.
Q. Was this before or after you became 13:23:10

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aware of the potential issues relating to the ownership of the Klimt paintings? 13:23:12

A. I would say it was -- I would say it was before.

Q. Did Mrs. Auersperg explain to you any reason why she thought you might be interested in these documents? 13:23:36

A. She explained to me why I might be interested in her documents?

Q. Yes. Was there any conversation between you on this subject? 13:23:51

A. She said it should be part of the things that my sister had left and that I hadn't seen before.

Q. Did you review any of the documents at that time? 13:24:05

A. No.

Q. When did you first look at any of the documents?

A. After Mr. Czernin started sending things. 13:24:13

MR. COOPER: I'd like to have marked as next in order, Exhibit No. 58, a two-page document marked on the lower right-hand portion of the two pages 000312 and 313. 13:25:03

(Altman Exhibit 58 was marked for identification by the reporter and is attached hereto.)

Q. BY MR. COOPER: Take a look at this document and tell me whether you have seen it before. 13:25:23

A. I don't recall this particular letter because there came so many that I'm sure this is what it was. 13:26:05

Q. Let me just identify for the record, this appears to be a letter dated September 28, 1945 from Gustav Rinesch. It is in any case on letterhead with his name, to the Directorate of the Austrian Gallery? 13:26:31

A. Dr. Grimschitz, yes.

Q. Are you familiar with who Dr. Grimschitz was?

A. No, except after the documents I received later on. 13:26:41

Q. You weren't personally acquainted with Dr. Grimschitz from the period during which you lived in Vienna?

A. No, certainly not. I never saw him. I never met him. 13:26:51

Q. You weren't aware whether he was acquainted with your Uncle Ferdinand? 13:26:52

A. No, I wasn't aware.

Q. You aren't aware whether he visited the palace in Vienna? 13:27:01

A. No, I was not aware.

Q. Before we leave this document, this document has one of the fax trails indicating that it was received from Mr. Czernin.

Do you have any reason to believe that this is anything other than one of the copies of correspondence you received from Mr. Czernin, as you earlier testified? 13:27:27

A. Are you talking about Exhibit No. 58?

Q. I am. 13:27:39

A. Do you want me to find out, remember if I had seen this before? I might have.

Q. I believe you already testified you do not remember seeing this document before.

A. I do not remember. 13:27:54

Q. I meant to ask you a different question.

You see the fax trail at the top of the first page of the document that has been marked as Exhibit No. 58? 13:28:02

A. On the left-hand side on the top. 13:28:09

Q. Running across the top of the page it starts with 08-01-99. Then it has some more numbers. Then it has the name Czernin-Molden.

A. Yes. 13:28:22

Q. Then some more numbers.

A. Yes.

Q. We have referred earlier in your testimony to a fax trail indicating that a document was sent by facsimile by Mr. Czernin to your counsel Mr. Schoenberg? 13:28:32

A. Yes.

Q. Do you recall that testimony we talked about earlier today?

A. I suppose so. 13:28:42

Q. You don't have any knowledge as to the origin of this document; is that correct?

A. No.

MR. COOPER: Let's go off the record for just a second. 13:29:41

VIDEOGRAPHER: Off the record 1:33 P.M.

(A brief recess was taken.)

VIDEOGRAPHER: Going back on the record at 1:43 P.M.

(Altman Exhibits 59-67 were

marked for identification
by the reporter and are
attached hereto.)
MR. COOPER: Off the record we marked a number of letters that have been produced to us in 13:39:38 connection with this matter as Exhibit Nos. 59 through 67 inclusive, in order to save time. And in light of Mrs. Altman's earlier testimony, we have gone through these letters off the record and reached the following stipulation with respect to 13:40:06 them.
Each of these letters were provided to Mrs. Altman either through Mr. Czernin, as part of the documentation that she received from him through Mr. Schoenberg, as she's testified, from 13:40:25 Nelly Auersperg, as she's testified, or through some other source through Mr. Schoenberg in connection with the preparation of this litigation.
Q. My understanding is that those documents that bear the Czernin fax line were, to 13:40:48 the best of your understanding, Mrs. Altman, obtained through Mr. Czernin; is that correct?
A. Correct.
MR. SCHOENBERG: Can I say something?
We can include Exhibit No. 58 in this. 13:41:05

And also, none of these documents were obtained 13:41:07 through Nelly Auersperg. All of them were obtained from Mr. Czernin. Some of them may be faxed, others may have been mailed to me, but all of them, in January or afterwards of 1999. 13:41:22
THE WITNESS: It's a very small group that was obtained through my niece.
Q. BY MR. COOPER: You don't personally know, from your recollection, which documents were obtained from your niece and which documents were 13:41:37 obtained through another source; is that correct?
A. I think all of them that says Czernin, it was Czernin. As far as my niece's, it was only the few things pertaining to the last will of my sister, what she left her. 13:41:55
Q. The documents that Mr. Schoenberg took you through yesterday, I believe he said off the record, were the documents, to his knowledge, were the documents you received from your nice Nelly Auersperg and were identified as such yesterday on 13:42:09 the record.
Can we add that to our stipulation?
MR. SCHOENBERG: Yes, that's fine. I think you can tell, in many cases from the document itself, where it was likely to have come from. 13:42:22

For example, there is a letter from 13:42:25 her brother Robert to her sister Louise, that was written the family and that's one she obtained from her niece Nelly.
Documents like these that we have just 13:42:36 marked, that are clearly from the files of the Bundesdenkmalamt in Austria, she didn't get from the family, but got only through the course of discovering documents and thanks to copies made by Mr. Czernin. 13:42:53
MR. COOPER: So our stipulation with respect to these documents is that those that bear the fax trail from Mr. Czernin were obtained from him. That the others were obtained either from Mr. Czernin or some other source than Nelly 13:43:09 Auersperg, in or after January 1999, and that Mrs. Altman was not previously aware of the existence or contents of these documents prior to that time; is that correct?
MR. SCHOENBERG: That's correct, for these 13:43:30 documents that we have set forth.
MR. COOPER: That's Exhibit Nos. 58 through 67; is that correct?
MR. SCHOENBERG: I should add one caveat. It's correct as to the originals of the documents. 13:43:44

Some of the documents may have been quoted in 13:43:46 articles that Mr. Czernin wrote in 1998 that he may have. I'm not sure if we had copies of those before January 1999. He had also at one point emailed me, I don't know if I have it any more, a 13:44:01 transcript he had made before he was allowed to make copies of some of the documents. But again, that would be between September 1998 and January 1999, which I don't think would make much of a difference. But certainly at no time before 13:44:13 September 1998, did either Mrs. Altman or I have any awareness of these documents.
MR. COOPER: With that qualification, do I have your stipulation as I have put it forward on the record? 13:44:31
MR. SCHOENBERG: Yes, absolutely.
I should add, I only first made contact with Mr. Czernin around December 1998. It could have been November, but not before that.
Q. BY MR. COOPER: Mrs. Altman, have you 13:44:49 previously reviewed any of the documents that were marked Exhibit Nos. 58 through 67?
A. Yeah.
Q. Did you see them only in the German version you see them now, or did you previously see 13:45:03

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translations of them into English? 13:45:06
A. No, I just saw them in the German version.
Q. Is that true of most of the other German language documents we have discussed with 13:45:13 you in connection with your deposition?
A. Well, yes. I read German fluently, so I can read it like that.
Q. So you haven't relied on translations of those documents in connection with your review 13:45:25 of them?
A. No, I haven't.
Q. I'm sorry. You were speaking when I was speaking. Was that a no?
A. I'm sorry. No. 13:45:36
Q. Thank you.
Returning for a moment to the efforts of your brother Robert and Dr. Rinesch after the death your uncle to obtain the restitution of property. 13:45:58
You have testified to some extensive degree that you were not aware of the efforts of Dr. Rinesch or Robert in specific details in attempting to get restitution; that's correct, right? 13:46:12

A. I don't quite understand your 13:46:14 question.
Q. I'll rephrase it.
You weren't aware of the specific efforts that were being made by Robert or 13:46:20 Dr. Rinesch in order to obtain restitution of the property, correct?
A. Correct, yes.
Q. You testified you were aware of nothing directly pertaining to attempts to obtain 13:46:30 restitution of the Klimts after World War II, correct?
A. Would you rephrase -- repeat that question? If I was not aware of especially Klimt things? The question about the Klimts? 13:47:01
Q. Yes, ma'am. I believe you testified yesterday that you were specifically aware of no aspect of Robert's and Dr. Rinesch's efforts to obtain any restitution of the Klimt paintings or any actions they took with respect to the Klimt 13:47:23 paintings during the years after the war; is that correct?
A. I didn't know anything at the time, but from the things I received later, I saw that it was a total denial of letting any paintings go out. 13:47:37

And only when we agreed to leave the Klimts there 13:47:42 did we get any paintings out. The first thing was no paintings go out, none, because they were all Austrian. And so they wouldn't let any one go -- let any of them go. 13:48:00
Q. The source of that information that you just volunteered was correspondence that you saw in or after 1998; is that correct?
A. Yes, correct.
Q. So I'm just asking you for your direct 13:48:13 personal knowledge in the years immediately after World War II; in the 1940s.
A. Yes, no -- no, I was not personally involved in that at all.
Q. And I was just confirming my 13:48:26 understanding that at that time you were not aware of what was being done with respect to the Klimt paintings either by Robert or Dr. Rinesch?
A. Correct.
Q. I had the impression yesterday, and 13:48:38 this is the only reason for this line of questions, that you may have had some contemporaneous knowledge during the '40s of efforts that were being made with respect to restitution of other property than the Klimts during that same time 13:48:53

period. Is that an accurate impression? 13:48:55
A. It's all so long ago. I don't recall.
Q. As you sit here, you don't recall whether you were aware of efforts that were being made with respect to property other than the Klimt 13:49:26 paintings during the 1940s by Robert or Dr. Rinesch?
A. It's difficult for me to say other than this. I knew there were efforts to be made to get something out, but whether it was the Klimts or 13:49:37 the other paintings, I wasn't aware of it.
Q. How about property other than paintings or artwork; were you aware of efforts being made with respect to restitution of any --
A. We got a few little china items. 13:49:53
Q. For the sake of record, if you would allow me to finish the sentence.
A. I'm sorry.
Q. I know you know where I'm going with these, but the record needs to be complete. 13:50:03
Other than paintings or other artwork, were you aware at the time, during the 1940s, of any of the efforts at obtaining restitution of property from your uncle's estate?
A. The extra efforts that were being made 13:50:27

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I was not involved in that, and I wasn't aware of it until I got a few pieces of porcelain. 13:50:29

Q. I understand from your testimony yesterday that none of your uncle's property in Czechoslovakia was returned to the family; is that correct? 13:50:48

A. Nothing.

Q. This is property that had fallen within the control of a communist government after World War II; is that correct? 13:51:05

A. No, excuse me. It was first under the leadership -- under the -- what would you call him? Heydrick, the one that took over Czechoslovakia .

Q. After the war?

A. Heydrick, H-E-Y-D-R-I-C-K. He lived in my uncle's castle, and a lot of the things that were in there, beautiful paintings and porcelain and carpets and whatever, were already taken by him. And so we didn't get anything from that. 13:51:25

Q. My question was for the period after the war. 13:51:50

A. After the war, no, I don't know.

Q. After the conclusion of the war?

A. I don't know, because we never went there. I never saw anything from there. 13:52:00

Q. Let me rephrase my question. 13:52:02

After the conclusion of World War II and the defeat of the Nazis --

A. Yeah.

Q. -- were efforts made, to your knowledge, to obtain restitution of any of the property from Czechoslovakia? 13:52:11

A. I suppose my brother did try, but nothing became of it, so I wasn't informed of anything. 13:52:25

Q. Do you know why nothing became of it?

A. I beg your pardon?

Q. Do you know why nothing became of it?

A. No. I mean the communists took over, I guess. 13:52:35

Q. Are you aware that the communists made any restitution of any of the property --

A. No, nothing.

Q. -- that had been seized during World War II? 13:52:49

A. No, nothing.

Q. Are you aware what property was restituted to the members of your family from Ferdinand Bloch-Bauer's estate after the war concluded? 13:53:00

A. You are not talking Czechoslovakia now. 13:53:02

Q. I'm talking about any property at all, yes.

A. Yes, very small part. 13:53:07

Q. Do you know precisely what was restituted?

A. A few paintings and a few pieces of china.

Q. That's the total for all the family members? 13:53:18

A. You talking shares that you asked me about yesterday, from the sugar industry? Are you talking about the artwork?

Q. I was actually talking about all property. And Mr. Schoenberg did mention to you specifically shares yesterday. 13:53:31

A. Yes.

Q. Is there a document that you are aware of that exists, that lists all the property that has been restituted to the family? 13:53:44

A. No, I haven't seen it if it exists.

Q. You mentioned a number of paintings in your testimony?

A. Yes. 13:54:02

Q. You have mentioned certain shares in the sugar factory? 13:54:02

A. Yes.

Q. You have mentioned a few other articles of art like the porcelain? 13:54:12

A. Correct.

Q. Are you aware of any other property that was restituted to any members of the family beyond those things that you have already mentioned? 13:54:27

A. No.

Q. Are you aware of any other property that was delivered to your sister Louise?

A. My sister Louise did get a few more of the property because she was 50 percent, and only after her death, her part was divided between her two children. So she got a few more things than I did or my brother Robert. 13:54:51

Q. Do you know what those items or?

A. I know one was a Rodin, R-O-D-I-N, bust that she -- she doesn't have it any more. She sold it. And she also received a few more paintings than I did, which were all Austrian paintings. And just like me, she sold a number of them and kept a couple. 13:55:06 13:55:36

Q. Are you aware how the decisions were made about which items you received and which items your sister Louise received?
A. No. Because I lived here and they lived there, and I trusted her implicitly. So she took what she liked, and then I got some other things that were left.
Q. Who made the decisions about who received what from the restituted property?
A. Well, as long as my sister was 50 percent of the inheritance, she chose apparently what she liked best, and then the rest was left for Robert and myself. There wasn't that much to begin with, so --
Q. Do you know what Louise received in return for the sale of the Rodin; the amount of money?
A. No, I wish I would. I never found out. I don't think it was as much as it could have been because I was never told how much she got for it. It was a small one. It was not a huge thing.
MR. SCHOENBERG: I read in one of the documents, I think, that it may not have been a real one.
THE WITNESS: That's another thing, yeah.

MR. SCHOENBERG: So who knows.
THE WITNESS: I don't think she got much because she would have told me.
MR. COOPER: Would you place before the witness Exhibit No. 32 please.
MR. SCHOENBERG: Surely.
Q. BY MR. COOPER: This document was shown to you by Mr. Schoenberg yesterday.
A. Yes.
Q. I believe that you testified that you believe the handwriting on the bottom of the page of Exhibit No. 32 is your brother Robert's; is that correct?
A. No, it says --
MR. SCHOENBERG: He's talking about here.
THE WITNESS: Oh, that one, the date. Excuse me.
That was my brother Robert, yes.
Q. BY MR. COOPER: You believe this was one of the documents you received from Mrs. Auersperg; is that correct?
A. Just a minute.
Yeah. May I make a comment on this?
Q. I was going to solicit your comment on this.

You mentioned yesterday that you thought that there was something incorrect about this document?
A. Yes.
Q. Is that the comment you wanted to make?
A. Yes.
Q. Would you please tell me what is incorrect?
A. It's totally incorrect that my uncle ever asked the gallery to keep the paintings in his house. He was the owner of those paintings. He gave one of the paintings to the gallery in 1936, and received a profuse thank you note, thanking him and telling him how generous it was to do that. If he would have to request keeping the paintings at his house, they wouldn't have thanked him in the very elaborate way about parting with that painting.
He owned these paintings. He didn't need any request to keep them in his house.
Q. Anything else?
A. This was a painting that Furer got for himself, the lawyer that was --
Q. You base what you just testified to

with respect to Exhibit No. 32 on your conclusions from this and other documents you received in and after 1998; is that correct?
A. Well, yes. There were several documents that are quite totally clear that it was my uncle that owned the paintings and not my Aunt Adele.
Q. But you only know that from your reading of documents in and after 1998, correct?
A. Yes. I mean, we all know it from these documents.
Q. I simply meant in drawing those conclusions, you weren't drawing upon any personal knowledge you had prior to the time that you had received these documents; isn't that correct?
A. Correct.
MR. SCHOENBERG: Before you move on, I just note for the record Exhibit No. 32, which we testified was a document that we received from Nelly Auersperg, appears to be a transcript of the letter you just marked as Exhibit No. 60, which is the copy that was presumably found in the records of the Austrian Gallery and sent to us by Mr. Czernin, but the text is pretty much the same.
MR. COOPER: Would you please place before

the witness the document previously marked as Exhibit No. 36. This is also a document you testified you received from Nelly Auersperg in early 1998. 14:01:53

Q. You also made a comment, volunteered a comment on the record that you had not been aware of this document prior to 1998 or you would have done something about it. 14:02:41

Do you recall making that comment?

A. Yesterday I made that comment? 14:03:04

Q. Yes.

A. I would say so. I'm sure I made it.

Q. I wonder if you recall what you meant by that.

A. Well, if I would have known that my uncle was the owner of the paintings, and not as it is constantly spoken about that it was her will that left the paintings to the gallery, I would have done something about it. But I was not aware of it. 14:03:11 14:03:34

Q. It appears, does it not, from this letter between your sister Louise and your brother Robert, that -- I'm sorry, between Dr. Rinesch and your brother Robert, that your brother Robert was aware of these facts at this time in 1948, correct? 14:03:56

MR. SCHOENBERG: You are asking her if it appears from this document whether he was aware? 14:04:02

MR. COOPER: Yes.

THE WITNESS: It's very difficult because he says on the one hand that it's definitely not a legal thing. On the other hand, he interprets the wish of my uncle to fulfill her request. 14:04:15

MR. SCHOENBERG: You are not listening to his question.

Can you ask your question again. 14:04:30

Q. BY MR. COOPER: As far as you know, Robert received this letter April 22, through Bryant, correct?

A. Oh, this one. I only saw the 11th of April -- yes, April 22. 14:04:45

Q. 1948, correct?

A. Yes.

Q. And you are not aware of how it is that your sister came into possession of this particular letter, correct? 14:04:54

A. No idea.

Q. But as far as you know, both of them were aware of the facts set forth in this letter in 1948, correct?

A. Yes. 14:05:04

MR. SCHOENBERG: Well, you meant the letter sent in '48, or they were both aware in 1948, because I think she testified Louise was in Yugoslavia or Israel. 14:05:06

THE WITNESS: Louise wasn't in Vancouver at that time. 14:05:19

Q. BY MR. COOPER: Where was Louise?

A. Yugoslavia.

Q. She arrived in Canada in 19 --

A. I don't know exactly. This is all so long ago. She was in Yugoslavia. She was in prison after he was executed. She tried to escape, and then she went via Israel to Canada, but I couldn't tell you exactly when she arrived in Canada. 14:05:28 14:05:45

Q. I'm sorry. I didn't mean to ask for all of that information. Again, I simply meant, to the best of your recollection, it was around 1949 that she arrived in Canada?

A. Definitely past 1948, but I don't know if it was '50 or '49 or '51. I don't know. 14:05:59

Q. I understand that.

You have no idea when she came into possession of this information; is that correct?

A. Not exactly, no. 14:06:15

Q. And you received it from Nelly Auersperg in March or April 1998; is that correct? 14:06:20

A. Yes.

Q. I'm sorry?

A. I guess so, yes. See, there was so much -- my problem is only, I know all the documents, but which one was through Czernin and which one came from Nelly is a little difficult because I know there was not very much I got from Nelly. It was a few sheets, but which ones were hers and which ones were his, I don't know exactly. 14:06:33 14:06:49

Q. Yesterday you had indicated in your response to Mr. Schoenberg's questioning that you thought this came from Nelly Auersperg?

A. Yeah. 14:07:06

Q. You don't have any reason to doubt that as you sit here today, do you?

A. No, I don't doubt that. It must have come either from Nelly or from Czernin.

Q. You also testified yesterday you remembered caring for the first time that there was an issue in Austria with regard to the Klimt paintings in March 1998, when you were at the hospital with your sister Louise.

Do you recall that? 14:07:36 14:07:58

A. Yes. 14:07:59
Q. What is it you recall learning at that time regarding the Klimt paintings?
A. Well, you see my sister at that time was partly in and out of consciousness, and it 14:08:07 wasn't me who told her about that letter. I think it probably was her son. I don't know exactly who informed her of that news of Vienna. And the only thing she said is, "We need a very good lawyer now." And the next thing is she died within a week 14:08:36 after that. So I wasn't concerned about the legal matters at that time.
Q. I'm interested in hearing what it was that you were informed to which your sister Louise reacted that she would need to get a good lawyer. 14:08:55
What was the substance of the information?
A. The unfortunate thing is it was not a direct phone call that I got. It was Dr. Sturm had called my sister-in-law Thea Bloch-Bauer, and told 14:09:09 her that something came up in Vienna that he is beginning to doubt that the Klimt paintings belong in the gallery. And so Thea came to the hospital to talk to us. But it was very difficult time for all of us, with my sister dying, so not much 14:09:35

attention was paid to it. 14:09:41
Q. What was the best recollection you had of what was told to you by Thea at that time?
A. That the newspaper came out in Vienna that says -- that said that there are great doubts 14:10:00 about the Klimts hanging in the gallery and that they actually don't belong to the gallery. And so it was then that, after my sister passed away, that we went into the legal aspects of it.
Q. And in what way did you go into the 14:10:27 legal aspects of it?
A. We got into communication with Randol Schoenberg.
Q. When was of the first conversation you had with Mr. Schoenberg in response to the 14:10:47 information you received in March 1998?
A. It took a while. My sister was buried in April --
Randy, did can you help me?
Q. I'm just looking for your best 14:11:10 recollection.
MR. SCHOENBERG: I can tell you what it is.
MR. COOPER: No, that's fine.
THE WITNESS: I'm very sorry, but I'm 14:11:14

usually good in memory, but there was so much going 14:11:16 on with her death.
We went back and forth and went to Vancouver twice. I think it was either in the late summer -- we didn't do anything right away. 14:11:28
Q. BY MR. COOPER: The articles that had been published, I take it they were published in Austria, the articles that Thea referred to?
A. Yes, I think members of the communist party and others had their doubts, by I never met 14:11:52 anybody.
Q. Did you obtain copies of those articles?
A. No.
Q. Do you recall any further details that 14:12:05 you received at that point in time regarding this question of the ownership of the Klimt paintings?
A. No.
Q. What discussions did you have with Dr. Sturm at the time regarding any information he 14:12:18 was providing?
A. I never even talked to him personally at that time. I talked to him last summer. At that time it was his wife who called me, and she was horridly upset. She said, "You can't do that 14:12:38

because he wrote, and he was so sure that he would 14:12:40 get it, that he put his name out. And now it would be horrible commission if you don't give it to him."
And I just said we can't, and Nelly 14:12:51 agreed with me.
She said, "You can't do that."
We had signed up with Mr. Schoenberg, and we can't go back on it. I even told him, "If you would have told us sooner, it might have been 14:13:03 our decision to go along with you, but at this point, we can't do it."
Q. When did that conversation take place?
A. That's the problem, you want the date, and I can't tell you the date. It must have 14:13:19 been -- maybe Nelly would know. Maybe it was, I guess, the summer of 1998 or 1999.
Q. Let me ask the question a little differently.
The conversation with Mr. Sturm's 14:13:35 wife --
A. Yes.
Q. -- to which you just referred?
A. Yeah.
Q. Took place after Mr. Schoenberg was 14:13:44

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retained in connection with these matters? 14:13:46
A. Correct, only a few days before – I mean a few days after Mr. Schoenberg was retained.
Q. So if we can fix that date in time, then you would be able to say that the conversation 14:13:58 you had, that you just referred to, occurred a few days after that?
A. Correct.
My age is letting me down.
MR. COOPER: Would you put Exhibit No. 43 14:14:42 before the witness, please.
MR. SCHOENBERG: Surely.
MR. COOPER: I don't have my copy. If you could lay that flat when you are done, I just want to make reference to the date. 14:15:09
THE WITNESS: 11th of May, the way he writes it. Isn't it different?
MR. SCHOENBERG: The letter is dated 11th of May, but there is a fax of September 21, 1998.
THE WITNESS: He wrote it in May and sent 14:15:33 it to us in September?
Q. BY MR. COOPER: Mrs. Altman, it's exactly your knowledge of this document that has been marked as Exhibit No. 43 that I wanted to explore a bit with you. 14:15:37

A. I didn't get this letter. 14:15:40
Q. That was my first question for you.
When was the first time you saw this letter?
A. Recently. I didn't get this letter. 14:15:47 I got this horrified call from his wife.
Q. I appreciate that. I'm just trying to clear up a few questions I have about the sequence of events.
A. Yes, go ahead. 14:15:58
Q. Did you have any communication with -- is it Mrs. Sturm, is that how I would refer to his wife?
A. Yeah.
Q. Mrs. Sturm, the conversation you had 14:16:07 with her was later in 1998, well after --
A. Much later.
Q. Okay. The conversation you understand took place between Thea Bentley and Mr. Sturm took place sometime in mid March 1998, correct? 14:16:32
A. Must have been because she came to the hospital and told us those things.
Q. Had you any communications with Mr. Sturm or Mrs. Sturm between March 1998 and the occasion for your telephone call with Mrs. Sturm 14:16:53

that took place a few days after Mr. Schoenberg's 14:16:58 retention?
A. None whatsoever.
My only communication with Mrs. Sturm was she bought some of the articles that I 14:17:06 inherited and sold to her, and she was a good friend, both of them were friends of my sister.
Q. You don't know what the nature of the communications between Thea Bentley and Mr. Sturm were that would have caused him to have written the 14:17:25 letter on behalf of the heirs of Ferdinand Bloch-Bauer on May 11, 1998?
A. No, I assure you Thea had no idea about that because I asked her after that all came about. She had no idea. None of us did. And if 14:17:44 he would have asked us before, it's very possible that they would have wanted him to take this as his assignment, but he never even contacted us before.
Q. By the time you learned of his letter purportedly on behalf of the heirs, you already 14:18:09 retained Mr. Schoenberg?
A. Yes.
Q. To act in the same capacity?
A. Yes. My niece Nelly agreed with me totally that this was very uncalled for. 14:18:18

Q. Thank you. 14:18:21
A. I mean, we are friends now, but at the time this was very uncalled for.
Q. Did Mrs. Sturm tell you what had caused Dr. Sturm to write this letter supposedly on 14:18:35 behalf of the heirs of Ferdinand Bloch-Bauer in May 1998?
A. Well, she had -- she was great friends, both of them were great friends of my sister, and with me there was nothing. I mean, I 14:18:57 knew them only for buying a few of my things, but she -- they were great friends of my sister, and apparently they assumed that when those first things in Vienna came up, that my sister would let them handle the case. 14:19:15
Q. Do you know whether your sister Louise spoke to Dr. Sturm about the Klimt paintings prior to her death?
A. No, I have no idea. I am sure she didn't. 14:20:02
MR. COOPER: Would you show the witness Exhibit No. 48, please.
Q. Do you recall testifying about Exhibit No. 48 yesterday, Mrs. Altman?
A. Yes. 14:20:45

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Q. This is your submission in connection with the petition for the reduction of court fees? 14:20:46
A. Correct.
Q. In connection with the Austrian litigation? 14:21:01
A. Correct.
Q. There is no reference in this document to your home as one of your assets; is that correct?
A. Yes. I even say that we bought the house in 1975, and it's part of my assets. 14:21:15
Q. There is no value listed under Item 1 on Page No. 2 with respect to the value of the house; is that correct?
A. I see we bought it. 14:21:34
Q. If you wouldn't mind, please allow me to finish my questions.
It says what it was purchased for, is that what you are saying?
A. Yes. 14:21:44
Q. Where does that appear?
A. At the bottom. The house was paid out in 1975 for approximately 900,000 Austrian shillings.
MR. SCHOENBERG: She's looking at the 14:21:59

first page, and I believe you are looking at the second page. 14:22:01
MR. COOPER: I see. All right.
Q. You are on the first page, and the reference is to the purchase price of the house, correct? 14:22:07
A. Correct.
Q. And what was the value of the house on the date that you submitted this document to the Austrian court? 14:22:19
A. It was a little higher probably. When was it? I mean --
MR. SCHOENBERG: Just say if you know.
THE WITNESS: Oh, September 1999. Well, I don't know what it was at the time. I'm sure it was more. 14:22:38
Q. BY MR. COOPER: Do you know what it's worth today?
A. I think today they said it's approximately $750,000. 14:22:46
Q. What is that based?
A. Pardon me?
Q. On what is that value based, to your knowledge?
A. In the neighborhood; the real estate 14:22:58

people who came by and wanted to know if I want to sell it. It's around $700,000. 14:23:00
Q. Do you recall why you didn't put the current value of the house on this submission when it was made to the Austrian court? 14:23:19
A. It doesn't say what it -- I mean, I can only say what I actually paid for it, but the other thing just is an assumption. It's not what you actually can get for it. I put down everything that I owned. 14:23:41
Q. The court granted, in part, your application for a reduction of the court fees, correct?
A. Pardon me?
Q. The Austrian court granted, in part, your request for reduction in the court fees, correct? 14:24:01
A. Yes. But I understand it was still too high. I would have had to mortgage my house in order to pay for it. 14:24:12
Q. You chose not to appeal that decision, correct?
MR. SCHOENBERG: Object to the extent it calls for attorney-client communications.
If you can answer without disclosing 14:24:22

any communications we had. 14:24:26
THE WITNESS: If I objected to it? I don't quite understand.
MR. SCHOENBERG: He's asking if you --
Q. BY MR. COOPER: I'm going to get an appropriate objection in a moment. 14:24:34
The question was simply: Do you recall that you had the opportunity to appeal the decision not to further reduce the court fees?
You just mentioned the fact that they didn't reduce them as far as you wanted them to, correct? 14:24:47
A. Yes.
Q. Yes. You chose not to appeal that decision to a higher Austrian court? 14:24:57
MR. SCHOENBERG: Object, it assumes there were even grounds for appeal.
If you can answer the question, go ahead.
THE WITNESS: I don't know. I live here. I don't know. 14:25:06
Q. BY MR. COOPER: You don't recall anything regarding the decision to appeal or not appeal this decision; is that correct?
A. I understood that I couldn't afford it 14:25:19

because I know what they -- what they asked for to begin with, and I thought I could never afford it. 14:25:23

Q. I meant the fact that there was a further avenue available to you in the Austrian court system to seek further reduction of the fees. 14:25:44

MR. SCHOENBERG: Objection, states facts not in evidence.

We can stipulate to the fact that no appeal was filed by us. There was an appeal filed by Austria. We certainly did not file an appeal. 14:25:55

THE WITNESS: I was told that.

MR. SCHOENBERG: You don't have to say what you were told. It's attorney-client privilege.

Q. BY MR. COOPER: I'm not seeking any communications between you and Mr. Schoenberg in connection with this. I was trying to understand whether you understood that you had the ability to appeal and whether you had made a deliberate choice not to do so? 14:26:08 14:26:26

MR. SCHOENBERG: Object, calls for attorney-client communications and also assumes facts not in evidence.

MR. COOPER: And you are instructing the witness not to answer? 14:26:39

MR. SCHOENBERG: Yes, I'm going to instruct her not to answer that. 14:26:40

Q. BY MR. COOPER: You testified yesterday that the proceeds of the sale of some of the property that was restituted to you -- 14:26:59

A. Property?

Q. Yes. In particular, I think you were referring to --

A. The porcelain.

Q. -- some of the porcelain? 14:27:09

A. Yes.

Q. Although I don't know if that's all the property referenced in the exhibit. I was not really focused on the exhibit so much as I was to the payments to the Fried, Frank firm to which -- 14:27:19

A. Correct. They received the entire money that we -- that I received for the -- that we received for the porcelain.

Q. What was the total amount paid, to the best of your knowledge, to the Fried, Frank firm? 14:27:36

A. It was approximately $100,000.

Q. Was that the entire amount that was paid to it or only from that particular source?

A. Excuse me? You are talking about the porcelain? 14:27:51

Q. No. Do you know what the total dollar amount of all monies paid to the Fried, Frank firm in connection with this matter was? 14:27:52

A. It was $100,000.

Q. Total, from beginning to end? 14:28:03

A. Yes. They worked on a very small percentage.

Q. Of the litigation?

A. Pardon me?

Q. What do you mean by your last comment, they worked on a very small percentage? 14:28:17

A. I was surprised it was so little.

Q. Actually, I didn't express any surprise at all, but I didn't understand your last comment. 14:28:29

A. You said all the amount, and I said yes, it was all the amount.

Q. I simply meant the entire amount paid to them was $100,000?

A. Yes. 14:28:38

Q. That was paid from the proceeds of the porcelain sale?

A. Correct.

Q. What did you mean by for working for such a small percentage? 14:28:45

A. When you said all, I said yes, it was all. 14:28:46

Q. A percentage of what?

A. Their legal fees.

Q. Were their legal fees based in some fashion on a percentage of some figure? 14:29:00

Do you understand my question?

A. Yes.

Q. I'm trying to understand what you meant by a percentage when referencing the fees. 14:29:15

A. I think they worked for what was called pro bono. I'm not a lawyer. I just know that they worked for what I thought was a very fair amount of money.

It has nothing to do with the case. I don't even know why we are discussing it. 14:29:42

Q. It was offered as testimony yesterday. I'm attempting to understand it.

A. It was offered as testimony yesterday?

Q. Yes. This whole question of the amount of money you received for the porcelain and the payment to Fried, Frank. 14:29:54

A. Yeah, I said that amount from the porcelain was paid in total to cover the legal fees of Fried, Frank and, yeah. 14:30:07

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Q. Fried, Frank ceased being your counsel in this case sometime shortly after that payment was made?
A. I beg your pardon?
Q. Fried, Frank ceased being your counsel in this case sometime shortly after that payment was made; is that correct?
A. Yes.
Q. And you have separate financial arrangements with Mr. Schoenberg from whatever financial arrangements were made with Fried, Frank with respect to payment for this case?
A. Totally separate.
Q. What are you financial arrangements with Mr. Schoenberg with respect to his payment for services in this case?
MR. SCHOENBERG: I'm trying to --
THE WITNESS: I think --
MR. SCHOENBERG: If I can interject and ask what relevance that would have in the case.
MR. COOPER: I believe that the reason the testimony was offered yesterday is that Mrs. Altman was attempting to demonstrate that her inability to pay a substantial amount in Austria for the court fees was as represented in the petition and in

other documents that have been submitted to the courts, and that an effort was being made to demonstrate that the proceeds from the porcelain sale had gone directly to counsel and was not otherwise available for other purposes, including the court fees.
So I think, given the fact that Mrs. Altman's financial wherewithal and ability to pay court fees and court counsel fees has been pled and made the subject of voluntary testimony, we are entitled to the remainder of the information on that same topic. For instance, her choice and ability to pay you.
MR. SCHOENBERG: I don't understand that. I'm going to instruct her not to answer.
Well, let me think about it.
Generally, the arrangement the client has with the lawyer is not privileged. The relevance of this testimony really is not a correct use of it. If you stop representing to the court that she got a million dollars from the porcelain and drawings, which you have represented to the 9th Circuit incorrectly, her relationship with me, really, has nothing to do with that. I don't see it as relevant in any way.

Can I confer with my client briefly?
MR. COOPER: Sure, that's fine.
VIDEOGRAPHER: Off the record?
MR. COOPER: You are asking to go off the record?
MR. SCHOENBERG: Yes, please.
VIDEOGRAPHER: Going off the record at 2:37 P.M.
(There was a discussion between the witness and her counsel.)
VIDEOGRAPHER: Going back on the record at 2:39 P.M.
MR. SCHOENBERG: Can you ask the question again?
Q. BY MR. COOPER: What is your financial arrangement with Mr. Schoenberg in connection with his representation of you in this lawsuit?
A. Mr. Schoenberg is working for me on contingency.
Q. Do you know what the terms of the contingency are?
MR. SCHOENBERG: To that I'm going to object.
THE WITNESS: I don't think it's anybody's

business except mine.
MR. SCHOENBERG: I'm going to object on relevance grounds there. The percentage of the contingency has nothing to do with any of the issues that you raised or any of the issues we raised.
MR. COOPER: I think you have already identified that the subject of the relationship, financial interest in the lawsuit, is not privileged. I think it's certainly within the ambit of what has been made relevant by Mrs. Altman's contentions in the case, and I see no reason why allowing her to complete this questioning is properly the subject of an instruction not to answer.
MR. SCHOENBERG: That's fine. I'm still instructing her not to answer any further questions with regard to the our financial arrangement.
Q. BY MR. COOPER: Mrs. Altman, returning for a moment to Exhibit No. 36. Would you put that back in front of you, please.
Do you recall that you testified that you would have done something about this had you learned of the contents of this letter prior to March 1998?

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A. Yes. 14:37:23
Q. What would you have done?
MR. SCHOENBERG: Calls for speculation.
Q. BY MR. COOPER: What did you mean when you said you would have done something? 14:37:31
A. I would have probably looked for legal representation because it was a request and not a legal obligation.
Q. Representation to do what?
A. To do something in that case because 14:37:53 the paintings were taken out of the house in the years following 1938, and without any right or legal -- they were taken.
Q. You would have done something to seek legal counsel to obtain the return of the 14:38:18 paintings?
MR. SCHOENBERG: Objection, again, calling for speculation, hypothetical, not percipient testimony.
MR. COOPER: I'm asking the witness what 14:38:29 she meant.
Q. Is that what you meant?
MR. SCHOENBERG: Again, same objection.
Q. BY MR. COOPER: Mrs. Altman?
A. I would have looked into it more 14:38:37

clearly. 14:38:39
MR. COOPER: Let's take a short break.
VIDEOGRAPHER: Off the record 2:42 P.M.
(A brief recess was taken.)
VIDEOGRAPHER: Going back on the record at 14:40:59 2:44 P.M.
Q. BY MR. COOPER: Mrs. Altman, one of the paintings that is included as the subject of your claims in this lawsuit is the painting that we have referred to a couple of times yesterday and 14:41:23 today of Amalie Zuckerkandl?
A. Yes.
Q. That painting was not the subject of Adele Bloch-Bauer's will; is that correct?
A. No, correct. 14:41:37
Q. It didn't play any role in any of the other facts about which you have testified in the last day and a half?
A. Correct.
Q. What is your understanding of why it's 14:41:47 included within the Complaint in this action?
A. It's included because I read from a letter from my brother that it was hanging in my uncle's bedroom at the time, and he wanted to know what became of it. And that is really my only 14:42:05

knowledge of it. I have not seen the painting 14:42:09 because I didn't go into my uncle's bedroom. I just get it from these letters that it was there.
Q. And you have no knowledge that would suggest that that painting was included in any of 14:42:22 the communications or transactions between Dr. Rinesch and the Austrian government during 1948; is that correct?
A. No, I just saw that letter of my brother Robert saying whatever happened to that 14:42:38 painting that was in my uncle's bedroom.
Q. And that's the sole information you have with respect to the Amalie Zuckerkandl painting?
A. Yes. 14:42:51
Q. Is that correct?
A. Yes.
MR. COOPER: Would you put Exhibit No. 40 before the witness, please.
Q. Is that the letter to which you just 14:43:16 referred as the letter from your brother?
A. Yes.
Q. This is the document marked for identification purposes 00976, marked yesterday as Exhibit No. 40, bearing the date February 17, 1979; 14:43:27

is that correct? 14:43:31
A. Yes.
Q. And that's the only information about the Amalie Zuckerkandl painting that you have; is that correct? 14:43:45
A. Yeah. He writes -- did you have it translated at the bottom? My brother writes, it would be highly interested for him to find out how come it went into the possession of Mueller-Hoffmann. 14:44:00
Q. You have no personal knowledge about how it got into the possession of Mueller-Hoffmann?
A. No, I don't. I don't know nothing about it.
MR. SCHOENBERG: Objection, also states a 14:44:10 fact not in evidence, and I actually believe it's not true.
I should explain that. It's not true that the painting was ever in the possession of the Mueller-Hoffmann family, but I don't believe 14:44:27 Mrs. Altman has any percipient knowledge of that.
MR. COOPER: Let's just clarify.
Q. You have no percipient knowledge of any of the contents of that letter?
A. No, nothing. I remember the 14:44:39

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Mueller-Hoffmanns from social contact, but that's all.

Q. At this time in 1979, Robert Bentley was still representing the interests of the family with respect to attempting to obtain the return of property from your uncle's estate; is that correct?

A. Yes.

MR. COOPER: Counsel, reserving our right to take a discovery deposition at an appropriate time in the litigation and based on the questioning you have made of Mrs. Altman yesterday and this morning, I have no further questions at this time.

MR. SCHOENBERG: I should add, we have had discussions prior to the stipulation for this deposition, a stipulation which is attached to Exhibit No. 1 of the deposition, with regard to any further depositions.

I know we don't yet have an agreement with regard to any further depositions. I know it's your position you are entitled to take another deposition asking the same things, and we have not yet agreed to that. We have agreed to postpone our disagreement and deal with it at another date.

MR. COOPER: Shall we go off the record to reach an agreement with respect to the handling of

this transcript?

MR. SCHOENBERG: Give me one second. I may have a follow up question or two.

I have some follow up.

Let's mark as Exhibit No. 68, a copy of an April 11, 2000 letter from Nelly Auersperg to Professor Bacher, with attached letter sent from Hermine Mueller-Hoffmann to Nelly's mother Louise. This was taken from a report prepared by Professor Bacher with regard to the portrait of Amalie Zuckerkandl.

MR. COOPER: Counsel, I trust this is going to be directly related to some testimony Mrs. Altman gave on cross, which is the only possible ground for proper redirect.

MR. SCHOENBERG: The answer to that question is yes.

MR. COOPER: I reserve judgment on that subject until I have heard your questions, but there is nothing about the document that strikes me as likely in that category.

(Altman Exhibit 68 was marked for identification by the reporter and is attached hereto.)

EXAMINATION

BY MR. SCHOENBERG:

Q. When counsel asked you whether you had any other information with regard to the portrait of Amalie Zuckerkandl, did you understand him to be asking with regard to other documents we might have collected in the last few years with regard to that painting?

MR. COOPER: Leading.

THE WITNESS: I didn't think we had any documents.

Q. BY MR. SCHOENBERG: Have you ever seen this document before?

MR. COOPER: Object, it exceeds --

THE WITNESS: The document I saw it later that Nelly wrote to Professor Bacher?

Q. BY MR. SCHOENBERG: Yes.

MR. COOPER: Exceeds the proper scope of redirect.

Q. BY MR. SCHOENBERG: Do you know what the second page of Exhibit No. 68 is?

A. Yes.

Q. You are looking at it now?

A. Yes.

Q. What is it?

A. It's a letter from my sister from Hermine Mueller-Hoffmann.

Q. Have you read this letter before today?

A. Yes. She's 84 in that letter.

Q. Does Hermine Mueller-Hoffmann say in this letter how Dr. Vita Kuenstler obtained the portrait of her mother Amalie Zuckerkandl?

MR. COOPER: The document speaks for itself. It's hearsay.

THE WITNESS: She says the portrait of Amalie Zuckerkandl is now with Mrs. Vita Kuenstler, an art historian, who got the painting through Dr. Kalir. She called me recently and told me that it was willed to the gallery in the Belvedere. It's okay with me, but it doesn't say anything how Mrs. Kuenstler came to get the painting through Dr. Kuenstler.

MR. SCHOENBERG: I'm not going to ask any further questions. Thank you.

MR. COOPER: Thank you, Mrs. Altman.

THE WITNESS: Thank you.

VIDEOGRAPHER: Going off the record at 2:55 P.M.

This is the conclusion of the

deposition. 14:51:51
(The following proceedings were had off the video record:)
MR. COOPER: Back on the record. We have reached an agreement with respect to the handling 14:55:14 of the transcript.
Counsel stipulate that the original transcript will be sent to Mr. Schoenberg.
That Mrs. Altman will have 45 days after his receipt of the transcript within which to 14:55:49 review, make corrections to, and execute the transcript. That in the interim, either party will have the right to make reference to the testimony as it appears in the unsigned transcript, in the event the need to do so arises. 14:56:12
That if for any reason Mrs. Altman does not execute the corrected transcript within or after the 45-day period, either party may continue to make reference to the transcript as if it were an executed original and use it for any purpose for 14:56:35 which the original would be capable of use.
Is there anything else we should add to that, Mr. Schoenberg?
MR. SCHOENBERG: The same would go for the video version of the transcript; that could be used 14:56:58

in the same manner. 14:57:02
MR. COOPER: Within the usual limitations of when a video can be used as opposed to a transcript, I have no disagreement with that.
MR. SCHOENBERG: I think that's fine. 14:57:12
MR. COOPER: Then it's so stipulated.
MR. SCHOENBERG: Stipulated. Thank you very much.
(The deposition was concluded at 2:57 P.M.)

WITNESS'S DECLARATION

I, MARIA ALTMAN, declare under penalty of perjury that I have read the foregoing transcript and that I have made any corrections, additions, or deletions that I was desirous of making in order to render the within transcript true and correct.
IN WITNESS WHEREOF, I have hereunto subscribed my name this _____ day of _____ 2002.

_____
MARIA ALTMAN

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I, George A. Haas, Certified Shorthand Reporter, duly qualified in and for the State of California, do hereby certify there came before me the deponent herein, who was by me duly sworn to testify to the truth and nothing but the truth concerning the matters in this cause.
I further certify that the foregoing transcript is a true and correct transcript of my original stenographic notes.
I further certify that I am neither attorney or counsel for, nor related to or employed by any of the parties to the action in which this deposition is taken; and furthermore, that I am not a relative or employee of any attorney or counsel, employed by the parties hereto or financially interested in said action.
IN WITNESS WHEREOF, I have hereunto set my hand this 5th day of June 2002.

_____
GEORGE A. HAAS, CSR NO. 5939

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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

MARIA V. ALTMANN, an individual,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No.
	)	00-08913 FMC (AIJx)
REPUBLIC OF AUSTRIA, a foreign	)	VOLUME I
state, and the AUSTRIAN GALLERY,	)	Pages 1 - 133
an agency of the REPUBLIC OF	)	
AUSTRIA,	)	
	)	
Defendants.	)	
	)	

DEPOSITION OF MARIA ALTMANN

LOS ANGELES, CALIFORNIA

WEDNESDAY, MAY 29, 2002

9:45 A.M.

REPORTED BY: LEESA DURRANT, CSR NO. 11899

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

MARIA V. ALTMANN, an individual,)
)
Plaintiff,)
)
v.) Case No.
) 00-08913 FMC AIJx
REPUBLIC OF AUSTRIA, a foreign) VOLUME I
state, and the AUSTRIAN GALLERY,) Pages 1 - 133
an agency of the REPUBLIC OF)
AUSTRIA,)
)
Defendants.)
_____)

Deposition of MARIA ALTMANN, taken on behalf of the Plaintiff, at 2049 Century Park East, Suite 3200, Los Angeles, California 90067 commencing at 9:45 a.m., Wednesday, May 29, 2002 before Leesa Durrant, Certified Shorthand Reporter No. 11899.

A-P-P-E-A-R-A-N-C-E-S

For the Plaintiff:
LAW OFFICES OF E. RANDOL SCHOENBERG
BY: E. RANDOL SCHOENBERG, ESQ.
12121 Wilshire Boulevard
Suite 3200
Los Angeles, California 90067
(310) 826-4944

For the Defendants:
PROSKAUER ROSE, LLP
BY: SCOTT COOPER, ESQ.
JONATHAN E. RICH, ESQ.
2049 Century Park East
Suite 3200
Los Angeles, California 90067
(310) 557-2400

Also Present: GOTTFRIED TOMAN, ESQ.
KATHERINE PATERNO
DALE PETERSON, videographer

I-N-D-E-X

W-I-T-N-E-S-S

MARIA ALTMANN

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UNANSWERED QUESTION:
(NONE)

INFORMATION TO BE INSERTED:
(NONE)

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LOS ANGELES, CALIFORNIA; WEDNESDAY, MAY 29, 2002;
9:45 A.M.

* * * * *

VIDEOGRAPHER: Going on the record. This is the videotaped deposition of Maria Altmann beginning at 9:45 a.m. on May 29th, 2002 in the matter of Altmann versus the Republic of Austria, et al., Case No. 0008913 FMC filed in the U.S. District Court, Central District of California.

This deposition is being taken at 2049 Century Park East in Los Angeles, California. My name is Dale Peterson. I am a videotape operator and public notary, retained by Supervision Video Services located in Los Angeles, California.

Would counsel present please identify yourself and state who you are representing starting with plaintiff's counsel.

MR. SCHOENBERG: Yes, my name is Randol Schoenberg, S-c-h-o-e-n-b-e-r-g, and I represent the plaintiff, Maria Altmann.

MR. COOPER: I am Scott Cooper. I am counsel of record for the Republic of Austria and the Austrian National Gallery.

MR. RICH: Jonathan Rich. I am a colleague of Scott Cooper's and I represent the Republic of Austria and the

Austrian National Gallery.

MR. TOMAN: My name is Gottfried Toman. I am engaged in the Austria Office of State Attorneys and representing Republic of Austria.

MR. COOPER: Also present this morning is Katherine Paterno, a summer associate with our law firm, Proskauer Rose, who's attending the deposition as an observer.

VIDEOGRAPHER: Will the court reporter please swear in the witness.

MARIA ALTMANN,
having been first duly sworn, was
examined and testified as follows:

EXAMINATION

BY MR. SCHOENBERG:

Q Good morning, Mrs. Altmann.

A Good morning, Mr. Schoenberg.

Q Could you please state your full name for the record?

A Maria Altmann -- Maria Viktoria Altmann.

Q How do you spell Altmann?

A A-l-t-m-a-n-n.

Q Let's first for the record mark Exhibit 1 which will be the Third Amended Notice of Deposition of

plaintiff Maria V. Altmann to preserve testimony pending appeal under Federal Rule of Civil Procedure 27 (b).

(Plaintiff's Exhibit No. 1 was marked for identification by the certified shorthand reporter.)

MR. SCHOENBERG: I will note for the record that this deposition is to preserve testimony and is being taken at our request with the stipulation of the defendants and the written stipulation dated August 3rd, 2001 is attached to this Third Amended Notice that we've marked as Exhibit 1.

We're starting earlier than scheduled which is probably unheard of in the history of law, but we're here this morning and we don't have any other stipulations at this time.

MR. COOPER: That's correct.

Q BY MR. SCHOENBERG: Mrs. Altmann, where were you born?

A I was born in Vienna, February 18, 1916.

Q And what was your name when you were born?

A I was still born with the name of Marie Bloch. It was a couple of years later that my parents combined the name, the maiden name of my mother with my father's name.

Q We'll get to that. How do you spell Bloch?

A B-l-o-c-h.

Q Who was your father?

A Gustav, Dr. Gustav Bloch.

Q Who was your mother?

A Teresa, Teddi for short, Bauer.

Q And you mentioned just now that the name was changed from Marie Bloch to Marie Bloch-Bauer; is that correct?

A Correct. I was not aware then. I must have been about two years old.

Q Is she speaking loud enough?

VIDEOGRAPHER: She sure is.

THE WITNESS: Do you want me to talk louder? I can.

VIDEOGRAPHER: You're fine for me. I can control the volume.

Q BY MR. SCHOENBERG: That's fine then. So your name was changed to Bloch-Bauer, and why was that?

A Because the male siblings of my mother and Aunt Adele had died very young years and to preserve the name they combined the name of Bloch with Bauer.

Q I see. Now you just mentioned Adele Bloch-Bauer. Who was Adele Bloch-Bauer?

A Adele was the sister of my mother, married to the brother of my father. She was a double aunt.

Q Who was the brother of your father?

A Ferdinand Bloch, later Bloch-Bauer.

Q So Gustav and Ferdinand Bloch married Teresa --

A Two brothers married two sisters.

Q You have to wait until I finish the question and then answer.

A I'm sorry.

Q So Gustav and Ferdinand Bloch married Teresa and Adele Bauer --

A Yes.

Q -- and the two families took the name Bloch-Bauer?

A Correct.

Q Now who was the father of your mother?

A His name was Moriz Bauer.

Q What was his profession?

A He was in the banking business and he was director of the Vienna Bank. I never knew him. He died long before I was born.

Q Now what profession was your father, Gustav Bloch-Bauer?

A He was a lawyer.

Q And how about his brother, Ferdinand Bloch-Bauer?

A Ferdinand was president of the -- of a sugar company in Vienna.

Q Do you know the name of the sugar company?

A It was called Brucker Zuckerfabrik, Austrian Sugar Factory.

Q I think that's a good translation.

Now were you an only child?

A No, I was the youngest child. I'm the only one alive among my siblings but I had three brothers and one sister.

Q When were your brothers and sisters born?

A My oldest born was 1901 and the next '03, '05 and '07 and then eight years nothing and then me.

Q You said you were born in 1916?

A Correct.

Q What were the names of your siblings?

A Charles, Karl, Robert, Poldie, P-o-l-d-i-e, and Luise. It's actually Leopold.

Q And that's in order of oldest to youngest?

A In the order I gave it to you.

Q Now we prepared a little bit of a family tree that may be difficult to read, but I just want to mark that as Exhibit 2. I think I faxed you a version of this, Jonathan, at one point.

(Plaintiff's Exhibit No. 2 was marked for identification by the certified shorthand reporter.)

THE WITNESS: He knows more about my ancestors than I do.
Q BY MR. SCHOENBERG: Is this Exhibit 2 a family tree that you helped me prepare?
A I have to look at it. Yeah, I did. Yes.
Q Now where was your father born?
A My father was born in Czechoslovakia in a place called Jungbunzlau.
MR. COOPER: Counsel, I don't want to interrupt. Is that the only question that you're going to ask the witness about the foundation for this document?
I would note that it wouldn't be sufficient for its admissibility and while I recognize that in this proceeding you're not able to move for admission, I wouldn't want the document to simply go by without having some discussion on it if you intend to have it admitted based on the witness's testimony.
MR. SCHOENBERG: That's fine. I don't intend to have it admitted based on her testimony. I really prepared it more as a guide --
MR. COOPER: Very good. Fair enough.
MR. SCHOENBERG: -- For everybody involved because the relationships sometimes get confusing and the dates and I can tell you where the information was gleaned.
MR. COOPER: If you use it to refresh the witness's

recollection, obviously we'll want to have an opportunity to voir dire the witness with respect to the information it contains, but that's fine. Let's go ahead and proceed.
MR. SCHOENBERG: I don't think there's going to be a dispute about any of the information on this chart.
MR. COOPER: Very good.
Q BY MR. SCHOENBERG: So the question was where was your father born and you said Jungbunzlau which is J-u-n-g-b-u-n-z-l-a-u. And that is a town that is now called Mlada Boleslav?
A You know more than I do.
Q In Bohemia; right?
A In Bohemia, yes.
Q Was Ferdinand born there also?
A I suppose so.
Q Now were you an Austrian citizen at some point?
A Yes, I was until 1945 when I became an American citizen.
Q Were you an Austrian citizen after 1938 when the Nazis took over Austria?
MR. COOPER: Calls for a legal conclusion.
THE WITNESS: I guess I was. I had an Austrian passport at the time.
Q BY MR. SCHOENBERG: Now do you know, was your

father an Austrian citizen?
A Yes.
Q When did he become an Austrian citizen?
A I couldn't tell you. He was 54 when I was born so I suppose it must have happened before.
Q Was Ferdinand Bloch-Bauer an Austrian or a Czech citizen?
A No, he was a Czech citizen.
Q How is it possible that your father could be an Austrian citizen and your uncle, his brother, be a Czech citizen?
A I suppose my father became an Austrian citizen after a while, but my uncle spent a lot of time in Czechoslovakia and remained a Czech citizen.
Q Was August von Wassermann a cousin of your mother's?
A My mother's, yes.
Q Who was August Von Vasserman?
A He was the one that he went -- what do you call it? Wassermann test, the blood test that's done ever since, the testing that the people before they get married they used to have the Wassermann test.
Q What disease does it test for?
A I think it's syphilis.
Q Now are you related to Julius Bauer?

A No. He was a friend of the family -- very dear friend of the family. I only knew him as an old gentleman and he spoke at any festivity in the family. But there's no relation.
Q What was his profession?
A Well, he was like a writer, maybe journalist and at every occasion, good or bad, he gave a speech.
Q Are you Jewish?
A Yes.
Q Were your parents Jewish?
A Yes.
Q What about your Uncle Ferdinand, was he Jewish?
A Yes.
Q And what about Adele Bloch-Bauer?
A Adele was Jewish but she gave up the religion when one of her favorite brothers died in very young years. She didn't believe in God anymore.
Q Now where did you grow up?
A I grew up in Vienna. I was in Vienna up to 1938.
Q And when you were growing up in Vienna, where were Ferdinand and Adele Bloch-Bauer?
A They were in great part of the year in Vienna, but the summer was entirely spent in Czechoslovakia and I visited them there too.

Q And how old were you about when Adele died?
A Nine.
Q That was in 1925?
A Yes.
Q Now I take it you had an opportunity to view your uncle's art collection; is that correct?
A Yes, when I was there. We were there practically every week for dinner or lunch and I grew up with that art collection.
Q Where did Ferdinand live?
A He lived in Vienna in Elisabethstrasse. They called it a palace, but it's actually a very lovely mansion.
Q The number on that was 18?
A I'm sorry. Elisabethstrasse street, No. 18.
Q Where is that located in Vienna?
A It's located on the Schillerplattz which is just a block away from the Ring Boulevard which is the main street, a few minutes from the opera and a very nice location.
Q So you said you had a good opportunity to view Ferdinand's art collection?
A Yes, of course. They are always Christmas, Easter and practically every Sunday for lunch.
Q Now you just mentioned that you celebrated

Christmas and Easter, but you said earlier that you were Jewish; is that correct?
A Yes, but I do have to admit that it was my family in Vienna it was a little different. We did celebrate Christmas and Easter though we were Jewish and had Jewish religion in school, but we did celebrate those holidays.
Q Did your father go to temple on --
A He went to temple on one day only, the day of atonement.
Q On Yom Kippur?
A Yom Kippur.
Q Who did he sit next to at temple?
A I beg your pardon?
Q Who did he sit next to at temple?
A He sat next to the brothers Rothschild. They were friends of his and they had given him for lifetime, Stradivarius cello, which was picked up by the Gestapo and my father died a few weeks after.
Q Now Gustav Klimt died just a little bit after you were born, so you didn't know him, did you?
A I never knew him, no.
Q But you saw some of his paintings in Ferdinand's house?
A My uncle had made -- after his wife passed away

so early, he had made like a memorial room which was her former bedroom and in that room were all of his paintings and always, all year-round beautiful flowers, and so I recall that very vividly.
MR. SCHOENBERG: Scott, I'm going to have her identify the Klimt paintings. Do you want a copy of these when we identify them?
MR. COOPER: Anything that you are going to have admitted as an exhibit in the deposition, I would like to have a copy.
(Plaintiff's Exhibit No. 3 was marked for identification by the certified shorthand reporter.)
Q BY MR. SCHOENBERG: Mrs. Altmann, I would like for you to go through these one by one and maybe hold them up to the camera as you identify them and tell me whether you recall these paintings being in the house of your uncle?
A In the bedroom, yes. Yes, this first one is --
MR. COOPER: Mr. Schoenberg, I don't want to interrupt this. It's implicit, but not explicit from the witness's testimony thus far that she was in the bedroom and saw these paintings firsthand. You might want to just clarify that because she volunteered the information. You didn't have the opportunity to ask that

question.
Q BY MR. SCHOENBERG: We'll go through these paintings. I want you to identify and tell us whether you saw these particular paintings in the house of Ferdinand Bloch-Bauer.
A Most definitely.
Q Go through them one by one and tell us whether you saw these paintings in Ferdinand's house.
A Yes, they were. As I said, a former bedroom of my aunt was transformed into a memorial room with just nothing but the Klimt paintings in there and flowers. Always beautiful flowers.
Now this first one is the Gold portrait and it is the painting that my uncle commissioned Klimt to paint of his wife.
The second one which was painted as I understand a few years after this one is "Adele Bloch-Bauer II."
This painting is the "Apple Tree I." It says I, but I didn't realize there's an "Apple Tree II." At least I don't know it, but this is the third one.
The fourth one is the Beechwood which is this one. I love that one.
And this one is called "Houses in Unterach" which was a lake in Austria.

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This one, I understand my uncle donated in the year 1936 to the gallery and got a lovely thank you note for it and this is Schloss, which means castle, Kammer am Attersee which is a lake.

Q Now this last one, was this portrait of Amalie Zuckerkandl in that memorial room?

A No, it was not. As a matter of fact, I don't recall that painting, but my brother said it was in my uncle's bedroom. I don't remember that. I don't remember having entered my uncle's bedroom. This was it.

Q Now you mentioned that the second to last one, the castle Kammer am Attersee was donated to the Austrian Gallery in 1936. Do you remember what painting replaced that in the memorial room?

A No.

Q Was there a portrait of Kokoschka, by Oskar Kokoschka by your Uncle Ferdinand?

MR. COOPER: Leading. Lacks foundation.

THE WITNESS: Pardon me?

MR. COOPER: It was an objection to the form of the question. I said it was leading and it lacks foundation which means that there's no establishment in the record that you have that information.

Q BY MR. SCHOENBERG: You can answer the question.

A I saw the painting. It was particularly ugly in my opinion. But I must say that I don't recall having seen it in the memorial room. I saw the painting, but I don't recall where it was hanging. It might have been there, but --

Q Okay. Let's mark actually the next exhibit, Exhibit 4.

(Plaintiff's Exhibit No. 4 was marked for identification by the certified shorthand reporter.)

Q BY MR. SCHOENBERG: Exhibit 4 is Bates stamp numbered pages 1 through 6.

Mrs. Altmann, what is Exhibit 4?

A Do you want me to tell you?

Q Yes. What is it?

A It was a letter that my Aunt Adele wrote to my brother Robert when he was -- I think it was about his 18th birthday. And the letter is incredible because it shows so much about her character and her incredible urge for knowledge. And that's what she tells him in the letter, that he should surround himself with extremely intelligent people that know art and are very educated and that's -- it's a very special letter in which she tries to tell him what's important in life.

MR. COOPER: Move to strike as nonresponsive.

Q BY MR. SCHOENBERG: Did Adele have a formal education?

A No. In those days girls did not go to university, so she got married when she was 17 to just get out of the house and to be able to surround herself with people that were important to her.

Q And who are some of the people that she surrounded herself with?

A Well, she surrounded herself with people from all areas. She had people that were politicians. There were people in the music world like Mahler and Strauss, Richard Strauss. And in the medical field it was Professor Tandler. And in the art it was Klimt and I am sure it was Schindler too who was the father of Alma Mahler. She had what was called in France a salon where she surrounded herself with people in every aspect of art and intellect.

Q What about her political orientation?

MR. COOPER: Lacks foundation.

THE WITNESS: Pardon?

MR. COOPER: Lacks foundation. I'm just making the objection that there's no basis established in the record for what he's asking.

MR. SCHOENBERG: He's just making an objection. You can answer the question.

Q What was Adele's political orientation?

A She was a socialist.

Q And what about your Uncle Ferdinand?

MR. COOPER: Lacks foundation.

THE WITNESS: I think he had no time to think of politics. He was a very hardworking, busy man.

Q BY MR. SCHOENBERG: Was Adele close to any political figures in Austria?

A Yes, she was a great friend of Karl Renner.

Q What about your Uncle Ferdinand, was he close to any Austrian or Czech political figure?

MR. COOPER: Same objections.

THE WITNESS: Yes, he was very friendly with Masaryk, at that time the head of Czechoslovakia -- president of Czechoslovakia.

Q BY MR. SCHOENBERG: How do you know that?

A I just heard it from my father. Not only that, when my husband and I lived in Fall River, Massachusetts, we went to Boston and we met the son of Masaryk there and, of course, he remembered me from knowing who I was and he was very unhappy at that time and he returned then to Prague. He committed suicide before being captured.

Q Who was the father of Masaryk?

A He was president of Czechoslovakia.

Q And Karl Renner, who was Karl Renner?

A Karl Renner was a very big socialist figure who became president after the war. I never met him.
Q How do you know that Adele was close to Karl Renner?
A From the hearsay of my siblings and I understand there was an exchange of letters that were removed from her night table while she was unconscious.
Q Back to Exhibit 4, on the first page at the top there's an insignia with a deer jumping over a tree and underneath it says "Schloss Jungfer" --
A Schloss means castle, Jungfer Brezan which is on the border. They called it a castle. It looked somewhat like the White House. I would call it a mansion, but at that time they called it a castle. And the stag, that was apparently his ex libris.
Q Ex libris.
A It's a mark for his books. He loved hunting and that's why he had a stag in there.
Q Was this Schloss Jungfer Brezan, was that the property that you were talking about in Czechoslovakia?
A It was the property that was taken over by Heydrich --
Q We'll get to that. Before we get to that, the property was owned by Ferdinand and Adele?
A And Adele.

Q And you visited there?
A Very often. Almost every summer I was there for two weeks or so.
Q Now at the end of the letter on the page numbered 6 is your -- is a signature of Adele and then there's another note below that says -- that's signed Buddha, B-u-d-d-h-a.
A I wouldn't know. That must have been a nickname that my brother Robert gave her, but I wouldn't know what it means.
Q Now when we were going through the paintings, the last one was this portrait of Amalie Zuckerkandl. Who was Amalie Zuckerkandl?
A Amalie Zuckerkandl, the way I recall her, she was a dear friend of my mother. I recall her very well. She was a very, very nice lady. My uncle was very generous to a lot of people, so that is only hearsay, that he tried to help her by buying that portrait.
Q Do you know what happened to Mrs. Zuckerkandl during the war?
A Yes, I understand that she was deported and died in concentration camp.
MR. COOPER: Lacks foundation.
Q BY MR. SCHOENBERG: Did you know any of her children personally?

A Yes. I remember Minnie. I think her name was Minnie who afterwards married -- I only knew her as a married woman. Rudolph Mueller-Hoffman was her husband. I remember him. He was very nice.
Q What did he do?
MR. COOPER: Lacks foundation.
THE WITNESS: I don't even know. He wasn't a lawyer. I think he was in the art world.
Q BY MR. SCHOENBERG: Now you mentioned earlier that Ferdinand ran a sugar company. Did any of your siblings work for Ferdinand in the sugar company?
A My oldest brother Charles was director of the sugar company. Actually it was called Brucker Zuckerfabrik in -- that doesn't make any difference. My brother Robert was personal secretary to my uncle.
Q What about your other brother, Poldie, or Leopold?
A Poldie never worked for my uncle.
Q Was your uncle the only shareholder of the sugar company?
A No. No. No. No. There was a group of people. As a matter of fact, the in-laws of my brother, Poldie, were big shareholders in there and then there were quite a few others. As I say, I recall the names, but that's all.

Q Who was your brother Leopold married to?
A He was married to Toni, Antoinette Pick, P-i-c-k, and they were big shareholders in the sugar company.
Q And Toni Pick or Toni Bentley is her name now?
A Yes, they changed it from Bloch-Bauer to Bentley.
Q She's still alive; right?
A Yeah, but you can't call it living. She's alive, but it's no life. She doesn't know who she is. She's blind. It's horrible.
Q And when did your brother marry Toni Pick?
A I think he must have met her in '36. Something like that, I think.
Q So before the war?
A No. No. No. It was before because I got married in 1937. It must have been 1934 that he got married.
Q What about Karl, was he married before the war?
A No, he married after the war.
Q And your brother Robert, was he married before the war?
A Yes, he was married. As a matter of fact, the birth of his son, my husband read in at that time there was still a newspaper in Dachau, that's where he read

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that my father died and that Robert got the little boy.
Q Who was that?
A George Bentley.
Q But I was asking -- who did he marry, Robert?
A He married Thea Stern.
Q Is she still alive?
A She's still alive. She's a couple of years younger than I am.
Q Where does she live?
A She lives in Vancouver, British Columbia.
Q What about your sister Luise, was she married before the war?
A Yes, Luise was married -- I was 12. Luise was married, I think in -- I was 11 when she married, so you can figure it out.
Q Around '29 or '30?
A Yeah.
Q Who did she marry?
A She married, his name was Baron Victor Gutmann, G-u-t-m-a-n-n.
Q Where did they live?
A They lived in Vienna and a great part of Yugoslavia where my brother-in-law had a lumber industry and owned some forests there.
Q When did you get married?

A I got married on December 9th, 1937.
Q And to whom were you married?
A I was married to Fritz Altmann.
Q Where did the wedding take place?
A It was one of the very last huge weddings in Vienna. It was in Vienna.
Q Was it in the main synagogue?
A No, it was -- my husband wanted the synagogue because his father -- that was his father's temple and that's where my husband wanted us to get married.
Q Which one was?
A Turner, T-u-r-n-e-r.
Q Did Fritz have any brothers and sisters?
A Yes, Fritz was just like me, the youngest among five. Fritz had three brothers and one sister.
Q Who were his brothers and sister?
A Bernhard was his oldest brother. He was 20 years older than Fritz and then Julius and Klara was his sister.
Q What did Bernhard Altmann did?
A Bernhard had a very large knitting mill in Vienna and was afterwards very successful in America doing the same thing.
Q Did you receive any gifts from Ferdinand when you were married?

A Yes.
Q What did you receive?
A I received a diamond necklace and matching earrings from Aunt Adele. And the sad thing is I never even wore it once because when the Nazis came to Vienna, they came and picked up my entire jewelry and the necklace was. After the war, they imprisoned the men that had taken the jewelry and he said that the diamond necklace was sent to Hammond Gerring's wife.
Q Who was that who said that?
A The Gestapo men who came to arrest us -- to arrest Fritz. They arrested him after the war and asked him about the jewelry of Bernhard's wife.
Q What was his name, the Gestapo?
A Mr. Landau.
MR. COOPER: Move to strike the last two answers as nonresponsive. If you would pause just a moment between his question and your answer, that way I won't interrupt you.
THE WITNESS: That's perfectly all right. Yes, I will.
Q BY MR. SCHOENBERG: Who was the -- what was the name of the Gestapo officer that you were just referring to?
A Landau, L-a-n-d-a-u.

MR. COOPER: Lacks foundation.
Q BY MR. SCHOENBERG: Now after your wedding at the end of 1937, you went on your honeymoon?
A We went in December on the honeymoon and we came back in January.
Q And where did you live?
A We lived in a beautiful totally new apartment that was in the living quarters of the factory that my brother-in-law owned and it was brand-new and beautiful, but we lived there only six weeks.
Q Do you remember when the Nazis annexed Austria is what is known as the Anschluss?
A I remember it very well.
Q Where were you?
A I happened to be at my parents' house where there was chamber music every Friday evening and it was just when the chamber music ended that the then Chancellor of Austria, Schuschnigg was his name, he announced that the German troops are at the border and that there would be no resistance so that there's no bloodshed.
Q And do you remember when the Nazis then -- the German Nazis came into Vienna?
A Yes, I remember it very well.
Q What do you remember?

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MR. COOPER: Calls for a narrative response.
THE WITNESS: Huh?
Q BY MR. SCHOENBERG: You don't have to worry. He's saying objections but you can answer the question. The judge will rule on them later.
A It was -- it was in the evening at 6:00 o'clock that Schuschnigg made the speech and then afterwards there was a lot of jubilant people in the streets and church bells were ringing and it was not an air of victims but more they were quite jubilant, the people in the streets. I am sure not everyone.
Q Do you know where Ferdinand was at the time of the Anschluss?
MR. COOPER: Lacks foundation.
THE WITNESS: Ferdinand must have been in Czechoslovakia. He was definitely not in Vienna at the time.
Q BY MR. SCHOENBERG: Do you know what happened to Ferdinand's home after the Anschluss?
MR. COOPER: Lacks foundation.
Q BY MR. SCHOENBERG: You can answer the question. He's stating objections. The judge will rule on them later.
A The thing is I never went back there anymore, but I understand that -- see, I was concentrating at that

time on one thing. My father died and my husband was in concentration camp, so I never thought of anything else of how he would get out, how he would get out.
Q You mentioned earlier there was a time when the Gestapo came to you personally. When was the first time that you had interaction with the Gestapo?
A It was -- this must have been -- it was very early because Bernhard had given us a car for the wedding, a new car and they came and pushed it out of the garage which was around the middle of March already. And then a little later, I would say in the last week of March, first days of April is when they came to question Fritz. They just called for questioning, but they arrested him and then he was shipped to Dachau.
Q You mentioned something about some jewelry of yours. When did that take place?
A That was the first time --
MR. COOPER: Objection. Excuse me, Mrs. Altmann. Objection as to relevancy and if you're going to go into a series of questions of this type, perhaps now is an appropriate time to have a stipulation for this series of questions as to relevancy.
MR. SCHOENBERG: That's fine. You can reserve your relevancy objections to this line of questioning.
Q The question was, earlier you had mentioned

that a Gestapo agent, a Mr. Landau, had taken your jewelry. When did that occur?
A I beg your pardon.
Q When did that occur?
A That occurred the very first time -- he then lived in the factory. He took the apartment. As a matter of fact, he took over our apartment.
Q That's Mr. Landau?
A Mr. Landau.
Q Was he Austrian or German?
A No, he was Austrian. The people that had taken over the factory were two German gentlemen.
Q This was the factory that belonged to your brother-in-law Bernhard?
A My brother-in-law, Bernhard.
Q What did Mr. Landau say to you when he came to ask you about your jewelry?
A He just --
MR. COOPER: Objection. Hearsay.
THE WITNESS: He just said give me the jewelry. Then he made me take off the engagement ring. I was so terrified that they might arrest my husband that I had jewelry at the house, but then I had the main jewelry which was given to me for the wedding a couple of months before at the jeweler and they wouldn't have known about

it, but I told them that I have more jewelry and so the jeweler sent it over.
Q BY MR. SCHOENBERG: Now at that time, Fritz wasn't yet arrested; is that correct?
A When they picked up the jewelry, no. That's why I wanted to be sure that they got everything so that he wouldn't be arrested. But they arrested him a few days after.
Q And where was Fritz sent?
A He was first at the Landesgericht at Vienna and Rosseuerlaender, R-o-s-s-e-u-e-r-l-a-e-n-d-e-r, and then he was shipped to Dachau, D-a-c-h-a-u.
Q Do you know why Fritz was arrested?
MR. COOPER: Lacks foundation. Calls for speculation.
THE WITNESS: He was arrested because -- not only out of religious reasons, but mostly because the two Germans that took over the factory wanted to be sure that my brother-in-law has foreign accounts not paid to him but to them and so they went to Paris to -- the two German gentlemen had told them to -- if they wanted -- if he wanted to see Fritz again, he should sign over the factory which he did. And they kept the promise and sent an officer to Dachau to bring Fritz home. He came back in July.

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Q BY MR. SCHOENBERG: Did you have to do anything to secure the release of your husband from Dachau?
A No, I did go with the one German gentleman to Berlin, but he did the talking. I didn't do anything.
Q After Fritz was released, where did you live?
A We lived in a small place assigned to us in the factory, in the house and we stayed there until -- we made two attempts to escape that failed and the third one worked and we landed in England.
Q You said your father passed away that summer in 1938?
A My father died in July, in July of 1938.
Q And you were still in Vienna then?
A Yes.
Q When did you leave Vienna?
A I left Vienna on October 21st, 1938.
Q Now among your family, who else escaped from Austria at that time?
Let's go through it. Did your mother leave?
A No, my mother followed a little later. We escaped to England and my mother followed a few weeks afterwards. My brother Robert was able to leave and then also the sister of Fritz. That's it.
Q What about Karl? Charles?
A He was not in Vienna, thank goodness, because

he -- he was in Paris at the time and never returned.
Q What about Poldie?
A Poldie was in Vienna and he was arrested.
Q What happened to him when he was arrested?
A That's an unusual story. They woke him up at midnight for interrogation and the man that questioned him said, "Mr. Bloch-Bauer, I'm going to test your memory. What did you do on New Year's Eve in 1934?" And my brother said, "I remember that very well. I was skiing at the Zugspitze" -- Z-u-g-s-p-i-t-z-e, it's a skiing mountain near Vienna -- "and at midnight we got an SOS call from the mountains that said a man had got lost there and he said my buddy and I went up and brought him down to the lodge." The man answered, "This is correct. And the man was me." My name is "Hiedler and I am a nephew of Adolph Hitler. I'm going to help you but only for three days and you better get out by then." He liberated my brother and he went to the Swiss consulate the next day and got out.
Q Where did your brother Leopold go when he left Austria?
A He went to Vancouver, British Columbia.
Q What did he do there?
A Then he brought --
Q What did he do there?

A He founded a very large lumber mill.
Q Do you know what it's called?
A C-a-n-f-o-r, Canfor Lumber Company.
Q And did any of your other relatives then go to Vancouver?
A Well, my brother Poldie was very good about that and had all of the others follow him and gave them jobs.
Q When you say "all of the others"?
A It was my brother Robert, my brother Charles and Luise, the whole time was still in Yugoslavia where her husband was killed by the communists and then the person that helped her very much married her and he went with her via Israel to Canada.
Q But so you were the only one that didn't go to Canada?
A Yeah. No. That's correct.
Q How about your mother, did your mother --
A My mother came in November '38 to Liverpool to join us. I think it was November. I don't know exactly. Then she went to Canada and stayed there.
Q Now did any of your brothers change their names when they went to Canada?
A Yes, two of my brothers changed their name to Bentley because nobody could pronounce Bloch-Bauer and

only my oldest brother to spite my youngest brother kept the name.
Q That was Charles?
A To make it a little more difficult.
Q That was Charles?
A Yeah.
Q So when we come across the name of your brother Robert Bentley later, that was Robert Bloch-Bauer who became Robert Bentley?
A Correct.
Q Now you said you escaped from Vienna and ended up in Liverpool, England. When was that?
A That's a little complicated.
Q I just asked when it was.
A When it was?
Q Yes.
A Excuse me. It was October '38, October 21, '38.
Q And how long did you stay in Liverpool?
A We stayed in Liverpool until the war broke out. We would have remained in England. We loved it. But the war broke out. We would have been enemy aliens and luckily at the time our American visa came and so we went to America in May 1940.
Q And where did you live initially in the United

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States?
A We were in Four River, Massachusetts where my oldest son was born and then in October, two years later, 1942 we came to Los Angeles.
Q And why did you come to Los Angeles?
A Fritz wanted to work for the war effort and so he got a position as a time study engineer with General Dynamics in San Diego and when he came there, they couldn't give him the job because he thought he was Australian and he would have been an enemy alien so he had come back to Los Angeles -- we came to Los Angeles and then we took a lawyer and he worked it out and Fritz worked at Lockheed for the entire war and --
Q Can we take a break? We've been going about an hour.
MR. COOPER: Sure.
MR. SCHOENBERG: And I can set up the next set of documents.
VIDEOGRAPHER: Going off the record at 10:38 a.m.
(Brief recess taken.)
VIDEOGRAPHER: Going back on the record at 10:58 a.m.
MR. SCHOENBERG: While he's getting the water, we'll mark as the next exhibit which I think is No. 5 a document that is Bates stamped marked 1346 through 1362.

(Plaintiff's Exhibit No. 5 was marked for identification by the certified shorthand reporter.)
Q BY MR. SCHOENBERG: Mrs. Altmann, Exhibit 5 is a property declaration concerning property of yours in 1938. It lists your address at Siebenbrunnen, No. 21. Is that where you were living in 1938?
A Correct. That was where the factory of my brother-in-law was and where it was also the living quarters in an extra house.
MR. COOPER: Objection. Lacks foundation. The question about this document lacks foundation. That's all.
MR. SCHOENBERG: The question was whether it was correct she lived there in the summer of 1938.
MR. COOPER: Counsel, just so we're clear, the question was by reference for a document for which there was no foundation. That was the basis for my objection.
MR. SCHOENBERG: You're objecting to the document, not the question?
MR. COOPER: I'm objecting to the question which referred to a document for which there's no foundation.
Q BY MR. SCHOENBERG: You can turn to the 4th page of this document for which Mr. Cooper believes there's no foundation.

MR. COOPER: Just so you and I understand each other, do you believe you have established a foundation for this document on the record?
MR. SCHOENBERG: I'm not having my deposition taken. I'm just going and asking questions. You're placing objections. You do your job and I will do mine.
MR. COOPER: Excellent.
MR. SCHOENBERG: The question was whether it she lived at Siebenbrunnen and your objection was lacks foundation.
Q Page 4 of this document, is that your signature at the bottom?
A Correct.
Q Is this, at least the first four pages of Exhibit 5 a document that you were required fill out in the summer of 1938?
A Yes.
Q On the third page --
A Yes.
Q -- do you see that?
A Yes.
Q At the bottom do you see where it says -- does it say there that your jewelry --
A Yeah. My jewelry was taken by the secret police, the Gestapo and, therefore, I have no way of of

appraising it.
MR. COOPER: Move to strike as nonresponsive.
Q BY MR. SCHOENBERG: Let me reask the question. What does it say at the bottom of the page?
A On page 3?
Q Yes. You can say again what you just said.
A It says my jewelry is taken by the secret police and, therefore, I cannot appraise it. I just translated what I wrote there.
MR. COOPER: For the record, since I think the record is unclear, the document is a German-languaged document. The reference was to page 1348 and Mrs. Altmann was, I believe, although I am guessing, translating a sentence that was typed onto an otherwise form printed document with the beginning of the words "mein," m-e-i-n and ending with the word "schatzen," s-c-h-a-t-z-e-n.
THE WITNESS: No, excuse me. Schmuck, it means jewelry, S-c-h-m-u-c-k.
MR. SCHOENBERG: He said the last word and he mispronounced it.
THE WITNESS: Schatzen is appraised.
Q BY MR. SCHOENBERG: If you could turn to page 1353.
A Yes.

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Q Now just using this to see if it refreshes your recollection, first, can you translate it for us?
A Yes. "As told us by the act of Gestapo means secret police and room for 50 the entire" -- "means entire fortune" --
Q Property?
A -- "property of the Jewish woman, Maria Altmann, was taken on June 13, 1938 by the state. The abovementioned Jewish woman has escaped without a passport" which is incorrect. I had a passport, but I escaped with my husband who had no passport "and is at the time in London." That document was 17th of July, 1939.
Q Do you know if the document -- the passport that you left with was a German passport issued by Nazi, Germany?
A Yes, they gave it to me to pretend that we can leave, but they would have never let Fritz go.
Q Let's mark now as Exhibit 6 a document numbered 1330 through 1345.
(Plaintiff's Exhibit No. 6 was marked for identification by the certified shorthand reporter.)
THE WITNESS: That's the same one? No.
Q BY MR. SCHOENBERG: That's a different one

which I will give you now.
A Sorry. Yeah.
A I can't even translate that it's so complicated.
Q I'm not going to ask you any foundational question about this, but I just thought it should be here in order.
When you and your husband Fritz left Vienna in 1938, were you able to bring any property with you?
A No, nothing.
MR. COOPER: Objection. Counsel, I'm sorry. I am just confused at this point. Is this document being offered to the witness for the purpose of asking a question of her or not? I don't know how to form an objection with respect to its total lack of foundation and substance because I don't know whether you have placed it before her for a reason.
Q BY MR. SCHOENBERG: Without reference yet to the document, were you allowed to take any property with you, you or your husband Fritz?
A Nothing. We had a rain coat and nothing else.
Q If you turn to the third page, 1332. Don't read it yet. Do you know where any taxes imposed on you when you left Austria?
A I am quite sure --

MR. COOPER: Vague and ambiguous.
THE WITNESS: -- there was.
Q BY MR. SCHOENBERG: What taxes were imposed on you?
A I think they called it a reichsfluchtsteuer. You can't possibly translate that. R-e-i-c-h-s-f-l-u-c-h-t-s-t-e-u-e-r.
Q On page 3 it mentions a lawyer, Dr. Rinesch.
A Yes.
Q Who was Dr. Rinesch?
A Dr. Rinesch --
MR. COOPER: Objection to any questions making reference to this document without a proper foundation for the document.
Q BY MR. SCHOENBERG: Who was Dr. Rinesch?
A Dr. Rinesch was the best friend of my brother Robert and was a great friend of the family. I knew him since I can remember anything and he was a very, very nice man for whom had my complete trust.
Q Was he your lawyer in the fall of 1938?
A Yes, he was.
Q Let's mark as Exhibit 7, I think, this next set of documents.
(Plaintiff's Exhibit No. 7 was marked for identification by the certified

shorthand reporter.)
THE WITNESS: I was two years old then.
Q BY MR. SCHOENBERG: What I would like you to do is go through this Exhibit 7 and identify the pages and who is portrayed in them. On the first page which is numbered --
A On the first page, marked March 22nd, 1918 is my father and my mother. The second page is a painting that I own of my mother as a young woman.
Q Is it a painting or a photograph?
A No, it's a painting which was in Vancouver with my sister and when my sister died I inherited the painting. It's still with my son.
Q Let's refer to the numbers at the bottom of the page to make sure. You're talking about page 1404 now?
A Correct.
MR. COOPER: Counsel, do I still have a running objection on relevancy with respect to this line of questioning?
MR. SCHOENBERG: That's fine. You can reserve all relevance objections for this line.
Q You skipped a page.
A I did? That's me.
Q 1405 is you?
A Yes. And it's just -- it's silly. I sent that

to my sister, this picture. It doesn't mean anything. This is a picture of a very elegant dinner at the castle of my uncle in Czechoslovakia.
Q That's 1407?
A And 1407. And 1409 is my engagement picture. The next one is Aunt Adele in Czechoslovakia and Brezan with the German Shepherd. This one is my -- 1411 is my uncle with a hunted stag. He loved hunting. Horrible. The next one -- and that is the so-called castle in Czechoslovakia. It was a postcard that I sent to a friend of mine in '32. Yeah, I was 16 then. That is the house that Heydrich took over.
Q You just mentioned someone, Heydrich. Can you spell that for the court reporter?
A H-e-y-d-r-i-c-h.
Q Who was Heydrich?
A Heydrich was a right-hand man of Hitler. Shall I spell it? And he was named as head -- he was supposed to take over Czechoslovakia for the Germans and he took my uncle's castle or mansion as his residence and lived there with his wife.
Q Let's mark as Exhibit 8 --
A As a matter of fact, when he left there to go to Prague, he was murdered on the way to Prague by the Czechs.

Q You're talking about Heydrich now?
A Heydrich, yeah.
Q This next few pages is Exhibit 8. I'm sorry the copies didn't come out very well. If these turn out to be relevant, we'll get better copies. Just for completeness sake we will --
A Oh, these were paintings. Ah, this was the one which --
(Plaintiff's Exhibit No. 8 was marked for identification by the certified shorthand reporter.)
Q BY MR. SCHOENBERG: Let's go page by page. That's why I show today to you to see if you can identify even with these poor copies what is on page 1 which is numbered 1415.
A That is a Waldmueller, W-a-l-d-m-u-e-l-l-e-r, painting. He was an Austrian painter. That was at my uncle's palace. Above is -- what do you call it? -- a showcase, display case for some of the beautiful porcelains they had. The next one is oil paintings that he had and of those these were actually returned to us partly to my siblings, and the one underneath where it says "Esterhazy," that was a Waldmueller painting that I got but I actually never saw it. It was sold. This picture, the last one here, 1417, is by an Austrian

painter, E-y-b-l, and it is a painting of, I think an Austrian aristocrat. This painting I have and still have while some of the others I sold because I needed the money.
Q Let's mark now as Exhibit 9 --
A Which is 9?
Q I'm going to give them to you.
A Shall I return these?
Q You can put them in front of you or on the side.
Exhibit 9 is a document numbered 1418 through 1427 and the front page says "My Adventures and Escape from Nazi Germany."
(Plaintiff's Exhibit No. 9 was marked for identification by the certified shorthand reporter.)
Q BY MR. SCHOENBERG: Mrs. Altmann, do you recognize Exhibit 9?
A Yes, I do.
Q What is Exhibit 9?
A You're talking about this one?
Q Yes.
A It's the story of -- my husband wrote this. It's the story of our escape from Vienna.
Q Is everything in this Exhibit 9 true?

A Yes.
MR. COOPER: Compound. Lacks foundation.
Q BY MR. SCHOENBERG: I'm sorry?
A It certainly is.
Q Has Fritz passed away?
A Fritz passed away in 1994.
MR. COOPER: It's always hearsay.
Q BY MR. SCHOENBERG: Let's mark as Exhibit 10 a document numbered 1428 through 1439. This is the "Story of the Escape of Fritz and Maria from Germany on 21st and 22nd of October, 1938" by Bernhard Altmann.
(Plaintiff's Exhibit No. 10 was marked for identification by the certified shorthand reporter.)
THE WITNESS: Yes, he arranged all of that from the outside because we tried from the inside and we failed.
Q BY MR. SCHOENBERG: Mrs. Altmann, do you recognize Exhibit 10 that we just put in front of you?
A Yes, I do.
Q What is Exhibit 10?
A It is the story of the escape of my husband and myself written by my brother-in-law, Bernhard Altmann, who arranged the whole thing from outside because when we tried from the inside it didn't work out.
Q Is everything in here true as far as you know?

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A Yes, it's true. I read it many times.
MR. COOPER: Lacks foundation. It's compound. It's hearsay.
MR. SCHOENBERG: Let's mark as Exhibit 11 a document numbered 13 through 16.
(Plaintiff's Exhibit No. 11 was marked for identification by the certified shorthand reporter.)
Q BY MR. SCHOENBERG: Mrs. Altmann, on the last page, page 16 --
A Page 16, excuse me. Yes.
Q -- do you recognize any signatures on that page?
A Yes, I recognize the signature of my father on the left.
Q Where it says Gustav Bloch-Bauer?
A Yes, Dr. Gustav Bloch-Bauer.
Q How old was Adele when she died?
A 42 about. 43.
Q You mentioned earlier that she gave up her religion?
A Yes.
Q Why was that again?
A Pardon me?
Q Why did she give up her religion?

A Because she lost the faith, the belief in God when her favorite brother died so young.
Q On the first page it says that Adele was a citizen of Czechoslovakia. Do you know if that's correct?
A I suppose so because her husband was Czechoslovakian. Yeah, it says here. Staatsangerhorigkeit means were citizen of what.
Q Let's mark now as Exhibit 12 which is pages 17 and 18. This was the handwritten version of Adele's last will.
(Plaintiff's Exhibit No. 12 was marked for identification by the certified shorthand reporter.)
Q BY MR. SCHOENBERG: Mrs. Altmann, when did you first see a copy of your Aunt Adele's will?
A In 1998 or '99. I had never seen it before.
Q Let's mark as Exhibit 13 pages Nos. 21 and 22 which I believe are a typed script of the will that was done shortly after the war, I think.
Just for the record, there may be some discrepancies between the typed script and the actual version.
(Plaintiff's Exhibit No. 13 was marked for identification by the certified

shorthand reporter.)
MR. COOPER: Okay. Just for clarity, I take it that you and I are clear at least with respect to your presentation of these various documents to Mrs. Altmann that I'm not required to make an objection as to a lack of foundation for admissibility of the documents at trial. Plainly your purpose in showing her some of these documents, perhaps all of them, is for questioning purposes and not for establishment of the foundation for the admissibility of the documents.
If we're clear on that, I will avoid additional objection that would go to the admissibility of the documents as opposed to any question that you ask her.
MR. SCHOENBERG: Yeah, for the most part that's correct. For example, on one of the previous documents she recognized the signature of her father that may ultimately go to foundation. I am assuming that we will be able to get these admitted foundationally through other methods through Mrs. Altmann's testimony.
MR. COOPER: That was my assumption as well. If we're clear on that, perhaps we can have just a running stipulation that by not objecting to these documents in today's deposition that we waive no objection with respect to their admissibility or the establishment of any foundation for their admissibility.

MR. SCHOENBERG: That's certainly fine with us. We'll stipulate to that.
Q Mrs. Altmann, Exhibit 13 is in front of you. When did you first receive a copy of Exhibit 13?
A I would say in early '99 or still at the end of '98. I don't quite recall it. My sister passed away at that time so that was a very difficult time for me.
Q Let's mark Exhibit 14.
(Plaintiff's Exhibit No. 14 was marked for identification by the certified shorthand reporter.)
THE WITNESS: This is her death certificate.
Q BY MR. SCHOENBERG: On the second page of Exhibit 14 there's -- it looks like there's a name at the top. Can you read that name?
A Yes. That is the man I mentioned before, Professor Julius Tandler, T-a-n-d-l-e-r. He was part -- he was a social democrat, part of the stadtrat, S-t-a-d-t-r-a-t. It's just a title.
MR. COOPER: Let the record reflect, the witness is spelling a word that appears under Professor Tandler's name on page 2 of the document that's been marked for identification purposes of Exhibit 14.
THE WITNESS: Yes.
Q BY MR. SCHOENBERG: You had said that Professor

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Tandler was a medical doctor?
A He was a professor of anatomy at the University of Vienna and a very dear friend of my aunt and uncle, I suppose.
Q Let's mark now as Exhibit 15 which is a three-page document, Nos. 24 through 26.
(Plaintiff's Exhibit No. 15 was marked for identification by the certified shorthand reporter.)
Q BY MR. SCHOENBERG: Mrs. Altmann, when did you first see exhibit -- the pages of Exhibit 15?
A All of these I only saw in '99.
Q In 1999?
A Yes. I never saw anything before. We escaped and I had nothing to go by.
Q Might as well continue. Exhibit 16 is a page numbered 29.
(Plaintiff's Exhibit No. 16 was marked for identification by the certified shorthand reporter.)
Q BY MR. SCHOENBERG: Mrs. Altmann, do you know what Exhibit 16 is?
A I'm just looking at it. Yeah, it's talking about the last will of my aunt.
Q Have you seen this before?

A I guess so. All of these things I only saw after 1999. I never saw anything because we escaped and I had no knowledge of any of these. That's about the house.
Q Okay. That's all I had for that.
This one I'm not going to mark as an exhibit, but it has been produced. It's pages numbered 30 through 84. The first page says "Inventaz Maerz," M-a-e-r-z, "1932."
A That's inventory.
Q There's no question yet. I will ask the question. I just want you -- after I put it in front of you to identify what this is briefly.
A It just says "Inventory March 1932" and it gives the inventory about the house of my uncle with everything in it and the art, also the furniture, piano, carpets and objects of art.
Q From whom did you get this inventory?
MR. COOPER: Counsel, do you have a copy of this document for me?
MR. SCHOENBERG: I didn't make an extra because it's thick, but you have a copy.
THE WITNESS: From whom I got it, actually my brother Robert did all of that.
Q BY MR. SCHOENBERG: Do you know when you

obtained a copy of this inventory?
A I don't think so.
Q That's fine. That's the only question I had about it.
A Did I? Maybe my memory fails me finally, but I don't recall it.
MR. SCHOENBERG: Scott, I can lay it out here in case you want to ask a question about it.
MR. COOPER: Thanks. I will just make a copy of it at the break if that's possible.
THE WITNESS: It's in terrible detail, all of the contents of the palace.
Q BY MR. SCHOENBERG: I have prepared -- we'll call it Exhibit 17 pages numbered 85 through 91 which are for the most part an excerpt of that insurance inventory.
(Plaintiff's Exhibit No. 17 was marked for identification by the certified shorthand reporter.)
MR. COOPER: For the record, you've characterized this document as to which there exists no foundation. When you say that this -- I see. The fact that these pages are numbered consecutively after the identification numbers of the other pages does not mean that these were pages in the original document that appeared consecutively after the last page of the document.

I take it this somehow was produced as a separate excerpt?
MR. SCHOENBERG: I think so. I may even have extra comments on it.
Q I want her to try to identify some of the handwriting on these pages inside here. I think it will be helpful to everyone.
A The handwriting is entirely the one of my brother Robert.
Q You're looking now at which page?
A I was just looking at page 87, but I can start from the beginning. Robert was what they called the personal secretary of my uncle so that is how he knows more than any of us about every detail. This is -- he named all the entire contents of the palace in Elisabethstrassee and all of the paintings, he named them one by one and then all of the objects of art in the different rooms.
MR. COOPER: Move to strike as nonresponsive.
Q BY MR. SCHOENBERG: On the page that's numbered 86 --
A 86, yes. 86, yes. Yeah.
Q -- unfortunately there's some writing at the very top that didn't come out very well. I'm not sure if you can recognize that as anybody's handwriting. Can you?

A You mean this?
Q Yeah.
A I couldn't possibly.
Q That's fine. The handwritten notations on the rest of page 86, not including the top.
A That's all from Robert.
Q What about on page 87?
A It's only Robert. I recognize his handwriting very well. But he was the one that did all of that. He was also in Vienna part of the time.
Q On page 88, whose handwriting is that?
A Robert.
Q On page 89, there's similar handwriting and then other writing on the left side, is that all from the same person, do you know?
A No, I wouldn't know who did it. Robert's with a question mark. Poldie with a question mark. Luise.
Q The printed writing on the left side, you do not recognize on page 89; is that correct?
A Correct.
Q But the handwritten notations?
A The handwritten notations is all my brother Robert. But there's little printed, the small ones where it says "Luise," "Robert," I don't know who wrote that.
Q Right, on the left-hand column.

A It might have been him, but I don't know.
Q What about on page 90?
A That's all Robert.
Q Again, the column on the left side --
A Unless he tried to print. It looks like a different handwriting. The one that says "Poldie in trust" for instance, that seems like a little different handwriting, but he might have tried to write neatly. I wouldn't know.
MR. COOPER: Counsel, just for the record, I am perfectly happy to have the witness testify as to her belief as to any handwriting that she recognizes. So that we're not silent on the subject, we obviously don't accept that she has expertise in the field of handwriting and/or nor the forensic ability to identify.
THE WITNESS: It's very interesting. I just seen it. I haven't seen it before, it says next to all of the paintings of my uncle, next to on the top where it says "Waldmueller, Trauben," do you see that? It says "Goering," then it says "Versoehnung" which means -- it's the name of a portrait, it says "Pinakorthek" which is the museum in Munich and then Munich then under Esterhazy it says "Hitler"; "Childless Dog" it says "Goering." So that was where it was first before it was returned.
MR. COOPER: To complete what I was saying, the

testimony I take it for the purpose of identifying any of the handwriting that Mrs. Altmann recognizes --
THE WITNESS: I suppose so.
MR. COOPER: -- rather than for any forensic purposes.
THE WITNESS: All right.
MR. SCHOENBERG: Let's look at the last page of 91.
MR. COOPER: Is that correct, Counsel, just so I know?
MR. SCHOENBERG: Her testimony is what it is so --
THE WITNESS: 91?
Q BY MR. SCHOENBERG: Yeah, the last page.
A Yeah, I got it.
Now on top that was a painting that he gave Rinesch.
MR. COOPER: There's no question pending, Mrs. Altmann.
THE WITNESS: That's all.
Q BY MR. SCHOENBERG: The handwriting in the middle, again you recognize that as your brother Robert's?
MR. COOPER: Lacks foundation.
THE WITNESS: In the middle, there's no writing.
Q BY MR. SCHOENBERG: In the lower part.
A In the lower part, that's my brother Robert,

yeah. Unbelievable.
Q This is the only other one I didn't make a copy of, but again I did make a copy this time of the first three pages. So let's mark as Exhibit 18 pages numbered 188 through 190. Then for reference purposes the entire document which is numbered 188 through 294.
(Plaintiff's Exhibit No. 18 was marked for identification by the certified shorthand reporter.)
Q BY MR. SCHOENBERG: Mrs. Altmann, do you recognize what we've marked as Exhibit 18?
A Yes.
Q What is that?
A You're talking about this?
Q Yes.
A Well, it was my uncle had a very, very famous collection of porcelain and as a matter of fact, it was traveled to different museums throughout Europe and then it was confiscated. And at first we were told that Hitler wanted to buy it and then it proved to be too expensive, so it was auctioned off in a public auction in Vienna.
MR. COOPER: Move to strike as nonresponsive.
Q BY MR. SCHOENBERG: Pay attention to me. He states his objections for the record and the judge will

rule on them eventually.
Mr. Cooper, could you put the entire document closer to Mrs. Altmann.
What we showed you as Exhibit 18 is just the first three pages.
A I have that original letter that was sent to me at home and it was unbelievably beautiful. That's all I can say.
Q How did you receive a copy of this catalog?
MR. COOPER: Assumes facts not in evidence. Lacks foundation.
THE WITNESS: I received it through -- just a minute. I don't know where you want me to put it. I don't want to do the wrong thing.
Q BY MR. SCHOENBERG: Where did you receive a copy of this catalog?
MR. COOPER: Same objections. It's also leading.
Q BY MR. SCHOENBERG: How did you receive a copy of this catalog?
A If I recall, Mrs. Sturm the antique dealer sent it to me.
Q Who was Mrs. Sturm?
A Mrs. Sturm has a very beautiful antique shop in Vienna and she was very anxious to get a lot -- as much as these things as she can. We sold her some things

because we needed the money.
Q What was the name of her store?
A Very difficult. B-e-d-n-a-r-c-i-k. It's a Polish name. You don't have to worry about it.
Q But you said you received it from Mrs. Sturm?
MR. COOPER: Ambiguous. Your reference to "it" is this document?
THE WITNESS: I think so.
MR. COOPER: The original of this document?
Q BY MR. SCHOENBERG: Pay attention to me.
Is Mrs. Sturm the owner of the Bednarczyk Gallery?
A Yes, Bednarczyk was her father and so the store is still called Bednarczyk. As a matter of fact, when the few paintings that we were able to get out I sold to the father, Mr. Bednarczyk, because I needed the money.
Q Now on the second page numbered 189 -- turn back to the previous page.
A 89.
Q At the top there are two stamped addresses for your brother, Robert Bentley.
A Yes. There are two addresses. The first one was his --
Q You're anticipating my question.
A -- the one was his first wife. The one on the

left was where he moved with his second wife.
Q Do you know when he moved to the second address?
A I couldn't tell you the year.
Q Who was his second wife?
A Who it was?
Q Yeah.
A Her name was -- she was English and her first name was Hylda.
Q Let's mark as Exhibit 19 a document numbered 303 which is a handwritten note from Dr. Eric Fuehrer, F-u-e-h-r-e-r. When it has two dots over the U, you can add an E.
This is dated, this appears to be dated July 10th, 1942.
(Plaintiff's Exhibit No. 19 was marked for identification by the certified shorthand reporter.)
Q BY MR. SCHOENBERG: Mrs. Altmann, do you know how you came to receive a copy of this document that we marked as Exhibit 19?
A All of this I had not seen before 1999.
Q How did you get it?
A I think through Czernin. I guess so. I don't know when I got it. I certainly didn't see it before.

Q C-z-e-r-n-i-n?
A Dr. Fuehrer was --
Q There's no question yet. Who was Dr. Erich Fuehrer?
A Dr. Erich Fuehrer was a Nazi lawyer assigned to take over my uncle's fortune and art.
Q And did you ever meet Dr. Fuehrer?
A No.
MR. COOPER: Move to strike the last answer to the prior question with respect to the identity of Dr. Fuehrer as lacking foundation.
Q BY MR. SCHOENBERG: Let's mark now as Exhibit 20 the will of Ferdinand Bloch-Bauer dated October 8th, 1942.
(Plaintiff's Exhibit No. 20 was marked for identification by the certified shorthand reporter.)
Q BY MR. SCHOENBERG: Mrs. Altmann, did you receive a copy of this from your sister?
A No.
MR. COOPER: I didn't hear the witness's answer.
(Record read.)
Q BY MR. SCHOENBERG: Did you receive it after your sister passed away?
A Yes.

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Q When did she die?
A She died in April '98.
Q And before April 1998 had you ever seen this document?
A No, but I saw it afterwards.
Q Did your sister have children?
A Yes, my sister had a daughter and a son.
Q What's the name of her daughter?
A Nelly Auersperg, A-u-e-r-s-p-e-r-g.
Q What's the name of her son?
A The son is Edward, Eddie Auersperg.
Q That's Nelly's son?
A Pardon me?
Q That's Nelly's son.
A Excuse me. That's Nelly's son. Forgive me. The two children of my sister were Nelly Auersperg and Frances Gutmann, G-u-t-m-a-n-n.
Q And where does Frances Gutmann live?
A Frances lived in Montreal, Canada.
Q And where does Nelly Auersperg live?
A She lives in Vancouver, British Columbia.
Q And who is Nelly Auersperg married to?
A She's married to Johannes. Well, if it's easier for you, it's Hansa, H-a-n-s-a, Auersperg.
Q Is the Auersperg family a well-known family in

Austria?
A It's a very well known.
Q How are they well known?
A Well, as a matter of fact, he tells me they were there before the Hausbergs so since 16th century.
Q Now did Nelly or her husband give you a copy of this will that we've marked?
A Yes, we went through all of these things after my sister passed away, but before I didn't see them.
Q Let's mark as Exhibit 21 a letter dated 30th of August 1945 to Dr. Erwin Lowatschek, L-o-w-a-t-s-c-h-e-k, in Zurich from Ferdinand Bloch-Bauer.
(Plaintiff's Exhibit No. 21 was marked for identification by the certified shorthand reporter.)
Q BY MR. SCHOENBERG: Is Exhibit 21 another letter that you received from your niece Nelly or your nephew Hansa after your sister died?
A Correct.
Q You'll see in the middle there's a reference to something I think you referred to before. B-r-u-c-k-e-r-z-u-c-k-e-r-f-a-b-r-i-c-k. What was the Bruckerzuckerfabrick?
A It was a sugar refinery where my uncle was president and he mentions in this document the partners

in the industry.
Q And who are those? Can you read that for us?
MR. COOPER: Objection. The document speaks for itself.
MR. SCHOENBERG: I'm going to ask her if she knows the people.
THE WITNESS: I just know the top one who was the father-in-law of my brother Poldie.
Q BY MR. SCHOENBERG: You're referring to Otto Pick?
A Yes. I knew the other names. I knew the names very well. I might have met even some of them, but that's it.
Q So Otto Pick was your brother Poldie's father-in-law?
A Correct.
Q He was one of the other shareholders in the sugar company; is that correct?
A Correct.
Q Let's mark as Exhibit 22 then a letter from Ferdinand Bloch-Bauer to Dr. Rinesch who we've mentioned before.
(Plaintiff's Exhibit No. 22 was marked for identification by the certified shorthand reporter.)

Q BY MR. SCHOENBERG: This one is dated 5th of September, the date is cut off, but I think it's 1945 if that matters ultimately, we will get a better copy of it if you have one.
A It was just a couple of months before he died, isn't it?
Q It couldn't have been after 1945.
Exhibit 22, is that another document that you received from your niece Nelly or her husband Hansa Auersperg after your sister died?
A Yes, I think so.
MR. COOPER: Leading.
Q BY MR. SCHOENBERG: Let's mark as Exhibit 23 page 314.
A Yeah, this is where all --
(Plaintiff's Exhibit No. 23 was marked for identification by the certified shorthand reporter.)
Q BY MR. SCHOENBERG: The question is, is this also a document you received from your niece Nelly or her husband after your sister Luise died in 1998?
MR. COOPER: Leading and it lacks foundation.
THE WITNESS: Yeah, I suppose so. I don't know exactly if I got that from Luise or with the rest of the things that I got afterwards.

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Q BY MR. SCHOENBERG: Let's mark now as Exhibit 24 the last will of Ferdinand Bloch-Bauer dated 22nd October 1945. This is numbered 316 through 318. 318 is a transcript.

(Plaintiff's Exhibit No. 24 was marked for identification by the certified shorthand reporter.)

Q BY MR. SCHOENBERG: Do you recall when you first saw this?

A Yes, 1999.

MR. COOPER: Objections. Lacks foundation. Calls for speculation.

Q BY MR. SCHOENBERG: I'm sorry. Can you say the answer again?

A In 1999.

Q Exhibit 25 is marked page 320.

A That's a death certificate.

(Plaintiff's Exhibit No. 25 was marked for identification by the certified shorthand reporter.)

Q BY MR. SCHOENBERG: Is this also something that you received from your niece Nelly or her husband Hansa after your sister died?

MR. COOPER: Leading. Lacks foundation.

THE WITNESS: I'm not quite sure if they showed me

that or if I got it with the other documents in 1999.

Q BY MR. SCHOENBERG: Same question for exhibit -- the next exhibit which will be Exhibit 26. Understanding, I assume, the same objections.

A That's the same thing. It's a death certificate.

(Plaintiff's Exhibit No. 26 was marked for identification by the certified shorthand reporter.)

MR. COOPER: You assumed correctly. Same objections.

Q BY MR. SCHOENBERG: Do you remember when you learned that your Uncle Ferdinand had died?

A Well, I heard it from Vancouver, of course. I didn't hear anything directly.

Q After you left Vienna in 1938, were you in contact with your uncle?

A Yes. As a matter of fact --

Q How did you communicate with your uncle after 1938?

A It was only for a very brief period while we were in Liverpool. Once we came to America, there was no communication anymore because there was war. While we were in Liverpool, we did communicate with him.

Q You wrote letters to him?

A Well, yes, because my husband was singing in a part in an opera that was a favorite opera of my Uncle Ferdinand, Il Travatore.

Q You have to spell that for the court reporter.

A She doesn't have to take that.

Q Il Travatore.

A My uncle was very happy about that because he said it was his favorite opera.

After that, once we left Liverpool and came to America there was no communication with him anymore.

Q After the war ended in Europe in 1945, between then and his death later that year, were you able to establish any communication with him?

A No.

Q Where was Ferdinand living?

A In Zurich, Switzerland.

Q Let's mark Exhibit 27, page No. 345.

(Plaintiff's Exhibit No. 27 was marked for identification by the certified shorthand reporter.)

THE WITNESS: I think we had a similar one before. No. No. No, we didn't.

Q BY MR. SCHOENBERG: Do you recognize the writing on the bottom where it says --

A Yeah, it says -- it must -- apparently they

probably went to Rinesch or something because it says --

Q The question is --

A -- to Robert. July 1946. That must be an inventory of the paintings.

MR. COOPER: Objection. Move to strike the answer as nonresponsive.

Q BY MR. SCHOENBERG: Do you recognize the writing at the bottom of the page?

A Robert, yeah.

Q From "the thing" she said, I think. What she meant to say was from the "report to Robert." She said "the thing."

A It names all of the paintings.

MR. COOPER: Just to be clear, that was a characterization of the witness's testimony, not a repetition for purposes of the transcript of what the witness said. The witness spoke one word and counsel characterized it as another.

MR. SCHOENBERG: She said "thing," but the word is "bericht" which means "report." You can ask your client, Mr. Cooper, to confirm that.

MR. COOPER: Counsel, just so you're clear, the document speaks for itself. There's no foundation for the document. There's no basis on which this document can be made a part of the record and asking the witness

whether she recognizes the handwriting is an appropriate question.
MR. SCHOENBERG: Is what?
MR. COOPER: Is an appropriate question.
MR. SCHOENBERG: That's what I asked.
MR. COOPER: It's not the testimony, however, that Mrs. Altmann gave and that's what I was addressing.
MR. SCHOENBERG: You do what you feel is necessary, Mr. Cooper.
Q Let's mark the next exhibit Exhibit 28.
(Plaintiff's Exhibit No. 28 was marked for identification by the certified shorthand reporter.)
Q BY MR. SCHOENBERG: Mrs. Altmann, Exhibit 28 just for the record is marked 363 and 364. This appears to be a letter from Robert Bentley to his sister Luise.
Mrs. Altmann, when the war ended, where was your sister Luise?
A In Yugoslavia.
Q And how long did she remain in Yugoslavia?
A I couldn't tell you the exact year. She remained there until she was able to go via Israel to Canada.
Q What happened to her husband after the war?
A Her husband was shot by the communists.

Q This was after the defeat of the Nazis?
A Yeah. They went first through the entire Nazi thing and were able to survive that and then when the communists came, my brother-in-law was an engineer thought that he could work there and keep the factory going. But they arrested him and within a few months he was executed.
Q Now when your Uncle Ferdinand died in November of 1945, you said you found out from Vancouver that he had passed away?
A Yes.
Q Do you recall when that was?
A Beg your pardon?
Q Do you recall when that was?
A I guess I should know by now how to use it. I just clip it in?
VIDEOGRAPHER: I'll get it for you.
THE WITNESS: I should learn it by now.
Q BY MR. SCHOENBERG: The question was do you remember when you found out that Ferdinand had died?
A I am sure within a few days. I didn't phone so much in those days. Now it's easier.
Q And did you learn at that time that you were one of his heirs?
A Yes.

Q And who told you that?
A Robert or Luise. It's only the three of us that were heirs.
Q Where was Luise in 1945?
A She was in Yugoslavia so it must have been Robert who told me.
Q And what steps did you then personally take with regard to the estate of your uncle after you learned that he passed away in 1945?
A At that time I had three small children. No, actually two. '47 I had three. We had very little money. I learned, I guess, from Robert that he died and that I was a partial heir.
Q What steps then did you take with regard to the estate?
A Nothing. I totally entrusted it to my brother Robert and to Dr. Rinesch, I suppose.
Q And in 1945 you were 29 years old?
A Yeah, I guess so.
Q How much older was your brother Robert?
A 12 years older. Charles was 15 years older.
Q So you mentioned Dr. Rinesch. Do you recall when you learned that Dr. Rinesch was involved in handling the estate?
A It wasn't a natural thing for me because I

didn't even think about it twice. He was a friend of the family. He helped us when we tried to get out. He tried to help us. I had complete trust in him.
Q So do you remember when you found out that Dr. Rinesch was handling the estate of Ferdinand?
MR. COOPER: Leading.
THE WITNESS: You mean when I found out?
Q BY MR. SCHOENBERG: Yeah.
A All during the course I knew that Rinesch was handling it and that was fine with me.
Q Did you have any direct communication with Dr. Rinesch about this?
A No, none. None. I saw him much later then when I went back for the first time to Austria. But during the time it was only Robert that handled that.
Q Let me finish the question completely. Did you have any communication with Dr. Rinesch about his handling of the estate of your uncle?
A Nothing whatsoever.
Q You said you saw him again only when you returned to Austria?
A Yeah, but that was much, much later.
Q When was that?
A My daughter was 18 years then and we visited him in Salzburg.

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Q Did your brother Robert keep you informed of how things were proceeding with the estate of your uncle?
A Yes.
Q How did he do that? Was it by telephone or letters?
A Yeah, partly telephone, partly letters. I was so busy at that time I had little children, I worked and the last thing I had time for was a lot of correspondence.
VIDEOGRAPHER: Excuse me, Counsel. I'm going to have to change videotape.
MR. SCHOENBERG: Sure.
VIDEOGRAPHER: Going off the record at 12:05 p.m. This is the end of videotape No. 1.
(Brief recess taken.)
VIDEOGRAPHER: Going back on the record at 12:07 p.m. This is the beginning of videotape No. 2.
Q BY MR. SCHOENBERG: I'm not sure if I asked you where you received a copy of Exhibit 28. Why don't I ask you that. Is this also one of the documents --
A Excuse me. 28 which is?
Q This letter from Robert to Luise, do you recall when you received that?
A I don't recall. Apparently much, much later. I don't recall that I saw it at the time that he wrote to

her. Much, much later.
Q This letter discusses also your uncle's property in Prague. Did you ever receive any compensation?
A Nothing whatsoever. This is so ridiculous. It says we could sell the castle to bring some of the money. It's a joke.
Q Did you ever receive any property back out of the Czech Republic?
A No, nothing.
Q Did you ever receive any compensation for it?
A Nothing. By the way, the castle was filled with beautiful art too and that was taken all by Heydrich.
Q In the middle here it says the Russians are in Bruck and we have no --
A In Bruck, the Russian.
Q -- and we have no idea when the --
A When this is going to be -- when the ownership will be established.
Q Do you know when the ownership issues with regard to the sugar company were finally resolved?
A Maybe shortly after, but I couldn't -- I wouldn't know. It's all ghosts popping up.
Q Let's mark as Exhibit 29 -- for lack of a

better word. I think this is the probate order from the court in Zurich from 1947. It's numbered 378 and 379.
(Plaintiff's Exhibit No. 29 was marked for identification by the certified shorthand reporter.)
Q BY MR. SCHOENBERG: Mrs. Altmann, what percentage of your Uncle Ferdinand's --
A 25 percent.
Q You have to let me finish the question.
A Excuse me. Forgive me.
Q Because it has to come in order when she types it up.
What percentage of your uncle's estate did you inherit?
A A quarter, 25 percent.
Q Who were the other heirs?
A My brother Robert, 25 percent, and my sister, 50 percent.
Q Your sister Luise?
A My sister Luise, yes.
Q I'm going to ask a few more questions.
Now why didn't you return to Austria after World War II?
A Why I didn't return?
Q Yeah.

A There was nothing there to return to. Much later after my brother-in-law Bernhard got his factory back from Austria then I went back. In the early '50s I went back with my husband.
Q Just to visit though?
A Yes.
Q You never considered moving back there to live?
A No, I certainly didn't.
Q Did your brother Karl serve in the Allied Forces?
A He was a captain -- I was very proud of him -- in the Czech Army in England.
Q So the Czech government in exile?
A They had a sort of an Army in England and my brother served in it.
Q Did he return to Europe or stay in Europe after the war?
A He went back for a while, but not for very long.
Q Who was Kurt Grimm?
A Kurt Grimm was a very dear friend of my brother Robert. He was a lawyer, a friend of the family.
Q You mentioned earlier your brother Robert returned to Austria?
A Yes, he was there for a while trying to

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retrieve some property and something of the sugar refinery but not with a great deal of luck.
Q You mentioned Dr. Rinesch. What was his first name?
A Gustav.
Q Did you ever have any opportunity to judge his legal skills?
MR. COOPER: Would you read back the question, please?
THE WITNESS: No.
(Record read.)
MR. COOPER: The question before that, please.
(Record read.)
THE WITNESS: No. I saw him as a --
MR. COOPER: Calls for a conclusion. Lacks foundation.
THE WITNESS: I saw him as a great friend of the family and never really questioned whether he was capable or not.
Q BY MR. SCHOENBERG: Before the war, so before 1938, did you personally have any understanding with regard to whether the Klimt paintings in Ferdinand's home were going to go to the Austrian Gallery after his death?
A No, I never had.
Q After the war ended in 1945 and your Uncle

Ferdinand died, did you learn anything with regard to his Klimt paintings? I'm talking about the immediate post-war period, not the last 10 years, but let's say the 1940s.
A No. I assumed that --
Q I'm not asking you to assume. I'm asking did you learn anything after the war?
A No, I didn't. No.
Q You knew that your --
A I knew that everything had been taken and was gone, so I didn't begin to question where was what.
Q Did your brother Robert ever tell you anything about what happened with the Klimt paintings after the war?
A Not really.
Q How about your sister Luise?
A She wasn't there. She was in Yugoslavia and I had no contact with her whatsoever. I'm talking about right after the war. I'm not talking about later.
Q Did anyone ask you what should now happen to the Klimt paintings after the war?
A No.
Q Were you ever asked to sign any documents with regard to the Klimt paintings after the war?
A No, never.

Q In the post-war period, did you know anything about Adele's will?
A No. The first time I saw it was in '99.
Q Now was Robert successful in recovering any of Ferdinand's property?
MR. COOPER: Lacks foundation.
THE WITNESS: Not really.
Q BY MR. SCHOENBERG: Did he recover any paintings?
A Yes.
MR. COOPER: Same objection.
THE WITNESS: There were some paintings. Yes, of course, we did get some paintings because I understand Rinesch negotiated with the -- that's a horrible word. The Bundesdenkmalamt. I couldn't do that to you.
Q BY MR. SCHOENBERG:
B-u-n-d-e-s-d-e-n-k-m-a-l-a-m-t.
Let me stop you there a little bit. I'm asking what property did you know had been recovered from Ferdinand's estate?
A Some of the paintings. My uncle strictly collected Austrian art and, therefore, the paintings were all done by Austrian artists. Therefore, they were very popular for the Austrians.
Q But not the Klimt paintings?

MR. COOPER: Ambiguous.
THE WITNESS: Klimt paintings, no. We didn't get any permission. We wanted to. We tried to get the paintings out, but there was no way of getting them out. Then we -- Rinesch apparently negotiated back and forth and then we got some of the other paintings out.
Q BY MR. SCHOENBERG: So you recall learning that certain paintings had been inherited by you and had been retrieved?
A Yes. With the exception of one which I still have, I sold the rest of them because I needed it.
Q What about Ferdinand's home on the Elisabethstrassee?
A Well, it's a very sad thing.
Q Let me finish the question.
Was that palace ever returned to you?
A No, never.
Q That was the question.
What about the sugar company, did the shares of the sugar company?
A Nothing. Yes, excuse me. A small part was returned and I got some money for it too.
Q Do you remember how much money you received?
A I think it was approximately $100,000.
Q And when was that?

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A I would say the late '40s, early '50s. Early '50s I would say. I really don't know exactly.
Q You said you never recovered any of the Czech property?
A No, nothing.
MR. SCHOENBERG: I think now is a good time to break. It's 12:15. If we can come back around 1:30.
MR. COOPER: That's fine.
VIDEOGRAPHER: Going off the record at 12:19 p.m.
(Lunch recess taken.)
VIDEOGRAPHER: Going back on the record at 1:37 p.m.
Q BY MR. SCHOENBERG: Good afternoon, everyone. Let's continue about where we left off. While you get your glasses out, we'll mark as Exhibit 30 this page that's numbered 451. It's an excerpt from a letter to your brother Robert from December 6, 1947.
(Plaintiff's Exhibit No. 30 was marked for identification by the certified shorthand reporter.)
Q BY MR. SCHOENBERG: Mrs. Altmann, do you have -- do you know who prepared this page?
A No.
Q Is this one of the documents you received from your niece Nelly after the death of your sister?
A Yes, but I really didn't know anything about

this.
Q Let's mark as Exhibit 31 a page that's numbered 501 that is a second page of a letter apparently sent from Mr. Rinesch to your brother Robert in February 1948.
(Plaintiff's Exhibit No. 31 was marked for identification by the certified shorthand reporter.)
THE WITNESS: That's only half the thing.
Q BY MR. SCHOENBERG: That's all we have. That's what I'm going to ask you.
Is this also a document that was given to you by your niece Nelly Auersperg after your sister died?
A Yes.
Q Do you know if any of the other pages of this letter exist?
A Not really. This was 1948.
Q You don't remember seeing this before 1998, do you?
A No.
Q Let's mark as Exhibit 32 a letter to Dr. Rinesch -- it's a transcript of a letter to Dr. Rinesch from, I think from Dr. Garzarolli, G-a-r-z-a-r-o-l-l-i.
(Plaintiff's Exhibit No. 32 was marked for identification by the certified shorthand reporter.)

Q BY MR. SCHOENBERG: Is this another document that you received from your niece after your sister died in 1998?
A Yes, but it's incorrect.
Q What's incorrect?
A Well --
MR. COOPER: Lacks foundation.
Q BY MR. SCHOENBERG: Let me ask you a different question.
Before 1998, had you ever seen a copy of this letter?
A No.
Q Had you ever been told about this letter before 1998?
A No.
Q Do you recognize the writing at the bottom where it says "26 2 1948"?
A No, because it even says in printing signature not readable.
Q But below that on the bottom of the page, do you see those numbers?
A That's a date, but that's written in the handwriting of my brother Robert.
Q Let's mark as Exhibit 33 another page with the same date of February 26, 1948 at the bottom. This is

document No. 503. The previous document was document 502, Exhibit 32. And the previous document was Exhibit 501 in case I forgot.
(Plaintiff's Exhibit No. 33 was marked for identification by the certified shorthand reporter.)
Q BY MR. SCHOENBERG: Mrs. Altmann, is this another document that you received from your niece after your sister died in 1998?
A I guess so. I'm not quite sure whether it was then in 1999. I guess it may have been from Nelly. I don't know.
Q If you see there's a little handwriting on the left side where it says "Von" and "vom" and then at the top --
A No. That's Robert saying Von Gustl which means from Gustl.
Q Do you recognize that handwriting?
A That's Robert, yeah. Besides he called him G-u-s-t-l which is sort of a nickname for Gustav.
Q Could it be Luise's handwriting?
A No.
Q Instead of Robert's?
A No.
Q Let's mark as Exhibit 34 a document numbered

522 and 523 which is a letter dated March 9, 1948 from Dr. Garzarolli to professor -- ready for him -- Grimschitz, G-r-i-m-s-c-h-i-t-z.

(Plaintiff's Exhibit No. 34 was marked for identification by the certified shorthand reporter.)

THE WITNESS: Which one? This one? No.

Q BY MR. SCHOENBERG: That one. Do you remember when you received a copy of this letter?

A No, I think that must have been later. I did not get that letter from my sister.

Q Could you have gotten it around January of 1999?

A Yeah, I suppose.

MR. COOPER: Calls for speculation.

THE WITNESS: I suppose so because I didn't get it before.

Oh, this is that letter. No, I did not get that before. I didn't quite see that this is the letter. I think this is the letter that made a very big impact on me because it says clearly that in 1948 the director of the then museum writes to his predecessor that it is just too bad that they were not able to get a notarized signature from my uncle and, therefore, they are in a very precarious situation.

Q So before 1999, had you --

A And my uncle at that time had already been dead, so if they didn't get the signature before then, how could they get it in 1948.

Q Before 1999 you had never seen this letter?

A No, never. It even ends with saying, "I hope you can help me to get out of this not undangerous situation."

Q Let's mark as Exhibit 35 a letter dated April 10th, 1948 signed by Dr. Gustav Rinesch to the Austrian Gallery. Tell me when you have finished reading it.

A Yes, I'm finished.

(Plaintiff's Exhibit No. 35 was marked for identification by the certified shorthand reporter.)

Q BY MR. SCHOENBERG: Did you personally authorize Dr. Rinesch to allow the Austrian Gallery to pick up one of the paintings --

A No.

Q Let me finish the question. Let me finish the question.

A Excuse me.

Q Did you personally authorize Dr. Rinesch to allow the Austrian Gallery to pick up one of the Klimt

paintings on April 10th, 1948?

A No.

Q Did you authorize Dr. Rinesch to execute this letter?

A No.

Q Did you see this letter before 1999?

A No.

Q Did you know before 1999 that Dr. Rinesch had allowed the Austrian Gallery to pick up this Klimt painting?

A No.

Q Let's mark Exhibit 36, the first page -- I think we don't have any further pages of the letter dated April 11, 1948. It's numbered 563.

(Plaintiff's Exhibit No. 36 was marked for identification by the certified shorthand reporter.)

Q BY MR. SCHOENBERG: Is this a document you received from your niece Nelly after your sister died in 1998?

A Yes. I am a little bit leery about what I got from Nelly and what came a little later, but I think --

Q This appears to be a letter to your brother from Gustav Rinesch?

A Correct.

Q At the top someone has handwritten received "via Bryant."

A Bryant was a friend of the family.

Q Let me ask the question and then you can answer.

Who was Bryant?

A His name was George Bryant. His name was Breuer before.

Q How do you spell Breuer?

A B-r-e-u-e-r. He was a friend of the family and apparently he got that letter out of Austria quicker than the mail would have got it. He lived in Vancouver so I suppose that's how it got there.

Q Was he originally from Austria?

A Yes.

Q Before 1998 had you ever seen this document?

A No.

Q Before 1998 had anybody told you about this document?

A No, none, or I would have done something about it.

Q Let's mark as Exhibit 37 a letter that's numbered 566 and 567. It's dated April 12, 1948 from Dr. Rinesch to Dr. Garzarolli.

(Plaintiff's Exhibit No. 37 was

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marked for identification by the certified shorthand reporter.)

THE WITNESS: Yes. What do you want?

Q BY MR. SCHOENBERG: Is Exhibit 37 a letter you first received in January of 1999?

A You are talking about this letter?

Q Yes.

A Yes.

Q Before January of 1999, had you ever seen this letter?

A No.

Q Did you ever authorize Dr. Rinesch to acknowledge the last will of your Aunt Adele Bloch-Bauer?

A No.

Q Did you ever authorize Dr. Rinesch to acknowledge a declaration by your Uncle Ferdinand Bloch-Bauer?

A No, it was all handled by my brother Robert. You can see that I authorized it, but it was all done through him. I had nothing to do with it.

Q You had no knowledge?

A No. I now do. I did after '99.

Q The very last sentence of the letter on page 2, Dr. Rinesch asks Dr. Garzarolli to confirm this acknowledgment with your brother. Are you aware of any

such confirmation by the Austrian Gallery?

A Not that I know of.

MR. COOPER: Objection. You're asking the witness to address a particular portion of the letter given the fact that it's in German, I wonder if you would just identify the German words that begin and end the paragraph to which you make reference.

MR. SCHOENBERG: The last sentence, the last four lines of the letter that starts with I-c-h B-i-t-t-e and the last word is W-o-l-l-e on the last word of the letter.

THE WITNESS: You are talking about the last paragraph?

Q BY MR. SCHOENBERG: The last sentence of the last paragraph.

Yeah. I just asked you whether you were aware whether the Austrian Gallery ever confirmed --

A No, not that I know of. They confirmed, no, I never saw a document. I see now what you mean.

Q That's all. Let's mark as Exhibit 38 a letter dated April 13, 1948 which is numbered 568. This is from Dr. Rinesch to Dr. Garzarolli.

(Plaintiff's Exhibit No. 38 was marked for identification by the certified shorthand reporter.)

Q BY MR. SCHOENBERG: Did you see this document before 1999 --

A No.

Q Let me finish the question, please.

A Excuse me.

Q Did you see this document before January 1999? You have to answer orally.

A I'm sorry. No, I didn't.

Q Let's mark as Exhibit 39 a letter also dated April 13th, 1948 from Dr. Rinesch to the bundesdenkmalamt that's numbered 569 to 573.

(Plaintiff's Exhibit No. 39 was marked for identification by the certified shorthand reporter.)

Q BY MR. SCHOENBERG: Mrs. Altmann, have you seen Exhibit 39 before January 1999?

A No.

Q Did you know before 1998 that Dr. Rinesch had made an agreement regarding the Klimt paintings immediately before applying for export permits for other artworks?

A No.

MR. COOPER: Assumes facts not in evidence.

THE WITNESS: I couldn't hear.

Q BY MR. SCHOENBERG: Can you read back the

question, please?

A No, I understood your question.

Q You don't have to -- he's just stating an objection.

A No. Would you repeat, please?

(Record read.)

THE WITNESS: No. I just knew that we were trying desperately to get some paintings out for whatever purpose. He couldn't get them out because this bundesdenkmalamt were forbidding any of these paintings to go out because they were Austrian, done by Austrian painters. So that is how we got some of them out. At first it looked as if we wouldn't get any.

Dr. Rinesch even --

Q BY MR. SCHOENBERG: There's no question. You don't have to say anymore. Do you want to add something? Do you need to add something?

A No.

Q Do you know who Friedrich Kammann, K-a-m-m-a-n-n, was?

A Yes, he had a job -- he probably was a lawyer in the sugar industry, Dr. Kammann. That's a name that rings a bell centuries ago.

Q You think he might have worked for --

A For my uncle.

Q -- for your uncle?
First, what is a Portier, P-o-r-t-i-e-r?
A A concierge.
Q Did you know a concierge named Siegert?
A Yes, I can paint him. He was always sitting there in a uniform in the little entry of the Elisabethstrasse, of my uncle's house.
Q Your uncle's house you described before was the Elisabethstrasse 18. Was it all his personal residence?
A It was his personal residence and on the top floor were the offices of the sugar industry.
Q So how many floors were there?
A Three.
Q And the top floor was the sugar industry?
A Yeah. I must say, I don't recall the top floor very well because I didn't go there very often. But downstairs it was his -- that was his residence.
Q Do you know who Dr. Geiger is?
A No. Geiger, no.
Q How about someone named Schulte-Strathaus, S-c-h-u-l-t-e-S-t-r-a-t-h-a-u-s?
A Never heard of him. A man? I don't know.
Q That's fine. If you don't know, that's fine.
Let's mark as Exhibit 40 a letter dated February 17, 1979 apparently from your brother to Gustav

Rinesch.
(Plaintiff's Exhibit No. 40 was marked for identification by the certified shorthand reporter.)
THE WITNESS: '79?
Q BY MR. SCHOENBERG: Yes.
A Yes.
Q Is this also a document you received from your niece Nelly after your sister died?
A I guess so.
Q You mentioned Amalie Zuckerkandl. You said she was a friend of your parents?
A She was a good friend of my mother. I remember her very well. I must say I do not remember the portrait, but it was in my uncle's bedroom. It was not in the room where the other paintings were.
Q Was Amalie Zuckerkandl, Ferdinand Bloch-Bauer's girlfriend?
A Goodness, no. For me she was an old lady, but for my uncle she was just a friend.
Q Did Ferdinand Bloch-Bauer have a lady friend in 1938?
A Sort of. Yeah, she was a very nice lady, but whether she was a girlfriend or not is beyond me. He traveled with her.

Q Who was that?
A Gisi Eich was her name.
Q The person you were just describing that went with him on trips, that was Gisi Eich?
A Yeah, they had dogs together, but I wouldn't have called her a girlfriend.
Q I may have mentioned this this morning, a Professor Mueller.
A It's amazing, but I remember him very well. He was a type of an artist, writer type. I remember him. He was a nice man.
Q Who was he married to?
A Minnie was his wife, M-i-n-n-i-e.
Q And Minnie was --
A Minnie was the daughter of Maltschi.
Q Maltschi?
A Excuse me. It's Amalie. But my mother called her Maltschi.
Q M-a-l-t-s-c-h-i.
Let's mark as Exhibit 41 page No. 985.
(Plaintiff's Exhibit No. 41 was marked for identification by the certified shorthand reporter.)
Q BY MR. SCHOENBERG: Do you recognize whose handwriting this is?

A Yes, my sister's.
Q Whose name is that printed at the top left?
A Luise Gattin. That was my sister's second husband. She says --
Q You don't have to read it. Luise Gattin was your sister?
A Yes.
Q She had married first Mr. Gutmann?
A Yes, Victor Gutmann and then Joseph Gattin.
Q And she lived in Vancouver?
A Yes.
Q And when again your sister passed away in April '98?
A April '98.
Q Is this also a document that your niece Nelly gave you when you --
A Yeah, I guess so. Yeah.
Q Let's mark as Exhibit 42 a document that's numbered 977.
(Plaintiff's Exhibit No. 42 was marked for identification by the certified shorthand reporter.)
Q BY MR. SCHOENBERG: This looks like it has a lot of different handwriting on it. I'm going to see if you recognize any of the handwriting.

A Partly Robert, but then the rest I don't know. Nelly. I don't know. I never saw this before. I don't know. I don't think I even saw that before.
Q That's fine.
I'm not sure if I have asked you before, when did your brother Robert pass away, if you remember?
A Wait a minute. My brother Poldie died the week after my 70th birthday which was '86 and Robert must have died I think a year later.
Q So perhaps in May 1987?
A Yeah.
Q Now were you in Vancouver before -- immediately before your sister Luise passed away?
A Oh, sure. I went every summer.
Q But were you there around the time that she died in 1998?
A I was there. I was there twice. I was there with her before she died and then I went back to the funeral.
Q And do you remember when you first heard that there was an issue in Austria with regard to the Klimt paintings?
A She was in the hospital at that time.
Q Luise?
A She was still quite sharp.

Yeah. That was in March. She was in the hospital for about six or eight weeks.
Q In March of 1998?
A Yes.
Q And what did you hear?
MR. COOPER: Objection. Hearsay.
Q BY MR. SCHOENBERG: With regard to the Klimt paintings.
MR. COOPER: Same objections.
THE WITNESS: That's when the first news articles in Austria came out about the question of the Klimt paintings belonging to the museum and I remember Luise saying we will need a very good lawyer. But then she went rapidly downward and died.
Q BY MR. SCHOENBERG: Who told you about the articles in Austria?
A The first thing was that my sister-in-law, Thea Bentley, Robert's divorced wife, was called by Dr. Sturm, a lawyer in Vienna whose wife has that beautiful antique shop and she called her. I was not in touch with them. He called her to say that a very exciting thing came up. They were questioning the authorization of the Klimt paintings.
But then my sister got rapidly worse and we were not even thinking about it anymore and she died just

a few weeks later.
Q Over the summer of 1998, did you have any discussions with Peter Moser, who's now the ambassador to the United States from Austria?
A Peter Moser was a friend of ours when he was consul general in Los Angeles and we had dinner at their house. They came to my house. I had called him then about nothing else but the house, the Elisabethstrasse. He said don't worry, I will look it up in the Grundbuch and it will be very easy. G-r-u-n-d-b-u-c-h. But that was it.
Q That was in the summer of '98?
A Spring of '98, yeah.
Q You had called him?
A I had called him and he called me back. He was very nice.
Q Did he call you again in September of 1998, do you recall?
A His wife was a good friend of mine and I think she called me. In his position, I don't expect him to do anything. I had never called him about the paintings, just the house.
Q Did you ever get any portion of Ferdinand Bloch-Bauer's library returned to you?
A No.

Q Were you ever made aware of an action taken by Dr. Rinesch to recover the library?
A No. I think she left her library, but through -- I don't know -- through a group. No, I never heard anything. Everything was taken out of the house, so I don't know anything about the library.
Q Let's mark as Exhibit 43 a letter dated May 11th, 1998 from Dr. Franz Sturm which is numbered 1492.
(Plaintiff's Exhibit No. 43 was marked for identification by the certified shorthand reporter.)
Q BY MR. SCHOENBERG: Did you authorize Dr. Sturm to write this letter --
A No.
Q Let me finish the question. Did you authorize Dr. Sturm to write this letter to Minister Gehrer, G-e-h-r-e-r, in May of 1998?
A No.
Q Did you know in May 1998 that Dr. Sturm had sent this letter?
A Well, yes.
Q How did you know that?
A Mrs. Sturm called me and she was very upset about it because I told her that a few days before receiving that letter we had given you the authorization

to become our lawyer and we didn't know about that and therefore, there's absolutely nothing I can do about it. She then called my niece Nelly who told her the same thing. It was very embarrassing for her, but it's okay now.

Q Was that in September of 1998 when you had that conversation?

A I don't quite see that. This is written in May.

Q My question was when did you become aware that Dr. Sturm had written this letter? Did you know about that in May?

A When did we make our agreement? This is the problem now. I don't know if it was me.

Q Without divulging too much, it was September of 1998.

A September 1998. 11 is in Europe. November 1st. This is written on the 5th of November or 5th of May or 11th of May.

Q 11th of May?

A That is the -- he didn't inform us of that letter.

Q That's what I was trying to ask you.

A That was much later that he informed us.

Q And so sometime in September you had that discussion with his wife?

A Correct. Then it was the problem that we had just all signed up with you.

Q Let's mark as Exhibit 44 a letter from me to Minister Gehrer dated September 13th, 1998.

(Plaintiff's Exhibit No. 44 was marked for identification by the certified shorthand reporter.)

Q BY MR. SCHOENBERG: My question is did you authorize me to send this letter to Minister Gehrer?

A Yes, I did.

Q Did you assist me in the preparation of this letter?

A Yes, I did. It all seems so long ago. It's just a few years.

Q On page 3 of the letter --

A Yeah.

Q -- the first complete paragraph talks about making a global settlement offer and discussing a resolution. Are you aware of any response by Minister Gehrer where she agreed to discuss --

A Pardon me?

Q Are you aware at any time about any response by Minister Gehrer where she agreed to discuss a resolution of the matter?

MR. COOPER: Lacks foundation.

THE WITNESS: No.

Q BY MR. SCHOENBERG: Let's mark Exhibit 45. I only have two copies of this unfortunately. I don't know why. It's a New York Times article by Judith -- you're going to love this name -- Dobrzynski, D-o-b-r-z-y-n-s-k-i. When you're done with that, why don't you give it to Ms. Altmann.

(Plaintiff's Exhibit No. 45 was marked for identification by the certified shorthand reporter.)

Q BY MR. SCHOENBERG: Do you remember this article?

A Yes.

Q Look at the last paragraph.

A Yeah.

Q Now you had a meeting with Minister Gehrer, didn't you?

A Yes, I did.

Q When was that?

A It was in March of '99.

Q And how did that meeting come about?

A It was a very cordial meeting.

Q How was it planned?

A It was -- Mr. Czernin drove me, C-z-e-r-n-i-n, drove me to meet Minister Gehrer.

Q You were in Vienna?

A I was in Vienna.

Q Why were you in Vienna?

A The Viennese Jewish community invited me to Vienna to participate in a symposium at the museum. I took my youngest son with me to accompany me. It all was extremely cordial. My meeting with Minister Gehrer couldn't have been more cordial.

Q What did you discuss with her?

A At first she thought I had a good sense of humor so she just laughed along the whole time. At the very end -- she told me about her grandchild and everything. At the very end, I said "Administer, we didn't discuss a legal question. I just want to say that when you were in New York you were asked about the Bloch-Bauer case and your answer was to contest a will you have to go to court. There was no will." It was a request to her husband. She said with a very nice Viennese accent, "Das weiss ich ja," I know that. I went home and talked to my son and he took it all down on the little machine and I said "I think everything looks wonderful. She knows exactly where we stand."

MR. COOPER: Move to strike as nonresponsive.

Q BY MR. SCHOENBERG: During that -- let's mark as Exhibit 46 a letter from you to Dr. Gerbert Frodl,

G-e-r-b-e-r-t, F-r-o-d-l, dated 23rd of February, 1999.
(Plaintiff's Exhibit No. 46 was marked for identification by the certified shorthand reporter.)
THE WITNESS: I wrote to him?
Q BY MR. SCHOENBERG: You tell us. Is this a letter that you wrote, Mrs. Altmann?
A My goodness. I forgot that. Yeah, apparently he wrote Dr. -- Dr. Frodl wrote to me that he would like to take me to lunch and I did that. We went to lunch when I was in Vienna.
Q So you met with Dr. Frodl. Who is Dr. Frodl?
A Dr. Frodl is the director of the Austrian Gallery.
Q By the way, who was Minister Gehrer?
A Minister Gehrer is administer for culture and education in Vienna.
Q So you met with Dr. Frodl. Where did you meet with him?
A I met him first at the symposium and he told me that he was going to call me at the hotel and we were going to have lunch together. He came and picked me up and took me to a very lovely little restaurant in Saint Stevens Place.
Q Did you discuss the Klimt paintings with

Dr. Frodl?
A He's a very nice man.
MR. COOPER: I'm going to object to the question because technically the question is defective. It's a "yes" or "no" question. I feel certain the witness will not answer with a yes or a no. I will object that it calls for a narrative and hearsay.
Q BY MR. SCHOENBERG: Did you discuss the Klimt paintings with Dr. Frodl?
A Right away after we had a drink. Director Frodl said -- I still remember his words -- "Now that we are alone, let's say what's in our hearts." I said, "Well, Director Frodl, we are not alone. I am one of four and I have a lawyer, but tell me what is in your heart." He said, "Look, we have enough landscapes. We can spare the landscapes, but just don't take the portraits away."
MR. COOPER: Move to strike as nonresponsive.
THE WITNESS: I went home and I had told my son the exact conversation. He has it down on tape. And I said, "Jim, everything is all right. They know where we stand."
MR. COOPER: And hearsay.
Q BY MR. SCHOENBERG: The discussion you just described, that was the full extent of your discussion of

the Klimt paintings with Dr. Frodl?
A Yes.
MR. COOPER: Calls for hearsay.
THE WITNESS: I then --
Q BY MR. SCHOENBERG: It's okay. There's no other question. Do you recall something else that you discussed with Mr. Frodl?
A No.
Q Is it correct that you came away from your meetings with Dr. Frodl and Minister Gehrer cautiously optimistic that the paintings would be returned?
A I couldn't even say "cautiously." Jimmy has it all on tape what I said and he made a little video of me and Dr. Frodl leaving from the hotel and it was all a very amicable visit.
Q So you were optimistic that the paintings --
A Very.
Q Let me finish.
You were optimistic that the paintings would be returned in March?
A Yes, I had no doubt in my mind.
MR. COOPER: Counsel, we have a continuing relevancy reservation with respect to all of this; is that correct?
MR. SCHOENBERG: That's fine.

MR. COOPER: I just want to make sure that that's our understanding.
MR. SCHOENBERG: Yes, you can make a relevance objection at any time.
MR. COOPER: I am not making relevancy objections and I just want to make sure it's clear that we have a stipulation that it's reserved for trial.
MR. SCHOENBERG: Yes, that's what I offered before we started and I agree to that.
Q Let's mark as Exhibit 46 a document numbered 1205 and 1206 which is a letter from you dated June 15th, 1999.
MR. COOPER: Counsel, I believe this would be 47.
MR. SCHOENBERG: I'm sorry.
THE WITNESS: I remember that letter. I do not remember the last one.
(Plaintiff's Exhibit No. 47 was marked for identification by the certified shorthand reporter.)
MR. COOPER: This is the first one you missed which is actually fairly impressive. I have 46 as Mrs. Altmann's letter to Dr. Frodl.
MR. SCHOENBERG: It was the newspaper that I didn't have an extra copy of that caused the confusion. Thank you very much, Counsel.

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Q 47 is 1205 and 1206. This is a letter dated June 15th, 1999 from you to the Beirat, b-e-i-r-a-t. What is the Beirat?
A The Beirat was the counsel, the group of people that form the council around Minister Gehrer. I wrote in --
Q Let me ask the question.
MR. COOPER: I didn't end up with a copy, Counsel.
MR. SCHOENBERG: I'm sorry.
A Exhibit 47, the first page is a letter in German and the second page is a letter in English.
Q Are these both letters that you prepared?
A Yeah, I prepared it and I wrote it in German and then in English.
Q So the second page, 120 --
A It's the same letter.
Q Let me finish.
1206 is the translation of the letter which is 1205?
A Yes.
Q And you sent the German version to the Beirat?
A Correct.
Q And what was the purpose of sending this letter?
A The purpose was that since I came back very optimistic in March of '98 --

Q '99.
A -- '99 -- excuse me -- I wanted to let them know the way I felt and that I would try as the last Bloch-Bauer that we could work together to find a way that the Gold Portrait would remain in Vienna.
Q Did you ever receive an answer to this letter?
A I never received an answer.
Q And later that month in the end of June of 1999 had you learned that the Beirat had recommended to Mrs. Gehrer not to return the Klimt paintings?
A Yes.
Q Did the Beirat recommend returning any property to the heirs of Ferdinand Bloch-Bauer?
A Yes. 19 pieces of porcelain which the museum had bought at the time and some sketches that were in the Albertina, Klimt sketches to the Gold portrait.
Q In the fall of 1999 did you authorize your attorneys to institute an action in Austria to recover the Klimt paintings?
A Yes.
Q And as part of that action or the initiation of that action, did you seek a waiver of court costs?
A Yes, because the original court costs were prohibitive so we tried to get them down to an affordable price.

Q Let's mark as Exhibit 48 your application which is dated September 30th, 1999 and is numbered 2178 to 2181. Do I have the right numbering now, 48?
MR. COOPER: That's what I have.
(Plaintiff's Exhibit No. 48 was marked for identification by the certified shorthand reporter.)
Q BY MR. SCHOENBERG: Exhibit 48, is that a document that you prepared?
A Yes.
Q The handwritten portion of it?
A Correct.
Q And that's your handwriting?
A Yes, it is.
Q Does this -- this document in September -- let's go to the 4th page, the last page. Is that your signature on the last page, 2181?
A Yes, it's my signature.
Q Did you sign this around September 30th, 1999?
A Correct.
Q As of September 30, 1999, were all of the answers to the questions on this form with regard to your assets true and correct?
A Yes, they were. I still have the same car.
Q As of September 30th, 1999, had you received

the porcelain and drawings that you said the Beirat had decided to return in the end of June 1999?
A I must say I don't recall if it was exactly, but yes, I did or I didn't. That I don't know exactly. It came, but if it was right then and there, I don't know.
Q Let's mark as the next exhibit, 49. Now you have me worried every time I do a number.
(Plaintiff's Exhibit No. 49 was marked for identification by the certified shorthand reporter.)
Q BY MR. SCHOENBERG: This is a letter dated October 19th, 1999 so about three weeks later. The number is 2200. Is that your signature?
A Yes.
Q Is this a letter that you wrote?
A Yes.
Q Who is it addressed to?
A It was addressed to Sektionschef Dr. Rudolf Wran.
Q Who was Dr. Wran?
A He definitely was part of the Beirat, but maybe he was heading it.
Q Does this refresh your recollection whether or not you had received the drawings and porcelain as of October 19th, 1999?

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A Well, apparently nothing happened. That's why I wrote that four months had gone by and nothing had happened. I say I'm 83 and weeks and months play a big part in my time and life and I can't understand why all of my questions remain unanswered.

MR. COOPER: For the clarity of the record, that's a reference to what is in German here on this document?

THE WITNESS: Correct. That's what I answered, yes.

Q BY MR. SCHOENBERG: Let's mark as Exhibit 50 a document numbered 2201 through 2203.

(Plaintiff's Exhibit No. 50 was marked for identification by the certified shorthand reporter.)

Q BY MR. SCHOENBERG: Is this the response you received from Dr. Wran to your October 19th letter to him?

A Excuse me. I am kind of a little bit -- he says in a short time he's going to -- I forgot that. Yes, he says that it's too complicated and, therefore, it takes a little while.

Q Is this the response that Dr. Wran sent you?

A Apparently, yeah. Yeah, it says --

Q Let's mark as Exhibit 51 a document numbered 2237 through 2241.

(Plaintiff's Exhibit No. 51 was

marked for identification by the certified shorthand reporter.)

Q BY MR. SCHOENBERG: Exhibit 51 is a letter at the end there's the date, the 10th of November, 1999. It says from the federal minister, Dr. Wran, at the end.

Does this refresh your recollection that Dr. Wran informed you that you could pick up or your agents could pick up the drawings and porcelain that were being returned?

A Yes.

Q When was that?

A It says here -- well, his letter came --

Q Look at the last page of this letter.

MR. COOPER: Calls for a conclusion.

THE WITNESS: November 10th, 1999, for Minister Gehrer, Dr. Wran.

Q BY MR. SCHOENBERG: Let's mark as Exhibit 52 documents that's numbered 2262 through 2265 dated November 2nd, 1999.

(Plaintiff's Exhibit No. 52 was marked for identification by the certified shorthand reporter.)

Q BY MR. SCHOENBERG: This was the order on the application for relief from the cost requirement. I won't ask you to read the whole thing, but in case you

need to refer to this to refresh your recollection.

Did you learn of a ruling by the Austrian court with regard to your application for waiver of the court costs?

A Yes.

Q What was that ruling?

A It was still money that I couldn't afford.

Q Do you recall how much money the court wanted you to pay?

A Well, it goes by what they called the steiwert, the object in question is too valuable. It's in connection with that that the court establishes a price. And I couldn't afford it.

Q Do you recall how much you personally were required to pay as a result of this order?

A I think it was $500,000. They reduced it then to a quarter of a million dollars. Then it was first half and then a quarter.

Q Do you know if the Austrian government appealed the decision on the court costs?

MR. COOPER: Lacks foundation.

THE WITNESS: Yes, they charged more first and then they reduced it as I recall, but it was still too high for me.

Q BY MR. SCHOENBERG: But do you know if after

the court -- the costs were reduced by the court, if the Austrian government filed an appeal of that decision?

MR. COOPER: Same objection.

THE WITNESS: I don't know. Did they? I don't know.

Q BY MR. SCHOENBERG: Let's mark and see if this refreshes your recollection, Exhibit 53, No. 2274 to 2284.

(Plaintiff's Exhibit No. 53 was marked for identification by the certified shorthand reporter.)

MR. COOPER: The pending question is whether this is what?

Q BY MR. SCHOENBERG: Refreshes your recollection on whether the Austrian government appealed the court costs.

MR. COOPER: Lacks foundation.

MR. SCHOENBERG: Appealed by Dr. Toman who is present here, on December 13th, 1999.

THE WITNESS: Is that at the end?

Q BY MR. SCHOENBERG: You don't recall seeing this?

A I'm sure I did, but I don't recall it offhand now.

Q On page 3 of this document, 2276.

A 2276?
Q Yeah. The paragraph on the bottom that begins A-2, can you read that sentence?
A Yeah.
Q And then I'll ask you a question.
A Yeah.
Q In this appeal by the Austrian government, Dr. Toman and the Austrian government state that you left out of your application for assistance on the court costs the fact that artworks had been returned to you.
A I left it out?
Q Did you read this?
A Yeah, I know I received it.
Q At the time that you filled out your application in September 1999, did you, in fact, already have the porcelain drawings in your possession?
A I must say that I don't know exactly when I got them.
Q That's fine.
A '99, I must have had them then.
Q At the end of 1999. But we're talking about in September of 1999?
A I didn't have it then.
Q Now what did you do with the porcelain that was returned at the end of 1999?

A It was used to pay the bill for your firm or former law firm, Fried, Frank and -- what was the third name?
Q That's okay. Let's mark as Exhibit 54 --
A Yeah, it's in entirety it was used for that.
Q Exhibit 54 is pages 2285 and 2286 from Bednarczyk, B-e-d-n-a-r-c-z-y-k, to me.
(Plaintiff's Exhibit No. 54 was marked for identification by the certified shorthand reporter.)
THE WITNESS: Let me ask the question first before you talk.
Q BY MR. SCHOENBERG: Did all of the heirs sell their share of the procelain?
A No, my niece Nelly kept it.
Q What percentage did she keep?
A She kept a quarter.
Q The other 75 percent, did they sell the porcelain?
A Yes.
Q And does this document reflect the amount that was received for the sale of the porcelain, the 75 percent of the heirs of Ferdinand Bloch-Bauer?
A Yes.
Q What did the heirs decide to do with the

drawings that were returned by Austria?
A My niece Nelly kept hers and gave one to her son and one to her daughter. My nephew Frances sold -- kept one and sold the rest to the museum in Ottawa.
Q So that was Frances.
A Frances kept one and sold the others to the museum.
Q What about you?
A I sold mine in New York to the Galerie St. Etienne.
Q And the heirs of your brother Robert, what did they do?
A They did the same.
Q Let's look at Exhibit 55 which is marked 2363 through 2365. It's a letter dated April 25th, 2000 from the Galerie St. Etienne.
(Plaintiff's Exhibit No. 55 was marked for identification by the certified shorthand reporter.)
Q BY MR. SCHOENBERG: Does this reflect the amount that --
A Correct.
Q -- you and Robert's heirs received --
A Correct. Yes.
Q Let me finish the question.

A Sorry.
Q Does this reflect the amount that you and Robert's heirs received as a result of the sale of the drawings that you recovered from Austria?
A Correct.
Q Can we take a short break?
MR. COOPER: Of course.
MR. SCHOENBERG: It's a quarter of three and I don't have that much more to go over.
VIDEOGRAPHER: Going off the record at 2:50 p.m.
(Brief recess taken.)
VIDEOGRAPHER: Going back on the record at 3:08 p.m.
Q BY MR. SCHOENBERG: We're back on the record. I just have maybe one or two more questions. Mrs. Altmann, after you filed suit in California in August of 2000, did you receive an assignment of claims from any of the other heirs of Ferdinand Bloch-Bauer?
A Yes, I did.
Q Which of the other heirs assigned their claims to you?
A My nephew Frances Gutmann and my nephew George Bentley and Trevor Mantle.
Q Who is Trevor Mantle?
A Trevor Mantle is the nephew of my late

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sister-in-law, second wife of my brother Robert and her heir was Trevor Mantle.

Q And who is George Bentley?

A George Bentley is the son of my brother Robert.

Q Who was Frances Gutmann?

A Frances Gutmann is the son of my sister Luise and the brother of Nelly Auersperg.

Q And presently you are representing all their interests with regard to the suit against Austria for the Klimt paintings?

A Yes.

MR. COOPER: Calls for a legal conclusion.

MR. SCHOENBERG: I have no further questions. We've agreed to adjourn the deposition for today. It's a little bit about 3:00 o'clock to give the court reporter sometime to prepare a very rough transcript so that we can make sure that most of it was transcribed. We'll resume tomorrow.

Scott, when would you like to resume tomorrow for cross-examination.

THE WITNESS: I thought you wanted to go on today?

MR. COOPER: We're going to allow the court reporter a little opportunity to work on the transcript given the difficulty of some of the language.

THE WITNESS: If you need any German spellings --

MR. COOPER: Why don't we start at 10:00 o'clock.

MR. SCHOENBERG: Here, same place?

MR. COOPER: Please.

MR. SCHOENBERG: Thank you very much.

VIDEOGRAPHER: Off the record, Counsel?

Going off the record at 3:10 p.m. This is the conclusion of Volume I of the deposition of Maria Altmann.

(Whereupon, the deposition proceeding concluded.)

I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at:_____

(Place) (Date)

_____

(Signature of Deponent)

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I, LEESA DURRANT, Certified Shorthand Reporter, Certificate No. 11899 for the State of California, hereby certify:

I am the deposition officer that stenographically recorded the testimony in the foregoing deposition;

Prior to being examined the deponent was by me first duly sworn;

The foregoing transcript is a true record of the testimony given;

The deposition officer was relieved of his or her duty pursuant to Code of Civil Procedure, Section 2025 (q) (1), and therefore any changes made by the deponent, or whether or not the deponent signed the transcript, are not herein set forth.

Dated _____

_____

LEESA DURRANT, CSR NO. 11899

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The „Portrait of Amalie Zuckerkandl“ by Gustav Klimt
Provenance: Documentation and Comments

Vienna, January 2003

Ruth Pleyer



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Introduction

The following summary of my research on the "Portrait of Amalie Zuckerkandl" by Gustav Klimt and its provenance was written for the descendants and heirs of both Amalie Zuckerkandl and Ferdinand Bloch-Bauer in December 2002/January 2003. It contains a compilation of the sources available at this point and reflects my personal thoughts on the provenance of the painting, a position to which I have come after nearly four years of continuous research and thorough study of the material available.

As I am trying to outline what happened to the painting before and particularly after March 1938 I feel I cannot do so without also describing the fates of those involved at least to a certain extent. Since the story of the Bloch-Bauer family has already been the subject of Hubertus Czernin: *Die Fälschung*, my summary rather draws on the documents concerning Amalie Zuckerkandl and her children (especially Minnie – alternatively spelt Mini - Müller-Hofmann and her family) since most of them were unknown to both Hubertus Czernin and me when *Die Fälschung* was first published in 1999. The conclusion I have come to draws from all documentation on the painting's history available to me. I do, however not exclude the possibility of further material existent that could possibly entirely clarify the matter (see below).

I have tried to translate documents as precisely as possible and I have included photocopies of essential originals where available to me for those of you who do speak/read German (see Annex 1). The provenance of each document is listed. Needless to say, this research would not have been possible without the work and help of many others, in particular, of course, Hubertus Czernin's groundbreaking interest and thoughts on the matter, and the contributions of the diligent Monika Mayer at the Austrian Gallery without whom Austrian provenance research would not stand were it does. She has shared all her information and been most cooperative in every possible detail.

I consider the following compilation background information for the families involved and their representatives only and therefore private and confidential. Please kindly understand my not wanting to be quoted without my prior consent. The views expressed are entirely mine as are any mistakes. Any additional information and clarifying evidence will be highly appreciated.

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Gustav Klimt: The Portrait of Amalie Zuckerkandl - Provenance

Catalogue raisonné Fritz Novotny, Johannes Dobai: Gustav Klimt. Salzburg: 1967. p. 370, No 213

Provenance listed: Collection Zuckerkandl, Wien; Collection Bloch-Bauer, Wien; Collection Prof. Müller-Hofmann, Wien; Private property, Vienna (*recte*: Dr. Victoria Künstler, Vienna; Dr. Gustav Künstler, Vienna; Dr Victoria Künstler, Vienna – see below).

Currently property of the Austrian Gallery, Vienna (bequest of Dr.Vita Künstler).

Shortly before the outbreak of the First World War Gustav Klimt made his first sketches for a portrait of Amalie Zuckerkandl (née Schlesinger) who had married Otto Zuckerkandl, a well-known urologist in 1985. Otto Zuckerkandl in his turn was a brother of Victor Zuckerkandl, builder of the Sanatory House in Purkersdorf that had been designed by Josef Hoffmann, and a preeminent promoter of the modern Austrian Arts around the turn of the century. Another brother of Otto and Viktor, Emil, was married to Bertha Zuckerkandl-Szeps, a cousin of the portrayed Amalie Zuckerkandl, and an eminent journalist of her times.

The Zuckerkandl family had been friends with Gustav Klimt since well before the turn of the century. In 1915, after the outbreak of World War I, Otto Zuckerkandl - who in 1912 had been promoted head of the Surgery Department of the Rothschild Hospital, the Jewish community's hospital in Vienna - and his wife Amalie moved to Lemberg were Otto Zuckerkandl served in a military hospital. His wife worked in the same hospital as a Red Cross aid. The completion of the portrait was such interrupted, and Klimt only took up painting again in 1917. Due to the artist's untimely death in 1918, the portrait remained unfinished and was later hanging in the couple's apartment on Möllwaldplatz in Vienna. (Cf.: Alice Strobl: Gustav Klimt. Die Zeichnungen 1912-1918. Band III.)

In 1919, Amalie and Otto Zuckerkandl had a divorce. Otto Zuckerkandl died in 1921, and the portrait remained in his wife's property. Already during the 1920ies Amalie Zuckerkandl sold the painting to Ferdinand Bloch-Bauer. In February 1999, Hermine Müller-Hofmann, then the couple's only surviving child, told the author of this summary that Ferdinand Bloch-Bauer had

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even purchased the painting twice, implying that he had such wanted to support her widowed mother. No later than 1928, when it was shown as number 58 – "Portrait of a Lady" - („*Damenbildnis Besitz F. Bloch-Bauer*") during a Klimt exhibition at the *Secession*, the "Portrait of Amalie Zuckerkandl" had become property of Ferdinand Bloch Bauer. (Klimt- Gedächtnis-Ausstellung 27. Juni 1928 bis 31. Juli 1928. XCIX. Ausstellung der Vereinigung Bildender Künstler Wiener Secession.) **Annex A.** During the 1930ies it was part of the interior of Ferdinand Bloch-Bauer's house in Vienna, Elisabethstrasse. According to an inventory dating from March 1932, the portrait was hanging in his bedroom and insured for 40 000 Czech Crowns. ("Inventar 1932". Bloch-Bauer Family Archives)

Otto and Amalie Zuckerkandl had three children: Eleonore, called Nora, was married to Paul Stiasny, the director of the Sanatory House in Purkersdorf. The Sanatory House was owned in shares by different members of the family (Nora Stiasny, Minnie Müller-Hofmann, Emil Zuckerkandl and Amalie Redlich, the only sister of the Zuckerkandl brothers) since their uncle Victor Zuckerkandl's death in 1927. Nora moved to the Sanatory House in the late 1930ies.

Amalie and Otto's son, also called Viktor Zuckerkandl, was a musicologist. Their youngest daughter Hermine, called Mini, married Wilhelm Müller-Hofmann, a painter and teacher at the Viennese "School – later "Academy"- of Applied Arts" (*Wiener Kunstgewerbeschule*") where he was to succeed Kolo Moser as the head of the Department of Painting.

Come March 1938. Amalie Zuckerkandl had converted to Judaism when she had gotten married to Otto Zuckerkandl in 1895. Like all citizens who were declared Jewish under the „Nuremberg Laws" and who owned property exceeding the value of 5000.- Reichsmark (RM), she had to file an „asset declaration" (*Vermögensanmeldung*) in the early summer of 1938. Amalie Zuckerkandl's „asset declaration", one of approximately 50 000 such declarations surviving in the Austrian State Archives, is dated July 15th, 1938 and reveals only very scarce information. Her pension – a voluntary benefit paid by the "Jewish Community" (*Kultusgemeinde*) – was 800 RM a year. In comparison the average worker's income in the German Reich - where wages were a little higher - in 1937 was 1.856 RM a year. (Frank Bajohr: *Parvenüs und Profiteure. Korruption im Nationalsozialismus*. p.235.) The average German worker's income was thus more than twice Amalie Zuckerkandl's modest pension. Additionally, Amalie Zuckerkandl declared she was receiving financial support „from friends" amounting to 133.33 RM a month,

which – she stated - were paid on a voluntary basis and would soon cease to be paid out altogether. (Vermögensanmeldung Amalie Zuckerkandl VA 34 764, Österreichisches Staatsarchiv, Archiv der Republik, Abteilung Finanzen, Vermögensverkehrsstelle. **Annex B**). In *Die Fälschung* Hubertus Czernin has pointed out that this voluntary payment came from Ferdinand Bloch-Bauer, an assumption later confirmed by correspondence between Mini Hofmann and her brother Viktor Zuckerkandl (see below).

Amalie Zuckerkandl's children had been living good if not outrageously prosperous lives until the *Anschluss*. Their situation was completely changed after March 1938. Victor Zuckerkandl, her son, was in Sweden and later went to the US. He remained in exile until the war was over. Nora Stiasny's husband Paul and their son Otto fled to Czechoslovakia immediately after the *Anschluss*. Nora's property was in Purkersdorf was robbed, confiscated and put up for forced sale in early summer 1938. (Nora's fate has been subject of *Die Fälschung: Der Fall Bloch-Bauer und das Werk Gustav Klimts*, vol. II., p. 380 ff.) The Sanatory House, which was estimated at a value of over 400 000 Reichsmark in 1938, was „aryanised" by the *Kontrollbank*. None of the owners ever got a single Reichsmark out of the sale. („Arisierungsakt" Sanatorium Purkersdorf, Österreichisches Staatsarchiv, Archiv der Republik, Abteilung Finanzen, Vermögensverkehrsstelle.) Nora Stiasny remained in Purkersdorf, bereft of her assets, waiting for an emigrant visa.

Minnie Müller-Hofmann, who had converted to Catholicism at the time of her marriage, evaded filing an „asset declaration" in 1938 because – as her son Victor Müller-Hofmann told the author in the summer of 2001 – the family had managed to bribe an official in charge. For a little while longer, Mini Müller-Hofmann maintained there was „no reason known to her why she should be considered Jewish under the Nuremberg Laws" („Arisierungsakt" Sanatorium Purkersdorf, Österreichisches Staatsarchiv, Archiv der Republik, Abteilung Finanzen, Vermögensverkehrsstelle), a position she was not able to hold up for a very long time. She was found out already in 1939. Wilhelm Müller-Hofmann's so-called „Gauakt", a file on his political "behavior" during the Nazi Era has survived in the Austrian State Archives, and contains a card from a „card-index of adversaries" (*"Gegnerkartei"*) that is dated with December 2nd, 1939 and states that he *„is married to a Jewess and considered an outspoken adversary of the movement.*(...)" („Gauakt" Wilhelm Müller-Hofmann, Zahl 49296, Österreichisches Staatsarchiv, Archiv der Republik, Bundesministerium für Inneres. **Annex C**) The couple's two sons, Victor

and Rudolf Müller-Hofmann were sent into exile to Sweden in February 1939. Wilhelm Müller-Hofmann, who had been promoted head of the Department for Painting at the Academy in November 1937, had to quit his job in March 1938 after the *Anschluss* and was forced to retire in November 1938. His work of art of two decades was destroyed at the Academy as „degenerate" („*entartet*") as he wrote in a letter to the Ministry of Culture in 1947. (Personalakt Wilhelm Müller-Hofmann. Österreichisches Staatsarchiv, Archiv der Republik, Bundesministerium für Unterricht und Kunst.) His application for acceptance into the *Reichskulturkammer* that was to monitor all cultural activities for the years to come was refused on grounds of his political beliefs and his Jewish wife. He was granted a small pension but unable to gain a living in whatsoever way during the next seven years, yet at the same time financially responsible for a growing circle of dependants.

Shortly after the *Anschluss*, on March 15th, 1938, Ferdinand Bloch-Bauer, the owner of the "Portrait of Amalie Zuckerkandl", fled to Prague. On April 27th, 1938 the Finance Authorities launched a persecution against Ferdinand Bloch-Bauer accusing him of tax evasion in several instances in the years between 1927 and 1937. Subsequent confiscation of his property was ordered only a month later on May 14th, 1938. It was then that the "liquidation" of Ferdinand's personal assets was initiated by his lawyer Erich Führer, a process that resulted in robbing one of the most prolific Austrian collectors of this century of all the works of art he had collected over the decades, leaving him but one – his own portrait by Oskar Kokoschka.

In 1939, Ferdinand Bloch-Bauer organized *"that the painting was given back to us (the Zuckerkandl-Müller-Hofmann family) when already in exile"* according to Mini Müller-Hofmann's accounts in 1999. (Quoted in Hubertus Czernin: *Die Fälschung. Der Fall Bloch-Bauer und das Werk Gustav Klimts.* vol. II, p. 397.) On first sight, this might seem rather unlikely. Yet if one studies the fate of not only one, but several Austrian collections of art confiscated by the National Socialists, the picture is quite a different one. On January 28th, 1939, the agents of the Federal Monuments Authorities, by then *"Zentralstelle für Denkmalschutz"*, came to the Bloch-Bauer Palais in Elisabethstrasse. The minutes of their visit surviving in the "Federal Monuments Office" explain the purpose of their visit: *„The procedure that had been agreed upon was that those pieces for which an export permit could not be granted were to be marked („gekennzeichnet")."* All of the paintings in Ferdinand Bloch-Bauers house are then listed - and most of them, except for four paintings and a couple of drawings, are numbered

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(„gekennzeichnet"?), probably because, as mentioned above, export permits for them were to be refused. The two portraits of Adele Bloch-Bauer by Klimt were not numbered, neither was Amalie Zuckerkandl's portrait (or, for that matter, Ferdinand's own portrait by Kokoschka.) Each one of the oil paintings that had been left unnumbered was a family portrait. (Aktenvermerk Dr. Josef Zykan, "Zentralstelle für Denkmalschutz". Archives of the "Federal Monuments Office" - Bundesdenkmalamt, Restitutionsakten Bloch-Bauer, Karton 32, Zl 782/39 **Annex D**) If we are sure that the "Portrait of Amalie Zuckerkandl" was in Ferdinand Bloch Bauer´s house in Elisabethstrasse on January 28th, we know that it is not mentioned again in the decrees on the seizure of the Bloch- Bauer property , Zl. 782/Dsch/39 and 1204/Dsch/39. It has to be assumed that the painting was taken out of the house in Elisabethstrasse sometime in 1939 and most probably taken to Amalie Zuckerkandl's apartment in Grünangergasse. None of the other family portraits (neither two Klimts of Adele Bloch-Bauer nor the Kokoschka) is mentioned in the the decrees on the seizure of the Bloch- Bauer collection either. (Sammlung Ferdinand Bloch-Bauer, Sicherstellungsbescheide Zl.782/Dsch/39 and 1204/Dsch/39. Archives of the "Federal Monuments Office" - Bundesdenkmalamt, Karton 8/1)

Even though Klimt was a highly estimated painter by standards of the Third Reich, his portraits of Jewish ladies were not immediately an object of – national – desire. All in the contrary, the author of the present study does not know a single case in which export permits would have been refused for family portraits in 1938/39. The fact that many of these works of art, for which an export permit had been granted to begin with were nevertheless confiscated later, was due to changing laws and financial politics. If we take the – very similar – case of the affluent Lederer family (of Hungarian descent), we can see that their whole collection of art was confiscated in Vienna in 1938/1939. Yet the confiscation lists at the Federal Monuments Office contain remarks on two works of art: A "Portrait of a Lady in a White Dress with Black Hair" – being Klimt´s "Portrait of Serena Lederer" and a "Portrait of a Boy" by Egon Schiele featuring Erich Lederer. "*Als Familienbild zurückgeblieben*" it says in each case meaning that the two paintings - having been family portraits – had been exempt from confiscation. (Aktenvermerk "Zentralstelle für Denkmalschutz", Archives of the "Federal Monuments Office" - Bundesdenkmalamt, Restitutionsakten Lederer, Karton 9, Zl 75514/39. **Annex E**.) Nevertheless, the two Lederer family portraits that had been stored in shipping crates with an agency in Vienna, were later confiscated as „alien property" by the Gestapo (Vugesta) and sold off.

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Similarly, an export permit was granted in Berlin for the „Portrait of Paula Zuckerkandl" by Gustav Klimt. The shipping crate which contained the painting, however, remained in Berlin until the war had started when shipments into foreign countries were more or less stopped. The „Portrait of Paula Zuckerkandl" is said to have been destroyed in the shipping company during an air-raid in the early 1940ies. (Personal communication to the author from a descendant of Dr. Käthe Freund, niece of Paula Zuckerkandl and owner of the portrait after Paula Zuckerkandl´s death, 2001.)

The members of the Zuckerkandl family who remained in Vienna after the *Anschluss* came under growing financial pressure. Already in the fall of 1939, Mini Müller- Hofmann had written to her brother Viktor Zuckerkandl: *„(...) The good news is that we have been able to rent the desired apartment in Haspeting (close to Bergen). Setting and landscape are wonderful, the pleasant aspect being that we can use the apartment all year round. For the time being we are however only going to spend the 5-6 months in summer here, especially because of mother („Mama") so that she does not have to be on her own all too long. I worry about her as the pension being paid by Ferry is so insecure, every month again one does not know whether the money will arrive. However, we do hope for the best. Our own pension has unfortunately also been cut down by 30 RM, some new sort of tax, but one can make up for it by living economically."* (Letter from Minnie Müller-Hofmann to her brother Viktor Zuckerkandl. Estate of Viktor Müller–Hofmann. **Annex F**)

In Mai 1940, the weekly reports of the "Jewish Community" in Vienna (from which Amalie Zuckerkandl had up to this point received her pension) note that *„Frau Professor Zuckerkandl is to be invited and to be questioned whether she receives any State or other form of pension in which case her pension from the Community is to be* cut down...". (Undated minutes - May 1940. Archiv der Israelitischen Kultusgemeinde Wien, Anlaufstelle, Aktenordner „D", „Aktennotizen, Beschlüsse, Verfügungen" 1940/41. **Annex G**) Already June 1939, the Jewish Community had been providing 50 000 bowls of soup to the needy every day. Most of them had not had any income whatsoever since March 1938. The *Kultusgemeinde* had become unable to provide more than absolute necessities to its members.

In June 1941, Mini Müller-Hofmann wrote to her brother Viktor at Wellesley College, Massachusetts on the subject of her mother again : *„Dear Viki, just a few words to clarify the*

conditions under which Mama's trip to you can take place. After receiving a couple of letters from Mama I do know why misunderstandings have to come about. She expresses herself in such a confused manner that one can hardly follow, especially if details do get lost sometimes. In order to be granted her visa, she has to have a passage on a boat that is both booked and paid for for a special date. To be precise she has to have a photocopy or any other valid confirmation in order to prove that the booking has been made specifically for her. With her confirmation and with the passport she has to get she can then go to the consulate where she gets her visa in addition to her quota and can then travel. There is no other way. (...) She could not have gone with Nora - who will hopefully get away this time – one way or the other as the rumor goes that all the seats are booked. Nora's reservation is supposedly for July. I can imagine that coming up with the money was probably not easy for you and I do feel sorry. It is, however, absolutely necessary that they both leave as we have had a lot of excitement („Aufregungen") this past winter. What do you say about Ferry's unheard-of behavior („unerhörtem Verhalten")? He has suspended his payments to her although he is supposedly very wealthy and living well. However, we will provide all that is necessary in the meantime and we hope that Heinrich will also make a contribution. Once Nora will be gone, things will get easier. (...)" (Letter from Minnie Müller-Hofmann, Haspeting, Bavaria, to her brother Viktor Zuckerkandl, Wellesley College, Massachusetts - opened by the *Wehrmacht* - dated June 4th, 1941. Estate of Viktor Müller–Hofmann. **Annex H**)

Probably in the year of 1942, Wilhelm Müller-Hofmann sold the „Portrait of Amalie Zuckerkandl" to Vita Künstler, the former assistant of Otto Kallir, who had „aryanised" Otto Kallir's *Neue Galerie* in Grünangergasse. According to Victor Müller-Hofmann, Wilhelm's son, the family had been friends with Otto Kallir ever since he remembered, which is how they had probably met Vita Künstler, Kallir's former assistant. Vita Künstler and her husband Gustav Künstler were not affiliated with the Nazi movement. Gustav Künstler's „Gauakt", the file on his political "behavior" during the Nazi Era contains the following notice dating from December 1942: *„His political attitude is not nationally oriented. His wife has taken over a Jew's art gallery. Both have decent incomes and yet they donate very little. They are still partisan to Jews and the monarchy.*"(„Gauakt" Dr. Gustav Künstler, Österreichisches Staatsarchiv, Archiv der Republik, Bundesministerium für Inneres.) The *Neue Galerie* in Grünangergasse in the center of Vienna was across the street from the house in which Amalie Zuckerkandl lived from 1924 until she was

forced into a an apartment with many others ("*Sammelwohnung*") in the 9th district, Grundlgasse 1/2, in November 1941.

Many years after the sale, Vita Künstler wrote an – as far as I can see - undated essay entitled „*Erinnerungen an die Neue Galerie*" that states „*During the war I was also offered a painting by Klimt by Prof. Müller-Hofmann, who also needed money. The painting in question was the unfinished portrait of his mother-in-law, Mrs. Amalia Zuckerkandl. I purchased the painting for the Galerie for the negotiated amount of 1600.- RM. Around the same time my husband's book „Kleiner Führer zu Kunst und Kultur in Wien" had been published and he had received a payment of 2000. – RM from the publishing house. Of course my husband soon came to the gallery to see the painting and fell in love to the extent that he proposed to buy the painting for his recently received 2000.- RM so that I could at least book a small profit which was essential to continue my business. It was such that the painting first came into my husbands office at the Berglandverlag at Schwarzenbergplatz and was later brought to our apartment. After the end of the war I asked Mrs. Müller-Hofmann – whose husband had meanwhile died - whether she wanted to have the painting back. She replied that it would have been bombed in their apartment in the Augartenpalais, that she was happy it had been saved and that she did not grudge us the painting ("gönne es uns")*." (Victoria Maria a.k.a. Vita Künstler: "*Erinnerungen an die Neue Galerie*." p. 16b. Undated typescript. Property of Vita Künstler´s family. **Annex I**) As Gustav Künstler's book was published in 1942, it is very likely that Vita Künstler purchased the painting that very year and sold it to her husband around the same time.

On April 9th, 1942, Amalie Zuckerkandl and her daughter Nora were forced into a train to nowadays Poland. Their names are listed in the deportation lists of the Finance Authorities ("*Oberfinanzpräsident Wien*") for the 17th transport to Izbica. (Deportationslisten des "Oberfinanzpräsidenten Wien", Finanzlandesdirektion Wien, Archiv der Republik, Österreichisches Staatsarchiv.) It is assumed that they both perished in Belzec. Nora's husband Paul and their son Otto who had fled to Czechoslovakia were caught in Prague and perished in Auschwitz. Amalie Redlich, Viktor Zuckerkandl's sister and one of the other owners of the Purkersdorf Sanatory House were she and Nora Stiasny had been neighbors, was taken to the camps together with her daughter Tilda Jorisch. Neither of them would come back.

No later than (but possibly already before) March 1942 Hermine Müller-Hofmann was forced to carry an identity card marked "Jew". ("*Deutsches Reich. Kennkarte J*". Hermine "Sara" Müller née Zuckerkandl. Issued by the Polizeipräsident Leopoldstadt, Vienna, March 2nd, 1942. Property of the Müller-Hofmann family. **Annex J**) In September 1942, the *Gaustabsamtsleiter* wrote a letter to the Director of the „Central Agency for Jewish Emigration" („*Zentralstelle für Jüdische Auswanderung*") SS Hauptstuf. Pg. Brunner on the subject of the Müller-Hofmann couple. Eichmann's „*Zentralstelle für Jüdische Auswanderung*" had originally been founded to rob the Austrian Jews of their remaining belongings during the process of obtaining papers for emigration. Since the beginning of the war it had taken to organizing the transports to the camps. SS Hauptstuf. Pg. Brunner was in charge of deportations and would eventually send around 50 000 people to the camps. A copy of the letter from the *Gaustabsamtsleiter* to Brunner survived in Wilhelm Müller-Hofmann's „Gauakt". It says:„*As it is unbearable that a „mixed couple" („Mischehepaar") are still tenants in an apartment in the Augarten Palais at this stage I do ask you for their evacuation. The wife is Jewish by decree of the "Racial Authorities of the Region" („Gausippenamt") and is currently working as an aid of the Sisters of the Parish St. Leopold in the 2nd district where she is helping out in the subject of religious instruction. The husband is of German blood but one of those ill-famed subjects from the previous regime („Systemzeit") some of whom are still living in the Augarten Palais.*" („Gauakt" Wilhelm Müller-Hofmann, Zahl 49296, Östereichisches Staatsarchiv, Archiv der Republik, Bundesministerium für Inneres **Annex K**). „Evacuation" - „*Aussiedlung*" - was the codeword for deportation and synonymous with death. No later than this very September 1942, Wilhelm Müller-Hofmann and his wife seem to have gone to Bavaria for the rest of the war. They barely survived.

On March 24, 1943 the Bloch-Bauer file at the "Federal Monuments Office" (then „*Institut für Denkmalpflege*") was closed: „*The Bloch-Bauer collection has been liquidated in total by the finance authorities.*". (Aktenvermerk Dr. Herbert Seiberl, Institut für Denkmalpflege dated February 24th, 1943. Archives of the Federal Monuments Office – Bundesdenkmalamt, Restitutionsakten Bloch-Bauer, Karton 32, Zl.808/k/41.) A Kokoschka portrait of Ferdinand Bloch-Bauer was the only painting of the entire collection that was exported to its owner's exile in Zurich.

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Hermine Müller-Hofmann, née Zuckerkandl and her husband Wilhelm in Bavaria during the war.

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In February 1943, an exhibition of Klimt's work opened in what had formerly been the *Secession* and was now "*Ausstellungshaus Friedrichsstraße*". A file containing material on the preparation of the exhibition has survived in the Archives of the "Austrian Gallery". Among other papers, the file contains an undated hand-written list (of potential donors to the exhibition?) which lists the name Müller-Hofmann. (Handwritten List - of potential donors?- , Akt zur Klimtausstellung 1943, Archiv der Österreichischen Galerie Belvedere **Annex L**) The name is, for whatever reason, crossed of. It seems that the person who wrote up the list knew that the Müller-Hofmanns had a painting by Klimt and only found out by inquiring further that they did not any longer. Where the original information had come from remains unclear, however, Erich Führer, Ferdinand Bloch-Bauers lawyer had also been contacted in the course of the preparation of the exhibition. He gave Adele Bloch Bauer´s portrait that he had secured for himself on loan for the exhibition. It might very well have been him who had told the organizers of the exhibition that the "Portait of Amalie Zuckerkandl" had been given back to the Zuckerkandl/Müller-Hofmanns.
Another – type-written - list in the same file contains insurance values for the paintings on loan. One of the donors listed on this type-written list is the *Neue Galerie* owned by Dr. Vita Künstler. Under the heading of *Neue Galerie* we find the titles of two paintings: "Portrait of a Lady" ("*Damenbildnis*") and "Waldinneres". There is no reason to doubt that the "Portrait of a Lady" was identical with the "Portrait of Amalie Zuckerkandl", which had been purchased by Dr. Künstler in 1942. The painting was to be insured for 10.000 RM., but is crossed off off for it ended up not being exhibited. (Insurance List. Akt zur Klimtausstellung 1943, Archiv der Österreichischen Galerie Belvedere. **Annex M**)

Shortly after the end of the war, Wilhelm Müller-Hofmann wrote to the "Academy of Applied Arts" from Bavaria. His personal file in the Archives of the Ministry of Culture contains the fragment of a letter that says: „*... sister of my wife to Poland. Their whereabouts have been unknown since the summer of 1942. I was only able to save my wife from running the same fate through a stay in Bavaria by keeping my adress strictly secret. When her existence became known to the Gestapo nevertheless last year (1944) the destruction of the infrastructure of both postal services and transportation had already progressed to such an extent that the measures taken in order to liquidate us could not be carried out. Resulting from the constant pressure I have been exposed to over the past seven years, I am suffering from a severe heart condition. Currently the Augarten Palais where my apartment used to be is under Russian occupation. All of my personal belongings have been looted except for the most primitive necessities which are*

in my Bavarian place of hiding, they could have been saved had I not been forced to leave (Vienna) to begin with. I am thus currently without apartment, without furniture, without sufficient clothing or even underwear. The Third Reich has severely punished me for disliking the Second Reich to begin with. " (Personalakt Wilhelm Müller-Hofmann. Österreichisches Staatsarchiv, Archiv der Republik, Bundesministerium für Unterricht und Kunst.) He applied for readmittance into the services of the "Academy of Applied Arts" as of Oct 18th, 1945.

On November 13th 1945, Ferdinand Bloch-Bauer died in Zurich.

On April 8th, 1946, Wilhelm Müller-Hofmann – who had so far been on the other side of the line of demarcation and therefore unable to travel - finally arrived in Vienna to join the Academy again. However, the couple's economic situation remained very tense. As they had lost their apartment, their furniture and all other property, Wilhelm Müller-Hofmann applied for an advance on his salary to the Ministry as a loan for the "purpose of reconstruction" in Mai 1948. The advance of Austrian Shillings 5 100.- that he asked for was granted and to be paid back in twenty monthly installments of ATS 500.-. On September 4th, he was to be promoted to the post of a Professor at the then "Academy of Applied Arts". *„Professor Müller-Hofmann is a well-respected teacher of great merit",* the decree says. (Personalakt Wilhelm Müller-Hofmann. Österreichisches Staatsarchiv, Archiv der Republik, Bundesministerium für Unterricht und Kunst.) His promotion was late, too late. Wilhelm Müller-Hofmann had passed away on September 2nd, 1948. His widow Minnie was granted a monthly pension of ATS 538,35 as of October 1st, 1948. The ATS 538.- pension just covered the ATS 500.- payments on the advance Wilhelm Müller-Hofmann had received for the "purpose of reconstruction". (Bescheid des Zentralbesoldungsamtes vom 15. Nov. 1948. Personalakt Wilhelm Müller-Hofmann. Österreichisches Staatsarchiv, Archiv der Republik, Bundesministerium für Unterricht und Kunst. **Annex N**)

In 1946, Erich Führer, Ferdinand Bloch-Bauer´s former lawyer was tried in Vienna. On hundreds of pages of testimony, the portrait of Amalie Zuckerkandl is not even mentioned once. (Strafsache gegen Erich Führer 11Vr 5418/46. Landesgericht für Strafsachen, Wien.)

In March/April 1948 the "Portrait of Amalie Zuckerkandl" was shown in an exhibition at the "Acadamy of Fine Arts" in Vienna. The painting ran under the heading of *"Bildnis Frau Z."*, the

Neue Galerie is listed as owner, probably not entirely correctly as Vita Künstler had already sold the painting to her husband around 1942/43 (*Entwicklung der Österreichischen Kunst von 1897 bis 1938. Akademie der Bildenden Künste. März/April 1948*)

In 1979, Robert Bentley, né Bloch-Bauer, nephew of and heir to Ferdinand Bloch-Bauer wrote a letter to an unidentified gentleman by the name of „Gustl" about his uncle Ferdinand. „(...) *In his bedroom in Vienna, Elisabethstrasse, uncle had Klimt´s painting: Mrs.Amalie Zuckerkandl, No. 213, plate 105 in the catalogue raisonné. Mrs. Amalie (Maltschi) Zuckerkandl was an intimate friend of my aunt Adele and uncle Ferdinand. Her daughter Minnie was married to Professor Müller-Hofmann. I am ignorant of what happened to her since 1938. Uncle Ferdinand purchased the painting from Mrs. Zuckerkandl. It is included in the inventory of 1932 in addition to the six paintings which are in the Austrian Gallery today. Uncle never told me the purchase price. It was insured for 8.000 Shillings, the four landscapes for 10.000 Shillings each. It was such a low value that Klimt´s work was attributed to in pre-war Shillings. The catalogue raisonné mentioned above states that the portrait of Amalie Zuckerkandl had been property of the Bloch-Bauer collection, that it was afterwards owned by Professor Müller-Hofmann and that it is currently owned by a private unknown to me. I would be very interested to find out how the painting came into the property of Müller-Hofmann and who the current owner is. In Dr. Rinesch's lists the painting is never mentioned, probably not in Dr. Erich Führer's, either. So from whom and how and when did Müller-Hofmanns acquire the painting? Who did the current owner purchase it from?*" (Letter from Robert Bentley to an unidentified gentleman by the first name of "Gustl", dated February 17th, 1979. Family Archives Bentley/Altmann. **Annex O)**

It has so far been assumed that the letter was written from Robert Bentley to Gustav Rinesch. Yet it was not. Had it been addressed to Gustav Rinesch, Robert Bentley would not have written „*in Dr. Rinesch's lists*" but "*your lists*". But who is the so far unidentified „Gustl"? In any case he must have been someone who had followed the Bloch-Bauer family very closely. Might he have been identical with Gustav de Leon, Robert Bentley's cousin? Does an answer from the unidentified „Gustl" maybe exist in the Robert Bentley estate, and does this letter maybe confirm the story of the painting we already know?

In 1986, Hermine Müller-Hofmann ànswered a letter from Louise Gattin, née Bloch-Bauer, Ferdinand Bloch-Bauer's niece in Canada who had contacted her. "*Dear Luise",* it says,

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"*although we have not seen each other for such a long time I certainly have not forgotten you – I can picture you, at your unforgettable mother´s place and then later, after your marriage.(...) I was very happy to receive your letter and I can hardly imagine that you are 78 years old and that I am 84. (...) Mama's portrait is in possession of a certain Dr. Vita Künstler, an art historian who has acquired the painting through Kalir. She called me recently and told me that she has decided to bequeath the painting to the Austrian Gallery by will. I can live with that.*" (Undated letter from Mini Müller-Hofmann to Luise Gattin, née Bloch-Bauer. Property Dr. Salomon Grimberg, Dallas, Texas. As Hermine Müller-Hofmann wrote the letter at the age of 84 and was born on May 16th,1902, it can be dated between May 1986 and May 1987.**Annex P)** If one reads Hermine Müller-Hofmann´s letter carefully, one has to assume that Luise Gattin had asked what had become of the "Portrait of Amalie Zuckerkandl", which implies that she knew that the Müller-Hofmanns had taken over the painting from Ferdinand Bloch-Bauer´s estate at some point (and had probably accepted the explanation how they acquired it.) Luise Gattin might have even assumed that Minnie Hofmann still had the painting. Had Ferdinand Bloch-Bauer himself told his niece that he had asked for the painting to be given back to Amalie Zuckerkandl/ the Müller-Hofmanns? Had Robert Bentley found out by writing to the unidentified "Gustl" in 1979 and told Luise Gattin who than later contactd Minnie Müller-Hofmann when an acquaintance of her's, Dr. Saomon Grimberg came to Vienna? However, Luise Gattin knew the transaction had happened and had at least not wondered about it when she wrote to Minnie Hofmann in 1986/87. Otherwise the reply would have been a different one.

In 1988, the „Portrait of Amalie Zuckerkandl" was donated to the Austrian Gallery by Vita Künstler under the condition that it remained in her house for her lifetime. In May 2000, Hermine – called Minnie - Müller-Hofmann died in Vienna at the age of 98. In the year of 2001, Dr. Viktoria Maria – called Vita - Künstler died in Vienna at the age of 101 years. The „Portrait of Amalie Zuckerkandl" has been in the Austrian Gallery since.

Conclusion

There is no reason to doubt that the „Portrait of Amalie Zuckerkandl" was acquired by Ferdinand Bloch-Bauer from the sitter herself in the 1920ies and that it remained his property until at least January 28, 1939, when it was registered in his house in Elisabethstrasse by the agents of the *Zentralstelle für Denkmalschutz*. We also know that in the decrees on the seizure of the Bloch-Bauer property dating from 1939 there is no further mention of the painting. (None of the other family portraits - neither two Klimts of Adele Bloch-Bauer nor the Kokoschka - is mentioned in the the decrees on the seizure of the Bloch- Bauer collection either.) We can assume that the „Portrait of Amalie Zuckerkandl" transfered from the house in Elisabethstrasse to the Zuckerkandls sometime in 1939.

It has been laid out that although Gustav Klimt was a highly estimated artist in Austria in 1938, not a single incident has yet come to the knowlegde of the author of the present study in which an export permit for a Klimt family portrait would have been refused in1938/1939. This indicates that the portraits of "Jewish" ladies were not considered of national interest under the 1920 law in the first year or so after the "*Anschluss*". If we look at comparable confiscations of Austrian collections of art, we can see that family portaits were often exempt. Nevertheless, these portraits were in high demand from the beginning of the 1940ies again.

Hermine Müller-Hofmann's stated that the painting was given back to her family on initiative of Ferdinand Bloch-Bauer. There is evidence that Ferdinand Bloch-Bauer stayed in touch with Amalie Zuckerkandl from his exile in Zurich and that continued supporting her – financially - at least into the first half of 1941.

It has been established that the members of the Zuckerkandl and the Müller-Hofmann family were subject to both racial and political persecution just like the members of the Bloch-Bauer family were. Of all the members of the Zuckerkandl family who had not been able to reach a safe exile, Hermine Müller-Hofmann was the only one who managed to survive the Holocaust in the German Reich by living in hiding.

It has been established by various sources that it was Wilhelm Müller-Hofmann who sold the "Portrait of Amalie Zuckerkandl" to Vita Künstler in 1942 for 1600.- RM.

It is established by Vita Künstler´s own account that she sold the painting to her husband Gustav Künstler a little later for 2000.- RM.

In the files on the preparation of the Klimt exhibition in 1943, the name Müller-Hofmann features on a hand-written list (of pontential donors). The name is crossed of.

It has been established that in 1943, an unfinished „Portrait of a Lady" owned by Vita Künstler was to be insured for 10.000.- RM for the Klimt exhibition in the *Ausstellungshaus Friedrichsstraße*. It ended up not being exhibited.

During the Bloch-Bauer family´s restitution efforts in the postwar years, the "Portrait of Amalie Zuckerkandl" was never mentioned.

It has been established that the painting was exhibited in 1948 as property of the *Neue Galerie,* probably not an entirely correct provenance as Vita Künstler claims to have sold the painting to her husband in 1942 or shortly after.

Vita Künstler credibly stated that she had asked Minnie Müller-Hofmann whether she wanted the painting back after 1948. However, no postwar settlement was reached on the purchase of the portrait.

Interpretation

Austrian post-war restitution legislation uses the term "*invalid (legal) transaction*" ("*nichtiges Rechtsgeschäft*") frequently. (*Annulment Act, Federal Law of 15 May 1946 concerning the Annulment of Legal Transactions and other Legal Acts during the German Occupation of Austria*; Federal Law Gazette 1946/106.) The conditions under which such a transaction has to be considered invalid are layed down in the various Restitution Acts. Under the conditions set forth in the 3rd Restitution Act , *Federal Law of 6 February 1947 Concerning the Annulment of Property Seizure*; Federal Law Gazette 1947/54, (*3. Rückstellungsgesetz, Bundesgesetz vom 6. Februar 1947 über die Nichtigkeit von Vermögensentziehungen*; BGBl 1947/54; zuletzt geändert mit BGBl 1954/252), which applies to transactions between individuals, a legal transaction that involved at least one party that was subject to (political) persecution under "German occupation" is to be considered invalid under various conditions, the most important being that a) the seller was not able to freely choose the buyer and/or b) the purchase price was not adequate.

The „Portrait of Amalie Zuckerkandl" was subject of three different legal transactions between and March 1938 and May 1945. The first of these three transactions is an assumed transfer from the estate of Ferdinand Bloch-Bauer to the Zuckerkandl/Müller-Hofmann family. As evidence leads us to assume that such a transaction took place on a voluntary basis, condition a) (the seller was not able to freely choose the buyer) does not apply. As evidence also leads us to assume that this first legal transaction did not involve the transfer of money, condition b) (the purchase price having been inadequate) cannot be applied either. The transfer of the painting from Ferdinand Bloch Bauer's estate to the Zuckerkandl/Müller-Hofmann family cannot be considered an invalid transaction under the conditions set forth in the 3rd Restitution Act.

The second legal transaction the painting was subject to between March 1938 and May 1945 was the sale from Wilhelm Müller-Hofmann to Vita Künstler, presumably in 1942. According to a decree dating from April 27th, 1938, individuals considered Jews under the "Nuremberg Laws" and their "aryan" spouses had to register their property with the "Asset Registry" ("*Vermögensverkehrsstelle*"). (*VO über die Anmeldung des Vermögens von Juden*. RGBl. I S.414 /GblÖ 102/38) The property of the painting had not been registered with the "Asset Registry" in 1938 when Amalie Zuckerkandl had filled out her „asset registration" because it had

then been Ferdinand Bloch Bauer's property. (Hermine Müller-Hofmann had not registered her property altogether and was facing severe punishment if found out.) It was forbidden for individuals considered Jews under the "Nuremberg Laws" to freely sell objects made from precious metals, jewellery and works of art with a value of over 1000.- Reichsmark after December 1938. (*Verordnung über den Einsatz jüdischen Vermögens vom 3.12.1938* (RgBl I S. 1709 - GblÖ 633/38.Art IV §14 (1)). Wilhelm Müller-Hofmann thus had to sell the painting to someone he knew. We cannot assume that he was in a position to freely choose the buyer. The transaction from Wilhelm Müller-Hofmann to Vita Künstler can therefore be considered as invalid.

Evidence (Vita Künstler´s own "*Erinnerungen*") leads us to believe that the painting was purchased by Vita Künstler for 1600 RM in 1942. When the painting was to be included in the Klimt exhibition in 1943, it would have been insured for 10.000 RM, presumably the market value in 1943. (In comparison, most of the drawings exhibited were insured for 2000 RM. Insurance values of the other oil paintings ranged as high as 200.000 RM) As Robert Bentley still remembered in 1979, the painting had been insured for ATS 8000.- before the war.The purchase price in 1942 had thus only been a fraction (roughly a seventh) of the market value not even a year later. The purchase price by no means being adequate, the transaction from Wilhelm Müller-Hofmann to Vita Künstler can be considered invalid under the conditions of the 3rd Restitution Act .

The third legal transaction the "Portrait of Amalie Zuckerkandl" was subject to between March 1938 and May 195 was the sale for 2000. RM from Vita Künstler to her husband Gustav Künstler sometime in 1942.

Under the "*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 (*Bundesgesetz vom 4.Dezember 1998 über die Rückgabe von Kunstgegenständen aus den Österreichischen Bundesmuseen und Sammlungen*; BGBl 1998/I/181) works of art that have been acquired by a Federal Museum or Collection through a valid legal transaction but had before been subject to a legal transaction considered invalid under the various Restitution Acts are to be returned to their previous owners or their descendants under the condition that they have not previously been subject to a postwar settlement. Vita Künstler reported that after the war she *"asked Mrs. Müller-*

Hofmann – whose husband had meanwhile died - whether she wanted to have the painting back." (Vita Künstler: "*Erinnerungen an die Neue Galerie*." Undated typoscript. Property of Vita Künstler´s family. p. 16b.) Yet Vita Künstler had sold the painting to her husband in 1942 as she herself reported later and was therefore not the proprietor. No terms or conditions under which the painting was to be given back were discussed or mentioned. Even if the painting had been Vita Künstler´s property, Hermine Müller-Hofmann, who remained under extreme economic duress the first years after the war resulting from damages caused by her family´s persecution and extinction during the Holocaust, was not in the position to freely negotiate a settlement.

Under the "*Federal Law of 4 December 1998 Concerning the Return of Works of Art from Austrian Federal Museums and Collections*", the "Portrait of Amalie Zuckerkandl" which became property of the Austrian Gallery through a donation by Vita Künstler in 1988 is to be restituted to the heirs of the late Wilhelm and Hermine Müller-Hofmann.

Annex 1: Documents

(Running the risk of being considered inconsequent, I have dedided to quote documents in German where they originate in Austrian public archives so that they can be retrieved more easily. I have stuck to English in the summary whereever possible in order to facilitate comprhension).

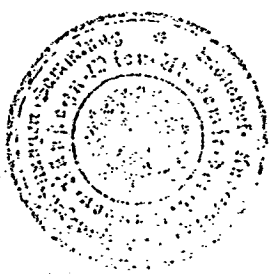
Annex A:

Catalogue of the Klimt- Gedächtnis-Ausstellung 27. Juni 1928 bis 31. Juli 1928. XCIX. Ausstellung der Vereinigung Bildender Künstler Wiener Secession.

BEILAGE 1

XCIX. AUSSTELLUNG DER VEREINIGUNG BILDENDER KÜNSTLER WIENER SECESSION

KLIMT-GEDÄCHTNIS-AUSSTELLUNG



27. JUNI 1928
BIS 31. JULI 1928

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IV.

42	Landschaft. Besitz der Österr. Galerie	Öl
43	Bildnis Frl. E. F. Besitz der Städt. Sammlungen	Öl
44	Landschaft	* Öl
45	Danaë. Privatbesitz	Öl
46	Attersee	* Öl
47	Der Kuß. Besitz der Österr. Galerie	Öl
48	Wasserstudie: Die Insel (Attersee). Privatbesitz	Öl
49	Die Hoffnung	* Öl
50	Sonnenblume. Privatbesitz	Öl
51	Die Hoffnung. Besitz Alois Grasmayr, Salzburg	Öl
52	Sonnenblumen. Privatbesitz	Öl
53	Familie. Privatbesitz	Öl
54	Die Wasserschlangen. Privatbesitz	Öl
55	Damenbildnis. Privatbesitz	Öl

V.

56	Gardaseelandschaft	* Öl
57	Attersee	* Öl
58	Damenbildnis. Besitz F. Bloch-Bauer	Öl
59	Gardaseelandschaft	* Öl
60	Kirche am Attersee. Privatbesitz	Öl
61	Bildnis der Frau B. B. Besitz F. Bloch-Bauer	Öl

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Annex B:

Vermögensanmeldung Amalie Zuckerkandl VA 34 764, Österreichisches Staatsarchiv, Archiv der Republik, Abteilung Finanzen, Vermögensverkehrsstelle.

Vor Ausfüllung des Vermögensverzeichnisses ist die beigefügte Anleitung genau durchzulesen!

Zur Beachtung!

1. Wer hat das Vermögensverzeichnis einzureichen?
Jeder Anmeldepflichtige, also auch jeder Ehegatte und jedes Kind für sich. Für jedes minderjährige Kind ist das Vermögensverzeichnis vom Inhaber der elterlichen Gewalt oder von dem Vormund einzureichen.

2. Bis wann ist das Vermögensverzeichnis einzureichen?
Bis zum 30. Juni 1938. Wer anmelde- und bewertungspflichtig ist, aber die Anmelde- und Bewertungspflicht nicht oder nicht rechtzeitig oder nicht vollständig erfüllt, **setzt sich schwerer Strafe (Geldstrafe, Gefängnis, Zuchthaus, Einziehung des Vermögens) aus.**

3. Wie ist das Vermögensverzeichnis auszufüllen?
Es müssen sämtliche Fragen beantwortet werden. Nichtzutreffendes ist zu durchstreichen. Reicht der in dem Vermögensverzeichnis für die Ausfüllung vorgesehene Raum nicht aus, so sind die geforderten Angaben auf einer Anlage zu machen.

4. Wenn Zweifel bestehen, ob diese oder jene Werte in dem Vermögensverzeichnis aufgeführt werden müssen, sind die Werte aufzuführen.

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Verzeichnis über das Vermögen von Juden
nach dem Stand vom 27. April 1938

~~des~~ der Amalie Zuckerkandl (Zu- und Vorname), Private (Beruf oder Gewerbe)

in Wien I. (Wohnsitz oder gewöhnlicher Aufenthalt), Grünanger-Straße, ~~Platz~~ Nr. 1

Angaben zur Person

Ich bin geboren am 1. August 1869

Ich bin Jude (§ 5 der Ersten Verordnung zum Reichsbürgergesetz vom 14. November 1935, Reichsgesetzbl. I S. 1333) und — deutscher[1]) — ..... — Staatsangehörigkeit[1]) — ~~staatenlos~~[1]) —.

Da ich — Jude deutscher Staatsangehörigkeit[1]) — staatenloser Jude[1]) — bin, habe ich in dem nachstehenden Vermögensverzeichnis **mein gesamtes inländisches und ausländisches** Vermögen angegeben und bewertet[1]).

~~Da ich Jude fremder Staatsangehörigkeit bin, habe ich in dem nachstehenden Vermögensverzeichnis mein inländisches Vermögen angegeben und bewertet[1]).~~

Ich bin verheiratet mit ..... geb. ..... (Mädchenname der Ehefrau)

Mein Ehegatte ist der Rasse nach — jüdisch[1]) — nichtjüdisch[1]) — und gehört der ..... Religionsgemeinschaft an.

Angaben über das Vermögen

I. Land- und forstwirtschaftliches Vermögen (vgl. Anleitung Ziff. 9):

Wenn Sie am 27. April 1938 land- und forstwirtschaftliches Vermögen besaßen (gepachtete Ländereien u. dgl. sind nur aufzuführen, wenn das der Bewirtschaftung dienende Inventar Ihnen gehörte):

Lage des eigenen oder gepachteten Betriebs und seine Größe in Hektar? (Gemeinde — Gutsbezirk — und Hofnummer, auch grundbuch- und katastermäßige Bezeichnung)	Art des eigenen oder gepachteten Betriebs? (z. B. landwirtschaftlicher, forstwirtschaftlicher, gärtnerischer Betrieb, Weinbaubetrieb, Fischereibetrieb)	Handelte es sich um einen eigenen Betrieb oder um eine Pachtung	Wert des Betriebs RM	Bei eigenen Betrieben: Wenn der Betrieb noch Anderen gehörte: Wie hoch war Ihr Anteil: (z. B. 1/4)
1	2	3	4	5

II. Grundvermögen (Grund und Boden, Gebäude) (vgl. Anleitung Ziff. 10):

Wenn Sie am 27. April 1938 Grundvermögen besaßen (Grundstücke, die nicht zu dem vorstehend unter I und nachstehend unter III bezeichneten Vermögen gehörten):

Lage des Grundstücks? (Gemeinde, Straße und Hausnummer, bei Bauland auch grundbuch- und katastermäßige Bezeichnung)	Art des Grundstücks? (z. B. Einfamilienhaus, Mietwohngrundstück, Bauland)	Wert des Grundstücks? RM	Wenn das Grundstück noch Anderen gehörte: Wie hoch war Ihr Anteil? (z. B. 1/4)
1	2	3	4

Hellrand

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III. Betriebsvermögen (vgl. Anleitung Ziff. 11 und 12)

a) Wenn Sie am 27. April 1938 Inhaber eines **Gewerbebetriebs** waren (vgl. Anleitung Ziff. 11):

Bezeichnung des Betriebs (Firma), Ort der Geschäftsleitung und Art des Betriebs (z. B. Maschinenfabrik, Lebensmittelhandlung, Gastwirtschaft, Tischlerei)	Gesamtwert d. Betriebs nach Abzug der Betriebsschulden? RM	Wenn der Betrieb noch Anderen gehörte: Wie hoch war Ihr Anteil? (z. B. 1/4)
1	2	3

Außer den Angaben in den Spalten 1 bis 3 ist die Berechnung des „Gesamtwerts des Betriebs" in einer Anlage im einzelnen zu erläutern

b) Wenn Sie am 27. April 1938 **an offenen Handelsgesellschaften, Kommanditgesellschaften oder ähnlichen Gesellschaften beteiligt waren:**

α) Um welche Gesellschaften handelt es sich? (Bezeichnung des Betriebs, Firma, Ort der Geschäftsleitung) .....

.....

β) Wie hoch war Ihr **Anteil?** ..... Wie hoch war der **Wert** Ihres Anteils? ..... RM

c) Wenn Sie am 27. April 1938 Vermögen besaßen, das der **Ausübung eines freien Berufs** diente (vgl. Anleitung Ziff. 12):

α) Art des freien Berufs: .....
(z. B. Augenarzt, Rechtsanwalt, Architekt, Kunstmaler)

β) Wo wurde der freie Beruf ausgeübt? .....
(Gemeinde, Straße, Hausnummer)

γ) Welchen Wert hatte das dem freien Beruf gewidmete Reinvermögen am 27. April 1938? .... RM

(Eine Aufstellung dieses Vermögens, aufgegliedert insbesondere nach Inventar (z. B. Instrumente, Bibliothek) und Außenständen, ist beizufügen. Wenn Sie den freien Beruf zusammen mit anderen Personen ausübten, ist in der Aufstellung das gemeinschaftliche Vermögen aufzuführen und der Wert Ihres Anteils hieran anzugeben.)

IV. Sonstiges Vermögen, insbesondere Kapitalvermögen (vgl. Anleitung Ziff. 13 bis 21):

Welchen Wert hatte das Ihnen am 27. April 1938 gehörige sonstige Vermögen (ohne Abzug von Schulden), und zwar:

a) Festverzinsliche Wertpapiere einschl. Schuldbuchforderungen und Sachwertanleihen (z. B. Anleihen oder Schuldverschreibungen von Staaten und Gemeinden, Obligationen von Industriegesellschaften, Pfandbriefe, Steuergutscheine usw.),

Wertpapiere mit Dividendenertrag (z. B. Aktien, Kuxe und Genußscheine, Reichsbankanteilscheine, Reichsbahnvorzugsaktien),

Geschäftsanteile an inländischen und ausländischen Unternehmen? (z. B. Anteile an Gesellschaften mit beschränkter Haftung, — Name der Gesellschaft, Ort der Geschäftsleitung ist anzugeben) — vgl. Anleitung Ziff. 14 —.

Bezeichnung des Wertpapiers usw. *(Wird ein Bankauszug beigefügt, aus dem sich die Angaben zu den Sp. 1 bis 5 vollständig ergeben, so genügt die Ausfüllung der Sp. 5 unter Hinweis auf den Bankauszug)*	Zinssatz [1])	Nennbetrag des gesamten Besitzes an dem in Sp. 1 bezeichneten Wertpapier usw.	Kurswert, gemeiner (Verkaufs-) Wert in Prozenten oder für ein Stück o. dgl.	Wert für den in Sp. 3 angegebenen Nennbetrag RM	Bemerkungen
1	2	3	4	5	6

Fortsetzung

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b) Verzinsliche und unverzinsliche Kapitalforderungen jeder Art an Inländer oder Ausländer? (z. B. Hypotheken, Grundschuldforderungen, Darlehen, Einlagen als stiller Gesellschafter, solche Ansprüche auf Gehälter, Löhne, Zinsen und ähnliche Beträge, die am 27. April 1938 bereits fällig, jedoch noch nicht ausgezahlt waren, Tilgungsfonds, die zugunsten des Steuerpflichtigen angesammelt sind u. dgl.). — vgl. Anleitung Ziff. 15 —

[Spareinlagen, Bankguthaben, Postscheckguthaben und sonstige laufende Guthaben sind nicht hier, sondern nachstehend zu c anzugeben.]

Art der Forderung (z. B. Hypothek, Darlehen)	Name und Anschrift des Schuldners	Nennbetrag der Forderung	Zinssatz [1])	Vertragliche Laufzeit bis [2])	Bemerkungen (z. B. über Umrechnung einer ausländischen Währung)
1	2	3	4	5	6

c) Zahlungsmittel, Spareinlagen, Bankguthaben, Postscheckguthaben und sonstige laufende Guthaben? (vgl. Anleitung Ziff. 16) . . . . . RM

Die Beträge in ausländischer Währung und die angewandten Umrechnungssätze sind im einzelnen ggf. auf einer Anlage anzugeben.

d) Geschäftsguthaben bei Erwerbs- und Wirtschaftsgenossenschaften? (vgl. Anleitung Ziff. 17) . . . . . RM

Name der Genossenschaft, Ort der Geschäftsleitung: .....

e) Noch nicht fällige Ansprüche aus Lebens-, Kapital- oder Rentenversicherungen, zu berechnen mit $^2/_5$ der eingezahlten Prämien oder Kapitalbeiträge oder mit dem Rückkaufswert? (vgl. Anleitung Ziff. 18) ..... RM

Name der Versicherungsgesellschaft: .....

Nr. des Versicherungsscheins: .....

f) Altenteilsrechte, Nießbrauchsrechte und sonstige Rentenrechte? (vgl. Anleitung Ziff. 19): Welchen Wert hatte die einjährige Nutzung? ....800..... RM. Seit wann stehen Ihnen die Nutzungen zu?

Seit ..... 1929 Bis wann stehen Ihnen die Nutzungen zu? Bis .....19.....

(Falls das Recht mit dem Ableben einer Person erlischt, sind auch Tag, Monat und Jahr der Geburt dieser Person anzugeben.)

Welchen Kapitalwert hatte das Recht? . . . . . 5600 RM

g) Gegenstände aus edlem Metall, Schmuck- und Luxusgegenstände, Kunstgegenstände und Sammlungen? (vgl. Anleitung Ziff. 20) . . . . . RM

h) Edelmetalle, Edelsteine und Perlen? . . . . . RM

i) Anderes nicht unter a bis h fallendes »sonstiges Vermögen«? (Vgl. Anleitung Ziff. 21) . . . . . RM

(z. B. Urheberrechte, geschützte und nichtgeschützte Erfindungen, solche Gewerbeberechtigungen, die nicht vom Berechtigten selbst ausgeübt werden)

Art der Gegenstände und Errechnung ihres Wertes sind hier anzugeben.....

.....

.....

.....

.....

.....

Hestrand

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V. Abzüge, soweit sie nicht das Betriebsvermögen (oben Abschnitt III) betreffen

(Schulden und Lasten dürfen nur insoweit abgezogen werden, als sie bei Beginn des 27. April 1938 bereits bestanden. Sie sind nachstehend im einzelnen aufzuführen.)

a) Schulden (vgl. Anleitung Ziff. 22):

Art der Schuld (z. B. Hypotheken-, Darlehnschuld)	Name und Anschrift des Gläubigers	Nennbetrag der Schuld	Zinssatz [1])	Vertragliche Laufzeit bis [2])	Bemerkungen (z. B. über Umrechnung einer ausländischen Währung)
1	2	3	4	5	6

b) Altenteilslasten, Nießbrauchslasten und sonstige Rentenlasten (vgl. Anleitung Ziff. 23): Welchen Wert hat die einjährige Leistung? ..... RM. Seit wann sind die Leistungen zu entrichten? Seit ..... 19.....

Bis wann sind die Leistungen zu entrichten? (Falls die Leistungen bis zum Ableben einer Person zu entrichten sind, sind auch Tag, Monat und Jahr der Geburt dieser Person anzugeben.) Bis .....19..... Welchen Kapitalwert hatte die Last? .....RM

VI. Bemerkungen:

Die unter IV/f angeführte Nutzung ist eine mir als der geschiedenen Ehefrau des verstorbenen Prof. Dr. Otto Zuckerkandl, Primararzt des Rothschildspitals, von der Wiener Israel. Kultusgemeinde gnadenhalber und ohne Rechtsanspruch gewährte Pension. Ich beziehe außerdem von Freunden eine freiwillige Unterstützung von RM 133·33 monatlich, die ich als jeder Rechtsgrundlage entbehrend und voraussichtlich demnächst erlöschend, hier nur der Vollständigkeit wegen anführe.

Ich versichere, die vorstehenden Angaben **nach bestem Wissen und Gewissen** gemacht, insbesondere mein Vermögen in diesem Vermögensverzeichnis **vollständig angegeben zu haben.** Soweit Werte in diesem Vermögensverzeichnis angegeben sind, bin ich von der Anleitung, die dem Vordruck zu diesem Vermögensverzeichnis beigelegen hat, nicht abgewichen.

Wien, 15. Juli 1938

Otto Zuckerkandl

(Unterschrift des Anmeldepflichtigen oder der an seiner Stelle zur Abgabe des Vermögensverzeichnisses verpflichteten Person)

Vermögensverzeichnisse ohne Unterschrift gelten als nicht abgegeben

Seitrand

002752

Annex C:

„Gegnerkartei" vom 2. Dezember 1939. „Gauakt" Wilhelm Müller-Hofmann, Zahl 49296, Österreichisches Staatsarchiv, Archiv der Republik, Bundesministerium für Inneres

002753

N.S.D.A.P.
Kreis II
Ortsgruppe Augarten

Wien, den 2. Dezember 1939

Vertraulich

G.K.-(Gegnerkartei)

1. Zunahme.....Müller-Heffmann .....
2. Vorname.....Wilhelm.....
3. Geburtsdaten..5.April 1885 .....
4. Geburtsort....Wien .....
5. Bekenntnis....röm.kath.....
6. Beruf.....Maler.....
7. Wo beschäftigt..selbstständig .....
8. Änderung des Arbeitsplatzes.....
9. Wohnert.....Wien I., Obere Augartenstrasse Nr.1 Palais, II.Stiege
10. 1. Änderung der Wohnungsanschrift.....
11. 2. Änderung der Wohnungsanschrift.....
12. 3. Änderung der Wohnungsanschrift.....

Dergang recherchiert!
Nr. 49296

Begründung:

Angefragter ist mit einer Jüdin verheiratet und gilt als ausgesprochener Gegner der Bewegung. Er führte eine Freimaurerloge. Es werden immer mehr Einzelheiten bekannt, so z.B. dass Genannter in der Verbotszeit, regelmässig Nachts, Zusammenkünfte mit seinen Freimaurerkollegen hatte. Vor Kriegsausbruch sandte Genannter seine Kinder nach Schweden. Er selbst weilte vor dem Attentat in Bayern und traf nach demselben wieder in Wien ein.

Amtsstempel:

Unterschrift des Personalamtsleiters

002754

Zentralstelle für Denkmalschutz
im Ministerium für innere und kulturelle Angelegenheiten

Bundesministerium für Unterricht.

1939.

113 1

Geschäftszahl	Vorzahl	Genehmigungs-, Dringlichkeits- und Schlußvermerk
782 / Dsch.	Fr	
Miterledigte Zahlen	Nachzahlen 1204/Kg 39	
	Bezugszahlen	

Gegenstand: Bhlg.-Brauer, Wien, I., Leibenbastei 18., Vorzeichenpflanzung, Genehmigung, Eigentreibung.

L.E. Dezykau.

1 Bhlg. 1 Bl. Vorzeigt

Frist: zu betreiben am

neue Frist

Zur Einsicht vor Genehmigung, Abfertigung, Hinterlegung

Laehen

Geschäftszeichen: Sammlungen Bloch-Bauer

Grundzahl

Reing.

Vergl.

002755

Lo 78 Z/Nfg 39

115 48/14

P. d. Freitag den 28. Jänner 1939 fand in Anwesenheit von Dir. Ruprecht, Dir. Ernst, Dr. Schlosser, Dr. Führer als Vertreter des Eigentümers, 2 Herren einer Treuhandgesellschaft (Dr. Painsipp), eines Herrn der Geheimen Staatspolizei, Frau Oberwalder und Referenten die Besichtigung der Wohnung Ferd. BlochBauer, Wien I. Elisabethstrasse 18, statt. Als Vorgang war vereinbart worden, dass jene Stücke bezeichnet werden, für welche eine Ausfuhrbewilligung nicht erteilt werden kann. Dir. Ruprecht behielt sich vor, das Interesse des deutschen Museelbesitzes zu wahren. Als wichtige Gruppen fallen auf

1. Sammlung Sorgenthal-Porzellan (Veröffentlicht von Dir. Ernst)
2. Eine grössere Anzahl Waldmüller und andere Altwiener Meister
3. Eine Reihe von Bildern von G. ~~Kl~~ Klimt.

Bezüglich der Porzellane werden die Fachleute ihre Anträge stellen. Es wäre zu verhindern, dass die Sammlungen Schenkungen annahmen, bezw. zu niedrigem Preis kaufen und ihre Anträge von dieser Erwerbsmöglichkeit abhängig machen.

An Kunstwerken wurden vom Referenten festgehalten

~~30~~ ~~Frau Bloch-Bauer~~ Gustav Klimt, Frau Zuckerkandl, Portrait 1916 ~~Portrait~~ 2 Skizzen zusammen 23·5X15
" " Frau Bloch-Bauer
" " Birkenwald 110
" " Apfelbaum 110
" " Frau Bloch-Bauer
~~34~~ ~~35~~ Liebermann, Garten 85X118
Kokoschka, Herr Bloch-Bauer
~~32~~ Moll, Winterlandschaft 80X80
~~16~~ Kriehuber, Aquarell, Offizier 1833 28X25
~~17~~ Bensa, Aquarell, Nikolaus I. in Wien 18·5X25
~~18~~ Franz Alt, Hofburg 1846, Aquarell 16.5X24
~~15~~ + Schindler, Soldaten, 18·5X21
~~13~~ + Fendi 1832, Aquarell, Mutter mit Kindern vor Marienbild 24·5X20
~~14~~ Jettel, Bauernhaus 34X45
~~1~~ + Waldmüller, Offizier 31·5X26

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Waldmüller, Versöhnung (in München)
" Waldm., Mutterglück (München)
" Ochsengespann in Wienerwald 41 x 52'5
" Alte Frau vor Hütte 60 x 46
" Prinz Esterhazy mit weissem Hasen 142 x 97'5
" Kleines Mädchen in blaugelbem Kleid 56 x 45
Amerling, Porträt Ratzesberg-Wartenburg 45 x 36
Meunier, Bronzeplastik, Seemann
Pettenkofen, Geflügelhändlerin 14 x 9'5
" Markt 36 x 26'5
Pettenkofen Skizzenbuch 47 x 24'5
" Marktszene 10'5 x 21'5
" Oelskizze, nach der Schlacht 32 x 20'5
J. E. Schindler, Bach mit Birken Brücke 43 x 63'5
" Häuser am Bach 43'5 x 69
" Tanz ~~Alte Donau~~ 35 x 60
Neder 1834, Rekrutierung ~~39~~ 39 x 47 1½hr
Rodin, Bronze, Allegorie der Freiheit
Holbein der Jüng. Porträt eines jungen Mannes 36 x 2
Hobbema, Landschaft mit Eichen
Kybl, Porträt eines jungen Mannes 20 x 16'5
Danhauser, Mädchen mit Hund an Wiege 48 x 41
Ranftl, Mädchen mit Hund 39'5 x 31
Nigg, grosses Blumenstück, Porzellanplatte 71 x 41
Gauermann, Reh vor Baum 18 x 14
2 Pausinger, Zeichnungen mit Hirschen
Hamilton ?. Grosses Tierstück 126 x 146
Stillleben mit Fasanen, Barock 62 x 49
Fruchtstück mit Pilzen und Melonen (Max Pfeiler) um 1700

1 Bronzeplastik modern 100 x 136
21 Graphiken
2 ehin. Bilder
53 Zieglerstiche
2 Graphiken
2 Stickereien
1 Porträt BlochBauer
div. moderne Graphiken in Mappen
1 Mappe Zeichnungen und Skizzenn vom Klimt
etwa 30 Graphiken in Rahmen

Gröhn, Ernte Brueghel 380 x 380

Zwei Bilder von Waldmüller befinden sich zur Ansicht in München bei Buchner, sollen aber wieder nach Wien kommen. Dir. Grimschitz soll an dem einen (Mutterglück?) interessiert sein, hingegen an allen anderen Bildern kein Interesse haben. Sein Urteil kann nur berücksichtigt werden, wenn er nicht bloss für seine Galerie spricht. Die Waldmüller sind von ausgezeichneter Qualität mit Ausnahme des Bildes

002757

116 44 45

sollten, sind in der Liste angestrichen.
Ueber Holbein und Hobbema wird das kunsthist.
Museum befragt werden müssen.
Wien, 2. Feber 1939 Zykan

Vorläufig einlegen
bis Ausfuhransuchen vorliegt!

7. Feber 1939

i.V. Leibel

002758

Dr. Thomas, Mandlgasse 19. Hofr.
I. Operring 17.
I. Operring 17.

Zentralstelle für Denkmalschutz im Min

Wien

Name: Serena Lederer Ort: Wien I., Bartensteingasse

Nr.	a) Art des Kunstwerkes b) Material und Technik	Beschreibung des Kunstwerkes Gegenstand der Darstellung	Größe cm Höhe und Breite	Schätz RM
	Ölbild	Die philosophische Fakultät		
	"	Kruzifix im Walde b. Lobzdock		
	"	Garten mit Malven und Hühnern		
4	"	Junge Dame mit entbl. Brust und ostasiatischen Motiven		
	"	Apfelbaum mit gold. Äpfeln		
6	"	Dame in ganzer Figur, im weißen Kleid mit schwarzen Haaren		
7	"	Die Freundinen		
8	"	Die Leda		
	"	Sämtliche 2 Schubert am Klavier u. Musik	106 x 160	
10	"	Knabenporträt ix	130 x 54	
11	Aquarell	Selbstporträt	30 x 40	
12	Bronze	(Planiesis)		
13	"			
14	"			
	Ölauf Holz	Weibliche Halbfigur im Vordergrund eine Muschel (Venus Anadiomene)	43x45 ohne Rahmen.	
16	Majolika	Alberello m. Blaubemalung	31 x 21	
	"	Ein großer Majolikatopf m. Blaumalerei m.d. Wappen des Spitals della scala		
18	"	Sitzende Madonna blau gefaßt		
19	Porzellan	Eine Deckelvase gelber Fond, Chinoiserie u. indische Blumen, Max Augustus Rex-Marke		
20	Alabasterblatt	Joachim und Anna		
21	Holz	2 Florent. Vasen teilweise vergoldet; Holz geschnitzt mit Wappen		

Kaiser Franz

Fortgesetzt auf Blatt

Annex F:

Excerpt from a letter from Minnie Müller-Hofmann to her brother Viktor Zuckerkandl, Fall of1939. Estate of Viktor Müller–Hofmann. As the original was not available to me on short notice, I am using a transcript Hubertus Czernin typed in 1999.

„(...) Eine für uns erfreuliche Begebenheit, wir haben die gewünschte Wohnung in Haspeting (nahe von Bergen) gemietet. Eie ganz wunderbare Lage und Landschaft und das angenehme ist, daß sie uns das ganze Jahr zur Verfügung steht, vorläufig wollen wir aber nur die 5-6 Sommermonate draußen sein, auch wegen Mama, daß sie nicht so lange alleine ist. Ich mach mir wegen ihr Sorgen, da die Pension von Ferry so ungewiss ist, man weiß von Monat zu Monat nicht, ob sie sie bekommt, aber hoffen wir das Beste. Unsere Pension ist leider auch um 30 M gekürzt, eine neue Steuer, aber man bringt es durch sparsames Leben wieder herein. (..)"

Annex G:

Undated minutes (May 1940), Archiv der Israelitischen Kultusgemeinde Wien, Anlaufstelle, Aktenordner „D", „Aktennotizen, Beschlüsse, Verfügungen" 1940/41.

Herrn Amtsverwalt R a g e l !

Herr BRUNNER vom Amte des Sonderbevollmächtigten für das Vermögen der israel.Kultusgemeinden in der Ostmark, erschien in Gesellschaft des Herrn SS Obersturmführers GREVEMIX heute um 10.30 Uhr in meinem Büro. Auf Grund der mit ihm gehabten Aussprache werden nachstehende Aufträge erteilt:

1.] Aron Barschak, Verwalter der Altersheim-Filiale II.Gr.Schiffgasse 3.

Herr BRUNNER vertritt den Standpunkt, dass Barschak durch die von der Kultusgemeinde bezahlte Miete und seine und seiner Frau Anstellung sich auf Kosten der Kultusgemeinde bereichere. Ich bekämpfte diesen Standpunkt und bezeichnete ihn als unrichtig. Herr BRUNNER glaubt, dass Barschak de facto nicht mehr Eigentümer des Hauses ist, weil es stark überlastet ist und er will, dass die Zentralsparkasse der Gemeinde Wien das Haus übernimmt und der Kultusgemeinde für Zwecke eines Altersheimes überlässt.

Die arische Wohnung wird geräumt und der Kultusgemeinde zur Verwendung für Altersheim-Zwecke überlassen werden. Barschak hat von seinen 3 Zimmern mindestens 1 Zimmer für Zwecke des Altersheimes der Kultusgemeinde abzugeben.

Ich erklärte, dass die Benützung des ebenerdig gelegenen Speisesaales mit Rücksicht darauf, dass dort wiederholt Scheiben eingeschlagen wurden, zur Unterbringung von alten Personen sich nicht eigne. Herr BRUNNER meint, dass der Schanksaal oder der rückwärtige Saal für Belagzwecke verwendet werden könnte.

Schliesslich ist Herr Brunner der Ansicht, dass die Anstellung des Ehepaares BARSCHAK unnötig ist, umsoweniger, als er meint, dass Barschak selbst fast gar keine Dienste leistet und seine Frau die Verwaltung und den Küchenbetrieb versorgen könnte.

2.] Die Pläne des Hauses XIX.Bennernfeldgasse 40 sind dem Amte des Sonderbevollmächtigten vorzulegen. Ich protestierte dagegen, dass dieses Haus verkauft werden soll, worauf Herr BRUNNER antwortete, dass er - ähnlich wie bei der

./.

1002760

Realität Hohe Warte 32,- dafür Vorsorge treffen werde, dass dieses Waisenhaus auch weiterhin zur Unterbringung von Waisenkindern dienen solle.

Ich verwies darauf, dass bereits 2 Waisenhäuser der Kultusgemeinde weggenommen wurden und dass wir das Haus XIX.Bauernfeldgasse 40 für die Unterbringung von Waisenkindern dringend benötigen.

3.) Der Hausbesorgerin des Hauses IX.Grüne Torgasse 26,ist zu kündigen.

4.) Herr BRUNNER beanständet die Zahlung von RM 133.33 p.m. an Frl. Zerline Sara KRENBERGER zu Lasten der"Allgemeinen Stiftung für jüdische Fürsorge in Wien"mit Rücksicht darauf,dass kein Rechtsanspruch besteht.

Im Hinblicke auf deren Gesundheitszustand soll die Kultusgemeinde sie in einem Altersheim unterbringen, was für Frl.Kremberger eine bessere Wartung gewährleistet und die Kultusgemeinde weniger kostet.

Die diesbezüglichen Verhandlungen sind mit Frl.Kremberger und der Leitung des Altersheimes zu führen.

5.) Frau Professor Zuckerkandl ist einzuladen und zu fragen, ob sie irgendeine staatliche oder sonstige Pension bezieht. In diesem Falle ist die Höhe dieses Bezuges festzustellen und die Gnadengabe der Kultusgemeinde einzustellen oder entsprechend zu kürzen.

6.) Das arische Personal wird aus allen Betrieben der Kultusgemeinde ~~entfernt~~ über behördlichen Auftrag entfernt werden. Das jüdische Ersatzpersonal muss zu bedeutend niedrigeren Ansätzen entlohnt werden,um auf die Weise Ersparnisse zu erzielen. Die Begründung für die niedrigere Entlohnung ist auch darin gegeben, dass keine geprüften, sondern nur kurzerhand umgeschultes Personal Verwendung findet.

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Maschinisten und Professionisten sind aus dem Kreise der Techniker

7. Herr BRUNNER teilte mit, dass das Bondi-Heim nicht vollauf ausgenützt sei. Ich erklärte, dass die Absicht besteht Mädchen aus dem Dr.Krüger-Heim zum Teil dort unterzubringen, dass jedoch die Unterbringung derzeit mit Rücksicht auf die im Heime aufgetauchten Mumps-Erkrankungen auf Schwierigkeiten stösst.

Ich widersprach der Behauptung, dass im Bondi-Heim zuviel Personal verwendet wird und erklärte, dass die dort untergebrachten Mädchen für die Auswanderung vorbereitet werden müssen, dass sie jedoch auch zur Arbeit im Hause herangezogen werden. Herr BRUNNER anerkannte dieses Argument und bemerkte, dass im Falle eines Mehrbelages das vorhandene Personal als zweckentsprechend bezeichnet werden müsse.

Wien, 20.Mai 1940.

Dr.Josef Israel Löwenherz.
Amtsdirektor u.Leiter der Isr.Kultusgemeinde Wien.

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Annex I:

Victoria Maria aka Vita Künstler: "*Erinnerungen an die Neue Galerie.*" Undated typoscript. Property of Vita Künstler´s family. p. 16b.

Ich numeriere die folgenden Seiten mit Buchstaben, weil sie nicht sachlich zur eigentlichen Erzählung über die Galerie gehören. Vielleicht sind s aber für Janie insofern interessant, weil ich auf die Kriegszustände in Wie und auf unser damaliges Leben eingehe. Die Blätter sind ja leicht zu eliminieren, weil besonders gekennzeichnet.

Zu den Ankäufen von Lebensmitteln jenseits unserer Karten erlebten me Mann und ich eine tragikomische Geschichte. Eine unserer Freundinnen rief u eines Tages an und fragte, ob wir die Duineser Elegien von Rainer Maria Rilk besässen, was wir bejahen konnten; wir besassen die Erstausgabe dieses Buch allerdings nicht in der Luxusausgabe. Daraufhin wurden wir informiert, dass die Braut des unserer Freundin bekannten Fleischhauers sich dieses Buch wünsche und der Fleischhauer bereit wäre, dafür ein halbes Kilo Schweineschmalz zu geben - ein leckeres Anbot in diesen mageren Zeiten. Ich war natürlich schneller bereit zu diesem Tausch, musste aber meinen Mann lange um seine Zustimmung bitten; ich meinte, wir wüssten doch nicht, ob wir überlebten, ob die Wohnung samt Bibliothek erhalten bliebe, und wir doch nach dem Kriegsende die Duineser Elegien wieder kaufen könnten - aber doch nicht die Erstausgabe meinte mein Mann dagegen. Un schliesslich kam es doch zu diesem Tausch, und wir delektierten uns eine recht kurze Zeit an der damaligen Delikatesse. Gleich nach dem Kriegsende kaufte ich natürlich das Buch, bekam es aber nur in einer nicht sehr schönen, zweisprachigen Ausgabe, nämlich links englisch und rechts deutsch. Als ich später einmal mit dem Ehepaar Kallir über die Kriegszeit berichtete und auch diesen Tausch erwähnte, kam das grosse Glück ins Haus: anlässlich meines nächsten Geburtstages erhielt ich aus New York die Duineser Elegien in der ersten Luxusausgabe, weil Dr.K. zwei Exemplare davon besass. Unsere Begeisterung, unser Dank war dementsprechend gross.

Mitten im Krieg wurde mir auch ein Klimtbild von Prof. Müller-Hofmann angetragen, der ebenfalls Geld brauchte. Es handelte sich um das unvollendete Porträt seiner Schwiegermutter, der Frau Amalia Zuckerkandl. Ich erwarb das Bild für die Galerie um den vereinbarten Preis von Mk 1.600.- Um die gleiche Zeit war aber das Buch meines Mannes "Kleiner Führer zu Kunst und Kultur von Wien" erschienen, und er erhielt vom Verlag Hölzl einen einmaligen Betrag von Mk 2.000.- dafür. Mein Mann kam natürlich bald in die Galerie, das Klimtbild besichtigen und verliebte sich gleich so, dass er mir den Vorschlag machte, um seine gerade erhaltenen Mk 2.000.- das Bild von der Galerie zu kaufen, damit ich doch einen kleinen Gewinn verbuchen könnte, der für die Weiterführung für mich ja essentiell war. Und so kam das Klimtbild zuerst in

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das Bureauzimmer meines Mannes beim Berglandverlag am Schwarzenbergplatz und später dann in unsere Wohnung. Nach Kriegsende habe ich Frau Müller-Hofmann - ihr Mann war inzwischen gestorben - gefragt, ob sie das Bild zurück haben wolle, worauf sie meinte, es wäre bei ihnen verbombt worden, da ihre Wohnung im Augartenpalais zerstört worden war, sie sei froh, dass es erhalten geblieben wäre und gönne es uns. Damals, in der Zeit des Ankaufes des Bildes gab es ja jeden Tag Fliegeralarm in Wien, allerdings ein einziges Mal in der Nacht, sonst immer bei Tag, was eine gewisse Erleichterung war. Die Nachtangriffe, wie sie Deutschland erlebte, müssen grauenhaft gewesen sein. In der Grünangergasse gab es zwei Stock tiefe Keller, die sogar damals die ganz Gasse entlang miteinander verbunden wurden, damit Fluchtmöglichkeiten bestünden. Sogar mit den Katakomben von St.Stephan gab es Kommunikationswege. Ich bin sehr ungern in den tiefsten Keller hinuntergegangen, weil man dort vom Geschehen überhaupt nichts hörte, sodass mich der Gedanke, verschüttet zu sein, ohne es zu wissen, mit Schrecken erfüllte. Meist hielt ich mich auf der Stiege zum ersten Kellergeschoss auf. War der Alarm vorbei, begann das grosse Telephonieren (das manchmal auch nicht zustandekam), um sich zu vergewissern, dass alle Lieben wohlauf wären. Beim Heimgehen sah man dann die Verwüstungen in der Stadt, musste Umwege machen, weil Strassen unzugänglich geworden waren, und war froh, sein eigenes Haus noch stehend vorzufinden. Das Haus in der Grünangergasse 1 bekam auch einen Treffer, der aber die Seite links des Stiegenhauses betraf, während in der Galerie, rechts vom Stiegenhaus, nur alle Fenster zerbrochen waren und unglaublicher Schmutz herrschte. Mit Herrn Effenberger habe ich die Fenster mühsam mit durchsichtigen Papier vermacht, da damals natürlich kein Glas aufzutreiben war. Am 10.April 1945 war für Wien mit dem Einmarsch der Russen der Krieg zu Ende. Die ersten Tage war es nicht ratsam, sich viel auf den Strassen zu zeigen - in Wien wurden 65.000 Frauen vergewaltigt - , und so blieb ich zu Hause, nicht ahnend, was inzwischen in der Galerie geschehen sein könnte. Einige Tage später machte ich mich dann doch auf den Weg, natürlich zu Fuss, weil keine Verkehrsmittel vorhanden waren; ich kam an auf der Strasse liegenden Toten vorbei und endlich in die Grünangergasse. Zuerst suchte ich Marijka Dolnicka in ihrer Hexenküche auf, in der sie in diesen Tagen auch geschlafen hatte; sie berichtete, die Russen wären wohl in den zweiten Stock gekommen, sie hätte ihnen aber sagen können, dass die Räume einer Kunstgalerie gehörten, worauf sie sich zurückzogen, ohne etwas anzurühren. Ich fand also die Galerie intakt vor. Die nächsten Wochen unter den Russen allein bescherten uns als Lebensmittel gelbe Erbsen, die aber so voller Würmer waren, dass nach dem Kochen

7972000

Annex J:

"*Deutsches Reich. Kennkarte J*". Hermine "Sara" Müller née Zuckerkandl. Issued by the Polizeipräsident Leopoldstadt, Vienna, March 2nd, 1942. Property of the Müller-Hofmann family.

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Annex K:

Letter from the *Gaustabsamtsleiter* Laube to the Director of the „Central Agency for Jewish Emigration" (*„Zentralstelle für Jüdische Auswanderung"*) SS Hauptstuf. Brunner. September 21, 1942. „Gauakt" Wilhelm Müller-Hofmann, Zahl 49296,Östereichisches Staatsarchiv, Archiv der Republik, Bundesministerium für Inneres.

- Der Gaustabsamtsleiter -

49296

Stb.4540/I/h ./. 21. September 42

Familie MÜLLER-HOFFMANN,
Wien 2., Augartenstr.1/II/[illegible]/3

An den
Leiter der Zentralstelle für jüdische
Auswanderung, SS Hauptstuf.Pg.BRUNNER
Wien 2.,
Castellezgasse 1/II/II/3

Da es untragbar ist, daß ein Mischehepaar heute noch eine Wohnung im Augartenpalais besitzt, ersuche ich Sie um Aussiedlung obgenannter Familie.

Die Frau ist laut Bescheid des Rassippenamtes Jüdin und betätigt sich zur Zeit besonders eifrig als Hilfskraft der geistlichen Schwestern beim Religionsunterricht für Schulkinder in der Pfarre St.Leopold in Wien 2.

Der Mann ist zwar deutschblütig, gehört aber zu jenen übelbeleumundeten Subjekten aus der Systemzeit, die teilweise heute noch im Augartenpalais wohnen.

Heil Hitler !

(Laube)

2

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Annex L:

Handwritten List (of possible donors?) , Akt zur Klimtausstellung 1943, Archiv der Österreichischen Galerie Belvedere)

Wallenstein Rüdiger (Schwarz) (Hermine von Winterfeld)

Bibliothek Tod in Leben (Hoffmann)

Vision?

Knips Obstbäume

~~Einlieferungsmarke Mädchen (nimmt)~~?

Zuckerhandel Rosen unter Bäumen

Malerin

Küche in Kasserne

Müller Wiesen

Pappel (Mannheim Neckar)

Sumpf (Bromley)

~~Müller-Hofmann (Wimmis)~~

Mannheim Nachtschule Präsi Conti

Dorotheum Vision

Bibliothek Aussee

Kurt Wiesen Bar Leipzig Landschaft

Annex M:

Insurance List. Akt zur Klimtausstellung 1943, Archiv der Österreichischen Galerie Belvedere.

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Rechtsanwalt Dr.Erich F ü h r e r	I.,Seilerstätte 16
Bildnis einer stehenden Dame	12.000 RM

Neue Galerie (Fr.D.V.Künstler)	I.,Grünangergasse 1
~~Damenbildnis~~	~~10.000 RM~~
Waldinneres	5.000 RM

Emilie F l ö g e	III/40,Ungargasse 39
Bildnis der Mutter	
Brautzug	
Landschaft	

Gustav U c i c k y	III/40,Gottfried Keller-Gasse 11
Wasserschlangen	25.000
Schloß Kammer	25.000

Johanne Z i m p e l	VI.,Mollardgasse 11/III.
Bildnis des Vaters	
Bildnis der Mutter	

Ö s t e r r e i c h i s c h e G a l e r i e	III/40,Prinz Eugenstr.2
Die Medizin	50.000 RM
Der Kuß	30.000 RM
Damenbildnis mit Goldhintergrund	25.000 RM
Frau Fritza Riedler	20.000 RM
Gartenblumen(Sonnenblumen)	15.000 RM
Allee in Schloß Kammer	15.000 RM
Bauernhaus	12.000 RM
Meeralgen	4.000 RM
Nach dem Regen	2.000 RM
Der Schauspieler Lewinsky	2.000 RM
Entwurf für das Bukarester Nationaltheater I.	1.000 RM
" " " " " " II.	1.000 RM
Der Apfelbaum	12.000 RM

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S t a a t l i c h e s K u n s t g e w e r b e m u s e u m	

Annex N:

Bescheid des Zentralbesoldungsamtes vom 15. Nov. 1948. Personalakt Wilhelm Müller-Hofmann. Österreichisches Staatsarchiv, Archiv der Republik, Bundesministerium für Unterricht und Kunst.

Zentralbesoldungsamt

Wien I., Singerstraße 17

Zahl 74452 - ZBA/ 1948. Abschrift.

An die

Finanzlandesdirektion für Wien, Niederösterreich und Burgenland

Pensionsstelle

GA X

Zahlungsauftrag

Zu Lasten Kapitel 6 Titel 1 § 2

Zu Lasten des Bundes- (Monopol-) Betriebes ..... Kapitel ..... Titel .....

Zu Lasten des Fonds .....

Der (Dem) (Den) Frau Hermine Miller-Hofmann, Witwe / xWaise(n) nach dem

am 2. September 1948 verstorbenen Professor Wilhelm Miller-Hofmann,

wohnhaft in Wien 3., Rennweg 4/I, Postamt ....., sind auf Grund der folgenden

Aufstellung die gebührenden ~~Ruhex~~ (Versorgungs-) Genüsse von insgesamt ~~xjährlich~~ / monatlich 538 S 35 g

in Worten: Fünfhundertdreissigacht - - - - - - - - - - - - - - - - - Schilling 35 g

zuhanden des Bevollmächtigten — Kurators — Vormundes .....,

wohnhaft in ....., Postamt .....

auf die Dauer des Bezugsrechtes / von ..... Jahren ab 1. Oktober 1948 flüssig zu machen.

..... Beilagen

Wien, am 15. November 1948.

Amtssiegel

Alois Kriz e.h.
(Eigenhändige volle Unterschrift)

Johann Manek e.h.
(Eigenhändige volle Unterschrift)

Vorgeschrieben: Stammblatt Nr. 002777

Archiv

Annex O:

Letter from Robert Bentley to an unidentified gentleman by the first name of "Gustl", dated February 17th, 1979. Family Archives Bentley/Altmann. I am using a copy of the letter that was provided to the Federal Monuments Office by Randol Schoenberg.

Annex P:

Undated letter from Mini Müller-Hofmann to Luise Gattin, née Bloch-Bauer.

Property Dr. Salomon Grimberg, Dallas, Texas. As Hermine Müller-Hofmann wrote the letter at the age of 84 and was born on May 16th,1902, it can be dated between May 1986 and May 1987. I am using a copy of the letter that was provided to the Federal Monuments Office by Dr. Grimberg.

BEILAGE B

Liebe Luise. Wir haben uns wohl lange nicht mehr gesehen, aber von vergessen ist keine Rede - ich sehe Dich noch vor mir, bei Deiner unvergesslichen Mutter und dann nach Deiner Heirat. Zuletzt haben wir uns bei Czuckas getroffen. Ich habe mich wirklich gefreut von Dir eine Zeile zu bekommen und kann es mir gar nicht vorstellen, dass Du 78 Jahre alt bist - ich 84. Wenn Dein Freund nach Wien kommt, kann e mich gerne besuchen doch soll e nicht enttäuscht sein, wenn ich nicht viel zu erzählen habe, denn ich war zu seine Tod erst 14 Jahre alt. Er war oft bei uns und ich habe ihn sehr gerne gehabt, weil er so lieb zu uns war und gemütlich. Das Orträt von Mama befir sich bei einer Frau Dr.Vita Künstler, Kunsthistorikerin die das Bild durch Dr.Kalir erworben hat. Sie hat mich kürzli telefonisch angerufen, um mir zu sagen, dass sie es testamentarisch der neuen Galerie im Belvedere vermacht hat. Damit bin ich ganz zufrieden.

Gesundheitlich geht es mir recht gut, fast erstaunlich in meinem Alter. Ich arbeite seit Jahren in einer katholischen Gemeinschaft und bin da noch immer im Einsatz für Strafgefangene, auch in unserem Heim für diese Männer, wenn sie herauskommen und kein Quartier haben. Ich habe nur mehr einen Sohn, den Vikerl, weil Rudi vor 2 Jahren in Schweden gestorben ist, mit 58 Jahren. Er hatte die Multiple Sclerose und - so arg es war - man muss Gott danken dass er, noch halbwegs beisammen war und er durch einen Gehirnschlag plötzlich verstorben ist, ohne zu leiden. Diese Krankheit kann ganz arg sein und man kann lange leiden. Er hat 4 Kinder, sehr liebe Kinder, aber alle in Schweden.

Wenn Du nach Wien kommst so würde es mich sehr freuen, Dich zu sehen. Meine Tel.Nr. 78-95-85.

Liebe Grüsse und gute Wünsche Deine

Anni

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Annex 2: Chronology

1918: Death of Gustav Klimt. The unfinished "Portrait of Amalie Zuckerkandl" which the painter had started on before WW I comes into the possession of Otto and Amalie Zuckerkandl (née Schlesinger)

1921: Death of Otto Zuckerkandl. The portrait remains in the property of his wife who he has divorced in 1919.

1928, June 27th to July 31st. The portrait is shown as number 58 – "Portrait of a Lady" - (*„Damenbildnis Besitz F. Bloch-Bauer"*) during a Klimt exhibition at the *Secession*. It has by then become property of Ferdinand Bloch Bauer.

1932, March: An inventory of the Bloch-Bauer Palais lists "Portrait of Amalie Zuckerkandl" as hanging in Ferdinand Bloch - Bauer´s bedroom. It is insured for 40 000 Czech Crowns.

1938, March 15th: Ferdinand Bloch-Bauer flees to Prague shortly after the *Anschluss.*

1938, March: Wilhelm Müller-Hofmann, Amalie Zuckerkandl's son-in law, is forced out of his job at the Academy.

1938, April 27th: the Finance Authorities launch a persecution against Ferdinand Bloch-Bauer accusing him of tax evasion in several instances in the years between 1927 and 1937.

1938, May 14th: Subsequent confiscation Ferdinand Bloch-Bauer´s property is ordered.

1938, July 15th: Amalie Zuckerkandl files her "asset registration". Her pension – a benefit paid voluntarily by the "Jewish Community" (*Kultusgemeinde*) – is 800 RM a year. Additionally, she declares she is receiving financial support „from friends" amounting to 133.33 RM a month, which – she states - are paid on a voluntary basis and would soon cease to be paid out altogether. This pension is paid by Ferdinand Bloch-Bauer.

Her daughter Mini who has converted to Catholicism at the time of her marriage evades filing an "asset registration" by bribing an official in charge

1938, November: Wilhelm Müller-Hofmann is forced to retire.

1939, January 28th: the agents of the Federal Monuments Authorities, by then "*Zentralstelle für Denkmalschutz*", come to the Bloch-Bauer Palais in Elisabethstrasse to mark those pieces of the collection for which an export permit will not be granted. All of the paintings in Ferdinand Bloch-Bauers house are then listed - and all of them, are numbered *(„gekennzeichnet")* except for four paintings (the two Klimt portraits of Adele Bloch-Bauer, the Kokoschka portrait of Ferdinand Bloch-Bauer and the Klimt "Portait of Amalie Zuckerkandl") as well as a couple of drawings

1939 December 2nd: A notice in Wilhelm Müller-Hofmann´s Gauakt states that he *„is married to a Jewess and considered an outspoken adversary of the movement.*(...)"

1939, February: Wilhelm and Mini Müller-Hofmann´s two sons, Victor and Rudolf Müller-Hofmann are sent into exile to Sweden.

1939: The decrees on the seizure of the Bloch- Bauer collection, Zl. 782/Dsch/39 and 1204/Dsch/39 make no futher mention of the "Portrait of Amalie Zuckerkandl". According to Mini Müller-Hofmann Ferdinand Bloch-Bauer had *„taken care that the painting was given back to us (the Zuckerkandl-Müller-Hofmann family) when already in exile.*"

1939, Fall: Mini Müller- Hofmann writes to her brother Viktor Zuckerkandl about their mother: *"I worry about her as the pension being paid by Ferry is so insecure, every month again one does not know whether the money will arrive. However, we do hope for the best."*

1940, May: The weekly reports of the "Jewish Community" in Vienna (from which Amalie Zuckerkandl had up to this point received her pension) note that *„Frau Professor Zuckerkandl is to be invited and to be questioned whether she receives any State or other form of pension in which case her pension from the Community is to be* cut down...".

1941, June 4th: Mini Müller-Hofmann writes to her brother Viktor at Wellesley College, Massachusetts on the subject of her mother again : *„(..) . What do you say about Ferry's unheard-of behavior („unerhörtem Verhalten")? He has suspended his payments to her although he is supposedly very wealthy and living well. However, we will provide all that is necessary in the meantime and we hope that Heinrich will also make a contribution. Once Nora will be gone, things will get easier. (...)"*

1941, November: Amalie Zuckerkandl is forced to move from her apartment in Grünangergasse where she had lived since 1924 into a an apartment ("*Sammelwohnung*") in the 9th district, Grundlgasse 1/2.

1942: No later than (but possibly already before) **March** Hermine Müller-Hofmann is forced to carry an identity card marked "Jew".

1942, April 9th: Amalie Zuckerkandl and her daughter Nora Stiasny are forced into a train to nowadays Poland on the 17th transport to Izbica. It is assumed that they both perished in Belzec.

1942: Wilhelm Müller-Hofmann sells the „Portrait of Amalie Zuckerkandl" to Vita Künstler, the former assistant of Otto Kallir, who had „aryanised" Otto Kallir's *Neue Galerie* in Grünangergasse for 1600.RM. The *Neue Galerie* in Grünangergasse in the center of Vienna is across the street from the house in which Amalie Zuckerkandl lived.

1942/43: Vita Künstler sells the „Portrait of Amalie Zuckerkandl" to her husband Gustav Künstler for 2000 RM.

1942, September 21st: the *Gaustabsamtsleiter* writes a letter to the Director of the „Central Agency for Jewish Emigration" („*Zentralstelle für Jüdische Auswanderung*") SS Hauptstuf. Pg. Brunner asking him to "evacuate" the Müller-Hofmann couple from their apartment in the Augarten Palais. „Evacuation" - „*Aussiedlung*" - was the codeword for deportation No later than this very September 1942, Wilhelm Müller-Hofmann and his wife seem to go to Bavaria for the rest of the war.

1942/43: A file on the preparation of the Klimt exhibiton in 1943 contains an undated hand-written list (of potential donors to the exhibition?) which lists the name Müller-Hofmann. The name is, for whatever reason, crossed of.
Another – type-written - list in the same file contains insurance values for the paintings on loan. Under the heading of *Neue Galerie* (Dr. Vita Künstler) we find the titles of two paintings: "Portrait of a Lady" ("*Damenbildnis*") and "Waldinneres". The "Portrait of a Lady" is to be insured for 10.000 RM., but is crossed off for it ends up not being exhibited.

1943 March 24th: The Bloch-Bauer file at the "Federal Monuments Office" (then *„Institut für Denkmalpflege"*) is closed: *„The Bloch-Bauer collection has been liquidated in total by the finance authorities."*. A Kokoschka portrait of Ferdinand Bloch-Bauer is the only painting of the entire collection that is exported to its owner's exile in Zurich.

1945, Oct 18th:Wilhelm Müller-Hofmann applies for readmittance into the services of the "Academy of Applied Arts" from his exile in Bavaria.

1945, November 13th: Ferdinand Bloch-Bauer dies in Zurich.

1946, April 8th,, Wilhelm Müller-Hofmann arrives in Vienna to join the Academy again. The couple's apartment is looted, they have lost their furniture and all other property

1947: Erich Führer, Ferdinand Bloch-Bauer´s former lawyer is tried in Vienna. On hundreds of pages of testimony, the "Portrait of Amalie Zuckerkandl" is not even mentioned once.

1945-1948: The "Portrait of Amalie Zuckerkandl" is not mentioned once in the restitution efferts of the bloch-Bauer family.

1948 March/April: The "Portrait of Amalie Zuckerkandl" is shown in an exhibition at the "Acadamy of Fine Arts" in Vienna. The painting ran under the heading of "*Bildnis Frau Z.*", the *Neue Galerie* is listed as owner.

1948, May: Wilhelm Müller-Hofmann applies for an advance on his salary to the Ministry as a loan for the "purpose of reconstruction". The advance of Austrian Shillings 5 100 is granted and to be paid back in twenty monthly installments of ATS 500.-

1948, September 2nd: Wilhelm Müller-Hofmann dies in Vienna. His widow is granted an ATS 538.- pension as of October 1st.

1979, February 17th: Robert Bentley, né Bloch-Bauer, nephew of and heir to Ferdinand Bloch-Bauer writes to an unidentified gentleman by the firt name of "Gustl" to find out what happened to the "Portrait of Amalie Zuckerkandl" that his uncle had bought from Mrs. Zuckerkandl. He wants to know out how the painting came into the property of Müller-Hofmann (whose name he has read in the catalogue raisoné) and who the current owner is.

1986: Hermine Müller-Hofmann answers a letter from Louise Gattin, née Bloch-Bauer, Ferdinand Bloch-Bauer's niece in Canada who has contacted her for the first time in many years.. ." *(...) Mama's portrait is in possession of a certain Dr. Vita Künstler, an art historian who has acquired the painting through Kalir. She called me recently and told me that she has decided to bequeath the paintig to the Austrian Gallery by will. I can live with that.*(..)"

1988: The „Portrait of Amalie Zuckerkandl" is donated to the Austrian Gallery by Vita Künstler under the condition that it remaines in her house for her lifetime.

2000, May: Hermine – called Minnie - Müller-Hofmann dies in Vienna at the age of 98.

2001: Dr. Viktoria Maria – called Vita - Künstler dies in Vienna at the age of 101 years.

The „Portrait of Amalie Zuckerkandl" has been in the Austrian Gallery since.

Legal Opinion

regarding the question of whether, in the period between 1923 and 1948, the Republic of Austria acquired a claim to or ownership of the paintings *Adele Bloch-Bauer I*, *Adele Bloch-Bauer II*, *Apple Tree I*, *Beech Forest (Birch Forest)*, and *Houses in Unterach am Attersee*, and whether, pursuant to § 1 of Austria's Federal Act Regarding the Restitution of Artworks from Austrian Federal Museums and Collections dated 4th December 1998, authority exists to restitute the paintings without remuneration to the heirs of Ferdinand Bloch-Bauer.

Professor Rudolf Welser
Professor of Civil Law and
Chairman of the Institute of Civil Law, University of Vienna

and

Assistant Professor Christian Rabl
Assistant Professor at the
Institute of Civil Law, University of Vienna

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Brief Summary of the Main Conclusions

I. In the period between 1923 and 1948, the Republic of Austria did not acquire a claim to or ownership of the Klimt paintings.

1. Adele Bloch-Bauer's testamentary request to her husband Ferdinand Bloch-Bauer to leave the paintings to the Austrian Gallery after his death constitutes a non-binding wish, and therefore does not constitute the basis for any estate law claims. Even if one assumed there was an intention to establish an obligation, that testamentary order would be ineffective, as it would encroach upon Ferdinand Bloch-Bauer's testamentary freedom. It would only be possible to convert the ineffective testamentary order into a reversionary-heir legacy if the paintings were the property of Adele Bloch-Bauer. A conversion of this kind is impermissible, as it would encroach upon testamentary freedom if the paintings were the property of Ferdinand Bloch-Bauer. Ferdinand Bloch-Bauer 's declaration to the probate court, and the legal presumption pursuant to § 1237 (old version) of the General Civil Code, are indications that the paintings belonged to Ferdinand. Moreover, one cannot infer from Adele Bloch-Bauer's will that she believed the paintings belonged to her.

2. In making his declaration to the probate court that he intended to faithfully fulfill his wife's request, Ferdinand Bloch-Bauer merely non-bindingly held out the prospect of fulfilling that request. In doing so, he did not establish a binding legal obligation with regard to the Austrian Gallery that he would bequeath the paintings. In any case, it would not have been legally feasible to establish a binding obligation of this kind, because not only did Ferdinand Bloch-Bauer have no intention of establishing an obligation to make a donation due upon death, but also the formal requirements were not met. Furthermore, Ferdinand Bloch-Bauer's statement of intent is definitely not an indication that he wished to donate the paintings to the Austrian Gallery during his lifetime. Even if one were to assume he intended to bind himself in this way, the formal

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requirements (a notarial act) were not met, nor was there an actual surrender of the paintings.

3. The sale of *Adele Bloch Bauer I, Adele Bloch Bauer II* and *Apple Tree I* to the Austrian Gallery and of *Beech Forest (Birch Forest)* to the Vienna City Collections by Dr. Führer, the lawyer officially assigned the task of liquidating Ferdinand Bloch-Bauer's assets between 1938 and 1945, cannot be deemed a legal transaction attributable to Ferdinand Bloch-Bauer. The sale neither constituted the basis of nor fulfilled an obligation on the part of Ferdinand Bloch-Bauer.

II. The prerequisites for authorization to restitute the paintings to the heirs of Ferdinand Bloch-Bauer without remuneration pursuant to § 1 of Austria's Federal Act Regarding the Restitution of Artworks from Austrian Federal Museums and Collections dated 4th December 1998 are met.

1. The legal element set forth in § 1 Paragraph 3 of the Restitution Act 1998 is not applicable. Nevertheless, the paintings do fulfill the wording of the legal element regarding restitution set forth in Paragraph 2: As a result of Dr. Führer's transactions, all the paintings were the subject of legal transactions or legal acts as defined in § 1 of the Annulment Act, and after 1945 passed lawfully into the ownership of the Federal Government pursuant to an agreement between Ferdinand Bloch-Bauer's heirs and the Austrian Gallery. However, in light of the legislator's intentions, § 1 Paragraph 2 must be interpreted restrictively, such that it applies only to acquisition from third parties, in particular from authorized dealers or at auctions. Paragraph 2 does not apply to acquisition from parties with a valid claim, because if it did, Paragraph 1 would lose its entire sphere of applicability.

2. The prerequisite for authorization pursuant to § 1 Paragraph 1 of the Restitution Act 1998 is that the artworks were the subject of restitution to their original owners or legal successors upon death and after 8th May 1945 in the course of proceedings arising therefrom passed into the ownership of the Federal Government without remuneration

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pursuant to the federal Law Regarding the Ban on the Export of Objects of Historical, Artistic or Cultural Significance.

Adele Bloch Bauer I, Adele Bloch Bauer II, and *Apple Tree I* were not restituted; instead, Ferdinand Bloch-Bauer's heirs came to an agreement with the Austrian Gallery that the pictures should remain with the Gallery permanently, and that the heirs would not demand that they be restituted. In light of the legislator's intentions, a short-cut procedure of this kind is not a barrier to the applicability of Paragraph 1. The question of whether *Houses in Unterach am Attersee* and *Beech Forest (Birch Forest)* also fulfill that legal element hinges on whether the prerequisite for fulfillment of the legal element "subject of a restitution" as set forth in § 1 Paragraph 1 of the Restitution Act 1998 is that the artworks were first restituted *by the Republic*. If that is not a prerequisite, then those two paintings do fulfill that legal element.

All the paintings were surrendered to the Republic without remuneration as defined in § 1 Paragraph 1, because the Federal Government gave no material quid pro quo, and Ferdinand Bloch-Bauer's heirs were not under any legal obligation. The transfer of ownership was carried out in direct connection with the offer to facilitate the granting of export permits for the remaining artworks. Indeed in her reply to a written parliamentary question about artworks in the possession of the Republic of Austria, the current Minister of Education, Science & Culture stated that there was an evident connection between the relinquishment of the paintings and the granting of an export permit.

3. To sum up: § 1 Paragraph 1 of the Restitution Act 1998 is applicable at least to *Adele Bloch Bauer I, Adele Bloch Bauer II* and *Apple Tree I*. Whether the same is true of *Houses in Unterach am Attersee* and *Beech Forest (Birch Forest)* depends on whether it is irrelevant that after 1945 the paintings were in the possession of Dr. Führer and the City of Vienna respectively rather than the Republic. In light of the practices of the Advisory Council established pursuant to § 3 of the Restitution Act 1998, on balance it is fair to say that § 1 Paragraph 1 is probably applicable to those two paintings as well.

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Facts of the Case and Question Presented

A. Facts of the Case

Maria Altmann has instructed us to provide an opinion regarding the following case:

Adele Bloch-Bauer died in 1925. She was survived by her husband Ferdinand Bloch-Bauer, having designated him her sole heir in her will dated 19th January 1923[1]:

My Last Will:

In sound mind and subject to no outside influence, I make the following will for the event of my death:

I. My husband, Ferdinand Bloch-Bauer, shall be the sole heir to my entire property.

II. If my husband predeceases me, my sole heir shall be my brother-in-law Dr. Gustav Bloch-Bauer or his descendants if he predeceases me.

III. I leave 50,000 Czech crowns to each of the following organizations:

1) the Viennese workers' association Kinderfreunde [Friends of the Children]*; and*

2) the Viennese association Die Bereitschaft [Be Prepared].

As my sole heir, my husband shall bear the cost of these transfers.

As I am convinced that my husband will fulfill these obligations in their entirety, there is no need to guarantee the claims of these two associations. If, in the period leading up to transfer of the two donations, one of the two associations should be liquidated, the

[1] Authors' note: The underlined phrases are underlined in the original.

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payment that is freed up shall pass to the Wiener Rettungs-Gesellschaft [Vienna Rescue Service].

I ask my husband after his death to leave my two portraits and the four landscapes by Gustav Klimt to the Austrian State Gallery in Vienna, and to leave the Vienna and Jungfer, Brezan library, which belongs to me, to the Vienna People's and Workers' Library. I leave it at the discretion of the Vienna People's and Workers' Library to keep the books or to sell them and accept the proceeds as a legacy. No guarantee is required for this legacy.

I ask my husband to divide up my jewelry among our nephews Karl, Robert and Leopold Bloch-Bauer and our nieces Luise and Bettina Bauer after his death[2], as far as possible in equal parts.

IV

If my brother-in-law Dr Gustav Bloch-Bauer or his descendants become my heirs, I obligate him or his descendants immediately after my death to make the following bequests: 50,000 Czech crowns to the Viennese workers' association Kinderfreunde and to the Viennese association Die Bereitschaft respectively; the two portraits and the four landscapes by Gustav Klimt to the Austrian State Gallery in Vienna; and my Vienna and Jungfer, Brezan library to the Vienna People's and Workers' Library.

I have written and signed this will with my own hand.

Adele Bloch-Bauer

Vienna, 19th January 1923

I hereby appoint my brother-in-law Dr Gustav Bloch-Bauer my executor.

In the probate proceedings for Adele Bloch-Bauer, Gustav Bloch-Bauer, "as the party assigned authority to handle the estate and proceedings" (i.e. Ferdinand Bloch-Bauer's

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representative) supplied the property affirmation in lieu of an oath, the verification of the estate, and the testamentary compliance confirmation, via the following declaration:

I hereby provide the testamentary compliance confirmation, as follows:

In Section I of her will dated 19th January 1923, the testatrix designates her husband Mr. Ferdinand Bloch-Bauer her sole heir.

To verify fulfillment thereof, I hereby refer to the statement of inheritance, which was issued unconditionally in his name and for him, relates to the entire estate, and is hereby accepted.

Section II is irrelevant, as Mr. Ferdinand Bloch-Bauer has survived his wife.

In Section III, Paragraph 1, the testatrix gives instructions regarding legacies in favor of

1) the Viennese workers' association Kinderfreunde; and

2) the association Die Bereitschaft.

These associations have received notification from the court regarding the accrual of the legacy.

In Section III, Paragraphs 2 and 3, the testatrix makes various requests to her husband; he promises to faithfully fulfill said requests, though they do not have the binding nature of a testamentary disposition.

It is important to note that the Klimt paintings are not the property of the testatrix, but rather of the testatrix's widower.

The nephews and nieces of the testatrix who are listed in Section III, Paragraph 3, have duly noted the contents of the will.

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[2] Authors' note: At this point, there is a discrepancy between the copy of the original and the transcription that was made available. In the transcription, Luise and Maria-Viktoria, along with Mira and Bettina, are named as the nieces.

Their statement is attached in ./5.

The provisions set forth in Section IV are irrelevant (as are those in Section II).

Verification of implementation of the last instruction, which indicates that I am to be appointed executor, is hereby provided, as I confirm that I have accepted that role. [...]

Originally, the painting *Adele Bloch-Bauer I* may have been intended as a gift to the portraitee's parents (at any rate, Adele Bloch-Bauer indicated this in a letter to Julius Bauer dated 15th October 1903, Austrian National Library, collection of hand-written texts, shelf mark 577/52-1, quoted in *Klimt und die Frauen* [Klimt's Women], Natter/Frodl, page 115). According to Adele Bloch-Bauer's statements in that letter, it was Ferdinand Bloch-Bauer who decided to commission Klimt's services ("my husband then decided to have Klimt paint my portrait..."

In 1936, Ferdinand Bloch-Bauer donated one of the Klimt paintings, *Kammer Castle on Lake Attersee III*, to the Austrian Gallery. The gallery responded in a letter dated 25th November 1936:

Dear Mr. Bloch-Bauer,

In the name of the Austrian Gallery, I would like to extend my warmest and most respectful thanks for your generous gift of the Gustav Klimt oil painting Kammer Castle on Lake Attersee *by way of a dedication from Adele and Ferdinand Bloch-Bauer. A few months ago a landscape in oils by Gustav Klimt, which had been loaned to us by a private owner, had to be returned to the owner, and we have been unable to find an appropriate substitute from among our inventory. So your donation is particularly welcome at the present time, and will go a long way towards completing the Klimt room.*

The rest of the paintings remained in the possession of Ferdinand Bloch-Bauer until 1938. Thus, aside from the case of the painting just mentioned, there are no definite facts regarding agreements between Ferdinand Bloch-Bauer and the Austrian Gallery.

In 1938, Ferdinand Bloch-Bauer fled abroad, leaving his art collection in his apartment in the Elisabethstrasse in Vienna.

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In his absence, a substantial tax penalty was imposed on him, and his art collection was liquidated to pay it. A lawyer, Dr. Führer, was put in charge of managing these assets, and functioned as Ferdinand Bloch-Bauer's representative.

In 1941, Dr. Führer, invoking the will of Adele Bloch-Bauer, handed over *Adele Bloch-Bauer I* and *Apple Tree I* to the Austrian Gallery. In return, the Gallery gave Dr. Führer *Kammer Castle on Lake Attersee III.* The correspondence between Dr. Führer and Dr. Grimschitz regarding this is available (letter from Dr. Führer to Dr. Grimschitz dated 3rd October 1941; response from Dr. Grimschitz to Dr. Führer dated 8th October 1941):

Dr. Führer to Dr. Grimschitz, letter dated 3rd October 1941:

Dear Professor Grimschitz,

With reference to our oral agreement of Tuesday 30th September of last year, I have the honor of informing you that in fulfillment of the will of Mrs. Adele Bloch- Bauer, pursuant to the testamentary provisions I am placing the following paintings at the disposal of the Modern Gallery (until now they have been stored in the apartment of Mr. Ferdinand Bloch-Bauer):

Klimt, Portrait of a Woman *and*

Klimt, Orchard.

You stated that in return you would be willing to hand over to me the painting Summer Landscape *by Klimt that is in your possession.*

Dr. Grimschitz to Dr. Führer, letter dated 8th October 1941:

Dear Dr. Führer,

Many thanks for your letter dated 3rd October, 1941. I will hand over to you the Gustav Klimt oil painting Kammer am Attersee, *which was given to the Modern Gallery by Mr. Bloch-Bauer, and in return will accept from you the two Klimt oil paintings*

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Portrait of a Woman on Gold Background *and* Apple Tree. *I will call you to arrange a good time for the handover. Thank you for all your efforts.*

Dr. Führer then sold *Kammer Castle on Lake Attersee III* to Gustav Ucicky. In 1942, he sold *Beech Forest (Birch Forest)* to the Vienna City Collection, and in 1943 he sold *Adele Bloch-Bauer II* to the Austrian Gallery.

The fate of *Houses in Unterach am Attersee* is somewhat unclear. Dr. Führer may well have kept it. The authorities probably awarded it to him as a "reward" for "liquidating" Ferdinand Bloch-Bauer's art collection. We must assume that its being in the possession of Dr. Führer was based on a legal act of this kind. At any rate, after Dr. Führer was arrested in 1945, *Houses in Unterach am Attersee* passed into the possession of Karl Bloch-Bauer, who initially kept it in safekeeping for the heirs of Ferdinand Bloch-Bauer, until it was subsequently handed over to the Austrian Gallery (see below).

Ferdinand Bloch-Bauer died at the end of 1945. In his will dated 22nd October 1945, there is no reference to the paintings, nor to the instructions of Adele Bloch-Bauer. He designated Louise Baroness Gutmann (half), Maria Altmann and Robert Bentley (one quarter each) his heirs.

Shortly before he died, Ferdinand Bloch-Bauer commissioned the Viennese lawyer Dr. Rinesch to try to bring about the return of his art collection. In a letter dated 28th September 1945, Dr. Rinesch wrote to the director of the Austrian Gallery, Professor Grimschitz, explaining his role as Ferdinand Bloch-Bauer's representative and describing his assigned task:

Although I do not wish to act prematurely with regard to my client's wishes, I have been instructed to first make inquiries regarding the whereabouts of individual items of the collection, so that they can be safeguarded if possible.

I would therefore be grateful if you would first inform me which items are located in national or city galleries in Vienna and which ones have probably been taken to Germany. My main task will be to obtain the aforementioned paintings from the Austrian art inventory with the help of the Allied military authorities.

After Ferdinand Bloch-Bauer's death, Dr. Rinesch functioned as the heirs' representative, though it is unclear whether he actually received power of attorney from all of them or just from Robert Bentley.

In November 1947, Dr. Rinesch requested the return of *Beech Forest (Birch Forest)* and Ferdinand Bloch-Bauer's porcelain collection. This letter is not available, but his request can be reconstructed from the response of Dr. Wagner, director of the Vienna City Collections, dated 3rd December 1947:

Until now we have been unable to respond to your letter dated 18th November 1947 regarding Ferdinand Bloch-Bauer's porcelain collection, because we had to consult our legal department. Now we have received their response, we can inform you that we are prepared to return the Klimt painting Birch Forest *and the Viennese classical porcelain insofar it as it is still present, in return for repayment of the purchase price.*

Dr. Rinesch knew by December 1947 at the latest that three of the Klimt paintings were in the possession of the Austrian Gallery, and that one had been sold to Gustav Ucicky. In a letter to Robert Bentley dated 6th December 1947 (a transcription of part of the letter is available), Dr. Rinesch informs his client about the whereabouts of the paintings and also mentions the Adele Bloch-Bauer will:

I have already requested that the Klimt that was sold to Ucicky be returned.

The Austrian Gallery is in possession of three Klimt paintings, namely two portraits of Adele Bloch-Bauer and one painting entitled Apple Tree.

The Gallery received two of them as a gift, and purchased one (the standing portrait). As is known, Adele Bloch-Bauer bequeathed her Klimts to the museum in her will, but Mr. Ferdinand Bloch-Bauer was entitled to hold onto the paintings during his lifetime. The testator is now deceased, though the museum in any case came into possession of the paintings earlier. The museum is aware of the contents of the aforementioned will. It was informed thereof by Dr. Führer, and correspondence regarding this exists. I believe the museum will assert its claim. How should I proceed? Should I send Adele Bloch-Bauer's will?

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The last sentence of the letter could be construed as an indication that Dr. Rinesch was in possession of (a copy) of the will at this point. In fact, however, Dr. Rinesch was not aware of the contents of the will. It is unambiguously clear from a letter to Robert Bentley dated 26th February 1948 that he was not in possession of the will even at that later time.

"The Austrian Gallery has written to me per Attachment IV). I have also spoken to Grimschitz about it. [...] Unfortunately I am not aware of the wording of the will, but I do still hope to find it in Dr. Führer's files. Who actually dealt with the estate at that time? Naturally it is not my business to arrange for implementation of the will, as the paintings are no longer available to me. One painting is in Ucicky's private possession. If the will is legally valid, I do not wish to be involved in a dispute with the acquirers of these paintings; I will leave that to the museum.

In the meantime in a letter dated 19th January 1948, Dr. Rinesch asked the current director of the Austrian Gallery, Dr. Garzarolli, for a response regarding the three Bloch-Bauer collection Klimt paintings in the Gallery's possession. He asked in particular how Dr. Garzarolli would respond to his clients' restitution claims:

I represent the heirs to the Viennese collector Ferdinand Bloch-Bauer, who died in 1945. His collection included, among other things, three paintings by Gustav Klimt, namely two portraits of Adele Bloch-Bauer and one landscape. Under the Nazis, Mr. Bloch-Bauer's private property was subjected to forced liquidation and handed over to the Austrian Museum by the Bloch-Bauer's lawyer, Dr. Erich Führer. I do not know the exact circumstances of this handover.

I would be grateful if you would inform me how you would respond to my clients' restitution claims.

Dr. Garzarolli then asked the former director of the Austrian Gallery, Dr. Grimschitz, for clarification as to how the paintings had been handed over (letter dated 25th February 1948). From the contents of the letter, it is clear that that the letter must have been

preceded by a conversation, in which Dr. Garzarolli was probably informed about Adele Bloch-Bauer's estate:

Please deliver the promised report concerning Adele Bloch-Bauer's estate, how the individual Klimt paintings were handed over, and the disposal of the outstanding items. Please deliver the report in the next few days, as Dr. Rinesch is very concerned about this matter.

The following day, on 26th February 1948, Dr. Garzarolli responded to Dr. Rinesch's letter of 19th January (a copy is available, though the signature is illegible). However, it is clear from the contents that the author of the letter must have been Dr . Garzarolli:

In response to your letter dated 19th January 1948, I wish to politely inform you that as far as I know Mrs. Adele Bloch-Bauer dedicated six paintings by Klimt to the Austrian Gallery. The husband of the deceased testatrix asked the Austrian Gallery to be allowed to keep the paintings at his home until his death.. As far as I can tell from the files, the family gave a summer landscape by Klimt to the Austrian Gallery. In a letter dated 3rd October 1941, the lawyer Dr. Erich Führer handed over two paintings by Klimt in the home of Mr Ferdinand Bloch-Bauer (a portrait of a woman and a painting of an orchard) to the Austrian Gallery asked for the summer landscape previously held by the Austrian Gallery to be returned and received it. At present the Austrian Gallery still lacks four paintings from the will. I have asked Professor Bruno Grimschitz for a report, which should be delivered shortly. I will send you a copy of this report and will have to ask request that the Ferdinand Bloch-Bauer's heirs be notified regarding the final fulfilment of Mrs. Adele Bloch-Bauer 's will.

On 1st March Dr. Grimschitz sent Garzarolli the report he had requested:

My account of the question of ownership rights to the Klimt paintings that were in the possession of Adele Bloch-Bauer, now deceased, of Elisabethstrasse 18, Vienna I, is as follows: Mrs. Adele Bloch-Bauer was in possession of six paintings by Klimt: Four landscapes (Apple Tree, Beech Forest, Houses in Kammer, Lake Shore with Houses in Kammer) and two portraits (Mrs Bloch-Bauer, seated against a gold background, and

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Mrs. Bloch-Bauer, standing in front of a colored background). I was a guest in their house between 1919 and 1938. Mrs. Bloch-Bauer and, after her death, her husband Mr. Ferdinand Bloch-Bauer, stated orally on many occasions that the six Klimt paintings would be given to the Modern Gallery in Vienna as a bequest from their owner Mrs. Bloch-Bauer. After his wife died, Mr. Bloch-Bauer asked me several times if he could be allowed to keep the paintings in the room of his deceased wife, which had been left unchanged, until the directors of the Gallery required the paintings for exhibition. When the portrait by Oskar Kokoschka was hung in the Klimt room, the Austrian Gallery was able to acquire the artistically weakest of the four landscapes, in fact before 1938. After the annexation of Austria in 1938, the Bloch-Bauer collection was destroyed, and most of the paintings passed into the possession of German private individuals. I contacted the lawyer Dr Führer, who was representing Mr. Ferdinand Bloch-Bauer, who was residing in Zurich, regarding the Klimt paintings, and asked him to relinquish the five paintings. As he was unaware of Mrs. Bloch-Bauer's will, he refused to do so. Nevertheless, I managed to obtain one of the portraits against a gold background and a landscape with apple tree, in exchange for the less characteristic Kammer landscape. As there was no further interest in the Klimt paintings and they were still in the house at Elisabethstrasse 18, I left the situation unchanged. In 1943 I found out from Mr. Gustav Ucicky that he was in the process of buying one landscape from the Bloch-Bauer collection. I then contacted Dr. Führer again and asserted the Austrian Gallery's claims, but without success. In order to obtain the second portrait for the Modern Gallery – as the Gallery did not have a representative portrait from Klimt's later period – I acquired it in spring 1943 for 7,500 Reichsmark. Despite my objections, Dr. Führer sold the rest of the Klimt paintings.

After this, Dr. Garzarolli may well have contacted the *Finanzprokuratur*[3] , although there are no documents available regarding this. At any rate, in an opinion sent to Dr. Garzarolli on 6th March 1948, the *Finanzprokurator* makes reference to Adele Bloch-Bauer's will. He notes that the questionable issue of ownership is in any case irrelevant, because Ferdinand Bloch-Bauer had stated he would faithfully fulfill the request. He also

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notes that the probate court had ordered that the Austrian Gallery be notified about Adele Bloch-Bauer's instructions, but says he believes the notification might not have actually been sent.

In a letter dated 9th March 1948, Dr. Garzarolli responded to Dr. Grimschitz. Garzarolli indicates that the *Finanzprokuratur* and the Inner City District Court have informed him about the estate files regarding the Adele Bloch-Bauer estate. He also complains that in the transactions with Dr. Führer Dr. Grimschitz did not take the estate files into account, and speaks of a "rather dangerous situation":

In the documents in the possession of the Austrian Gallery[4]*, no mention is made of these facts, and there are no statements from a district court, nor are there any notarized statements or even a personal statement from Mr. Ferdinand Bloch-Bauer. In my view you should definitely have sorted this out. I am therefore in a particularly difficult situation, especially as the letter from Dr. Führer dated 3rd October 1941, which mentions the will, creates a situation that is inconsistent with the meaning of the will and your knowledge thereof. I cannot understand why, even during the Nazi period, an existing incontestable bequest in favor of a national institution was not taken into account, by making reference to it or by contacting Mr. Bloch-Bauer, who was already abroad, via his temporary asset manager. Furthermore, there are no references in the files regarding the purchase of the late portrait for 7,500 Reichsmark. Therefore please supply me with the necessary statements, as I have to prepare a report.*

The situation is turning into a sea-snake, because at present the City Collections are holding in safekeeping or in possession of one of the landscapes from the former Bloch-Bauer estate.

It worries me enormously that so far all the circumstances surrounding the restitution issues are very unclear. It will be in your interest to stick closely to me through all this

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[3] Translator's note: Office that represents the Republic of Austria and other parties in civil law matters. US equivalent: Office of the Attorney General.

[4] Authors' note: Garzarolli means Adele Bloch-Bauer's will and Ferdinand Bloch-Bauer's declaration to the probate court.

confusion. That will probably be the best way for us to emerge from this rather dangerous situation.

Dr. Garzarolli then tried to obtain the other paintings mentioned in Adele Bloch-Bauer's will (*Beech Forest, Houses in Unterach am Attersee,* and *Kammer Castle on Lake Attersee*) for the Austrian Gallery. In a letter dated 24th March 1948, he requests the support of the Ministry of Education with regard to the painting in possession of the Vienna City Collections. First, he describes the events up until the point Ferdinand Bloch-Bauer emigrated, drawing on Dr. Grimschitz's account. He then goes on:

After the Anschluss, *Mr. Bloch-Bauer emigrated to Switzerland, and Dr. Führer became his temporary asset manager. In a letter dated 3rd October 1941, Dr. Führer contacted the Austrian Gallery, proposing that "in order to execute Mrs Adele Bloch-Bauer's will" he would exchange a portrait of a woman and an "orchard" painting (*Apple Tree*?) for the painting (*Summer Landscape*) that had been donated earlier. It should have been a straightforward matter for Dr. Grimschitz, who was director at that time, to insist on the handing over of all the Klimt paintings, by presenting the will that was available at any time from the District Court of Vienna I. But instead of directing all his efforts at the Reich governor's office, Dr. Grimschitz agreed to Dr. Führer's proposal, and acquired the second portrait of a woman (portrait of Adele Bloch-Bauer) for 7,500 Reichsmark, from among the four Klimt paintings outstanding. Unfortunately no documentation regarding this purchase is available, nor is there any indication of the funds used for the acquisition [...]*

Dr. Führer simply sold the remaining three paintings. One of them, Beech Forest, was purchased by the directors of the Vienna City Collections. Dr. Wagner, the current director of the City Collections, knows the facts of the case, and I have asked him for a response. He has stated that from his point of view there are no grounds for returning the painting, since he paid for it. So I have now asked him for information regarding available legal remedies pursuant to the Restitution Act. I hope this means we can avoid a lawsuit, which I would find very unpleasant for collegial reasons. Furthermore, I intend to ask the Provincial Court of Vienna I to take evidence from Dr. Führer, so that the

request for a return of the painting can be initiated, based on knowledge of the current owner of the painting.

Dr. Garzarolli presented the situation in much the same way in a letter to the *Finanzprokuratur* dated 1st April 1948. He asked the *Finanzprokuratur* to clarify the situation by questioning Dr. Grimschitz, who was evidently unwilling to provide information. He also stated that *Lake Shore in Kammer* (*Houses in Unterach am Attersee*) had been found to be in the possession of Karl Bloch-Bauer, and, among other things, requested that the *Finanzprokuratur* help him ask Karl Bloch-Bauer for the paintings[5]. He also noted that the Ministry of Education was in the process of initiating a request that the City Collection return *Beech Forest (Birch Forest)*.

The next day (2nd April 1948) Garzarolli sent a letter to the head of the Federal Monument Office, Dr. Otto Demus. In the letter he describes entering Karl Bloch-Bauer's apartment and viewing the paintings from Ferdinand Bloch-Bauer's collection that were there. He provides recommendations as to how to react to any requests for export permits, and also mentions the Klimt paintings:

On 31st March, in the presence of Dr. Balke, I viewed the paintings from what was formerly Mr. Ferdinand Bloch-Bauer's collection that are currently in Mr. Karl Bloch-Bauer's apartment [...]. I noted that they include a series of important Austrian paintings from the first half of the 19th century. The following items are particularly important:

1. Danhauser, Child in Cradle

2. Pettenkofen, After the Battle ...

3. Neder, Soldiers' Scene

4. Ranftl, Child with Dog

5. Nigg, Flowers *(on porcelain)*

6. Fendi, Mother with Children in front of the Madonna

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As No. 1 and No. 2 are very important paintings, please do not issue export permits for them. I have proposed that No.1 be acquired by the Austrian Gallery at a reasonable price, and that Nos. 2, 3 and 5 be exchanged for items of a similar value from the Austrian Gallery's inventory, and that the Albertina Museum be alerted regarding No. 6.

The collection also includes the Klimt painting Lake Shore with Houses in Kammer, *which is due to the Austrian Gallery pursuant to a legacy of Mrs. Adele Bloch-Bauer (who died on 25th January 1925), which was acknowledged by Mr. Ferdinand Bloch-Bauer. This painting was withheld by and obviously misappropriated by the lawyer Dr. Erich Führer. The* Finanzprokuratur, *which represents the interests of the Ministry of Education, has already initiated a request for its return.*

Please do not announce the acquire/trade plan until the Finanzprokuratur *says it is the right moment (we are awaiting notification), i.e. please delay this for tactical reasons.*

On a memo written by Dr. Demus, probably on 3rd April 1948, there is a handwritten note regarding the above letter from Garzarolli. The handwritten note also makes reference to a conversation with Dr. Rinesch, and the cover sheet of the memo indicates that the subject matter is "The Bloch-Bauer Collection". Dr Demus's handwritten notes are not entirely legible (they are available only in the form of a copy; uncertain/illegible items are indicated below):

P.O.[6] *Discussed with Rinesch. The matter must be treated in context, and* [...][7] *the paintings brought back from Munich should be taken into account.*

12 paintings were not seized property, and have now been returned by Dr. Führer.

Inform Dr. Rinesch that if the 12[8] *paintings are assessed separately, it will be necessary to hold on to all of them.*

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[5] Translator's note: Sic. Probably: "painting".
[6] Translator's note: Out-of-context abbreviation. Not translated.
[7] Authors' note: Illegible.
[8] Authors' note:*? K?*

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On 10th April, Dr. Garzarolli sent the *Finanzprokuratur* a letter in which he describes a conversation with Dr. Rinesch held in the presence of Dr. Franz Balke:

Dr. Gustav Rinesch [...], who is the legal representative of Mr. Ferdinand Bloch-Bauer's heirs, just spoke to me about the export of paintings. We also discussed Mrs. Bloch-Bauer's bequest of the six Klimt paintings to the Austrian Gallery. In the presence of Dr. Franz Balke, Dr. Rinesch told me that Mr. Ferdinand Bloch-Bauer's heirs acknowledge the Klimt legacy, and that in the next few days he will send us a written statement regarding this. Dr. Rinesch has also granted the Austrian Gallery a written authorization to take possession of the Klimt painting Lake Shore with Houses in Kammer *which is hanging in Mr. Karl Bloch-Bauer's apartment [...] and which is included in the legacy.*

Dr. Rinesch also told us that in the name of his client he initiated negotiations with Dr. Wagner about three months ago regarding the return of the Klimt painting Birch Forest, *which the Vienna City Collections bought from Dr.Erich Führer for 5,000 Reichsmark. At that time Dr. Wagner said he was willing to hand over the painting in return for repayment of the purchase price, which as far as I know was no longer the case a month ago.*

Dr. Rinesch made it clear he knew that the film producer Gustav Ucicky [...] had bought the last Klimt painting outstanding, Houses in Kammersee, *for 4,000 Reichsmark (I had to ask the Provincial Court of Vienna I that evidence be taken from Dr Führer regarding this painting). Dr. Rinesch said he had asked Mr. Ucicky to return the painting, but that Mr. Ucicky had responded by saying he bought the painting from Dr. Führer, Mr. Bloch-Bauer's legal representative, and thus had no reason to return it. Dr. Rinesch also said he was prepared to testify that Mr. Bloch-Bauer, who emigrated to Switzerland, had been subject to coercion. I therefore ask that you withdraw the restitution action against Mr. Gustav Ucicky relating to Klimt's* Houses in Kammer, *which belongs to the Austrian Gallery.*

On 11th April 1948, in a letter to Robert Bentley, Dr. Rinesch explained that he had visited Karl Bloch-Bauer's apartment and held conversations with Dr. Demus and Dr. Garzarolli:

As the contents of Carl's apartment are now being packed up, the Memorial Office also paid their visit this week. As I anticipated, the officials noticed immediately that among the paintings there were several from the Bloch-Bauer collection. I then received a phone call from Dr. Demus, and George and I went to his office. Dr. Demus explained that he and the Austrian Gallery placed great value on the paintings. He also said it would be difficult to reach agreement regarding the small group of paintings for which we want export permits immediately. In my view, we should file a joint application for all the export permits for the paintings in question, including those currently in Munich. We also discussed the Klimt paintings and Adele Bloch-Bauer's legacy. I think that by resolving this matter we can win the favor of the Memorial Office and the museum, so yesterday I obtained the estate act from the district court.

According to her will dated 19th January 1923, your aunt's legacy of two portraits and four landscapes by Klimt to the Austrian Gallery was in the following form:

[quote from the will]

It is true that this is not in the form of a legacy; nevertheless, the act contains a declaration from your uncle in which he promises to fulfill his wife's request. This doubtless gives the Austrian Gallery a legal claim, just as to a legacy, and it will be necessary to fulfill the terms of the will. You are in any case in agreement (per your letter dated 8th March) that this should happen.

*Yesterday I visited Dr. Garzarolli of the Austrian Gallery. He has already viewed the paintings in Carl's apartment and knows about your aunt's will and your uncle's declaration. I made a declaration that Ferdinand Bloch-Bauer's heirs will fulfill his (your uncle's) wishes, and I am glad to say this was duly noted. According to the declaration I made, the Klimt painting (*Houses on Attersee*) which is in Carl's apartment, and for which in any case no export permit has been requested, will be given to the museum. Per*

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*our agreement, it will be up to the museum to handle the proceedings regarding the return of the painting (*Birch Forest*) in the possession of Vienna City Collections and the one that Ucicky bought from Dr. Führer. The six paintings will be given dedication plates and hung alongside one another in the gallery.*

The museum is already favorably disposed regarding this, so I immediately discussed the question of exporting the other paintings. I have not yet received a definitive commitment, but I agreed to submit a list of all paintings that we want to immediately export, and that they will be exported gradually once they have been brought back here. I will do this immediately, and perhaps some of the things can be sent along with the shipment of Carl's furniture.

On 12th April 1948, in a letter to Dr. Garzarolli, Dr. Rinesch, in the name of Ferdinand Bloch-Bauer's heirs, confirmed the oral agreement to hand over the paintings to the Austrian Gallery:

I hereby confirm the oral agreements that I, the representative of the heirs of the deceased Mr. Ferdinand Bloch-Bauer Robert B. Bentley, Maria Altmann and Luise Gatin [sic], made with you:

The Bloch-Bauer heirs acknowledge the 19th January 1923 will of Mrs Adele Bloch-Bauer, who died in 1925, and the declaration made by Mr. Ferdinand Bloch-Bauer, now deceased, to GZ A II – 14/25 of the Inner City District Court, in which he pledged to fulfill the request of his deceased wife regarding the six Klimt paintings.

*My clients duly note that Adele Bloch-Bauer's will has already partially been fulfilled in that the two portraits (*Portrait of a Woman against Gold Background *and* Portrait of a Woman Standing*) and the painting* Apple Tree *are in the possession of the Austrian Gallery.*

A further painting, Birch Forest, *was sold for 5,000 Reichsmark in November 1942 to the Vienna City Collections by Dr. Erich Führer, Mr. Ferdinand Bloch-Bauer's legal representative. I am currently negotiating with the director of City Collections, Dr. Wagner, regarding its return, and Department 10 notified me in writing on 3rd December*

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1947 that it is prepared to return the painting in return for repayment of the purchase price.

Another Klimt painting, Kammer am Attersee, *was sold by Erich Führer to Mrs. Ingeborg Ucicky for 4,000 Reichsmark in 1942. I have already corresponded with the current owner of the painting, the film producer Gustav Ucicky, of Strudelhofgasse 17, Vienna IX, regarding the return of the painting. Mr. Ucicky invoked the fact that he made a bona fide purchase, and refused to return it.*

Furthermore, as I hold power of attorney for the heirs, I have supplied you with an authorization to take possession of the last Klimt painting contained in the legacy. This is the landscape Houses in Kammer am Attersee. *Please have it picked up from Mr. Karl Bloch-Bauer's apartment (Am Modenapark 10, Vienna III).*

I hereby duly note that you yourselves will handle the proceedings regarding requests for return directed at the City Collections and Mr. Ucicky; insofar as I am able to supply documents from the files regarding the sales, I will do so.

In the name of the heirs, I gratefully note that you will create appropriate dedication plates for the six paintings contained in the Bloch-Bauer legacy. Please also update the heirs on regular basis regarding the implementation and receipt of the legacy (Attention: Mr. Robert B. Bentley, 3924 Pine Crescent, Vancouver, British Columbia, Canada).

On 13th April 1948, Dr. Rinesch, as the legal representative of Ferdinand Bloch-Bauer's heirs, submitted an application for export permits to the Federal Monument Office, for all paintings from the Ferdinand Bloch-Bauer collection that had been obtained, returned or were to be returned. He also mentioned the agreement regarding the Klimt paintings:

It is important to note that the heirs I represent currently have Canadian or American citizenship and live abroad. They do not intend to sell these paintings and artworks, because they are the remains of what was once their uncle Ferdinand Bloch-Bauer's significant collection. Nevertheless, understandably they wish to bring the testator's remaining assets to their place of residence. It is also important to note that much of the

art collection and formerly substantial assets have been irrevocably lost due to Nazi appropriation methods.

Nonetheless, the heirs whom I represent have spontaneously issued a declaration stating that Klimt paintings from the Bloch-Bauer collection, including several top-quality works, should be passed to the Austrian Gallery pursuant to the last wills of Ferdinand and Adele Bloch-Bauer. In light of the Bloch-Bauer family's completely changed situation with regard to assets, this declaration is specifically intended to demonstrate the Bloch-Bauer heirs' interest in Austrian art and Austrian museum holdings. I hope that in return the Federal Monument Office and the public collections involved will apply the provisions of the Memorial Protection Act in an accommodating manner that takes into account the special circumstances surrounding the case.

At the same time, Dr. Rinesch sent Dr. Garzarolli a copy of the application, asking him for his support (letter dated 13th April):

Please find attached a request for an export permit that I sent to the Federal Monument Office in the matter of the Ferdinand Bloch-Bauer collection paintings. I would be grateful if you would reach agreement with Dr. Demus regarding this as soon as possible, and hope you will invite me to participate in another meeting regarding this. I hope you will be able to provide a report that is favorable from my client's point of view. I am relying on your sense of justice.

The matter remained unresolved for a long time. In particular, there were arguments about a painting by Waldmüller and one by Eybl. Initially, export permits for these paintings were not granted.

Dr Rinesch's activities are reflected in a letter dated 5th November 1948 sent to Dr. Benesch, director of the Albertina Museum:

*As the party assigned authority to handle the estate in the matter of Ferdinand Bloch-Bauer's estate, I am aware that, in connection with an application for export permits for artworks, the Federal Monument Office gave you 16 drawings by Gustav Klimt and one watercolor by Fendi (*Mother with Child in front of Holy Family*) for safekeeping. As I*

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am currently negotiating with the Federal Monument Office regarding an export permit for the Bloch-Bauer collection items returned so far, please send a response regarding this to me and to the heads of the Federal Monument Office in the near future. I wish to take this opportunity to explain that that the Bloch-Bauers have already given several Klimt paintings to the Austrian Gallery, including several representative major works, pursuant to Mrs. Adele Bloch-Bauer's will. Having made this very generous bequest, the heirs are justified in anticipating that the authorities will be accommodating with regard to the export of other artworks of considerably less value.

In a notification dated 18th June 1949, the Federal Monument Office turned down the application for export permits. Dr. Rinesch thereupon sent a complaint to the Ministry of Education, on 13th July 1949. His arguments were based on, among other things, the fact that the Klimt paintings had been relinquished:

[...]

To demonstrate their interest in the Austrian public collections, the Bloch-Bauer heirs have very loyally agreed that the four main works by the Austrian painter Gustav Klimt from the Bloch-Bauer collection should be passed to the Austrian Gallery as a legacy. Even though this legacy was in any case already set forth in the will of Ferdinand Bloch-Bauer's wife, who predeceased him, the heirs could easily have prevented fulfillment of the legacy, because in the meantime the testatrix's position in terms of assets had changed catastrophically, and the other prerequisites for the donation were no longer met, due to the events of the Third Reich.

The Austrian Gallery has thus become the owner of these valuable works. They have become of particular artistic significance for Vienna, as many of Klimt's major works were destroyed in the war.

In a letter dated 21st July 1949, Dr. Garzarolli sided with the Bloch-Bauer heirs rather than the Federal Monument Office, stating that they had relinquished the Klimt paintings:

The two paintings in question[9] *were particular favorites of Mr. Ferdinand Bloch-Bauer, now deceased. The heirs therefore attached special value to exporting them*

The Austrian Gallery has now reassessed the issues. In light of the reasons indicated below, we now recommend to the Federal Monument Office (dI) that export permits for the two paintings be granted, by way of an exception.

*Despite various transactions which were carried out during the Nazi period by Mr. Bloch-Bauer's legal representative and which significantly worsened the Austrian Gallery's position, Mr. Ferdinand Bloch-Bauer's heirs immediately acknowledged his declaration – supplied to the District Court of Vienna I for the event of his death – indicating his intention to uphold the desire of his deceased wife to donate five Klimt paintings to the Austrian Gallery. As a result, they have created a situation in which the Austrian Gallery can actually receive this legacy. Furthermore, the lawyer Dr. Gustav Rinesch has already stated that he is prepared to hand over a small painting by August von Pettenkofen (*Scene after the Battle*) pursuant to a declaration from the Bloch-Bauer heirs, in exchange for export permits for the two aforementioned paintings. The small painting is a study for the larger version in the Austrian Gallery.*

In the present Legal Opinion, we also address Minister Gehrer's decision regarding the return of 16 Klimt drawings pursuant to the law mentioned at the beginning. According to Maria Altmann's attorney, E. Randol Schoenberg, restitution was carried out based on the following facts: During the Nazi period, the drawings were in the possession of the lawyer Dr. Führer. After his arrest in 1945, they passed into the possession of Karl Bloch-Bauer, who relinquished them to the Albertina Museum on behalf of Ferdinand Bloch-Bauer's heirs so as to obtain export permits for other artworks. These are the facts on which the present Legal Opinion will be based.

[9] Authors' note: One painting by Waldmüller and one by Eybl.

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B. Question Presented

Starting from these facts, we discuss whether, in the period between 1923 and 1948, the Republic of Austria acquired a claim to or ownership of the paintings *Adele Bloch-Bauer I, Adele Bloch-Bauer II, Apple Tree I, Beech Forest (Birch Forest),* and *Houses in Unterach am Attersee.*

As part of our legal assessment, we also discuss the legal opinion supplied to the Austrian Ministry of Education, Science and Culture by the *Finanzprokuratur* on 10th June 1999.

First, we discuss whether Adele Bloch-Bauer's testamentary "request" was meant to be binding (see A). Next (see B) we discuss whether, assuming the request was meant to be binding, the instructions were effective, based on the assumption the paintings were the property of the testatrix Adele Bloch-Bauer (see B II), or, alternatively, based on the assumption they were the property of the heir Ferdinand Bloch-Bauer (see B III)). We then examine the legal nature of Ferdinand Bloch-Bauer's declaration that he intended to faithfully fulfill his wife's request (see C). We then assess Dr. Führer's actions between 1938 and 1945 (see D). We then determine whether, pursuant to § 1 of Austria's Federal Act Regarding the Restitution of Artworks from Austrian Federal Museums and Collections dated 4th December 1998, authority exists to restitute the paintings to the heirs of Ferdinand Bloch-Bauer without remuneration (see E). At the end we provide a summary of our conclusions (see F).

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Legal Analysis

A. The Legal Nature of Adele Bloch-Bauer's "Request": Non-binding Wish or Binding Instruction?

I. Clarifying the Matter By Interpreting the Will

The legal fate of the disputed Klimt paintings depends primarily on how Adele Bloch-Bauer's "request" to her husband to leave the two portraits and four landscapes to the Austrian Gallery after his death is understood. Is it a non-binding request or a binding instruction? We will clarify this issue by interpreting the will.

II. Principles for Interpreting Wills

When interpreting dispositions on death, the starting point is the **usual meaning** of the words. One then asks whether they correspond to the testator's intention (Supreme Court in *GlU* (*Sammlung von Civilgerichtlichen Entscheidungen des k.u.k. oberste Gerichtshofes*, hg. von Glaser und Unger; [*Civil Law Decisions of the Imperial and Royal Supreme Court*, ed. Glaser and Unger]), 965; Welser in *Rummel, 3rd edition*, Section 7 regarding § 552). The goal is to determine the testator's **true intention** (Welser in *Rummel, 3rd edition*, Section 7 regarding § 552; Koziol/Welser, *Bürgerliches Recht, 11th edition* [*Civil Law*] II, 441; Supreme Court in *NZ* (*Österreichische Notariatszeitung* [*Austrian Notaries' Journal*]) 1997, 365). In order to determine this, all circumstances, particularly the testator's oral and written statements, must be taken into account.

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Nevertheless, the testator's intentions can only be determined if there are **indications in the wording** of the will; this ensures the formal requirements are fulfilled. This is the so-called "indication theory" (see Welser in *Rummel, 3rd edition*, Section 9 regarding § 552; Koziol/Welser, *Bürgerliches Recht, 11th edition,* II, 442 and further references; and Rabl, *Altes Testament – Neues Testament* [*Old Will, New Will*] 19 ff and further references).

The testator's intention *at the time the will was drawn up* serves as the basis for assumptions. Subsequent changes in circumstances must also be borne in mind, if this accords with the testator's (hypothetical) intention. The instructions are then interpreted as the orders the testator would have given had he known about the altered circumstances (this is known as **"hypothetical interpretation"** (see Weiß in *Klang, 2nd edition,* III, 226; Welser in *Rummel, 3rd edition,* Section 8 regarding § 552; and Kralik, *Erbrecht* [*Law of Inheritance*], 125.

These principles are derived from, among other things, § 655 of the Austrian General Civil Code, according to which words "should be interpreted as having their usual meaning, including in the case of legacies; or it must be proved that the testator was accustomed to conveying an idiosyncratic meaning by using certain specific expressions, or that the legacy would otherwise be ineffective." This rule is applied generally, not just in legacy law (Supreme Court in *NZ* 1984, 130; index no. 8 Ob 654/88 in *RIS-Justiz* [the official legal database of the Austrian courts], document no. RS0012348); index no. 6 Ob 1/82 in *RIS-Justiz*, document no. RS0012355).

According to prevailing opinion and court rulings, a binding instruction may also be couched in the form of advice or a **request** if it is determined that the testator **intended a binding instruction**. Thus a legacy in the form of a wish ("request") is feasible provided there are **no doubts** regarding the testator's true intention (Supreme Court in *RZ* (*Richterzeitung* [*Judges' Journal*] 1937, 178; *NZ* 1997, 365). Furthermore, instructions regarding reversionary substitutions (Supreme Court in *GlU* 15.341; *RZ* 1937, 178; *EvBl* 1964/423; *NZ* 1985, 26 and below; see also the rulings in *RIS-Justiz*, document no. RS 0038393) or binding obligations (Supreme Court in *SZ* (*Sammlung der Entscheidungen*

des Obersten Gerichtshofes in Zivilsachen [*Rulings of the Supreme Court in Civil Matters*]) 60/225; *NZ* 1998, 109) may be couched in the form of a request provided they are "clearly expressed" (Supreme Court in *SZ* 60/225; see also *NZ* 1985, 26) in a manner that is **beyond doubt** (Supreme Court in *SZ* 25/85).

III. Applying the Principles to the Present Case

1. Ordinary Use of Language and Specialist Legal Language

The provisions of Adele Bloch-Bauer's will dated 19th January 1923 that are relevant to the legal fate of the Gustav Klimt paintings read as follows:

I leave 50,000 Czech crowns to each of the following organizations:

1) the Viennese workers' association Kinderfreunde; and

2) the Viennese association Die Bereitschaft.

As my sole heir, my husband shall bear the cost of these transfers. As I am convinced that my husband will fulfill these obligations in their entirety, there is no need to guarantee the claims of these two associations. If, in the period leading up to transfer of the two donations, one of the two associations should be liquidated, the payment that is freed up shall pass to the Vienna Rescue Service.

I ask my husband after his death to leave my two portraits and the four landscapes by Gustav Klimt to the Austrian State Gallery in Vienna, and to leave the Vienna and Jungfer, Brezan library, which belongs to me, to the Vienna People's and Workers' Library. I leave it at the discretion of the Vienna People's and Workers' Library to keep the books or to sell them and accept the proceeds as a legacy. No guarantee is required for this legacy.

There is no further information regarding the circumstances in which Adele Bloch-Bauer's will was prepared. Furthermore, aside from the will itself, nothing is indicated

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that would help us determine the testatrix's true intention. Interpretation must therefore focus on the **text of the will**, which must be assessed in the **context** of the rest of the will (see Supreme Court in *NZ* 1933, 157; index nos. 7 Ob 675/85 and 2 Ob 70986, both in *RIS-Justiz*, document no. RS0012365).

According to the *Finanzprokurator*[10], the provision regarding the Klimt paintings is not a non-binding wish, but rather a binding order. He argues that "*this is definitely the case*" (Opinion, page 4, paragraph 2), though subsequently he is not quite so adamant (Opinion, page 4, paragraph 3: "*basically a legacy*"). According to the Opinion, an important argument in favor of this being a binding order is that it is in the immediate context of the instruction regarding the *library*, which the testatrix calls a "*legacy*" in subsequent lines. The Opinion also refers to Section IV of the will, which states that the *substitute heirs* indicated must fulfill a legacy regarding the books and the paintings. The *Finanzprokurator* argues that the differences in formulation are due to the fact that the beneficiaries differ, and due to the different items to which the instructions relate. He argues that the testatrix chose the form of a request for items to which she was *emotionally attached.*

We agree with the *Finanzprokurator* that when interpreting the instructions, their context with respect to other instructions in the will must be taken into account. However, we do not agree with the conclusions that he draws from this.

It is immediately obvious from the text of the will that it is written in relatively precise **legal language**. The choice of words and the will's structure indicate that the testatrix had considerable legal knowledge herself or received expert advice when drawing up the will. The ordinariness of some of formulations reflect the fact that the testatrix introduces her will with a reference to her "*sound mind*" and *lack of* "*outside influence*"; the same is probably true of the term "*sole heir*". But the specialist legal terms used after that definitely suggest specialist legal competence. Section II contains the clearly formulated order regarding substitute inheritance. Sections III and IV competently *differentiate* between situations in which the estate of the deceased passes to *Ferdinand*

[10] Translator's note: See *Finanzprokurator's* Opinion, referred to below as the Opinion.

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Bloch-Bauer (Section III) or to the *substitute heirs* (Section IV). The testatrix twice uses the estate law term "*transfer*" in reference to the donations regarding which she gives instructions. Finally, she states that the *form* of the will, which was written in her own hand, has been *upheld.* Gustav Bloch-Bauer, who was probably the legal adviser, is named the *executor.*

The specialist knowledge on which the will is based is reflected very clearly in the case of the two financial bequests of 50,000 Czech crowns each. The fact that the testatrix **waives a guarantee** of these bequests shows that she or her legal adviser knew that under the law an **official guarantee** is required in the case of **bequests involving a beneficiary** (§ 158 of the Non-Litigious Proceedings Act), and that a testator can waive this guarantee (Ehrenzweig, *System, 2nd edition,* II/2, 561).

2. The Significance of the "Legacy" to the Vienna People's and Workers' Library

The subsequent passages are particularly relevant to us (Section III, Paragraph 2). When reading them, it is important to bear in mind that, as explained above, competent formulations and legal instruments are used. The *Finanzprokurator* rightly points out that the instruction regarding the six paintings is *linguistically directly linked to* the instruction regarding the books. It is also important to note that the testatrix *gave instructions in the same way for both* (the paintings and the books), aside from the person of the beneficiary. It is also true that the term "legacy" is used, and that the "the guarantee is waived" regarding the library. The *Finanzprokurator* concludes from this that a (binding) legacy is present in the case of the paintings (Opinion, page 4) and in the case of the library.

This argument is unconvincing. First, it is important to remember that, from the outset, the wording of the instructions is not unclear or misleading. Adele Bloch-Bauer **asks her to husband to leave** the paintings and the library to specific beneficiaries. In the absence of any other indications, "asking" constitutes a request and is not a binding

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order. The very wording of the testamentary provision suggests that **both wishes are non-binding**.

In the next sentence, in which the testatrix makes further provisions regarding the library, she twice uses the word "**legacy**". It is left at the discretion of the Vienna People's and Workers' Library to hold on to the books, or sell them and accept the proceeds "as a legacy". The guarantee is waived for this legacy too. Adele Bloch-Bauer refers to the fate of the library *after Ferdinand Bloch-Bauer's death*, as her request is to be fulfilled thereafter. She states that the recipient can do as it pleases with the books, which of course **would only be possible if** they were **bequeathed** to it by Ferdinand Bloch-Bauer, or if the **substitute inheritance** and thus the legacy obligations pursuant to Section IV of the will were to apply (see part 3 below). Her statement indicating that in that case the Vienna People's and Workers' Library may sell the books and keep "the proceeds" as a legacy must be meant figuratively, as the proceeds from a bequeathed item are not in themselves a bequest. The testatrix probably merely wanted to say that the Vienna People's and Workers' Library would be free to use the books as it wished and could also sell them. Then *the money* could be seen as "a donation" by her.

It can therefore be argued that Adele Bloch-Bauer wanted the Vienna People's and Workers' Library to receive a "book legacy", but the instructions can be understood ipso jure to mean that the bequest was **not ordered unconditionally** but rather **was dependent upon the request being fulfilled by her husband** (or upon the substitute inheritance applying). This undermines the evidentiary value of the *Finanzprokurator*'s argument.

The testatrix was probably, so to speak, thinking ahead from the previous sentence, and meant: "If my husband **fulfills this request** or **the substitute inheritance applies**, the books should be considered a legacy, and I leave it at the discretion of the Vienna People's and Workers' Library to keep them or to sell them and accept the proceeds "as a legacy"." A binding order on the part of Adele Bloch-Bauer cannot be inferred from her instruction.

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3. Further Evidence that the Request is Non-binding

We must also look closely at the two options for the sole heir (the testatrix's husband; or substitute inheritance). The first option with regard to the donations applies if her *husband* becomes sole heir; the other option applies if the *substitute inheritance* applies. Adele Bloch-Bauer **asks her husband** to **arrange the legacy**; by contrast, she **unconditionally charges the legacy to the substitute heirs** (Section IV: "I obligate him ... immediately after my death to make the following bequests:"). Given that the will was drawn up in a legally competent manner (see above), this differentiation is definitely not accidental: Clearly, no constraints are to be placed on the testatrix's **husband**, who is close to her, and he is to be **free** with regard to arranging the legacies. By contrast, the **substitute heirs**, (Gustav Bloch-Bauer or his descendants if he predeceases her), who are not as close to her, are not meant to have this freedom. They are **unconditionally obligated** to implement a legacy that is due immediately.

In attempting to explain the differing formulations used for the two options (Opinion, page 4), the *Finanzprokurator* argues that they result from "the person of the beneficiary and from the type of item to which the instructions relate". He also states that all the items (money, paintings, books and the jewelry, which we have not mentioned so far) are to be treated equally, namely as a legacy. He is only partly right. It is true that, as we explained above, *the distinction between an instruction regarding a non-binding request regarding a legacy and an immediate order regarding a binding legacy* relates "**to the person**". But it cannot be argued that the words "ask" and "legacy" were chosen based on the type of item. It is very unlikely that, if the testatrix were, "based on the type of item", choosing expressions that were to be equivalent in terms of how binding they were, she would choose expressions with different meanings with regard to binding versus non-binding. Just because a testator has certain feelings regarding a given item, this does not mean he will use a non-binding formulation to indicate a binding order, or vice-versa. In fact if the testatrix had special feelings for particular items, she would have been particularly careful to specify their fate, and would have paid especially close attention to the **meaning of her words**.

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We do not know **why** the testatrix **merely asked** her husband (made a non-binding request) to bequeath the paintings. There may be many reasons for this. One reasonable assumption is that she was working on the **assumption that the property belonged to Ferdinand Bloch-Bauer** (see B. II and IV), and therefore felt she could only make a non-binding request to him. At any rate, the testatrix uses the word "ask" with regard to "the library which belongs to me" too. One must therefore assume that, at least with regard to that item, she wanted to give her husband the freedom to handle her things at his own discretion. This may have been because she wanted to give him the option of deciding based on **subsequent developments** that were not foreseeable at the time.

4. The Interpretation Rule Pursuant to § 614 of the General Civil Code Applies By Way of Analogy

Our remarks so far constitute a fairly strong argument in favor of Adele Bloch-Bauer's "request" being non-binding. Those who disagree must concede that the question of whether or not the "request" is binding is at least **doubtful**. In doubtful cases, **§ 614 of the General Civil Code** applies, and it should be **applied by way of analogy** to the present case. According to that provision, a reversionary substitution cannot be presumed, and doubtful expressions cannot be interpreted as substitution orders (Supreme Court in *GlU* 1179; *SZ* 25/85; NZ 1985, 26; Welser in *Rummel*[3], Section 3 regarding § 614). This also means that **in doubtful cases** a testamentary provision via which the testator enjoins the heir upon his death to **surrender** to a third party an item bequeathed to him by the testator should not be deemed a binding reversionary substitution, but rather should be considered **non-binding** (Supreme Court in *GlU* 1179; *SZ* 25/85; NZ 1985, 26; Welser in *Rummel, 3rd edition,* Section 3 regarding § 614; Eccher in *Schwimann, 2nd edition,* Section 1 regarding § 604). The rule regarding doubt set forth in § 614 of the General Civil Code actually applies to the assets of the testator. So it must apply **all the more so** if the testator instructs the heir upon his death **to bequeath an item of his own property (property that belongs to the heir) to a third party**, because in doubtful cases the heir cannot be subject to a stronger obligation in the case of his own items of property than in

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the case of the testator's items of property (see B. III regarding whether an instruction of this kind can be issued at all). Thus in doubtful cases a testamentary provision of this kind is non-binding.

Therefore in doubtful cases it must be assumed that the testator simply expressed a wish, regardless of whom the disputed items belonged to when the will was drawn up.

IV. Summary

1. In situations involving *ordinary use of language*, the word "ask" constitutes a *non-binding request*. This should be the meaning ascribed to it, unless it can be convincingly demonstrated that the testator's intention was to give a binding order. That cannot be proven in the present case.

2. There are several indications that the meaning of the terms used in the instructions was quite clear to the testatrix. It is true that she intended her request to cover the library as well as the Klimt paintings, and that she left it up to the beneficiary of the books – the Vienna People's and Workers' Library – to keep them or sell them and accept the proceeds "as a legacy". However, one cannot in any way infer that the "request" was of a binding nature, because her granting permission for selling and designating the proceeds a "legacy" could ipso jure *only apply if Ferdinand Bloch-Bauer were to meet the non-binding request to implement the legacy*, or if the substitute inheritance were to apply.

3. If it is argued that there is still doubt as to whether the "request" is binding or non-binding, § 614 of the General Civil Code can be applied by way of analogy. According to this provision, if, in a doubtful case, it cannot be assumed that the testator intended to obligate the heir to pass on the bequeathed assets, then in doubtful cases it is even less reasonable to assume that the testator intended to bindingly obligate the heir to pass on items of his own (the heir's) property to a third party (upon his death). Therefore in doubtful cases it must be assumed that the testator simply expressed a wish, regardless of whom the disputed items belonged to when the will was drawn up.

Adele Bloch-Bauer's "request" is therefore non-binding.

B. Adele Bloch-Bauer's "Request" as a Binding Order

I. A Legacy of the Testatrix, or a Testamentary Order Directed at the Heir?

If one argues that Adele Bloch-Bauer's "request" constitutes a non-binding wish and not a binding order (see A. IV), her request does not give rise to **a right** or an obligation. That means no beneficiary, including the Austrian Gallery (the Republic of Austria), can derive claims from it. However, if one argues that Adele Bloch-Bauer "bindingly enjoined" her husband to make the donation, additional questions arise, namely: How should the binding nature of the "request" be categorized from an estate law standpoint, and what is the legal nature of the order?

To answer this, the wording of the instructions must be one's starting point, as that is the only available starting point. By contrast with Section III, Paragraph 2 ("I leave"), in Section III Paragraph 2 the testatrix **does not bequeath the paintings herself**, but rather **asks her husband to bequeath** the paintings to the Austrian Gallery after his death. Based on the assumption that she intended to establish an obligation, this constitutes an order (a "charge") as defined in § 709 of the General Civil Code or, more precisely, a **testamentary order** to Ferdinand Bloch-Bauer.

Testamentary orders **infringe the principle of testamentary freedom** and are therefore **invalid**.

The term "testamentary freedom" denotes a testator's right to dispose freely of his assets upon death. That freedom is mandatory and is not at the disposal of a third party or of the testator himself. The Supreme Court has already ruled several times that even a testator's promise to include somebody in his will is invalid (Supreme Court in *SZ* 49/136; *Arb* [Journal of Labor Law Rulings] 9925; see also *SZ* 36/30).

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Nevertheless, under the General Civil Code there is an exception to the non-permissibility of binding assurances regarding inheritances – namely in the case of *contracts of inheritance* (§§ 1249 ff of the General Civil Code), which are only feasible between spouses. By analogy, *contracts of legacy* are permitted between spouses, though they are not covered in the General Civil Code (see Welser in *Rummel, 3rd edition,* Section 2 regarding § 552 and further references, and Petrasch in *Rummel, 3rd edition,* Section 2 regarding § 1249 and further references). In general, a binding obligation to give an item upon death is permitted provided it is in the form of a *donation due upon death.* These are subject to very strict formal requirements (§ 952 Section 2 of the General Civil Code, in conjunction with § 1 Section 1 lit d of the Law Regarding Notarial Acts [*NotAktsG*]). However, even the **permitted** cases of the aforementioned kind **are not allowed to** involve establishing an **obligation to make a testamentary disposition at a later date.** Instead, the transaction in question is carried out immediately upon death. By contrast with a last will, it is irrevocable, which to some extent infringes testamentary freedom. It is important to make a distinction between contracts against payment (inter vivos) **which do not constitute grounds for any estate law claims** but rather are only effective in the event of death, and obligations to bequeath somebody something upon death. The former are permitted without any limitations (see Petrasch in *Rummel, 3rd edition*, Section 2 regarding § 1249 and further references regarding court rulings), but are not relevant to the present case.

Unilateral legal transactions via which the testator does not make an immediate testamentary disposition, but rather commits to dispose in a particular way in the future, are therefore invalid, as they encroach upon testamentary freedom. This makes it **all the more non-permissible for the testator to obligate a third party** to dispose in a particular way upon death. This is also true if the party is the testator's heir.

The invalidity of obligations of this kind is confirmed by various individual provisions of the General Civil Code. Pursuant to § 610 of the General Civil Code, a **testamentary prohibition** imposed on the heir by the testator is per se **impermissible.** It may be **converted** into a reversionary substitution in favor of the designated party's legal heirs only insofar as it involves **the testator's assets.** The Supreme Court has ruled

(Supreme Court, index no. 2 Ob 382/97, in *RIS-Justiz*, document no. E48734) that a "straightforward testamentary prohibition" that does not serve to pass on assets of the testator should be deemed legally prohibited, as it encroaches upon testamentary freedom pursuant to § 878 of the General Civil Code.

Prevailing opinion treats **testamentary orders** (i.e. a testator's legally binding orders to the heir to dispose in a particular way upon death) in the same way as testamentary prohibitions: They are invalid, as they encroach upon testamentary freedom.

The only **exception** to the invalidity of testamentary orders is if the order can be **converted** into another order (the invalid instruction is converted into a valid one) by applying § 610 of the General Civil Code by way of analogy. The question of whether the testamentary order refers to an item that was (originally) **the testator's own property** or to **property of the heir** is an important factor in determining whether a conversion of this kind is feasible.

The question of whether the Klimt paintings originally belonged to Adele Bloch-Bauer or to her husband Ferdinand Bloch-Bauer is disputed. We will therefore now discuss two alternative scenarios (see II and III). We will then discuss whether the will itself contains indications regarding ownership (see IV).

II. Property of Adele Bloch-Bauer

The question of whether Adele Bloch-Bauer's **testamentary order** to her husband is effective can be answered most easily if one assumes the paintings belonged to her. A testator's testamentary orders that refer to assets originating from the testator himself can be **converted into reversionary substitutions** (reversionary-heir legacies) in favor of the beneficiary stipulated in the testamentary order by applying § 610 of the General Civil Code by way of analogy (Supreme Court in *NZ* 1974, 73; *EvBl* 1961/38; *EvBl* 1988/117; *NZ* 1990, 151; Welser in *Rummel, 3rd edition*, Section 1 regarding § 610; Kralik, *Erbrecht* 200; Eccher in *Schwimann, 2nd edition*, Section 1 regarding § 610; and in the older literature: Zeiller, *Commentar II* [*Commentary II*] 507). The testamentary orders are

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treated as instructions from the testator himself that are not directed at the heir (the charged party), but rather relate directly to the item in question (which belongs to the testator). The primary designated party receives the assets – the property in question – as prior heir or prior legatee, and the secondary designated party receives it as reversionary heir or reversionary legatee (Supreme Court in *NZ* 1974, 73; *EvBl* 1961/38; *EvBl* 1988/117; *NZ* 1990, 151; Welser in *Rummel*[3], Section 1 regarding § 610; Kralik, *Erbrecht* 200; Eccher in *Schwimann, 2nd edition*, Section 1 regarding § 610). An instruction stating that the heir should receive all the assets and should "forward" only a specific asset to the secondary designated party ("reversionary-heir legacy") is also deemed permitted.

The constraint – namely that the assets to which the obligation relates must originate from the testator – has been pointed out repeatedly (Welser, *Das Legat einer fremden Sache* [*Bequeathing the Property of Another Party*], *NZ* 1994, 203; Koziol/Welser, *Bürgerliches Recht, 11th edition*, II, 464; B. Jud, notes regarding *NZ* 1998, 146; Kletecka, *Das Nachlegat der Sache des Erben* [*Reversionary Bequests of Property of the Heir*) *NZ* 1999, 68). A reversionary substitution obligation relating to **assets of the heir is impermissible**. This is covered by § 609 of the General Civil Code, and definitely not as an exception, but rather explicitly with regard to the relationship between parents and children. **§ 652 of the General Civil Code extends these principles**, which primarily apply to the law of inheritance, **to legacy law**.

Thus if Adele Bloch-Bauer actually was the owner of the paintings, then the *Finanzprokurator*'s arguments on page five of his Opinion, where he states that a reversionary-heir legacy is involved, are accurate.

III. Property of Ferdinand Bloch-Bauer

It is questionable whether testamentary orders that are invalid per se may be converted if they refer to property of the heir. Under Austrian law, **a legacy of the testator** that relates to an item of property of the heir, is **valid** per se. Thus the *Finanzprokurator*'s opinion can be used to try to *convert the testamentary order to*

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Ferdinand Bloch-Bauer into a legacy of Adele Bloch-Bauer. However, this would have to involve a legacy that (atypically) was due not upon her death, but rather upon her husband's death, i.e. the death of the legacy debtor. We discuss this in a greater detail below. From a legal standpoint it is definitely one of the most problematic aspects of this case.

1. The *Finanzprokurator's* Arguments

According to the *Finanzprokurator*, Adele Bloch-Bauer's "request" should be considered **a legacy instruction by the testatrix**, i.e. as a legacy of Adele Bloch-Bauer herself. He argues that the paintings being the property of the sole heir, Ferdinand Bloch-Bauer, does not detract from the legacy's validity, because, pursuant to § 662 of the General Civil Code, they were not the property of another party as such. He also points out that the legacy was subject to postponement until the death of the heir Ferdinand Bloch-Bauer, i.e. was subject to a time restriction. On page 6 of his Opinion, he rejects the view of Welser (*NZ* 1994, 197), who states that a legacy that is not paid until the heir's death is ineffective because it encroaches upon testamentary freedom. Furthermore, the *Finanzprokurator* argues that the charged heir's rights were not infringed, because in any case his "approval" would be required as part of his acceptance of the legacy. He also states that it is of key significance that the Supreme Court's view, in *NZ* 1998, 146 = *SZ* 70/102, differed from that of Welser.

2. Response

To get a better understanding of this, we must first take a closer look at the contents of § 662 of the General Civil Code (bequeathing the property of another party). After that, we will examine whether, per the *Finanzprokurator*'s arguments, § 662 of the General Civil Code can really be used to "restructure" the impermissible testamentary order of the testatrix Adele Bloch-Bauer.

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a) Bequest of an Item of Property of Another Party Pursuant to § 662 of the General Civil Code

Pursuant to § 662 Section 1 of the General Civil Code, a bequest of property of another party that belongs neither to the testator, nor to the heir or legatee who is to pass them to a third party, is ineffective. It is undisputed that this provision only refers to specific legacies (see only Welser in *Rummel, 3rd edition*, Section 1 regarding § 662). Nonetheless, so-called "demonstrative legacies" (§ 662, final section, General Civil Code) are effective. But in the absence of explicit instructions, it cannot be assumed that the testator intended to charge the heir (or main legatee) with the task of procuring an item of property of another party for the legatee (sub-legatee).

Surprisingly, Austrian law treats **property that belongs to the heir** as equivalent to property of the testator. This is surprising insofar as such property is no more part of the estate than a third party's property: Surrendering it to a legatee constitutes the same sacrifice of assets for the charged party as it would be if he had to procure property. The *German Civil Code* is more logically consistent in that it considers property of the charged party "property of another party" (see Otte in *Staudinger, 13th edition*, Section 5 regarding § 2169 of the German Civil Code. The *Swiss Civil Code* (Article 484, Section 3) takes a similar position. The fact that the Austrian General Civil Code takes the opposite view may well go back to Prussian General Common Law (Part I, 12th Main Section, § 374). Adequate reasons for this have never been given, even in the minutes of the Legislative Commission during whose sessions *Zeiller* proposed the current version of § 662 of the General Civil Code (see also Ofner, *Urentwurf und Beratungsprotokolle* [*Original Draft and Minutes of Deliberation*] I 396 f)).

At any rate, it is especially doubtful whether the bequest of an item of the heir's property is effective if the testator **erroneously believed** it was *his own property* (per page five of the Opinion). After all, a testator who believed a bequeathed item of property belonged to him would be unlikely to draw up the same legacy if he knew it belonged to

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his heir. Given that he was aware of the facts and the legal situation, he would probably be surprised to find his legacy was effective. In this respect the legal regulation is neither appropriate nor in accordance with the wishes of a typical testator. Nonetheless, so far the literature has not tried to "tone down" § 662 of the General Civil Code by analyzing it. In fact the prevailing opinion is that the **error** on the part of the testator is not an obstacle to the applicability of § 662 of the General Civil Code, which means the bequest of the item of the heir's property is effective if the testator believed it was his own property (Unger, *Erbrecht, 4th edition* [*Law of Inheritance*], 289; Pfaff, Hofmann, *Commentar* [*Commentary*] II/1, 435 and 397, who consider this rule "doubtful in legislative terms"; Ehrenzweig, *System, 2nd edition,* II/2, 547 FN 9; *Rappaport* in *Klang, 1st edition*, II/1, 662; Kralik, *Erbrecht* 223 FN 5; Welser in *Rummel, 3rd edition*, Section 2 regarding § 662; Welser, *NZ* 1994, 198).

Pursuant to § 572 of the General Civil Code the heir can **contest** an order that was drawn up based on an error of this kind (Welser in *Rummel, 3rd edition*, Section 2 regarding § 662; Kralik, *Erbrecht* 223 FN 5). The right to contest is subject to the statute of limitations; the period of limitation is three years (§ 1487 of the General Civil Code) and begins when the will is announced. The statute of limitations is not upheld ex officio (§ 1501 of the General Civil Code), but rather must be actively pleaded (in the present case by the Republic of Austria) (Koziol/Welser, *Bürgerliches Recht, 11th edition*, II, 205).

There are no particular rules regarding the **due date** of a bequest of an item of the heir's property. § 685 of the General Civil Code is applicable, pursuant to which bequests of certain items of an estate are due immediately after death, while others are not due until one year later. However, § 685 of the General Civil Code is not imperative in nature, and can be overridden if the testator intended some other arrangement (see only Welser in *Rummel, 3rd edition*, Section 1 regarding § 685). Hence the testator may specify when the legatee may demand the bequest. This does not have to be defined as a calendar date, and thus may be specified in other ways. Nevertheless, it is disputed whether the due date can be specified as the date of death of the charged heir. We discuss this below.

b) Bequest of an Item of the Heir's Property Due Upon the Heir's Death

As noted above, the *Finanzprokurator* attempts to circumvent the invalidity of the testamentary order by assuming, contrary to the clear wording of the will ("I ask... to leave"), that a **legacy of the testatrix herself** that refers to items of property of the heir is involved, **rather than an order of the testatrix to her husband Ferdinand**. He would have done better to have asked whether the testamentary order may be "converted" into a legacy of this kind.

At any rate, our immediate concern is the question of the **due date** of the legacy. The due date is not after the testatrix's death, as would normally be the case, but rather after the heir's death. The *Finanzprokurator* argues that this due date is feasible (page 7 of the Opinion) by invoking the Supreme Court in *NZ* 1998, 146 = *SZ* 70/102. We disagree with him. The legacy of a **testator** that is **not due until the death of another testator** and must be paid for from his available assets **is not a legacy of the first testator**. At best, it might be considered a legacy of the second testator, though it would not be feasible to obligate him to implement it, as this would encroach upon his testamentary freedom. Taking the *Finanzprokurator* 's position would mean completely eliminating all testamentary freedom of a testator who was initially mentioned in the will of a first testator. If it were feasible for a testator to dispose of all his heir's property, such that upon the heir's death it passed to persons specified by the testator, *the heir would no longer be able to dispose of his assets upon death*, if the testator wished it so. That would be equivalent to making testamentary orders permissible.

If it is impermissible for a testator to draw up a legacy that refers to the heir's assets and has a due date on the date of the heir's death, then **one cannot render an explicit testamentary order effective by converting it into a legacy of the testator** himself that is due upon the heir's death. Thus both types of instruction are ineffective.

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This cannot be toned down by arguing that the heir need not accept the inheritance (see Opinion, page 6 and Eccher in *Schwimann, 2nd edition*, Section 1 regarding § 652 concerning charged legatees). After all, the goal is not to make the heir's skilful maneuvering a viable method for avoiding nonsensical results under the law; the goal is to ensure that nonsensical instructions are not incorporated into law. The conversion of a testamentary order relating to the heir's assets into a legacy of the testator having a time limit (the death of the heir) is just such a nonsensical conclusion, and must not be read into § 662 of the General Civil Code, as it would give rise to tortuous contradictions in interpretation, as Kletecka (*NZ* 1999, 66) has rightly argued. It is important to observe the distinction that it is **impermissible** (pursuant to § 609 of the General Civil Code) for the testator to instruct his heir (with regard to the latter's assets) **to designate an heir,** while supposedly it is **permitted** for the testator to obligate the heir after his death to **leave** one or more items of property – which may constitute his entire assets – to somebody **as a legacy**. Unless this distinction is observed, all that is left of testamentary freedom is a "nudum ius", i.e. the formal option of drawing up one's own will (see Kletecka, *NZ* 1999, 68).

The argument that a legacy having a time limit (the death of the heir) is unobjectionable, on the grounds that the heir has consented to it by supplying a declaration of inheritance, overlooks an important fact: One cannot even obligate oneself to dispose on death in a particular way. Therefore it is even less feasible for it to be binding if somebody "implicitly" consents to dispose in a particular way, by taking possession of the estate.

The *Finanzprokurator*'s argument that the charged party may disclaim his status as beneficiary, and thus disclaim the charge too, would be even less convincing in an instance where a main legatee charged with a legacy was, as the sub-legatee, supposed to hand over his own property. This is because there would be no formal acceptance or relinquishment regarding the legacy.

Elsewhere (Welser, *NZ* 1994, 203 ff) it has been demonstrated conclusively that an instruction to the heir to surrender an item of his property upon his death is invalid. This

view has been confirmed several times in the literature (Koziol/Welser, *Bürgerliches Recht, 11th edition*, II 464; B. Jud, Note regarding Supreme Court in *NZ* 1998, 146; Kletecka, *NZ* 1999, 66). The only opposing view in the literature is that of Eccher (in *Schwimann, 2nd edition*, Section 4 regarding § 650).

The following aspect of the *Finanzprokurator*'s arguments is also unconvincing: He remarks that a legacy of an item of the charged party's property due upon the testator's death seems inconsistent with the principle of freedom of ownership (which is as important as testamentary freedom), yet then states that under the law this is not an obstacle to the applicability of § 662 of the General Civil Code. Our response to this is: Pursuant to § 609 of the General Civil Code, **a person may not make stipulations regarding another party's available assets at death**, even though a variety of contract law and property law charges on another party's assets (i.e. on ownership) are permitted. Under private law, there are all kinds of constraints on ownership. In fact under civil law the principle of unlimited freedom of ownership does not exist. Thus an owner can basically consent to charges on his property in the favor of a third party, but cannot commit to disposing of his estate in a specific way, even explicitly. It is even less feasible for an obligation of this kind to be incurred "tacitly" by accepting an inheritance. The fact that constraints on ownership are permitted cannot be used to argue that constraints on testamentary freedom are permitted, and § 662 of the General Civil Code must not be interpreted in that way.

The *Finanzprokurator* very misleadingly states that "none of the *current commentaries*" disputes that a legacy of an item of the heir's property having a time limit (the death of the heir) is feasible (Opinion, page 6). Of the five "current commentators" named by the *Finanzprokurator* (Weiß, Welser, Kralik, Ehrenzweig, and Koziol/Welser), **three** (Weiß, Kralik, and Ehrenzweig) make **absolutely no mention** of the issue of legacies having a time limit (the death of the heir). Of the commentators who address this issue (Welser in *NZ* 1994, 203 ff, and Welser in *Rummel*, Koziol/Welser; Jud; Kletecka; and Eccher), only Eccher deems legacies having a time limit (the death of the heir) feasible; **none of the other commentators** deems them feasible.

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The *Finanzprokurator*'s remark that court rulings have contradicted Welser's "academic opinion" is also inaccurate. He considers this to be "of decisive importance" (page 6) and tries to prove it by invoking the Supreme Court's decision in *NZ* 1998, 146 (= SZ 70/102). However, that ruling *did not reject* Welser's position, namely his essay in *NZ* 1994, 203 ff; but rather simply **overlooked** it. It is true that, in an obiter dictum, the ruling in *NZ* 1998, 146 deems it feasible to obligate a legatee to surrender an item of his own property upon his death (see B. Jud, *NZ* 1998, 146 for a critical opinion regarding this). But that completely ignores the question of encroachment upon the heir's testamentary freedom, and does not accord with the law, as we have already stated.

The *Finanzprokurator*'s argument that *NZ* 1998, 146 (= *SZ* 70/102) involves "*an instruction that is entirely comparable*" to the present subject-matter (Opinion, page 7) is inaccurate. The testatrix's instruction in that case reads: "2. I also **make the following bequests**: a) To my wife Maria A. I bequeath the half of the house in NT. that belongs to me (...), subject to the charge that a reversionary legacy for the half that belongs to her and the inherited half, i.e. the entire property (...), shall apply to our granddaughter Gerda L. with regard to said property (...)." The testatrix Adele Bloch-Bauer "**asks her husband to bequeath**" and thus issues a *testamentary order*. By contrast, the testator in *NZ* 1998, 146 **gave instructions regarding a reversionary-heir legacy** himself, insofar as it related to his own half of the property. This is clear from his use of the expression "reversionary legacy". A **reversionary legacy** is a legacy **of the testator himself** and not a legacy of a (charged) heir. Because the testator disposed of both halves of the property in the same way ("reversionary legacy"), it must be assumed that he viewed himself *as the party* who was giving instructions regarding a legacy, for his wife's half of the house too. Thus the case in *NZ* 1998, 146 (= *SZ* 70/102) involves a legacy of the testator himself, while Adele Bloch-Bauer's will involves a testamentary order of the testatrix.

The *Finanzprokurator* fails to mention another ruling, namely *NZ* 1999, 91. In that case, the later testator surrendered an item of real estate to his wife via a mixed inter vivos gift. The wife committed to *surrender* the real estate to one of the joint children of her choice either *during her lifetime* or *as a bequeathed inheritance*. To protect the interests of the future acquirer, an agreement prohibiting sale or charges was drawn up.

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The testator subsequently drew up a will in which he ordered that after his wife's death a **specific daughter** should receive the real estate. However, after the testator's death, the wife gave the real estate to a different daughter. After the death of the testator's wife, the daughter named in the testator's will sued her sister for surrender of the real estate.

Initially, the Supreme Court argued that its ruling applied the regulations regarding reversionary substitutions by way of analogy to ownership succession rights established during the lifetimes of the parties in question (see Supreme Court in *NZ* 1999, 91; see also, for example, *SZ* 51/65, and further references in Welser in *Rummel, 3rd edition,* Section 5 regarding § 608). Disputably in our view, the Supreme Court also argued that *despite the binding nature of the agreement, the testator was able to eliminate his wife's right to choose* by specifying the beneficiary himself, provided the wife had not yet exercised that right (Kletecka is rightly critical of this view; see *NZ* 1999, 66 f). The Supreme Court therefore argued that the testator's legacy in favor of the plaintiff was valid. The Supreme Court then asked whether the receipt of the benefit was ineffective on grounds of encroachment upon testamentary freedom. **The Supreme Court then abstained from commenting on this issue,** according to Welser in *NZ* 1994, 197 ff. It stated that the question of whether Welser's remarks were accurate should remain unresolved, because the case had to be decided one way or another immediately. It stated that this was due to the particular nature of the subject matter, as the wife had been free to decide when she wanted to surrender the real estate. It argued that she had not been obliged to wait until her death, but rather could equally have transferred the real estate *inter vivos*. It also argued that the plaintiff's legacy had accrued upon the testator's death, with a shifted due date. Thus, the Supreme Court argued, there was no encroachment upon testamentary freedom.

Kletecka (*NZ* 1999, 66 f) was rightly critical of this decision. As he rightly pointed out, the question of encroachment upon testamentary freedom does not revolve around interpretations regarding accrual or the due date. The **decisive issue** was whether the charged party (his heirs) had to **surrender** the property **after his death**, as the legacy debtor. Kletecka also argued that the fact that the charged party was free to surrender the

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property earlier, i.e. inter vivos, did not preclude encroachment upon testamentary freedom (Kletecka (*NZ* 1999, 67)).

The only way to justify the aforementioned ruling is by citing other, somewhat complicated grounds. These grounds, which we also find dubious, are based on the Supreme Court's assumption that the testator was entitled to subsequently render concrete his wife's right to choose per the agreement. It is then possible to infer that the right of the sister who was the testator's beneficiary was an *ownership succession right arising from the agreement* between the testator and his wife (see Supreme Court in *NZ* 2001, 190). The resulting charge upon the wife could then be deemed to relate to property of the testator, because at the time the agreement was drawn up he was the owner of the real estate, and from the outset the wife would have acquired that charge along with the property. Then the regulations regarding reversionary substitutions could be applied by way of analogy, so that the daughter who was the beneficiary would be viewed as the reversionary legatee and recipient of an *item of the testator's property after the wife* (the primary beneficiary).

By contrast, the Supreme Court's decision in *GlUNF*[11] 1179 is completely correct. In that case, the testatrix had free ownership of two houses to the tune of a given percentage; with regard to another percentage her ownership was charged with a reversionary substitution in the favor of her two daughters; and a third percentage was co-owned by the daughters. In her will, the testatrix designated the daughters the heirs, and stated in the following words: "I also desire that *after the deaths* of my daughters houses Y and X shall pass to impoverished actors and business people of a foundation that bears our name." The Supreme Court rightly deemed that the will contained only a non-binding wish regarding the fate of the "houses as a whole"; it also noted that the testatrix "*did not have right of disposition* with regard to the shares of the houses al*ready owned by her daughters at the time the will was drawn up*, nor with regard to shares which *were to pass to them* after their mother's death by way of substitution assets." We share this view.

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[11] Translator's note: This journal (edited by Pfaff, Schey et al. under the title *Neuer Folge* [*New Series*]) is the continuation of *Civil Law Decisions of the Imperial and Royal Supreme Court*, edited by Glaser and Unger].

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To sum up: The court rulings regarding this matter are unclear and ambiguous. The Supreme Court will probably have to reassess the question of binding an heir via a testator's instructions that are to be effective upon the heir's death and relate to the heir's own assets.

IV. Indications in Adele Bloch-Bauer's Will Regarding Ownership; Legal Presumption in Favor of Ferdinand Bloch Bauer's Ownership

1. Indications in Adele Bloch-Bauer's Will Regarding Ownership

Ownership is an objective fact that does not depend on the opinion of the persons involved. Thus the formulations used in Adele Bloch-Bauer's will are, at best, merely a suggestion regarding the ownership status at that time.

One indication that the testatrix Adele Bloch-Bauer considered herself the owner of the paintings is that in Section III of the will, in her "request" to Ferdinand Bloch Bauer, she uses the phrase "my two portraits". But even the *Finanzprokurator* rightly considers this ambiguous (page 3 of the Opinion). As both portraits are of the testatrix herself, the phrase should probably be understood to mean "the paintings that depict me". Moreover, in Section III, Adele Bloch-Bauer speaks of "the" four landscapes by Gustav Klimt rather than of "her" four landscapes when referring to the other paintings, and in Section IV, in the instructions regarding the paintings that are applicable in the event of substitute inheritance, she uses the phrase "the two portraits and four landscapes by Gustav Klimt".

Thus it is fair to assume that in making the request to Ferdinand Bloch Bauer, Adele Bloch-Bauer wanted to ask her husband to donate the six designated paintings *from his extensive art collection* to the Austrian Gallery upon his death, e.g. because she considered these artworks so important that she wanted the general public to have access to them.

The *Finanzprokurator*'s view that Adele Bloch-Bauer believed the paintings belonged to her is primarily based on another part of the will, where she makes a **binding order to**

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the substitute heir to immediately surrender the paintings (Section IV of the will). This argument is based on the assumption that if Adele Bloch-Bauer had thought the paintings belonged to her husband, she could not have obligated the substitute heirs to immediately surrender the paintings to legatees. This argument is convincing if viewed in isolation, but not in light of the overall instructions. After all, Section IV would **only** be applicable **if Ferdinand Bloch Bauer were to predecease the testatrix** (see Section II: "*If my husband predeceases me, my sole heir shall be my brother-in-law Dr. Gustav Bloch-Bauer...)*". In such an instance the testatrix would be able to, and in fact would have to, assume she would be the owner of the paintings upon her own death. As the couple had no children, either spouse could assume that they would be the heir upon the death of the other. Indeed Adele Bloch-Bauer herself made a will in favor of Ferdinand Bloch-Bauer.

Thus it cannot be inferred for certain from the will that Adele Bloch Bauer considered herself the owner of the paintings. Moreover, it is even less feasible to draw any conclusions regarding the actual ownership status.

It is worth pointing out that in the list the testatrix only speaks of the four landscapes (Section III) and of the two portraits and the four landscapes by Gustav Klimt (Section IV), while she speaks of the library "**which belongs to me**" and "**my** Vienna and Jungfer, Brezan library" (Section III and Section IV). The differences in the formulations could be an indication that the owners differed.

The clearest indication regarding the ownership status is not to be found in Adele Bloch-Bauer's will; it is to be found in Ferdinand Bloch-Bauer's clear and unambiguous **declaration to the probate court** (see C below).

2. Legal Presumption in Favor of Ferdinand Bloch Bauer's Ownership

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a) § 1237 Section 2 Old Version and § 1247 of the General Civil Code

The marital property regime as set forth in the General Civil Code is based on the principle of separation of property. It is possible to depart from this principle if specific agreements are drawn up. In the absence of matrimonial agreements of this kind, pursuant to § 1237 of the General Civil Code each spouse retains ownership of the property brought by him/her to the marriage, and each spouse has no claim to what the other acquires during the marriage. Nowadays § 1237 of the General Civil Code is applicable as amended pursuant to the Federal Act Regarding the Law of Inheritance for Spouses, the Marital Property Regime and Divorce Law dated 15th June 1978 [*EheRÄG* 1978], *Federal Legal Gazette* 1978/280. But in its original version, and thus at the time of Adele Bloch-Bauer's death, the General Civil Code adhered to the principle of separation of property.

In its original form, § 1237 of the General Civil Code contained a legal presumption relating to acquisition during the marriage. Based on the Roman-law concept *praesumptio muciana,* it was presumed that **in doubtful cases an acquisition originated from the husband**. Thus in doubtful cases items of property in the marital household were considered property of the husband. This legal presumption was not eliminated until *EheRÄG* 1978. In the present case, § 1237 of the General Civil Code in its original version, and thus the aforementioned legal presumption, are applicable. This is because the Austrian Gallery's acquisition of the paintings alleged by the *Finanzprokurator* took place before 1978, and because the question of ownership is of great significance, as explained above.

The presumption set forth in § 1237 Section 2 of the General Civil Code (old version) only relates to items of property that were acquired **during the marriage** (Supreme Court in *GlU* 2254; Nippel, *Erläuterung* [*Explanation*] VII 599 f; Winiwarter, *Bürgerliches Recht* IV 445; Ogonowski, *Österreichisches Ehegüterrecht* [*Austrian Marital Property Law*] 401; Stubenrauch, *Commentar* [Commentary] *8th edition*, II 538; Weiß in *Klang*, *2nd edition*, V 823 and further references). **No distinctions are made between types of property**, and the presumption relates in particular to immovable

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property, though this may be refuted by land-register entries made by the wife (see Weiß in *Klang, 2nd edition*, V 824 and further references).

Possession of the item of property has no impact on the legal presumption. Moreover, the presumption still applies if the item of property is in the possession of the wife (Ogonowski, *Österreichisches Ehegüterrecht* 401; Ehrenzweig, *System, 2nd edition*, II/2, 146; Weiß in *Klang, 2nd edition*, V 826 and further references; Gschnitzer, *Familienrecht* [*Family Law*] 60; Gschnitzer/Faistenberger, *Familienrecht, 2nd edition*, 79; for a different view, see only Nippel, *Erläuterung* VII 600).

The presumption set forth in § 1237 Section 2 of the General Civil Code is effective with regard to the husband's creditors and **with regard to anybody**, i.e. basically with regard to all parties (Nippel, *Erläuterung* VII 600; Ehrenzweig, *System* II/2, 146; Weiß in *Klang, 2nd edition*, V 826; only Anders, *Familienrecht, 2nd edition,* 38, places constraints, and argues that it is not meant to be possible for the husband's heirs to exploit the presumption to the detriment of the wife).

The legal presumption may be refuted by **counter-proof**. In particular, proof that the husband gave the item of property to the wife as a gift may be taken into consideration. The General Civil Code takes this possibility into account in a further legal presumption set forth in § 1247 Section 1, which remains in effect today in its unchanged version: "In doubtful cases, jewelry, gemstones and other precious objects given by the husband to his wife for decorative purposes shall be deemed to have been given as gifts and not loaned." The presumption set forth in § 1247 Section 1 of the General Civil Code overrides the presumption set forth in § 1237 Section 2 (old version) of the General Civil Code. Thus if the prerequisites indicated in § 1247 Section 1 of the General Civil Code are met, the presumption set forth in § 1237 Section 2 of the General Civil Code is not applicable (see, for example, Stubenrauch, *Commentar*, 8th edition, II 538; Weiß in *Klang, 2nd edition*, V 825).

Contemporary literature and court rulings give very few indications as to the meaning of "other precious objects for decorative purposes". According to an opinion of the Supreme Court from 1920 (*SZ* 2/147), "precious objects" means physical items that are of

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great value despite their small volume and low weight. This opinion constitutes all the court rulings to date. However, it discusses the term "precious objects" with reference to restauranteurs' liability (see also Supreme Court in *EvBl* 1961/336; *SZ* 56/24, in which reference is made to the aforementioned opinion) and railroad operators' liability rather than from the perspective of § 1247 of the General Civil Code. Weiß (in *Klang, 2nd edition*, V 881) adopts the above definition with regard to § 1247 of the General Civil Code. By contrast, Lenhoff (in *Klang, 1st edition*, III 779 f) argues that, in the case of § 1247 of the General Civil Code, the key issue is whether the items are for female use and do not constitute maintenance payments, because the latter in any case pass into the ownership of the wife (Ogonowski, *Österreichisches Ehegüterrecht* 342 takes the same view; Ehrenzweig, *System, 2nd edition,* II/2, 146 f, and Petrasch in *Rummel, 2nd edition,* § 1248 Section 1 also lean in that direction: "necessary functional items"; see also Gschnitzer, *Familienrecht*, 61; Gschnitzer/Faistenberger, *Familienrecht, 2nd edition*, 80: "the straight line"). According to Lenhoff, the item must nonetheless be for decorative purposes, i.e. it must "decorate" the wife as an independent item. Thus even very valuable paintings or bronzes do not fall into this category (Lenhoff in *Klang, 1st edition*, III 778). Weiß (in *Klang, 2nd edition*, V 881) merely adds that the item has to have been given for decorative purposes and not for sale or pledge. The relevant minutes also speak of "female items" (Ofner, *Urentwurf [Original Draft]* II 147: "not items that are used by both husband and wife").

§ 678 of the General Civil Code defines explicitly what "decorative items" means: Decorative items are items "other than jewelry and articles of clothing that are used **to decorate the person**". § 678 of the General Civil Code constitutes interpretation rules for legacies (see the margin heading for § 656 of the General Civil Code); nevertheless, one can argue that it may also be applied when interpreting § 1247 of the General Civil Code (Stubenrauch, *Commentar, 8th edition*, II 547; Krasnopolski/Kafka, *Familienrecht* 89; Anders, *Familienrecht, 2nd edition*, 39; Lenhoff in *Klang, 1st edition,* III 77 all take that view; Ogonowski, *Österreichisches Ehegüterrecht* 341 ff, on the other hand, takes the opposing view: He argues that the law only applies to typical cases, and that the key issue is simply that the husband has given his wife the item over and above maintenance payments, in order to fulfill a specific need).

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b) Application to the Present Case

Ferdinand and Adele Bloch-Bauer married in 1899. All the paintings in question were painted by Klimt at a later date, and were thus acquired during the **Bloch-Bauer's marriage**. Thus the first prerequisite for the applicability of § 1237 Section 2 (old version) of the General Civil Code is fulfilled (the items were acquired during the marriage).

It is not possible to determine whether, upon Adele Bloch Bauer's death, the paintings were in her sole possession or in the spouses' joint possession. Even if they were in Adele Bloch-Bauer's sole possession, this would not be an obstacle to the applicability of § 1237 Section 2 (old version) of the General Civil Code.

Thus the assumption set forth in § 1237 Section 2 (old version) of the General Civil Code, according to which it must be assumed the paintings were in the ownership of the husband Ferdinand Bloch-Bauer, is basically applicable. It is effective with regard to all parties, i.e. including potential parties having a valid claim pursuant to Adele Bloch-Bauer's will. Ferdinand Bloch-Bauer's declaration in the Adele Bloch-Bauer probate proceedings, in which it is stated that the paintings were his property, lends further support to this assumption.

Anyone wishing to derive rights from the alleged ownership by Adele Bloch Bauer per would have to invalidate the assumption pursuant to § 1237 Section 2 of the General Civil Code. In the present case, it would be important to bear in mind the evidence that Ferdinand Bloch-Bauer gave the paintings to his wife. However, in light of the available documents and Ferdinand Bloch Bauer's declaration to the probate court, that evidence is not convincing.

Nevertheless, is important to check whether the assumption pursuant to § 1237 Section 2 of the General Civil Code is invalidated by the applicability of § 1247 of the General Civil Code. According to the latter provisions, it may be assumed the husband

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gave the item in question to his wife, provided certain prerequisites are fulfilled. For this to apply, the paintings would have to be considered precious objects which Ferdinand Bloch-Bauer gave his wife "for decorative purposes". It is doubtful whether Ferdinand Bloch Bauer gave the paintings to his wife at all; moreover, this cannot be determined from the available documents. Originally, *Adele Bloch-Bauer I* may have been intended as a gift for the portraitee's parents. At any rate, this is what the Adele Bloch-Bauer herself indicated in a letter to Julius Bauer dated 15th October 1903 ("my husband then decided to have Klimt paint my portrait..."). However, this is by no means certain, and in any case this evidence (Adele Bloch Bauer's letter) relates to just one painting.

It is quite clear that the paintings do not constitute precious objects as defined in § 1247 of the General Civil Code. Even if one assumes that the paintings should be deemed precious objects and that they were given to Adele Bloch-Bauer, they were definitely not intended "to decorate" Adele Bloch-Bauer. Moreover, even if one adopts the broad interpretation of § 1247 of the General Civil Code as defined by some parties, to the effect that necessary functional items (the "straight line") should be included, this does not alter the fact that the paintings definitely do not fulfill that requirement either.

Furthermore, even if one disregarded all these points, it would be important to remember that § 1247 of the General Civil Code merely constitutes a refutable basis for an assumption. Even if Ferdinand Bloch Bauer's statement that the paintings were his property were insufficient counter-evidence, it would still be an important indicator that Ferdinand Bloch-Bauer did not even give his wife free disposal of the paintings, let alone the ownership thereof.

Therefore the assumption pursuant to § 1237 Section 2 (old version) of the General Civil Code applies. It must be assumed that after Adele Bloch Bauer's death the paintings were the property of Ferdinand Bloch-Bauer.

V. Summary

1. If one argues that Adele Bloch-Bauer's request is a binding order, it is not a legacy instruction from the testatrix herself, but rather a *testamentary order* to her sole heir Ferdinand Bloch-Bauer. By contrast with what she says in Paragraph III of Section I of her will, the testatrix is not saying that she leaves the paintings, but rather merely **asks her husband to leave the paintings**, i.e. to dispose of them upon death in a specific way.

2. Testamentary prohibitions and testamentary orders are *invalid,* because they encroach upon testamentary freedom. Exceptions are only permitted insofar as the instruction can be converted into a reversionary substitution. However, a prerequisite for a reversionary substitution and conversion into a reversionary substitution is that the instruction must relate to *the (first) testator's* own assets or ***own property***. Conversion of Adele Bloch-Bauer's request into a reversionary substitution (reversionary-heir legacy) would be feasible if it could be shown that the paintings were her property.

3.The legal situation is much more difficult if the paintings were the property of the heir Ferdinand Bloch-Bauer (as part of his collection). Pursuant to § 662 of the General Civil Code, the bequest of an item of property that belongs[12] to the testator is feasible. However, it is *not the goal of the law to make testamentary orders to the heir permissible*; but legacy instructions which are issued by the testator himself and which refer to items of property of the heir are permissible. According to prevailing opinion (about which we have serious reservations), the legacy is supposedly valid if the testator mistakenly assumed the item of property was his own. This can be contested on grounds of an error; however, in the present case, it would be possible to argue that such action is statute-barred.

4. The *Finanzprokurator* argues that one can convert the testamentary order to Ferdinand Bloch-Bauer into a valid legacy instruction of the testatrix Adele Bloch-Bauer, which would be valid pursuant to § 662 of the General Civil Code. However, one could only make that argument if the legacy was to be implemented **upon the death of the**

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testatrix, rather than (as in the present case) **upon the death of her heir**. This is because an explicit stipulation that the due date is the heir's death constitutes an impermissible encroachment upon testamentary freedom. That means it is all the more non-permissible to "convert" a testamentary order into an instruction of this kind having a due date. Indeed in most cases the literature indicates that conversions of this kind are not feasible. Court rulings are not entirely clear on the matter, but are generally cautious. We anticipate that the Supreme Court will issue further rulings on this issue.

Thus the correct view is that Adele Bloch-Bauer's request, if one assumes it was meant to be binding (see A), cannot constitute the basis for a right of the Austrian Gallery (the Republic of Austria) to the paintings if they were the property of Ferdinand Bloch-Bauer.

5. No firm conclusions regarding ownership can be drawn from the will. The words "My portraits" do not prove anything, because the portraits are portraits of the testatrix herself. The *Finanzprokurator's* reference to the testatrix's binding instruction to immediately surrender the paintings to the substitute heirs is also unconvincing. This is because the substitute inheritance **could only have been implemented** if Ferdinand Bloch-Bauer had **predeceased the testatrix Adele Bloch-Bauer**. In that case Adele Bloch-Bauer could have been totally confident in assuming that *upon her own death she would be the owner* of the paintings. The fact that the testatrix twice mentions "belonging to me" or "my" library, yet avoids using the possessive when referring to the paintings (aside from the reproductions) could be an indication of ownership by Ferdinand Bloch-Bauer.

6. The assumption pursuant to § 1237 of the General Civil Code (old version) –this law was in force until 1978 – is another argument in favor of the paintings being the property of Ferdinand Bloch-Bauer. According to that assumption, *in doubtful cases* items of property which were acquired during a marriage and which were in the matrimonial household were the *property of the husband.* This assumption was effective with regard to all parties. To invalidate it, it would be necessary to prove that Adele

[12] Translator's note: Sic. Probably: "...an item of property that does not belong..."

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Bloch-Bauer had acquired the paintings herself or that Ferdinand Bloch-Bauer had given them to her. If § 1247 Section 1 of the General Civil Code – which states that in doubtful cases precious objects given by a husband to his wife for decorative purposes should be deemed to have been given as a gift – were applicable, there would be no need for such proof. But the paintings do **not** fulfill the prerequisite that they must be **precious objects** given to the wife for **decorative purposes**. All of this lends support to Ferdinand Bloch-Bauer's statement that the paintings were his property.

C. Ferdinand Bloch-Bauer's Declaration to the Probate Court

I. Question Presented

If one assumes the Austrian Gallery (Republic of Austria) did not derive any legal claim from Adele Bloch-Bauer's will because it did not contain a binding instruction (see A), or because, if it had contained a binding instruction, this would have encroached upon Ferdinand Bloch-Bauer's testamentary freedom (see B), it would nonetheless be conceivable for the Austrian Gallery (Republic of Austria) to derive a legal claim from Ferdinand Bloch-Bauer's conduct during the probate proceedings. We discuss this in greater detail below.

The testamentary compliance confirmation supplied by Ferdinand Bloch Bauer's brother Dr. Gustav Bloch-Bauer (as the party assigned authority to handle the estate and probate proceedings) contains, among other things, the following declaration:

In Section III, Paragraph 1, the testatrix gives instructions regarding legacies in favor of

1) the Viennese workers' association Kinderfreunde; and

2) the association Die Bereitschaft.

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These associations have received notification from the court regarding the accrual of the legacy.

In Section III, Paragraphs 2 and 3, the testatrix makes various requests to her husband; he promises to faithfully fulfill said requests, though they do not have the binding nature of a testamentary disposition.

Below, we discuss the implications of Ferdinand Bloch-Bauer's promise to "faithfully fulfill", and determine whether this has any significance with regard to any claim of the Austrian Gallery. The main question is: How should this declaration be interpreted?

II. Interpretation

1. The *Finanzprokurator*'s Arguments

In his Opinion, the *Finanzprokurator* states that the declaration in the testamentary compliance confirmation has legally effective meaning. He argues that Ferdinand Bloch Bauer thereby **acknowledged** his wife's will, to the effect that the paintings should pass to the Austrian Gallery. He also argues (Opinion, page 5 and page 8) that it would even be feasible to provide legally effective acknowledgement of a will that was invalid for formal reasons. On page 8 of the Opinion (in reference to the Supreme Court in *GlUNF* 1179) he argues that an acknowledgement of this kind can only be retracted if the declaration has not been accepted by the party at whom it is directed.

The *Finanzprokurator* also argues that it is "obvious" that Ferdinand Bloch Bauer's declaration should be considered a promise to donate as defined in § 943 of the General Civil Code. He argues that Ferdinand Bloch Bauer wanted to donate the paintings during his lifetime, because he was motivated by Adele Bloch-Bauer's will. He then argues that it is completely clear from further events that the Federal Government (the Austrian Gallery) accepted the promise to donate, even though no formal understanding was reached (Opinion, page 8 ff).

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2. Response

a) Acknowledgement

1. Legally effective acknowledgements are not covered explicitly in the General Civil Code. However, as a general rule they are viewed as a sub-category of settlements. They constitute **acceptance agreements** via which a dispute or doubt regarding a right can be eliminated via unilateral yielding by one party (see only Koziol/Welser, *Bürgerliches Recht, 11th edition,* II, 102; Ertl in *Rummel, 2nd edition*, Section 6 regarding § 1380 and further references). Court rulings stress that it is important that the acceptance agreement be accepted by the other party to the agreement, thus creating the sense of an agreement. On the other hand, according to some legal opinions unilateral promises to perform an act are also feasible (see Ertl in *Rummel, 2nd edition*, Section 6 regarding § 1380 and further references).

An acknowledgement creates new, **independent grounds for obligation** which arise regardless of whether the dubious or disputed right existed at all. Hence one speaks of the legal effectiveness of an acknowledgement agreement. It is important to distinguish between legally effective acknowledgements and declarative acknowledgements. A declarative acknowledgement is not an agreement, but rather simply an indication that the party in question is aware that a specific obligation exists. A declarative acknowledgement can be used to help prove a dubious right, but is refutable. If the right did not exist, the declarative acknowledgement does not create new grounds for obligation (Koziol/Welser, *Bürgerliches Recht, 11th edition,* II, 102; Ertl in *Rummel, 2nd edition*, Section 7 regarding § 1380; Supreme Court in *SZ* 51/76).

The legal efficacy of an acknowledgement of an invalid will (as proposed by the *Finanzprokurator*), in particular a will that is invalid for formal reasons, is disputed (see Welser in *Rummel, 3rd edition*, Section 5 regarding § 601 and further references). The majority view is that the will that is invalid for formal reasons remains invalid. The

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acknowledgement agreement merely has contract law efficacy between the parties involved (for a more detailed analysis, see B. Jud, *Der Erbschaftskauf* [*Sale of an Accrued Inheritance*] 111 ff and further references).

2. The present case does not involve an acknowledgement of a will that is invalid for formal reasons (for a discussion of contracts of acknowledgement regarding legacies that are invalid for formal reasons, see Supreme Court in *SZ* 7/297). Instead, the question is whether a non-binding wish or an instruction of the testatrix that is invalid because it encroaches upon testamentary freedom was rendered binding by the declaration made by Gustav Bloch-Bauer (as Ferdinand Bloch Bauer's representative). From the outset, estate law grounds for obligation arising from an acknowledgement do not seem feasible. All one can do is determine whether Ferdinand Bloch Bauer created **new grounds for obligation** via a contract law agreement. For this to be the case, there would have to have been an agreement between Ferdinand Bloch-Bauer and the Austrian Gallery (Republic of Austria).

Contrary to the *Finanzprokurator*'s arguments, Ferdinand Bloch Bauer's declaration contains **neither** a legally effective acknowledgement **nor a declarative acknowledgement**. Ferdinand Bloch-Bauer promises to faithfully fulfill the various requests and at the same time indicates that he is not legally obligated to do so: "... *though they do not have the binding nature of a testamentary disposition.*"

Thus the correct view is that Ferdinand Bloch Bauer **did not intend to establish an obligation**. As a general rule, phrases such as "*I promise to faithfully fulfill*" do not give rise to a legal obligation. At most, they hold out the prospect of fulfillment of a moral duty. Furthermore, Ferdinand Bloch-Bauer had absolutely no reason to impose a per se non-existent legal obligation upon himself (in the absence of urgent reasons). Assuming he was convinced that he was not under any legal obligation, especially with regard to his own property (indeed he explicitly states this), and wanted to fulfill his wife's intentions, **he could have done so without establishing a binding obligation**. Taking on a legal obligation would not have made any sense, as it would merely have been an obstacle to his later dispositions.

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Moreover, Ferdinand Bloch-Bauer reiterates that Adele Bloch Bauer's instruction is non-binding. He would hardly have done this if he wanted to establish an obligation via his declaration.

The *non-binding nature of his promise* matches the *non-binding nature of the testatrix's "request"*. Given that the request was non-binding, nobody would respond to it with a legally binding promise. This is because, in light of the non-binding request, the parties involved were already "in a realm not subject to law".

Thus it cannot be assumed that Ferdinand Bloch-Bauer's intention in his declaration was to establish an obligation with regard to the Gallery. Anyone who doubts this should note the regulations regarding lack of clarity set forth in **§ 915 of the General Civil Code**: As Ferdinand Bloch Bauer did not receive any quid pro quo for his declaration, it must be assumed that he wished to impose the "lesser burden" upon himself, and from that one must infer that the declaration was *non-binding*.

3. The non-binding nature of Ferdinand Bloch-Bauer's declaration arises not only from the absence of an intention to incur a binding obligation, but also from the **absence of an addressee in the form of a beneficiary**. It is important to remember that the declaration was as made part of the *testamentary compliance confirmation*. The purpose of a testamentary compliance confirmation is to inform the court that the necessary prerequisites have been met, so that the court can issue a completion of probate proceedings confirmation (cf. Weiß in *Klang, 2nd edition*, III 1044). It is not meant to be a channel of information to outside parties or legatees. It simply demonstrates to the court that the heir has complied with or guaranteed the legacies in question, has notified the legatees, and has performed any legal duties pursuant to §§ 158 to 161a of the Non-Litigious Proceedings Act. These relate to substitutions, equivalent obligations to fulfill, or legacies. In the case of movables, at least the beneficiary must be informed.

In the present case, the testamentary compliance confirmation makes no mention of notifying the Austrian Gallery; by contrast, it does state that the financial legatees have been notified. Moreover, it emphasizes that the beneficiaries of the instructions in Section III, Paragraphs 1 and 3 have been notified. In view of the fact that, as already mentioned,

Ferdinand Bloch-Bauer stresses the non-binding nature of Adele Bloch-Bauer's request (the probate court clearly had no objection to this), one must conclude that he neither intended nor wished that the Austrian Gallery be notified. The possibility that the probate court may have independently decided to notify the Austrian Gallery (as indicated in the opinion submitted to the Austrian Gallery by the *Finanzprokuratur* on 6th March 1948; that document also suggests that the notification might not have actually been sent) is of no significance. The key issue is that the declaration by Ferdinand Bloch-Bauer (via his representative Gustav Bloch-Bauer) is definitely not directed at the Austrian Gallery. It is **directed solely at the probate court,** so that the court can issue a completion of probate proceedings confirmation.

The *Finanzprokurator* sees this declaration (which was directed solely at and intended solely for the court), in particular the declaration of intent contained therein, as an offer to the Austrian Gallery to establish a legally effective acknowledgement agreement. We strongly disagree with him.

As can be seen from the following overview, our arguments are confirmed by various court rulings. These rulings indicate that a statement in a testamentary compliance confirmation does not constitute an acknowledgement agreement. Of particular note is the Supreme Court's decision in *GIUNF* 1179. The *Finanzprokurator* invokes this when he says that that an acknowledgement of fulfillment of a mere wish can only be retracted if the declaration is not accepted by the party at whom it is directed. This quotation may have been taken from the head note in Dittrich/Tades, *MGA ABGB*, [*The General Civil Code*] E 1 regarding § 711. Upon closer analysis the Supreme Court's decision in fact **undermines rather than bolsters** the *Finanzprokurator 's* argument.

The point of departure for this judgment is the disposition on death already cited in B III 2 b ("*I also desire that* after the deaths *of my daughters houses Y and X shall pass to impoverished actors and business people of a foundation that bears our name*"), which the Supreme Court deemed a mere wish. During the probate proceedings, after the statement of inheritance had been issued, the representative of one of the legatees made the following declaration: "*1. that the testatrix had, with regard to her freely disposable*

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real property, established a reversionary substitution, with regard to which the foundation to be set up is a substitute legatee. 2. that this reversionary substitution should only be effective after the death of both legatee daughters, and that the entire estate of the mother should therefore pass to A as heiress to her mother and sister, but should be encumbered with the substitute legacy in favor of the foundation to be set up after her death". **The *Finanzprokuratur* was immediately supplied with a copy** of this declaration. Before the *Finanzprokuratur* could make a statement to the probate court, the heiress A stated that she did not acknowledge the declaration made by her representative, who in the meantime had been relieved of his duties, and that he had not been authorized to make it. She entered a plea with the *Finanzprokuratur* for recognition of her unrestricted position as heiress. The Supreme Court accepted the plea, not on the grounds that a declaration of this kind could be retracted up until such time as it had been accepted by the other party, but rather on the grounds that there was **no trace of an agreement** between the heiress and the *Finanzprokuratur*. The Supreme Court argued that in light of its contents as a whole, the declaration was to be deemed a request to acknowledge the substitute legacy in favor of the foundation, with the proviso that the substitution should only be effective after her death. It argued that the heiress was entitled to retract this request, because she had **not yet received notification from the *Finanzprokuratur* that it had been accepted** (it is important to note the difference relative to what was quoted in the *Finanzprokurator's* Opinion). The unilateral declaration did not in any sense give irrevocable rights to the *Finanzprokuratur* as the authority for the foundation, especially as it was quite clear that **no agreement or settlement had been reached.**

In light of this decision and the facts of the present case, it is important to bear the following in mind: By contrast with the declaration made by the heiress in the case described above, Ferdinand Bloch-Bauer's declaration contains **no indications of an intention to establish an obligation**. Nor does it contain any indication that the Austrian Gallery was to be notified regarding his declaration, or that it was in fact notified. In actuality the probate court did not send any notification to the Austrian Gallery. Furthermore, the Austrian Gallery never issued any statement, either to the probate court or to Ferdinand Bloch-Bauer, that it would accept the (alleged) offer.

More recent court rulings are also very guarded when confronted with attempts to ascribe contract law efficacy to **declarations** made by the heir **to third parties** during probate proceedings. This is particularly clear in the case of the *property affirmation in lieu of an oath.* Rulings and commentaries stress repeatedly that the sole purpose of the property affirmation in lieu of an oath is to serve as the basis for probate proceedings (Supreme Court in *EvBl* 1974/226; *NZ* 1987, 210; *NZ* 1992, 153; *NZ* 1994, 113 and the decisions in *RIS-Justiz,* document no. RS 0007879; in the commentaries: Welser in *Rummel, 3rd edition*, Section 2 regarding § 801 and Eccher in *Schwimann, 2nd edition*, Section 10 regarding § 801). Moreover, the rulings make it clear that one cannot ascribe contract law efficacy to the property affirmation in lieu of an oath (Supreme Court, index no. 4 Ob 598/79 in *RIS-Justiz,* document no. RS 0007879; *NZ* 1992, 153).

Below, we invoke the example of Supreme Court in *NZ* 1992, 153 (see also Welser in *Rummel, 3rd edition*, Section 2 regarding § 801 and Eccher in *Schwimann, 2nd edition*, Section 10 regarding § 801). During probate proceedings, the City of I. asserted a claim. The sole heiress supplied an unconditional statement of inheritance and property affirmation in lieu of an oath indicating that the City of I. was **the proper party with regard to the claim**. The City of I. thereupon argued that the heiress had acknowledged the claim. The Supreme Court disagreed. It stated that **a legally effective acknowledgement** as a legal transaction required a **matching declaration of intent.** It also argued that the fact that the claim was included in the property affirmation in lieu of an oath did not constitute an acknowledgement, because the property affirmation in lieu of an oath only constituted a unilateral declaration, hence ruling out the possibility that a contract of acceptance had been established. The fact that the heiress had not expressed any doubts about the substance of the claim did not alter the situation in any way. The Supreme Court also argued that she would only have been compelled to dispute this if the City of I. had brought legal action against her. It also stated that neglecting to dispute could only be interpreted as tacit acknowledgement if for special reasons the defendant had been under an obligation to make a good-faith declaration.

To sum up: In light of the wording of the declaration, the circumstances in which it was made, and its role in the proceedings, the *Finanzprokurator's* assumption that

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Ferdinand Bloch-Bauer intended to establish an obligation via his declaration to the probate court is **without any legal basis.**

4. These theoretical grounds rule out the possibility that Ferdinand Bloch Bauer's declaration imposed any legal obligation upon him. Below, we address a further issue that also rules out the possibility that his declaration imposed any legal obligation upon him, namely the question of the **legal admissibility** of the alleged acknowledgement. If one were to accept the *Finanzprokurator*'s argument that Ferdinand Bloch-Bauer intended to establish an obligation and that the Austrian Gallery accepted it, the contents of an acknowledgement agreement of this kind would have to have been the contents of Adele Bloch Bauer's will, namely **an obligation** on the part of Ferdinand Bloch-Bauer to **leave** the paintings to the Austrian Gallery upon death. However, as already explained in detail in B., under Austrian law an agreement-based self-obligation by Ferdinand Bloch-Bauer (as testator) would be legally inadmissible. At best it would be feasible in the form of a "contract of legacy". However, as already explained, by analogy with a contract of inheritance a contract of legacy is only permitted between spouses, and the formal requirements have to be observed.

b) Promise to Donate

As an alternative to the assumption that there was an acknowledgement, the *Finanzprokurator* proposes that there was an agreement------- regarding an inter vivos gift.

The counter-arguments to this are our points made so far – namely Ferdinand Bloch-Bauer's lack of an intention to establish an obligation, and the fact that his declaration was not addressed to the Austrian Gallery – and the fact that **in the content of his declaration he did not in any way hold out the prospect of a gift of this kind**. He declared that he would faithfully fulfill his wife's request, according to which the Austrian Gallery was to receive the paintings after his death. We cannot see how one can

conclude from this declaration that the paintings should be donated to the Gallery "immediately", **during his lifetime**.

The only feasible argument is that Ferdinand Bloch-Bauer's declaration, in conjunction with Adele Bloch-Bauer's request (assuming there was an intention to donate), involves a promise that the Austrian Gallery should receive the paintings **after his death**. But then the regulations concerning **donations due upon death** would have to have been observed. According to those regulations, there would have to have been a notarial act, an acceptance by the beneficiary, and an explicit renunciation of revocation by the donator (§ 956 Section 2 of the General Civil Code, § 1, Section 1 lit d of the Law Regarding Notarial Acts). In actuality, none of these prerequisites for validity was met. The donation would therefore have been invalid for formal reasons. At best, one could argue that it was a legacy per § 956 Section 1 of the General Civil Code. But that would have had to have been in testamentary form, which was not so in the present case. Aside from that, a legacy of that kind would have been revoked by Ferdinand Bloch-Bauer's 1945 will (for a discussion of the influence of a will on a previous codicil, see Rabl, *Altes Testament – Neues Testament* 44 ff and further references).

In his Opinion, the *Finanzprokurator* sidesteps these compelling arguments by asserting that there was an **inter vivos gift**. That is not a viable assumption, because Ferdinand Bloch-Bauer had no intention of establishing an obligation, and because none of the declarations required to establish an agreement (an offer to the *Finanzprokuratur* containing the appropriate content, and a declaration of acceptance by the *Finanzprokuratur*) was made. Even if one disregarded the fact that these prerequisites were not met, the "agreement to donate" would be **invalid in terms of form**, because it does not meet the prerequisites set forth in § 943 of the General Civil Code. We discuss this in greater detail below.

III. Inter Vivos Gift and Agreement Regarding Constructive Possession as Actual Surrender as Defined in § 943 of the General Civil Code

1. The *Finanzprokurator*'s Arguments

As already stated, the wording of Ferdinand Bloch-Bauer's declaration rules out the possibility of an inter vivos gift. Even if one were to disregard that, it would be important to remember that the notarial act required for a gift without actual surrender (per § 943 of the General Civil Code in conjunction with § 1 Section 1 lit d of the Law Regarding Notarial Acts) was not carried out.

The *Finanzprokurator* argues that an actual surrender as defined in § 943 of the General Civil Code took place, and that therefore a notarial act was not needed for the gift to be effective. He argues that the actual surrender did not have to take place at the same time the agreement was established, and that it was thus permissible for it to follow later. He sees the actual surrender in terms of an agreement regarding constructive possession, namely in Ferdinand Bloch-Bauer's request that "he be allowed to keep the paintings in the room of his deceased wife". He argues that one can "infer" this request from two documents, namely the letter to Robert Bentley dated 6th December 1947, and Dr.Garzarolli's letter to the Federal Monument Office dated 24th March 1948. He maintains that it is sufficient for the actual surrender that "as far as can be seen" Ferdinand Bloch-Bauer **never disputed** an intention to donate, and that "**one can deduce for certain**" from his surrender of *Kammer Castle on Lake Attersee III* that he wished to adhere to the donation (Opinion, page 9).

The *Finanzprokurator* maintains that as a general rule constructive possession is not an "actual surrender" as defined in § 943 of the General Civil Code, but that in special circumstances exceptions can be made. He invokes a court ruling according to which, if a donation is contested by a third party (e.g. the donor's heir), it is sufficient for acquisition of ownership if the donor subsequently adheres to his intention to donate and thereby indicates that he does not require protection against haste (see Supreme Court in *JBl*

(*Juristische Blätter* [*Journal of Law*] 1992, 791; *JBl* 1992, 792 and the decision 4i regarding § 943 in Dittrich/Tades, *MGA ABGB*).

2. Response

The *Finanzprokurator*'s arguments relating to "actual surrender" are very weak in two respects. First, it is inaccurate to argue that an agreement regarding surrender (disposal transaction) was ever made. Second, the agreement he presupposes would not constitute an "actual surrender" as defined in § 943 of the General Civil Code.

The main purpose of the special formal requirements set forth in § 943 of the General Civil Code is to protect persons against promises to donate that have not been thought through ("made too hastily") . An "actual surrender" takes place when the agreement to donate is followed by another, different act which can be recognized as a surrender and which indicates the donor's intention to **immediately** surrender the object of the donation **from his safekeeping into the possession of the beneficiary** (cf. only Schubert in *Rummel, 3rd edition*, Section 1 regarding § 943 and further references). It is true that the agreement to give and the surrender do not have to coincide chronologically, i.e. the actual surrender can follow later (Supreme Court in *JBl* 1980, 264; *EvBl* 1985/117).

An agreement regarding constructive possession, i.e. an agreement between the parties to transfer ownership, while the object remains with the donor, is not sufficient for actual surrender as defined in § 943 of the General Civil Code (Supreme Court in *ZBl* (*Österreichisches Zentralblatt für die juristische Praxis* [*Austrian Central Journal of Legal Practice*]) 1934/306; *ZBl* 1935/197; *SZ* 38/227; *JBl* 1967, 623; *NZ* 1973, 103; *SZ* 45/35; *RZ* 1979/17; ÖBA 1991, 594; Stanzl in *Klang, 2nd edition*, IV/1, 612 and further references; Schubert in Rummel, *3rd edition*, Section 1 regarding § 943).

The court rulings cited in the Opinion allow an **exception to this** (a **single case**, addressed by the Supreme Court in two separate legal procedures (2 Ob 587/91 in *JBl* 1992, 791 = *NZ* 1992, 230 with notes by Hofmeister = *ecolex* 1992, 161 with notes by

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Puck; and 3 Ob 575/91 in *JBl* 1992 with notes by Schwimann). The discussion in Dittrich/Tades, *MGA ABGB* cited in the Opinion mentions these two decisions only.

In the case in question, the plaintiff and the defendant were half-sister and brother respectively. Their mother owned considerable property during her lifetime, including a castle, where the plaintiff regularly spent the summer months, and a large number of artworks. In 1984 the mother gave the daughter (now the plaintiff) a Chinese corner cabinet that was in the castle, and stated that the plaintiff *could immediately take it* to London (her main residence). In fact the cabinet remained in the castle, in a room used solely by the mother. A year later the mother gave the castle to the defendant, initially without the contents; subsequently they too were transferred to him. After that the mother told the plaintiff that *the cabinet did in fact already belong to her*, and the plaintiff's legal representative recorded this statement in writing. Later the mother, urged by the defendant, signed a declaration that the castle and its contents had been given to him in 1985. The cabinet was *not* mentioned in the list of *excepted items.* A year later the mother confirmed in a notarial act that she had given the cabinet to the plaintiff in 1984. However, at this point she was already legally incapable of entering into transactions. After her death the plaintiff invoked her ownership and asked the defendant to surrender the cabinet. The defendant claimed that the gift was invalid for formal reasons.

In the Supreme Court's view, by way of an exception the agreement regarding constructive possession was sufficient to constitute "actual surrender", because the mother had subsequently confirmed the gift in writing. It maintained that the agreement regarding constructive possession was sufficient to constitute protection because, although the donor did not immediately and obviously feel the consequence of her gift in terms of a loss of property, **she subsequently adhered to her intention to give and indicated that she did not require protection against haste**. The Supreme Court felt that the case was also exceptional because the gift was disputed not by the parties to the agreement, but by the beneficiary and a third party.

The Supreme Court reconfirmed the basic thinking behind this decision in *NZ* 1993, 240 (which contains a critical comment by Hofmeister (= *SZ* 65/137) in a sub-section). It

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argued that the **donor's subsequent adherence to his intention to give** provided **indications of an actual surrender** insofar as it was evidence that the decision had been thought through. However, this was only an obiter dictum, because in the case in question an actual surrender took place (mixed donation of a property).

We reject with these rulings. Hofmeister (note regarding *NZ* 1992, 230) also rejects them, and has presented compelling counter-arguments. Puck has doubts regarding the issue (in *ecolex* 1992,131). Schwimann (in *JBl* 1992, 791) sides with the Supreme Court, but does not discuss the problematic aspects. Binder (in *Schwimann, 2nd edition*, Section 13 regarding § 943) takes a neutral stance. Schubert (in *Rummel, 3rd edition*, Section 1 regarding § 943) accepts the rulings. If, as per current opinion, an agreement regarding constructive possession made immediately does not constitute a warning, then that is even less true of a mere (subsequent) declaration which (as in the case described) was obviously made at the request of the recipient of the gift and was drawn up by her legal representative. That is a procedure that cannot be equated with a notarial act or an actual surrender, especially if it is based on the erroneous assumption that the transfer of ownership of the objects has already taken place. The fact that the donor, *even before she confirmed her intention to donate to the plaintiff*, relinquished the inventory (including the cabinet) to the defendant and then subsequently (after issuing the confirmation to the plaintiff) reconfirmed that she had given the castle and its contents to the defendant seems especially problematical, and casts doubt on the "unambiguous adherence to the prior intention to give".

Anyway, we can disregard the problematic issues involved in that ruling, as they are not applicable to the present case:

a) In the case described above, it was quite clear that an agreement regarding constructive possession was established. The donor gave the object to the beneficiary, who could have immediately taken it with her. **Ferdinand Bloch-Bauer** did no such thing. He held out the prospect of (voluntarily) fulfilling his wife's will, but **had no intention of transferring ownership of the paintings**.

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As a counter-argument to this, the *Finanzprokurator* reminds us that Ferdinand Bloch-Bauer **asked** (the Austrian Gallery) **to be allowed to keep the paintings,** and maintains that this gave rise to an agreement regarding constructive possession. It is **doubtful** that Ferdinand Bloch-Bauer ever made such a declaration. There is no evidence to that effect in the documents from the period before Ferdinand Bloch-Bauer's death in 1945. Of the two quotations cited by the *Finanzprokurator,* the first (the letter dated 6th December 1947 from Dr. Rinesch to Robert Bentley) definitely does not constitute a compelling argument: It contains **absolutely no evidence** to support the assumption that Ferdinand Bloch-Bauer had asked the Austrian Gallery for temporary possession of the paintings. It merely contains Dr. Rinesch's explanation to Robert Bentley that during his lifetime Ferdinand Bloch-Bauer had the right to hold onto the pictures. Obviously Dr. Rinesch's assumption was that the Austrian Gallery had a claim to the paintings *upon Ferdinand Bloch-Bauer's death.* It contains no evidence of an agreement regarding constructive possession during Ferdinand Bloch-Bauer's lifetime, nor of a request by Ferdinand Bloch-Bauer to be allowed to continue to keep the paintings.

The *Finzanzprokurator*'s second quotation relates to Dr. Garzarolli's letter to the Ministry of Education dated 24th March 1948, in which he remarks that Ferdinand Bloch-Bauer had, after his wife's death, asked the then director of the Austrian State Gallery Dr. Grimschitz that he might be allowed to hold onto the pictures. Dr. Garzarolli's remark stems from a written statement about the history of the pictures, which Dr. Grimschitz had sent to Dr. Garzarolli a few days earlier (on 1st March 1948) and which contains the following passage: "Mrs. Bloch-Bauer and, after her death, her husband Mr. Ferdinand Bloch-Bauer, stated orally on many occasions that the six Klimt paintings would be given to the Modern Gallery in Vienna as a bequest from their owner Mrs. Bloch-Bauer. After his wife died, Mr. Bloch-Bauer asked me several times if he could be allowed to keep the paintings in the room of his deceased wife, which had been left unchanged, until the directors of the Gallery required the paintings for exhibition."

When evaluating the evidence, the court will have to decide whether these statements are credible. Nevertheless, a few aspects demand initial consideration in this connection. It is hard to imagine that Ferdinand Bloch-Bauer would have asked to retain the pictures,

given that according to his wife's wish he was entitled to keep them *until his own death* and had himself merely "promised to faithfully fulfill" his wife's wish to surrender the pictures *upon his death*. Moreover, as far as is known, the **files contain absolutely no indication** of ownership of the pictures by the Austrian Gallery, which might have been based on an agreement with Ferdinand Bloch-Bauer to donate them. The documented **behavior** of Dr.Grimschitz is in **complete contradiction** to his claim that in principle the pictures had remained with Ferdinand Bloch-Bauer as "an act of grace". If Dr.Grimschitz had, during Ferdinand Bloch-Bauer's lifetime, really believed that the Austrian Gallery had left the pictures in the latter's keeping only temporarily and for personally motivated use, then he would have had to reclaim them for the Gallery immediately upon Ferdinand Bloch-Bauer's flight. In fact only three pictures went to the Austrian Gallery, which provided **considerations** for them. One could perhaps explain the purchase of *Adele Bloch-Bauer II* for 7,500 Reichsmark as the liquidation of Ferdinand Bloch Bauer's "tax obligation". But the acquisition of *Adele Bloch-Bauer I* and *Apple Tree II* in exchange for *Kammer Castle on Lake Attersee III* is completely incomprehensible if Dr.Grimschitz assumed that the exchanged pictures were in any case the Gallery's property.

Even if one were to accept that Ferdinand Bloch-Bauer had really asked the Austrian Gallery to be allowed to keep the pictures for the time being, then that request would **not** have had the necessary **declaratory value** (required per **§ 863 of the General Civil Code**) to transfer ownership of the pictures to the Austrian Gallery. The request could have arisen from so many other motives that it lacks unambiguous declaratory value. It could be that Ferdinand Bloch-Bauer was courteously putting off the Austrian Gallery because he was still thinking over the fate of the pictures or because he was in fact no longer prepared to leave the pictures to the Austrian Gallery in the prevailing circumstances.

(b) According to the *Finanzprokurator,* the fact that Ferdinand Bloch-Bauer "as far as can be seen" **never denied** his intention to make the donation is sufficient to validate the actual surrender. The *Finanzprokurator* also argues that it is to be **inferred without doubt** from the hand-over of the picture *Kammer Castle on Lake Attersee III* in 1936 that he wanted to abide by the donation (Opinion, page 9). But Ferdinand Bloch-Bauer in fact

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never provided any confirmation of a donation pursuant to an agreement regarding constructive possession. Obviously he had no need to deny later an intention to donate that he never expressed. To deduce judicial consequences from silence runs counter to accepted jurisprudential rules (Koziol/Welser, *Bürgerliches Recht , 11th edition,* I 92 f and further references). Even less can silence be seen as the acknowledgment of an act never envisaged.

Moreover, we reject the *Finanzprokurator*'s statement that the **later donation that was actually carried out** (*Kammer Castle on Lake Attersee*) constitutes a reaffirmation of an (imaginary) "**overall donation**". In fact Ferdinand Bloch-Bauer gave *Kammer Castle on Lake Attersee* to the Austrian Gallery in 1936 entirely of his own free will, which clearly emerges from the Gallery's letter of thanks, which *in no way* gives the impression of confirming the *fulfillment of a legal obligation.* It is pure fantasy to infer from the handing over of this painting an "intention" on the part of Ferdinand Bloch-Bauer "to reaffirm" the fact that he had already years previously donated all the pictures, and that this hand-over was merely the "partial fulfillment" of a long-established obligation. Someone who gives just one picture does not signal thereby that he has already given (all) other pictures and intends to abide by that situation.

The "constructive possession and affirmation" theory proposed in the Opinion is not at all well-founded. In fact it is fair to call it wishful thinking.

IV. Summary

1. With the words "I promise to faithfully fulfill ..." one does not normally incur a legal obligation; one holds out the prospect of *the fulfillment of a moral duty.* Ferdinand Bloch-Bauer had no reason to establish a legal obligation. If he had wanted to meet his wife's wishes, he could have done so without binding himself. *It would have made no sense to impose a binding obligation upon himself,* because it would have hindered his ability to make his own dispositions. In addition Ferdinand Bloch-Bauer *specifically stressed* the non-binding nature of Adele Bloch-Bauer's wish.

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Thus no intention to incur a binding obligation can be deduced from Ferdinand Bloch-Bauer's declaration. Anyone who doubts this should bear in mind the rules regarding lack of clarity pursuant to § 915 of the General Civil Code. Since Ferdinand Bloch-Bauer obtained no quid pro quo for his declaration, the legal rules concerning doubt would lead one to assume that it is non-binding, as the "lesser burden".

2. The declaration was not directed towards the Austrian Gallery. It was made as part of the testamentary compliance confirmation. It is directed solely towards the court, and informs the court that the necessary prerequisites have been met, so that it can issue a completion of probate proceedings confirmation. No notification was sent to the Austrian Gallery as part of testamentary compliance confirmation; by contrast, the other legatees indicated in the will were in fact notified.

3. If one were to accept the *Finanzprokurator*'s view that Ferdinand Bloch-Bauer wanted to establish an obligation via his declaration and that the Austrian Gallery accepted this offer, then *the contents* of an acknowledgement agreement of this kind would have had to have been *the contents of Adele Bloch-Bauer's instructions*, i.e. an obligation on the part of Ferdinand Bloch-Bauer to donate the pictures to the Austrian Gallery upon his own death. Under Austrian law it would be *legally impossible* for Ferdinand Bloch-Bauer (as testator) to establish an agreement-based obligation of this kind. At best it would have been feasible as a "contract of legacy". These are only permitted between spouses and require that the necessary formalities be observed.

4. The *Finanzprokurator*'s alternative assumption concerning an *agreement regarding an inter vivos* gift can be refuted by our arguments so far and by the contents of the declaration. One cannot conclude from Ferdinand Bloch-Bauer's declaration to faithfully fulfill Adele Bloch-Bauer's request that the paintings be left to the Austrian Gallery *after his death* that they were to be donated to the Austrian Gallery "immediately", i.e. *in the lifetime* of Ferdinand Bloch-Bauer. If one were to assume there was an intention to donate, the only relevant content would be a promise to donate the paintings to the Gallery after his death. But then the formal requirements regarding a donation due upon death would have had to have been observed (§ 956 Section 2 of the General Civil Code;

§ 1 Section 1 lit d of the Law Regarding Notarial Acts), and in the present case none of those requirements was fulfilled.

5. Even if one were to assume that in making the declaration Ferdinand Bloch-Bauer's intention was to give the paintings to the Gallery immediately, i.e. during his lifetime, the declaration regarding the obligation would be void pursuant to § 943 of the General Civil Code, because the *formal requirements regarding a notarial act were not observed.* These formal requirements could only have been waived if the promise to donate had been followed by an actual surrender. But Ferdinand Bloch-Bauer *did not* carry out an actual surrender. The agreement regarding constructive possession postulated by the *Finanzprokurator* does not meet the prerequisites of an actual surrender as defined in § 943 of the General Civil Code. We reject the Supreme Court's two decisions, in which by way of an exception it accepted an agreement regarding constructive possession as an actual surrender if the donor subsequently adhered to his intention to give and thereby indicated that he did not require protection against excessive haste. Furthermore, they are not applicable to the present case.

6. The *Finanzprokurator* points out that Ferdinand Bloch-Bauer asked the Gallery to be allowed to retain the pictures, and considers this an agreement regarding constructive possession. But it is doubtful whether Ferdinand Bloch-Bauer ever made such a statement. There is no indication thereof in the available documents from the period leading up to Ferdinand Bloch-Bauer's death in 1945. In arguing against this, the *Finanzprokurator* cites two documents from the ensuing period, one of which (letter of the lawyer Dr. Rinesch to Robert Bentley dated 6th December 1947) by no means supports his view. That means the only source is the account provided by Dr. Grimschitz, whose credibility is, for various reasons, doubtful. But even if one assumed that Ferdinand Bloch-Bauer did make such a declaration, his request would not have the necessary declaratory value as defined in § 863 of the General Civil Code to transfer ownership of the paintings to the Gallery.

7. We do not accept the *Finanzprokurator*'s view that it is sufficient for the actual surrender that Ferdinand Bloch-Bauer never denied his intention to make the donation

and that it can be deduced without doubt from the surrender of *Kammer Castle on Lake Attersee* that he intended to abide by the donation. In reality Ferdinand Bloch-Bauer *never confirmed an earlier donation.* To infer legal consequences from silence runs counter to the general principles of jurisprudence. It is not now possible to assume that the actual and executed donation of *Kammer Castle on Lake Attersee* implies an intention to abide by an imaginary previous "overall donation". *Someone who gives just one picture does not thereby declare that he has already given other pictures and intends to abide by that situation.* Thus the letter of thanks to the Gallery in 1936 does not even mention the other paintings.

Thus, up to **1938, no valid title** arose from which the Austrian Gallery could have inferred rights to or rights regarding the paintings in question. The Austrian Gallery did not obtain an estate law or contract law claim to a transfer of ownership. Even less did it become owner of the paintings. The only exception was *Kammer Castle on Lake Attersee*, which Ferdinand Bloch-Bauer donated to the Austrian Gallery in 1936 of **his own free will**. It became the Gallery's property as a donation rather than on the basis of Adele Bloch-Bauer's will.

D. Dr. Führer's Transactions Between 1938 and 1945

I. Dr. Führer's Actions

In the years 1938 to 1945 ***Adele Bloch-Bauer I*** and ***II***, ***Apple Tree I*** and ***Beech Forest (Birch Forest)*** were the subject of various transactions by the lawyer Dr. Führer. The formal background to these events was a tax penalty imposed upon Ferdinand Bloch-Bauer by the Nazis, which Dr. Führer, as the officially appointed property administrator, had to "expunge" by "liquidating" the Bloch-Bauer art collection.

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Dr. Führer handed over ***Adele Bloch-Bauer I*** and ***Apple Tree I*** to the Austrian Gallery in 1941. In doing so he invoked Adele Bloch-Bauer's will, saying that he had thereby complied with it, but obviously there were probably **other motives**. In return, the Gallery surrendered ***Kammer Castle on Lake Attersee III***, which Ferdinand Bloch-Bauer donated to it in 1936. Dr. Führer sold *Kammer Castle on Lake Attersee III* to Gustav Ucicky. Since this picture is not in contention, we will not be looking any further into its legal fate.

Dr. Führer sold ***Beech Forest (Birch Forest)*** to the Vienna City Collection in 1942, and sold ***Adele Bloch-Bauer II*** to the Austrian Gallery in 1943.

Houses in Unterach am Attersee remained with Dr. Führer until 1945. It is assumed the painting was given to him by the Nazi authorities as a "reward".

II. The Finanzprokurator's Arguments

With the exception of *Beech Forest (Birch Forest)*, the *Finanzprokurator* considers all cases in which Dr. Führer "handed over" or sold pictures as compliance with Ferdinand Bloch-Bauer's private-law obligation (assumed by the *Finanzprokurator*) to hand over the pictures to the Austrian Gallery. The *Finanzprokurator* argues that even if Ferdinand Bloch-Bauer did not authorize Dr. Führer to do so, Dr. Führer's handover with express reference to the will should be viewed as "a physical surrender, at least in factual terms, and thus as the fulfillment of the testamentary instruction or promise of donation" (Opinion, p.10). The *Finanzprokurator* sees the fact that after the war Ferdinand Bloch-Bauer's heirs did not, within the period allowed by law, submit a request for restitution of the paintings as conclusive consent to Dr. Führer's legal transactions.

III. Response

The *Finanzprokurator*'s arguments are **without any legal basis** and to some extent border on cynicism. As Ferdinand Bloch Bauer did not grant Dr. Führer any kind of

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authorization, Dr. Führer's disposals cannot be attributed to Ferdinand Bloch-Bauer. Without a power of attorney, it was not possible for **legal changes** attributable to Ferdinand Bloch-Bauer to take place. It is obvious that Ferdinand Bloch-Bauer never granted a power of attorney. Dr. Führer's actions therefore had no consequence other than that in purely factual terms ***Adele Bloch-Bauer I***, ***Apple Tree I*** and ***Adele Bloch-Bauer II*** came into the Austrian Gallery's possession, ***Beech Forest (Birch Forest)*** into the City Collections' possession, and ***Houses in Unterach am Attersee*** into Dr. Führer's possession.

The fact that Dr. Führer cited compliance with Adele Bloch Bauer's will when handing over *Adele Bloch-Bauer I* and *Apple Tree I* to the Austrian Gallery is of no significance. First, **there was no such obligation** (see A and B); second, even if one presupposes there was a binding testamentary obligation, he was **not authorized** to fulfill it and was therefore not in a position to carry out a legally effective surrender (modus). In any case the reference to the will was obviously just a "cover-up" for a misappropriation of Ferdinand Bloch-Bauer's property, particularly as according to the files Dr. Führer was not accurately acquainted with the will and was merely alerted to the "obligation" by the director of the Austrian Gallery. Furthermore, all Dr. Führer's actions with regard to the paintings contradict the theory of testamentary compliance: the "quid pro quo" in the form of *Kammer Castle on Lake Attersee III* and the subsequent sale thereof, the sale of *Beech Forest* and *Adele Bloch-Bauer I*, and his holding onto *Houses in Unterach on Lake Attersee*, all of which he should have given to the Austrian Gallery if had wanted to fulfill the alleged will. In light of this, it hardly matters that the alleged last will would have been due for fulfillment only upon the **death of Ferdinand Bloch-Bauer,** so that prior to that event Dr. Führer could not even have given the appearance of fulfilling it.

Moreover, we do not agree with the *Finanzprokurator* that the failure to enter, within the permitted term, a claim for restitution pursuant to the Annulment Act [*NichtigkeitsG*] 1946 Regarding the Nullity of Proceedings and Other Legal Acts which Occurred during the German Occupation of Austria[13], in combination with the post-war restitution laws (see below, E. III 1), can be seen as **conclusive consent** by Ferdinand Bloch-Bauer's heirs

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to Dr. Führer's transactions. Aside from the fact that the *Finanzprokurator* has not even bothered to try to provide a theoretically valid explanatory reason for such a consent (in light of § 863 of the General Civil Code such an attempt would fail), the assumption of silent consent is simply absurd, given the concrete circumstances. Dr. Rinesch, as representative of Ferdinand Bloch-Bauer's heirs, did not start restitution proceedings within the permitted time, not because he intended to consent to Dr. Führer's transactions, but because he came to an express agreement with the Austrian Gallery to relinquish the paintings (even the *Finanzprokurator* points this out, on page 13 of the Opinion).

IV. Summary

1. The *Finanzprokurator* 's assertion that by handing over *Adele Bloch-Bauer I*, *Adele Bloch-Bauer II* and *Apple Tree II* Dr. Führer had effectively carried out Adele Bloch-Bauer's testamentary instructions or Ferdinand Bloch-Bauer's promise of donation is without any basis in law.

2. Without power of attorney from Ferdinand Bloch-Bauer, Dr. Führer was not in a position to fulfill such an obligation. It is obvious that Ferdinand Bloch-Bauer did not grant an authorization of this kind.

3. The fact that in handing over *Adele Bloch-Bauer I* and *Apple Tree I* Dr. Führer invoked Adele Bloch-Bauer's will is irrelevant, because the will did not establish any obligation on the part of Ferdinand Bloch-Bauer, and he did not authorize Dr. Führer to fulfill it. Dr. Führer obviously invoked the will in order to cover up his own transactions, which in substance run counter to the testamentary-compliance theory, as he did not give the Austrian Gallery a single picture without material reciprocation. In view of this it hardly matters that Ferdinand Bloch-Bauer's alleged obligation was not yet due at that time.

[13] Translator's note: Referred to below as the Annulment Act 1946.

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4. Contrary to the *Finanzprokurator's* view on page 13 of the Opinion, the fact that the Ferdinand Bloch-Bauer's heirs (represented by Dr. Rinesch) did not enter a restitution claim after 1945 **does not constitute conclusive consent** to Dr. Führer's actions. A restitution claim was not made because an explicit agreement was made with the Austrian Gallery to relinquish the paintings to it .

Thus, in the period between 1938 and 1945, no basis was laid either for a claim by the Austrian Republic against Ferdinand Bloch-Bauer for transfer of ownership of the paintings, nor was an existing title effectively asserted.

E. Applicability of the Federal Act Regarding the Restitution of Artworks from Austrian Federal Museums and Collections dated 4th December 1998, Federal Legal Gazette I 1998/181

I. The Federal Law of 4th December 1998, Federal Legal Gazette I 1998/181

1. Basic Principles

The Federal Act Regarding the Restitution of Artworks from Austrian Federal Museums and Collections dated 4th December 1998, *Federal Legal Gazette* I 1998/181, referred to below as the Restitution Act 1998, empowers Austria's Minister of Finance, Minister of Education, Science & Culture, Minister for Economic Affairs and Minister of Defense to return artworks from Austrian museums and collections, including the Federal Movables Agency [*Bundesmobilienverwaltung*], **to their original owners** or legal successors upon death **without remuneration.**

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Pursuant to § 2 Section 2 of the Restitution Act 1998, prior to transfer of ownership these federal ministers are obligated to consult the Advisory Council established pursuant to § 3. This federal law **does not establish a claim** to transfer of ownership.

Pursuant to §1 of the Restitution Act 1998, authorization hinges upon meeting one of three conditions defined in § 1 Paragraphs 1 to 3.

§ 1 Paragraph 1 covers artworks "which were the subject of restitution to their original owners or legal successors upon death and which after 8th May 1945 in the course of proceedings arising therefrom pursuant to the federal Law Regarding the Ban on the Export of Objects of Historical, Artistic or Cultural Significance[14] (*State Law Gazette* [*StGBl*] No. 90/1918) passed into the ownership of the Federal Government without remuneration and are still in the ownership of the Federal Government."

§ 1 Paragraph 2 assumes that the artworks passed into the ownership of the Federal Government lawfully, but had previously been the subject of legal transactions as defined in § 1 of the Annulment Act 1946.

§ 1 Paragraph 3 concerns artworks which, following restitution proceedings, could not be returned to their original owners or legal successors upon death, passed into the ownership of the Federal Government without remuneration as ownerless assets, and are still in the ownership of the Federal Government.

2. The Intentions of the Legislator

The Restitution Act 1998 is based on a government bill dated 25th September 1998 (1390 of Beil St Prot XX. GP). Per the commentary regarding the government bill, the following "problem" must be addressed: Artworks which in the course of or as a consequence of the Nazi regime became the property of the Federal Government are currently in Austrian museums. The problem must be solved by returning the artworks to their original owners or legal successors upon death (1390 of Beil St Prot XX. GP, page

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3). Thus the basic goal is as follows: **Artworks which in the course or in consequence of the Nazi terror regime became the property of the Federal Government and are still in its ownership should be returned.**

The legislator's approach is explained in greater detail in the commentary (1390 of Beil St Prot XX. GP, page 4): According to the commentary, in the course of restitution legislation after World War Two, the Republic returned artworks that had been illegally taken from their former owners; **often,** in unambiguous cases, **a formal restitution procedure was not required**. In the 1990s the historical provenance of the artworks in Austrian collections was elucidated. The **Commission for Research on Provenance** was established to clarify the ownership situation during the Nazi regime and immediate post-war period. The Commission's **initial results** became available, and pertained to three categories of artwork :

1. Artworks and cultural objects which **in the course of proceedings pursuant to the Law Regarding the Ban on Exports of Significant Artworks had been retained** and had passed into the possession of Austrian museums and collections as "donations" or "dedications". All the artworks in this category had already been the subject of restitution and had been returned to the owners, and thus were well documented. In return for the grant of export permits pursuant to the Law Regarding the Ban on Exports of Significant Artworks, agreements had been made with those seeking export permits that certain specific artworks should go to the Austrian museums. The Commission argued that from today's standpoint, and given that, in the case of both laws regarding adjustments pertaining to artworks and cultural objects, certain specific artworks had been exempted, the procedure adopted at that time was **unjustifiable**.

2. Artworks and cultural objects that had come into the possession of the Federal Government lawfully but had previously been the subject of **legal transactions** that were null and void pursuant to the Annulment Act 1946. In the post-war period some museum directors acquired art objects in good faith from authorized art dealers, but subsequently

[14] Translator's note: Referred to below as the Law Regarding the Ban on Exports of Significant Artworks.

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doubts had arisen about their possibly suspicious provenance. The research into provenance revealed cases of this kind.

3. Artworks and cultural objects which in spite of restitution proceedings could not be returned to the original owners or their legal successors upon death and as ownerless assets passed into the ownership of the Federal Government.

If one looks at the commentary regarding the government bill and the wording of the three elements in § 1, one can see that the legislator essentially **adopted the Commission for Research into Provenance's categories**. According to the commentary (1390 of Beil St Prot XX. GP, page 5), § 1 was basically meant to be a general legal provision. This was because investigations had not been completed, and the specific art objects to be covered by the authorization had not yet been identified.

Below, we discuss whether the Klimt paintings in question fit into any of these categories. In his Opinion, the *Finanzprokurator* denies this; we address his argumentation below. For purposes of clarity, we will consider the categories covered by § 1 Paragraphs 1 to 3 of the Restitution Act 1998 in reverse order.

II. Applicability of § 1 Paragraph 3 of the Restitution Act 1998

§ 1 Paragraph 3 of the Restitution Act 1998 clearly does not apply. It requires that the work of art should have passed as an ownerless asset into the possession of the Federal Government without remuneration. In the case of the Klimt paintings this was obviously not so (the *Finanzprokurator* reaches the same conclusion on page 13 of his Opinion).

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III. Applicability of § 1 Paragraph 2 of the Restitution Act 1998

1. Analysis of the Legal Elements

§ 1 Paragraph 2 of the Restitution Act 1998 is applicable if the artworks passed into the possession of the Federal Government lawfully but prior to this were the subject of a **legal transaction as defined in § 1 of the Annulment Act 1946**. The additional sentence "passed into the possession of the Republic of Austria" is clearly superfluous (cf. also page 12 of the *Finanzprokurator's* Opinion). It should be considered an editorial error and ignored.

Pursuant to § 1 of the Annulment Act 1946, legal transactions with or without remuneration were deemed null and void if they were carried out during the German occupation of Austria and in conjunction with **political or economic persecution** by the German Reich and resulted in natural or legal persons being deprived of property or property rights that was theirs on 13th March 1938.

This **annulment was**, however, **not absolute**, as enforcement of § 2 of the Annulment Act 1946 was subject to special implementation laws. Based on this, a total of seven post-war **restitution laws** that set a time limit for restitution claims were enacted. These time limits were extended repeatedly; the last time limit for restitution claims ran out in 1956 (see Oberhammer, "The legal treatment of property without heirs or known provenance belonging to Jewish victims of National Socialism," *NZ* 2001, 40 FN 6).

This aspect of Austrian restitution legislation, which is problematic from a legal policy point of view (cf. Wilhelm, "The Narrow Path of Justice", *ecolex*, 1998, 898) is of no consequence to the present case. The second element of § 1 Paragraph 2 of the Restitution Act 1998 makes it a prerequisite that the Republic became **the lawful owner of the work of art after 1945**. The Restitution Act 1998 does not as it were "reverse" the nullifying action of the Annulment Act 1946, the direct applicability of which came to an end when the time limits defined in the post-war restitution laws were reached. Instead, the elements of § 1 of the Annulment Act 1946 are an independent prerequisite for the

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applicability of § 1 Paragraph 2 of the Restitution Act 1998. The applicability of the post-war restitution laws is not relevant.

2. Application to the Present Case

The first question is whether the Klimt paintings were the subject of legal acts or legal transactions as defined in § 1 of the Annulment Act 1946.

Adele Bloch-Bauer I, ***Adele Bloch-Bauer II***, ***Apple Tree I*** and ***Beech Forest (Birch Forest)*** were the subject of various transactions by the lawyer Dr. Führer (see D). The background to these events was the **tax penalty** imposed on Ferdinand Bloch-Bauer during the Nazi period, which Dr. Führer, as the officially appointed administrator, had to "expunge" through the "liquidation" of the art collection.

Dr. Führer handed over ***Adele Bloch-Bauer I*** and ***Apple Tree I*** to the Austrian Gallery in 1941. In doing so he invoked Adele Bloch-Bauer's will. As pointed out above (D), this was merely a cover-up for his real intentions, because in return the Gallery gave him *Kammer Castle on Lake Attersee*. Even if Dr. Führer had truly wanted to fulfill the will, it would have been **"an act of fulfillment" permeated by National Socialism**, for which Dr. Führer was, from the perspective of the Annulment Act 1946, neither legally mandated nor authorized by Ferdinand Bloch-Bauer.

Dr. Führer sold ***Beech Forest (Birch Forest)*** to the Vienna City Collections in 1942, and sold ***Adele Bloch-Bauer II*** to the Austrian Gallery in 1943. Dr. Führer's conduct with regard to ***Houses in Unterach am Attersee*** is not entirely clear. We must assume that with the consent of the authorities he kept it as a "reward" for liquidating Ferdinand-Bloch Bauer's art collection.

In view of the facts of the case, there is no doubt that the nullity clause of § 1 of the Annulment Act 1946 is applicable to **all the "transactions"** carried out by **Dr. Führer**. This is because all the legal transactions and legal acts were carried out as part of the political and economic persecution by the German Reich, in order to deprive Ferdinand

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Bloch-Bauer of his property. Thus the first condition for the applicability of § 1 Paragraph 2 of the Restitution Act 1998 is fulfilled for all the paintings.

The second prerequisite indicated in Paragraph 2 is that the Federal Government must have become the **lawful owner** of the pictures after 1945. This prerequisite is met, due to the agreement with the Austrian Gallery made by the lawyer Dr. Rinesch, on behalf of Ferdinand Bloch-Bauer's heirs. In the agreement, the heirs acknowledge Adele Bloch-Bauer's will, and acknowledge that through his statement to the probate court Ferdinand Bloch-Bauer committed to transfer ownership of the pictures to the Austrian Gallery after his death. In light of the actual legal situation, he was not under any obligation of this kind. Nonetheless, the goal of the heirs' acknowledgment was to bring about a legal situation in which the Gallery would become the owner of the paintings. It is important to note that the heirs' acknowledgment was **directly connected** with their wish to obtain **export permits** for the other pictures. That will be of considerable importance to the applicability of § 1 Paragraph 1 of the Restitution Act 1998 (see IV). In connection with Paragraph 2, it is also important to ask whether the connection between the acknowledgement and the offer of support for the granting of export permits threatens the acknowledgement's validity with regard to the legal situation at that time. That would mean the Republic did not become the "lawful" owner of the artworks as defined in § 1 Paragraph 2 of the Restitution Act 1998. However, in our opinion the validity of the acknowledgement is not threatened.

In light of the **wording** of § 1 Paragraph 2 of the Restitution Act 1998, its prerequisites **are fulfilled** for *Adele Bloch Bauer I, Adele Bloch-Bauer II, Apple Tree I, Beech Forest (Birch Forest)* and *Houses in Unterach am Attersee.*

However, there is another **obstacle** to the applicability of § 1 Paragraph 2 of the Restitution Act 1998: The legislator had a **special purpose** in mind with § 1 Paragraph 2 of the Restitution Act 1998 (see above, I.2). He had in mind pictures which after the war were acquired for Austrian museums in good faith at auctions and from authorized dealers, but which had been taken from their former owners due to persecution during the Third Reich as defined in the Annulment Act 1946. The goal was to single out instances

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of **acquisition from third parties**, as opposed to acquisitions **from parties with a valid claim,** as in the present case.

This is confirmed by a **systematic interpretation** of Paragraph 2 in conjunction with Paragraph 1 of § 1 of the Restitution Act 1998. Artworks that had been the subject of restitution after the war (first prerequisite indicated in Paragraph 1) were usually to be found in Austrian museums because they had been taken from their owners via legal transactions as defined in Paragraph 1 of the Annulment Act 1946; otherwise they would not have been returned or their return asked for. From the perspective of that time, the relinquishment to the Federal Government without remuneration as defined in Paragraph 1 (second prerequisite indicated in Paragraph 1) constituted a lawful acquisition. If Paragraph 2 referred to lawful acquisition from parties with a valid claim, Paragraph 1 and the additional prerequisite of a connection between the acquisition by the Republic and export permits for other artworks would have no sphere of applicability. Paragraph 2 would make Paragraph 1 redundant, which is not permissible, and has to be avoided through **limiting interpretation**. Therefore the wording of Paragraph 2, which is excessively broad in light of the legislative history, must be limited, to the effect that lawful acquisitions by the Republic does not refer to acquisitions from parties with a valid claim who were deprived of the paintings at an earlier time.

Thus the conditions for an authorization pursuant to § 1 Paragraph 2 of the Restitution Act 1998 are not fulfilled.

IV. Applicability of § 1 Paragraph 1 of the Restitution Act 1998

1. Legal Elements

§ 1 Paragraph 1 of the Restitution Act 1998 deals with artworks "which were the subject of restitution to their original owners or legal successors upon death and which after 8th May 1945 in the course of proceedings arising therefrom pursuant to the federal Law Regarding the Ban on the Export of Significant Artworks (*State Law Gazette*

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[*StGBl*] No. 90/1918) passed into the ownership of the Federal Government without remuneration and are still in the ownership of the Federal Government."

With § 1 Paragraph 1 of the Restitution Act 1998 , the legislator rejects certain **conduct by the authorities** in the past which per se was in accordance with the legal situation at that time. The intention is to reverse the consequences of that conduct, namely the Federal Government's ownership of the artworks in question. Thus the legislator rejects "**counter-trades**" in which export permits for artworks were granted in exchange for relinquishment of other artworks. Nevertheless, this deprecation by the legislator does involve a **historical component**. Artworks that initially were taken from their owners by and as a result of the **Nazi regime** have to be involved. Generally this involved persons who were exposed to personal and material persecution under the Nazi regime, emigrated as a result, and after the liberation of Austria made efforts to have their property restituted, so that they could bring it (including artworks) to their new place of residence abroad. This is only expressed indirectly in the legislation, in that it is geared towards **restitution** and **export proceedings arising therefrom.** Thus it is clear that it does not relate to any later export proceedings.

The wording of the law links restitution to the following conditions:

1.The artwork has to have been the **subject of a restitution** to the **original owner** or his legal successors upon death;

2. in the course **of proceedings arising therefrom** pursuant to the provisions of the Law Regarding the Ban on Exports of Significant Artworks the artwork has to have passed **into the ownership of the Federal Government** after 8th May 1945 **without remuneration**;

3. and **it must still be in the ownership of the Federal Government.**

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2. The *Finanzprokurator's* Arguments

First, we address the *Finanzprokurator's* argument (Opinion, page 12). He argues that § 1 Paragraph 1 of the Restitution Act 1998 is not applicable, because the prerequisite of **original ownership by** Ferdinand Bloch-Bauer (and therefore his heirs) as defined in the Restitution Act 1998 is not met. He argues that the ownership by the Federal Government arises from legal acts before 1938. This view is **wrong** and has been rebutted in A, B, and C. Ferdinand Bloch-Bauer and his heirs should be deemed the original owners as defined in § 1 Paragraph 1 of the Restitution Act 1998.

The *Finanzprokurator* also argues that only *Houses in Unterach am Attersee* and *Beech Forest (Birch Forest)* passed into the ownership of the Federal Government **after 8th May 1945**, and that of these two paintings only *Houses in Unterach am Attersee* passed into the ownership of the Federal Government **without remuneration** as defined in § 1 Paragraph 1 of the Restitution Act 1998 (*Kammer Castle on Lake Attersee III*, also mentioned, is not in dispute, so we will not discuss it here). However, in our opinion it is not possible to differentiate between *Houses in Unterach am Attersee* and *Beech Forest (Birch Forest)*. Dr. Rinesch, as the heirs' representative, made the agreement with the Austrian Gallery that *Houses in Unterach am Attersee* would be handed over to the Gallery, and that the heirs would, in favor of the Austrian Gallery, give up their claim to restitution of *Beech Forest (Birch Forest)* by the intermediate (unlawful) acquirer, the Vienna City Collections. **In both cases** the heirs transferred their right to the paintings (in one instance their actual ownership; in the other, their claim to restitution from the City Collection) to the Austrian Gallery. This transaction was either in both instances without remuneration as defined in § 1 Paragraph 1 of the Restitution Act 1998, or in neither of the two instances. We discuss whether § 1 Paragraph 1 is applicable to these paintings below.

The *Finanzprokurator* also points out that none of the pictures was the subject of **export proceedings**. This is true, but on closer inspection § 1 Paragraph 1 of the Restitution Act 1998 does not make this a prerequisite. It merely says that the "restitution" has to have given rise to export proceedings in the course of which the work of art was relinquished to the Republic. In light of the rationale behind this provision,

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relinquishment of the restituted work of art to the Republic so as to obtain an export permit for other artworks must be deemed sufficient. It would be unreasonable to argue that the relinquishment had to have been preceded by a formal request for an export permit (even) in the case of the artworks subsequently relinquished.

Thus the *Finanzprokurator*'s arguments do not seem sound.

3. Application of § 1 Paragraph 1 of the Restitution Act 1998 to the Present Case

As already stated, for authorization pursuant to § 1 Paragraph 1 to apply, the following conditions must be met: The paintings have to have been the subject of a restitution to the original owner or legal successors upon death (see below, *a*); in the course of proceedings arising therefrom pursuant to the Law Regarding the Ban on Exports of Significant Artworks they have to have passed into the possession of the Federal Government after 8th May 1945 without remuneration (see below, *b*); and they must still be in the possession of the Federal Government (see below, *c*).

In formulating this law, the legislator had a certain **typical case** in mind: Artworks that have been taken from their owner are returned to their rightful owner (or his heirs) after 1945; the owner wants to export them; and in order to obtain an export permit he relinquishes one or more artworks to the Republic.

a) Subject of a Restitution

It is not clear from the wording of the law whether the restitution has to be based on **formal proceedings** under one of the post-war restitution laws (see above, III.1). There are no indications regarding a more precise definition of "restitution". Nevertheless, the commentaries regarding the Restitution Act 1998 do provide some help. Thus the general commentary regarding the government bill (Beil St Prot XX. GP, page 4) contains the

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note that after the war artworks were often returned informally, i.e. there were no formal restitution proceedings. Nowhere is it suggested that in such instances the law should not be applicable. It is therefore reasonable to argue that "restitution" also means **the informal return** of artworks that had been taken from the victim during the Nazi period.

Below, we first address the question of applicability to *Adele Bloch-Bauer I, Adele Bloch-Bauer II,* and *Apple Tree I.* These paintings are certainly not a "typical case" of the kind on which the law is based. None of these pictures was returned by the Republic of Austria to Ferdinand Bloch-Bauer's heirs and then surrendered back to the Republic. Dr. Rinesch, as the heirs' representative, came to an agreement with the Austrian Gallery that the paintings **already in the possession** of the Gallery (*Adele Bloch-Bauer I, Adele Bloch-Bauer II* and *Apple Tree I*) should **pass** into its ownership.

In formal terms, the parties based these donations on acknowledgment of a right of the Gallery pursuant to Adele Bloch-Bauer's will and Ferdinand Bloch-Bauer's declaration. In fact, however, the agreement was (also) a prerequisite for the granting of an **export permit** for the remaining pictures in the Ferdinand Bloch-Bauer collection. Assuming one does not take into account the reference to Adele Bloch-Bauer's will and Ferdinand Bloch-Bauer's declaration (we will discuss their relevance later), then the reason a restitution did not take place is simply that Ferdinand Bloch-Bauer's heirs had already reached a "**short-cut**" agreement with the Gallery: Instead of asking for restitution of the paintings so that they could then be given back to the Republic, it was agreed that they should be relinquished to the Republic via **renunciation of restitution**.

It is important to ask whether authorization pursuant to § 1 Paragraph 1 of the Restitution Act 1998 is not applicable simply because there was **a short-cut** to relinquishment instead of an actual restitution.

An interpretation that ruled out authorization pursuant to § 1 Paragraph 1 of the Restitution Act 1998 in cases of short-cuts would make no sense. Provided the other prerequisites indicated in § 1 Paragraph 1 of the Restitution Act 1998 are met, a "shortening" of the restitution and relinquishment process should not be a obstacle to its applicability. Why should an authorization pursuant to § 1 Paragraph 1 be valid for

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artworks that were first returned by the Republic and then surrendered back to it again by the owner so as to allow him to export other artworks, yet be invalid if the party with a valid claim agreed in advance with the Republic to renounce a request for restitution so as to be able to export other artworks? The absence of a "to-and-fro movement" ("restitution followed by surrender back to the Republic"), in favor of a shortened procedure, should be of **no significance**. After all, the authorities' conduct, which is rejected by the legislator per the elements of Paragraph 1, occurred to an equal extent in both cases. The only difference is in the formalities of the procedure.

An interpretation to this effect (or at any rate application by analogy) of § 1 Paragraph 1 of the Restitution Act 1998 (for a discussion of application by analogy in administrative law, see Antoniolli/Koja, *Allgemeine Verwaltungsrecht 3rd edition* [*General Administrative Law*], 103f; Raschauer, *Allgemeine Verwaltungsrecht* [*General Administrative Law*], Section 570 f) would only encounter objections if the legislator wished to restrictively define the conditions for authority to restitute. This is unlikely, in light of the commentary regarding the government bill concerning the Restitution Act 1998 (see Beil St Prot XX. GP, page 4). It is evident from that part of the commentary that in drawing up Paragraph 1 the legislator adopted the Commission for Research into Provenance's **findings up until then**, and used them as the basis for that Paragraph. Elsewhere in the commentary it is made clear that the Commission's findings were only **interim results,** as the research had not been completed (in his parliamentary speech of 5th November 1998 the Deputy Kohl mentioned that only 30% of the art objects had been inspected so far). According to the commentary, the legal authorization was therefore couched in general form, and the specific art objects were not listed. There are no plans for a further law based on further findings by the Commission. If one views the formulation of § 1 Paragraph 1 of the Restitution Act 1998 in light of the legislator's intentions, one can see that its rather literal wording is somewhat too narrow, given its goal and purpose. After all, the key issue is whether a "disreputable exchange" as defined above took place.

It therefore seems correct to apply § 1 Paragraph 1 of the Restitution Act 1998 by way of analogy to surrender of artworks to the Republic via a **short-cut**. The fact that in

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the present case a "relinquishment" took place, rather than a restitution followed by surrender back to the Republic, does not preclude the applicability of § 1 Paragraph 1 to *Adele Bloch Bauer I*, *Adele Bloch Bauer II*, and *Apple Tree I*.

Different issues arise with regard to the applicability of § 1 Paragraph 1 of the Restitution Act 1998 to *Houses in Unterach am Attersee* and *Beech Forest (Birch Forest)*. *Houses im Unterach am Attersee* was in the possession of Dr. Führer, who was assigned the task of "liquidating" Ferdinand Bloch-Bauer's art collection to "expunge" the tax penalty imposed on him. We must assume that with the consent of the Nazi authorities Dr. Führer was meant to hold onto the painting as a "reward" for his activities. After the war it passed into the possession of Karl Bloch-Bauer, who held it in safekeeping for Ferdinand Bloch-Bauer's heirs. It was probably given to him in the course of Dr. Führer's arrest by the Allies. It was surrendered to the Austrian Gallery pursuant to the agreement that Dr. Rinesch made with the Gallery in the heirs' name. In that agreement, Ferdinand Bloch-Blauer's heirs also agreed that the Austrian Gallery should ask for the return of *Beech Forest (Birch Forest)* from the Vienna City Collections, which was the interim (unlawful) acquirer. If one assumes these agreements were made in order to obtain an export permit for the other pictures (we discuss this assumption below), it is fair to argue in favor of authority for restitution pursuant to § 1 Paragraph 1 of the Restitution Act 1998 for both these paintings.

The key issue is whether the prerequisite for fulfillment of the legal element "subject of a restitution" as set forth in § 1 Paragraph 1 of the Restitution Act 1998 is that the artworks were first restituted by **the Republic**. After 1945 *Houses in Unterach am Attersee* and *Beech Forest (Birch Forest)* were not in the possession of the Republic, but rather in possession of Dr. Führer and the City of Vienna (City Collections). If it is irrelevant *who* returned the artworks to their rightful owners, then the legal element "subject of a restitution" is fulfilled in the case of *Houses in Unterach am Attersee*: The painting was purloined by Dr. Führer, and was returned to the heirs via an informal route (handover to Karl Bloch-Bauer as the heirs' representative). The situation regarding *Beech Forest (Birch Forest)* is similar to the situation regarding *Adele Bloch-Bauer I*, *Adele Bloch-Bauer II* and *Apple Tree I*: The heirs renounced a request for restitution

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simply because they had reached a short-cut agreement with the Austrian Gallery, to the effect that the Austrian Gallery should ask for the return of the painting from the City Collections. In place of a relinquishment of possession order ("to-and-fro movement"), the procedure was shortened via a kind of assignment.

Thus the key issue is whether a prerequisite for the applicability of § 1 Paragraph 1 of the Restitution Act 1998 is that the artworks were in the possession of the Republic, or whether it is sufficient that during the Nazi period they were taken by whomsoever from the parties with a valid claim. The commentary regarding the Restitution Act 1998 (1390 Beil XX. page 4) does contain one passage that assumes possession by the Republic: "As part of restitution legislation after the Second World War, **the Republic of Austria** returned, among other things, artworks unlawfully purloined from their then owners to their original owners or legal successors upon death; often, in unambiguous cases, formal restitution proceedings were unnecessary." However, we doubt whether clear conclusions can be drawn from this text. It is worth noting the wording of the law, which hints at a close link between "restitution" and "counter-trades" ("subject of a restitution...in the course of proceedings arising therefrom..."), which would only have been possible in the case of a restitution by the Republic. On the other hand, one could also argue that it is immaterial whether the restitution was carried out by the Republic itself. If, when interpreting the concept "restitution", one orients oneself to the post-war restitution laws, at least by way of analogy, then restitutions by **private persons** are included. This is covered by the 3rd Restitution Law (Federal Law of 6th February 1947, *Federal Legal Gazette* 54/1947). Moreover, it is important to remember that the main rationale for restitution pursuant to § 1 Paragraph 1 of the Restitution Act 1998 is that the authorities' earlier practice of making the granting of export permits dependent on the surrender of specific artworks purloined during the Nazi period is rejected. So for the purposes of the legislation it should be immaterial who took the artworks from the parties with a valid claim.

It is also important to take into account the actions of the Advisory Council set up pursuant to § 3 of the Restitution Act 1998. Its actions do not appear to be oriented to whether the artworks were first returned by the Republic. Thus 16 Klimt drawings were

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returned to Ferdinand Bloch-Bauer's heirs pursuant to § 1 Paragraph 1 of the Restitution Act 1998; after 1945 these were initially not in the possession of the Republic. Karl Bloch-Bauer "held onto" these drawings until, in return for an export permit, they were relinquished to the Albertina Museum without remuneration as defined in § 1 Paragraph 1 of the Restitution Act 1998.

To sum up: No conclusive decision can be reached as to whether restitution as defined in § 1 Paragraph 1 of the Restitution Act 1998 is restricted to return by the Republic. If that is what the law requires, then *Houses in Unterach am Attersee* and *Beech Forest (Birch Forest)* do not fall within the authorization to restitute. But if it is sufficient that the pictures were taken by whomsoever during the Nazi period, then the prerequisite "subject of a restitution" is fulfilled for these two paintings as well.

b) Transfer of Ownership to the Federal Government after 8th May 1945 Without Remuneration in the Course of Export Ban Proceedings Arising from the Restitution

Below, we investigate whether the pictures were surrendered "without remuneration" to the Republic after 8th May 1945 "in the course of" export proceedings arising from restitution. Thus the issue is whether, as required, there is a **connection** between the **granting of export permits** and the **relinquishment** of the artworks, and whether surrender "**without remuneration**" as defined in § 1 Paragraph 1 of the Restitution Act 1998 took place. It is certain that the Republic acquired ownership of all the paintings **after 8th May 1945**. The *Finanzprokurator*'s view to the contrary (see above, 2) is based on a legal interpretation of the events up to 1945 that has already been rebutted in A to C.

First, we investigate whether there is a **sufficient connection** between the relinquishment of the paintings and the granting of export permits for other artworks.

It is clear from the documents that Dr. Rinesch, as the representative of Ferdinand Bloch-Bauer's heirs, **initially was also trying to have the Klimt paintings returned,**

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and brought the heirs' intentions in this respect to the attention of the Austrian Gallery's representatives (see Dr. Rinesch's letter to Dr. Garzarolli dated 19th January 1948): "*I would be grateful if you would inform me how you would respond to my clients' restitution claims.*" After this, negotiations were held, during which Dr. Rinesch inquired about the whereabouts of the remaining pictures from the Ferdinand Bloch-Bauer collection. Then the question of Austrian Gallery's possible estate law claim to the Klimt paintings was raised. According to the available documents, neither Ferdinand Bloch-Bauer's heirs and Dr. Rinesch on the one hand, nor Dr. Garzarolli as the Austrian Gallery's representative on the other, acknowledged that the Austrian Gallery had an unambiguous claim (despite the opinion sent by the *Finanzprokurator* to Dr. Garzarolli on 6th March 1948, the contents of which are inaccurate). It seems that Dr. Rinesch, as representative of the heirs, had not by any means decided to unreservedly acknowledge a right of the Austrian Gallery to the pictures. In his **request to export** various pictures from the Bloch-Bauer collection dated 13th April 1948, he states that it would have been perfectly feasible to contest the validity of the legacy and of Ferdinand Bloch-Bauer's declaration, but that in order to obtain the export permits he and the heirs were refraining from doing so: "*Nevertheless, understandably they* [Ferdinand Bloch Bauer's heirs] *wish to bring the testator's remaining assets to their place of residence. It is also important to note that much of the art collection and formerly substantial assets have been irrevocably lost due to Nazi appropriation methods.*

Nonetheless, the heirs whom I represent have spontaneously issued a declaration stating that Klimt paintings from the Bloch-Bauer collection, including several top-quality works, should be passed to the Austrian Gallery pursuant to the last wills of Ferdinand and Adele Bloch-Bauer. In light of the Bloch-Bauer family's completely changed situation with regard to assets, this declaration is specifically intended to demonstrate the Bloch-Bauer heirs' interest in Austrian art and Austrian museum holdings. I hope that ***in return*** *the Federal Monument Office and the public collections*

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involved will apply the ***provisions of the Memorial Protection Act*** *in an* ***accommodating*** *manner that takes into account the special circumstances surrounding the case*[15].

Dr. Garzarolli, as director of the Austrian Gallery, clearly offered his personal support for the granting of export permits, and kept his promise, via the **position he took regarding the request for export permits** for the remaining pictures (see Dr. Garzarolli's letter to the Federal Monument Office dated 21st July 1949). In that letter he expressly draws attention to the heirs' readiness to recognize the legacy, and makes it clear he believes that a difficult situation has thereby been resolved. Thus he advises that the request for export permits should **be supported "by way of an exception"**:

"*The Austrian Gallery has now reassessed the issues. In light of the reasons indicated below, we now recommend to the Federal Monument Office (dI) that export permits for the two paintings be granted, by way of an exception.*

Despite various transactions which were carried out during the Nazi period by Mr. Bloch-Bauer's legal representative and which significantly worsened the Austrian Gallery's position, Mr. Ferdinand Bloch-Bauer's heirs immediately acknowledged his declaration – supplied to the District Court of Vienna I for the event of his death – indicating his intention to uphold the desire of his deceased wife to donate five Klimt paintings to the Austrian Gallery. As a result, they have created a situation in which the Austrian Gallery can actually receive this legacy."

Thus there is **no doubt that there is a connection between the acknowledgement of the legacy and the granting of export permits** for other artworks from Ferdinand Bloch-Bauer's collection. The current Minister of Education, Science & Culture shares this view. In her reply to the written parliamentary questions from the Deputy Mag. Terezija Stoisits and friends concerning artworks in the possession of the Republic of Austria (No. 4024-4263/J – NR/1998) she made the following remarks (5184/AB XX.GP) regarding B*eech Forest (Birch Forest), Adele Bloch-Bauer I, Adele Bloch-Bauer II, Kammer Castle on Lake Attersee III* and *Apple Tree I*:

[15] Authors' note: i.e. the application for export permits.

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"The connection between the relinquishment of the Klimt pictures to the Austrian Gallery and the granting of export permits is evident: In their arguments, Dr. Rinesch and the director of the Austrian Gallery Dr. Garzarolli both unambiguously refer to the heirs' request for export permits. Thus in July 1949 Garzarolli recommends that export permits be granted for two previously barred pictures, by referring to the Klimt legacy."

It makes no difference that the acknowledgement was given before the formal request for export permits was submitted. "**In the course of proceedings**" pursuant to the Law Regarding the Ban on Exports of Significant Artworks as defined in § 1 Paragraph 1 of the Restitution Act 1998 should not be interpreted as "relating to a sequence in time"; it merely expresses that there has to be a **connection** between the surrender of the artworks and the granting of export permits for other artworks. The question of whether artworks were surrendered because export permits were promised, or because they were granted simultaneously or later, is immaterial.

Below, we investigate whether the pictures were left to the Austrian Gallery "**without remuneration**" as defined in § 1 Paragraph 1 of the Restitution Act 1998.

The absence of remuneration as defined in § 1 Paragraph 1 should not be understood in the civil-law sense. In the civil-law sense, "without remuneration" means a service rendered without a quid pro quo, i.e. rendered out of generosity (cf only Koziol/Welser, *Bürgerliches Recht, 11th edition,* I, 104). The legislator who drew up the Restitution Act 1998 **did not have a voluntary donation in mind**; he had in mind formal "donations" or "dedications" in a non-technical sense, which were made to the Republic in order to obtain export permits. If this were viewed in purely civil-law terms, there would be no absence of remuneration: Transfer of ownership of the artwork in question was not carried out out of generosity and without a quid pro quo, but rather solely to obtain an export permit. Indeed if one were to disregard the fact that the granting of an export permit is an official act, then one would argue that under civil law a counter-trade was involved (or, if the export ban was doubtful, an arrangement).

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However, in the Restitution Act 1998 the meaning of "without remuneration" is quite specific: The situation has to involve **artworks** for which the owner **transferred ownership** to the Republic and for which he was **forced to transfer ownership**, in order to exports permits for other artworks, without the Republic in return providing a consideration in an amount corresponding to the artworks' value on the open market. Thus the connection between the transfer of ownership and the granting of export permits for other art works is mentioned separately in the law (see above); and it is of decisive importance to an **understanding of transfer of ownership "without remuneration"** as defined in § 1 Paragraph 1 of the Restitution Act 1998. The two elements cannot be separated; together, they constitute the legal element "transfer of ownership without remuneration in the course of export ban proceedings arising from restitution".

Nevertheless, as the present case is atypical, we must also discuss the question of "without remuneration" separately. The special circumstances are that Ferdinand Bloch-Bauer's heirs did not surrender ownership of the paintings to the Austrian Gallery in the formal guise of a "donation", but rather acknowledged "without remuneration" the Republic's right to ownership of the paintings, by invoking Adele Bloch-Bauer's will and Ferdinand Bloch-Bauer's declaration to the probate court. Nonetheless, this is not an obstacle to the applicability of § 1 Paragraph 1 of the Restitution Act 1998, for the following reasons:

As explained in A, B, and C, in view of the legal circumstances the Austrian Gallery in actuality had **no legal claim** to ownership arising from a title of this kind. From a substantive-law standpoint, the Klimt paintings were the **property of Ferdinand Bloch-Bauer's heirs**. The heirs would of course have been able to demand that the paintings be handed over by the Austrian Gallery and the City Collections, and to refuse to surrender the painting in the possession of Karl Bloch-Bauer. However, this would have led to a legal battle lasting perhaps several years, and made the Gallery less willing to help search for the other pictures, and would have made the Federal Monument Office less willing to grant an export permit. The parties with a valid claim therefore preferred to relinquish certain pictures to the Republic.

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The **relinquishment** or surrender of the paintings to the Austrian Gallery was designed to facilitate the **export** of the remaining artworks, and did indeed make this possible. It must have been clear to all those involved that without the indirect **pressure of a refusal of an export permit** for the remaining pictures, the **"acknowledgement"** would not have been made. Even if one leaves aside our legal analysis (see A, B, and C), the Austrian Gallery faced a legally unfavorable situation. Ferdinand Bloch-Bauer had held out the prospect of compliance with his wife's wishes, but had not followed through (he did not leave the paintings to the Austrian Gallery in his will). Some of the paintings were in the Austrian Gallery's possession, but had been **acquired in a manner** (counter-trade between Dr. Führer and the Austrian Gallery; Dr. Führer sold one painting to the Austrian Gallery) that was definitely not in accordance with Adele Bloch-Bauer's intentions, let alone Ferdinand Bloch-Bauer's. Dr. Garzarolli rightly noted in various letters that the manner in which the paintings were acquired up to 1945 constituted "a rather dangerous situation" for the Gallery. In addition, he was keen to acquire the Klimt paintings that were not yet in the Gallery's possession. For this reason, and to clear up the circumstances surrounding the paintings acquired from Dr. Führer, he needed Ferdinand Bloch-Bauer's heirs to acknowledge a legal claim of the Gallery. To obtain this acknowledgement, he (probably with the approval of Dr. Demus of the Federal Monument Office) linked the question of the granting of an export permit for the remaining pictures to the surrender of the Klimt paintings. In light of this, it is not surprising that, as mentioned above, the **Federal Minister** responsible has acknowledged an **"evident" connection** between the relinquishment of the Klimt paintings and the granting of an export permit.

To sum up: In light of the circumstances, it is fair to argue that a transfer of ownership without remuneration as defined in § 1 Paragraph 1 of the Restitution Act 1998 was involved. The director of the Austrian Gallery, Dr. Garzarolli, was aware that Ferdinand Bloch-Bauer's heirs were only relinquishing the paintings to the Gallery so that they could obtain export permits for the remaining artworks. Instead of a formal donation, the transfer of ownership was based on the acknowledgement of the Austrian Gallery's claims pursuant to Adele Bloch-Bauer's will and Ferdinand Bloch-Bauer's declaration to the probate court. Thus paintings to which, in light of the legal

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circumstances, the Republic had no claim passed into the ownership of the Republic based on the owners' consent. The transfer of ownership through acknowledgement was made "without remuneration " as defined in § 1 Paragraph 1 of the Restitution Act 1998, because the only quid pro quo was the granting of export permits for other expropriated artworks.

c) Property of the Republic

The final prerequisite for authorization pursuant to § 1 Paragraph 1 of the Restitution Act 1998 is not problematic. The paintings are currently in the **ownership of the Republic**.

d) Result

Thus § 1 Paragraph 1 of the Restitution Act 1998 is **applicable** to *Adele Bloch Bauer I, Adele Bloch Bauer II* and *Apple Tree I* at least **by way of analogy**. Whether the same is true of *Houses in Unterach am Attersee* and *Beech Forest (Birch Forest)* depends on whether the applicability of § 1 Paragraph 1 is contingent on the paintings being in the possession of the Republic after 1945. In light of the practices of the Advisory Council established pursuant to § 3 of the Restitution Act 1998 (the Advisory Council's actions do not seem to be oriented to this), on balance it is fair to say that § 1 Paragraph 1 is probably applicable to those two paintings as well.

V. Summary

1. The Restitution Act 1998 empowers Austria's Minister of Finance, Minister of Education, Science & Culture, Minister for Economic Affairs and Minister of Defense to return artworks from Austrian museums and collections, including the Federal Movables

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Agency, **to their original owners** or legal successors upon death **without remuneration,** provided one of the three legal elements set forth in § 1 Paragraphs 1 to 3 is applicable.

2. The **legal element set forth in Paragraph 3** concerns artworks which, following restitution proceedings, could not be returned to their original owners or legal successors upon death, passed into the ownership of the Federal Government without remuneration as ownerless assets and are still in the ownership of the Federal Government. This was obviously not so in the present case.

3. The prerequisite for authorization pursuant to **§ 1 Paragraph 2** of the Restitution Act 1998 is that the artworks passed into the ownership of the Federal Government lawfully, but had previously been the subject of legal acts as defined in § 1 of the Annulment Act. After 1945 the paintings passed lawfully into the ownership of the Federal Government pursuant to an agreement between Ferdinand Bloch-Bauer's heirs and the Austrian Gallery. Between 1938 and 1945 all the paintings were the subject of legal transactions or legal acts covered by § 1 of the Annulment Act 1946. In light of the wording of § 1 Paragraph 2 of the Restitution Act 1998, an authorization to restitute the paintings would basically be applicable. However, in light of the legislator's intentions, § 1 Paragraph 2 must be interpreted restrictively. Lawful acquisition by the Republic is meant to apply only to acquisition from third parties – in particular authorized dealers or at auctions – and **not to acquisition from parties with a valid claim**. If the latter type of acquisition were covered by § 1 Paragraph 2, Paragraph 1 would lose almost all of its sphere of applicability, because acquisition without remuneration as defined in Paragraph 1 was also lawful, and the pictures in question were usually also the subject of legal transactions as defined in the Annulment Act 1946. Thus § 1 Paragraph 2 is not applicable to the present case.

4. The prerequisite set forth in § 1 Paragraph 1 of the Restitution Act 1998 is that the artworks were the **subject of restitution** to their original owners or legal successors upon death and after 8th May 1945 **in the course of proceedings** arising therefrom pursuant to the federal Law Regarding the Ban on the Export of Objects of Historical, Artistic or Cultural Significance passed into the **ownership of the Federal Government** without

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remuneration. The legislator's intention was to reverse conduct by the authorities that had been lawful in the past, namely the granting of export permits for artworks in exchange for artworks expropriated by the Nazi regime. The legislator's approach was based on the findings of the Commission for Research into Provenance, and § 1 Paragraph 1 presupposed a specific course of events: After the war expropriated art objects were restituted; the owner wanted to export them; but could only obtain an export permit by relinquishing various pieces to the Republic.

5. In the present case, *Adele Bloch Bauer I, Adele Bloch Bauer II*, and *Apple Tree I* were **not restituted;** instead, Ferdinand Bloch-Bauer's heirs came to an agreement with the Austrian Gallery that the pictures should **remain** with the Gallery permanently, and that the heirs would not demand that they be restituted. The fact that there was no restitution in the literal sense of § 1 Paragraph 1 is not a obstacle to its applicability. It makes **no difference** whether the paintings were first returned by the Republic and then surrendered back into its ownership in connection with export proceedings, or whether the party entitled to restitution agreed to a **short-cut procedure** and waived a restitution demand in order to obtain export permits for other pictures. Thus § 1 Paragraph 1 is applicable by way of analogy, especially as the legislator based his wording on the findings of the Commission for Research into Provenance, which at that time had examined only a small number of the artworks in the collections, with the result that the law makes no mention of short-cut procedures.

6. After the war *Houses in Unterach am Attersee* and *Beech Forest (Birch Forest)* were initially not in the possession of the Republic of Austria; they were in the possession of Dr. Führer and the Vienna City Collections respectively. The key issue is whether the prerequisite for fulfillment of the legal element "subject of a restitution" as set forth in § 1 Paragraph 1 of the Restitution Act 1998 is that the artworks were first restituted by **the Republic.** If initial restitution by the Republic is not a prerequisite, then *Houses in Unterach am Attersee* does fulfill this legal element, because the painting was (informally) returned to Ferdinand Bloch-Bauer's heirs (handed over to their representative Karl Bloch-Bauer). The situation regarding *Beech Forest (Birch Forest)* is similar to the situation regarding *Adele Bloch-Bauer I, Adele Bloch-Bauer II* and *Apple*

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Tree I: The heirs only waived a restitution demand because they had reached a short-cut agreement with the Austrian Gallery that it should ask for the return of the painting from the City Collections. In place of a relinquishment of possession order ("to-and-fro movement"), the procedure was shortened via a kind of assignment.

The actions of the Advisory Council set up pursuant to § 3 of the Restitution Act 1998 do not appear to be oriented to whether the artworks were first returned by the Republic. If it is sufficient that the pictures were taken by whomsoever during the Nazi period, then the prerequisite "subject of a restitution" is fulfilled for *Houses in Unterach am Attersee* and *Beech Forest (Birch Forest)* as well.

7. A further prerequisite for the applicability of § 1 Paragraph 1 is that the paintings were surrendered to the Republic without remuneration and in the course of export permit proceedings. The transfer of ownership to the Republic was not carried out "voluntarily" as defined in the laws regarding donations; it was carried out in order to obtain an export permit. Therefore relinquishment "without remuneration" as required by § 1 Paragraph 1 should not be understood in the technical civil-law sense. The key point is that the Federal Government gave no material quid pro quo to the parties having a valid claim to the artworks; it merely granted export permits for other artworks. One possible counter-argument to the argument that there was no remuneration is as follows: The relinquishment of the artworks was based on the acknowledgement of the Gallery's claim to the paintings pursuant to Adele Bloch-Bauer's will and Ferdinand Bloch-Bauer's declaration to the probate court. However, in light of the actual legal situation, the Gallery **did not have a valid claim;** moreover, the claim appeared doubtful to Ferdinand Bloch-Bauer's heirs as well as to the authorities. The acknowledgement was made merely with a view to **facilitating the granting of export permits** for the remaining artworks. The Austrian Gallery's "consideration" was that Dr. Garzarolli agreed to intercede on the heirs' behalf with regard to the granting of export permits, and then in fact did so. In light of the direct connection between the acknowledgement of the Gallery's claim and the agreement to grant export permits for the remaining artworks, it is fair to argue that **the relinquishment was "without remuneration"** as defined in § 1 Paragraph 1.

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8. The fact that transfer of ownership without remuneration as defined in § 1 Paragraph 1 of the Restitution Act 1998 preceded the granting of an export permit is not an obstacle to the applicability of an authorization pursuant to § 1 Paragraph 1 of the Restitution Act 1998. The transfer of ownership was a **prerequisite for the granting of the export permit**. Indeed in her reply to a written parliamentary question about artworks in the possession of the Republic of Austria, **the current Minister of Education, Science & Culture** stated that there was an evident connection between the relinquishment of the paintings and the granting of an export permit.

To sum up: § 1 Paragraph 1 of the Restitution Act 1998 is applicable at least to *Adele Bloch Bauer I, Adele Bloch Bauer II* and *Apple Tree I*. Whether the same is true of *Houses in Unterach am Attersee* and *Beech Forest (Birch Forest)* depends on whether it is irrelevant that after 1945 the paintings were in the possession of Dr. Führer and the City of Vienna respectively rather than the Republic. In light of the practices of the Advisory Council established pursuant to § 3 of the Restitution Act 1998, on balance it is fair to say that § 1 Paragraph 1 is probably applicable to those two paintings as well.

F. Summary

I. Adele Bloch Bauer's Instructions

1. In situations involving *ordinary use of language*, the word "ask" constitutes a *non-binding request*. This should be the meaning ascribed to it, unless it can be convincingly demonstrated that the testator's intention was to give a binding order. That cannot be proven in the present case.

2. There are several indications that the meaning of the terms used in the instructions was quite clear to the testatrix. It is true that she intended her request to cover the library as well as the Klimt paintings, and that she left it up to the beneficiary of the books – the Vienna People's and Workers' Library – to keep them or sell them and accept the proceeds "as a legacy". However, one cannot in any way infer that the "request" was of a binding nature, because her granting permission for selling and designating the proceeds

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a "legacy" could ipso jure *only apply if Ferdinand Bloch-Bauer were to meet the non-binding request to arrange the legacy*, or if the substitute inheritance were to apply.

3. If it is argued that there is still doubt as to whether the "request" is binding or non-binding, § 614 of the General Civil Code can be applied by way of analogy. According to this provision, if, in a doubtful case, it cannot be assumed that the testator intended to obligate the heir to pass on the bequeathed assets, then in doubtful cases it is even less reasonable to assume that the testator intended to bindingly obligate the heir to pass on items of his own (the heir's) property to a third party (upon his death). Therefore in doubtful cases it must be assumed that the testator simply expressed a wish, regardless of whom the disputed items belonged to when the will was drawn up.

Adele Bloch-Bauer's "request" is therefore non-binding.

4. If one argues that Adele Bloch-Bauer's request is a binding order, it is not a legacy instruction by the testatrix herself, but rather a *testamentary order* to her sole heir Ferdinand Bloch-Bauer. By contrast with what she says in Paragraph III of Section I of her will, the testatrix is not saying that she leaves the paintings, but rather merely asks her husband to leave the paintings, i.e. to dispose of them upon death in a specific way.

5. Testamentary prohibitions and testamentary orders are *invalid,* because they encroach upon testamentary freedom. Exceptions are only permitted insofar as the instruction can be converted into a reversionary substitution. However, a prerequisite for a reversionary-heir substitution and conversion into a reversionary-heir substitution is that the instruction must relate to *the (first) testator's* own assets or *own property.* Conversion of Adele Bloch-Bauer's request into a reversionary substitution (reversionary-heir legacy) would be feasible if it could be shown that the paintings were her property.

6. The legal situation is much more difficult if the paintings were the property of the heir Ferdinand Bloch-Bauer (as part of his collection). Pursuant to § 662 of the General Civil Code, the bequest of an item of property that belongs[16] to the testator is feasible. However, it is *not the goal of the law to make testamentary orders to the heir*

[16] Translator's note: Sic. Probably: "...an item of property that does not belong..."

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permissible; but legacy instructions which are issued by the testator himself and which refer to items of property of the heir are permissible. According to prevailing opinion (about which we have serious reservations), the legacy is supposedly valid if the testator mistakenly assumed the item of property was his own. This can be contested on grounds of an error; however, in the present case, it would be possible to argue that such action is statute-barred.

7. The *Finanzprokurator* argues that one can convert the testamentary order to Ferdinand Bloch-Bauer into a valid legacy instruction of the testatrix Adele Bloch-Bauer, which would be valid pursuant to § 662 of the General Civil Code. However, one could only make that argument if the legacy was to be implemented upon the death of the testatrix, rather than (as in the present case) upon the death of her heir. This is because an explicit stipulation that the due date is the heir's death constitutes an impermissible encroachment upon testamentary freedom. That means it is all the more impermissible to "convert" a testamentary order into an instruction of this kind having a due date. Indeed in most cases the literature indicates that conversions of this kind are not feasible. Court rulings are not entirely clear on the matter, but are generally cautious. We anticipate that the Supreme Court will issue further rulings on this issue.

Thus the correct view is that Adele Bloch-Bauer's request, if one assumes it was meant to be binding (see A), cannot constitute the basis for a right of the Austrian Gallery (the Republic of Austria) to the paintings if they were the property of Ferdinand Bloch-Bauer.

8. No firm conclusions regarding ownership can be drawn from the will. The words "My portraits" do not prove anything, because the portraits are portraits of the testatrix herself. The *Finanzprokurator*'s reference to the testatrix's binding instruction to immediately surrender the paintings to the substitute heirs is also unconvincing. This is because the substitute inheritance could only have been implemented if Ferdinand Bloch-Bauer had predeceased the testatrix Adele Bloch-Bauer. In that case Adele Bloch-Bauer could have been totally confident in assuming that *upon her own death she would be the owner* of the paintings. The fact that the testatrix twice mentions "belonging to me" or

"my" library, yet avoids using the possessive when referring to the paintings (aside from the reproductions) could be an indication of ownership by Ferdinand Bloch-Bauer.

9. The assumption pursuant to § 1237 of the General Civil Code (old version) –this law was in force until 1978 – is another argument in favor of the paintings being the property of Ferdinand Bloch-Bauer. According to that assumption, *in doubtful cases* items of property which were acquired during a marriage and which were in the matrimonial household were the *property of the husband.* This assumption was effective with regard to all parties. To invalidate it, it would be necessary to prove that Adele Bloch-Bauer had acquired the paintings herself or that Ferdinand Bloch-Bauer had given them to her. If § 1247 Section 1 of the General Civil Code – which states that in doubtful cases precious objects given by a husband to his wife for decorative purposes should be deemed to have been given as a gift – were applicable, there would be no need for such proof. But the paintings do **not** fulfill the prerequisite that they must be **precious objects** given to the wife for **decorative purposes**. All of this lends support to Ferdinand Bloch-Bauer's statement that the paintings were his property.

II. Ferdinand Bloch-Bauer's Declaration to the Probate Court

1. With the words "I promise to faithfully fulfill ..." one does not normally incur a legal obligation; one holds out the prospect of *the fulfillment of a moral duty*. Ferdinand Bloch-Bauer had no reason to establish a legal obligation. If he had wanted to meet his wife's wishes, he could have done so without binding himself. *It would have made no sense to impose a binding obligation upon himself*, because it would have hindered his ability to make his own dispositions. In addition Ferdinand Bloch-Bauer *specifically stressed* the non-binding nature of Adele Bloch-Bauer's wish.

Thus no intention to incur a binding obligation can be deduced from Ferdinand Bloch-Bauer's declaration. Anyone who doubts this should bear in mind the rules regarding lack of clarity pursuant to § 915 of the General Civil Code. Since Ferdinand

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Bloch-Bauer obtained no quid pro quo for his declaration, the legal rules concerning doubt would lead one to assume that it is non-binding, as the "lesser burden".

2. The declaration was not directed towards the Austrian Gallery. It was made as part of the testamentary compliance confirmation. It is directed solely towards the court, and informs the court that the necessary prerequisites have been met, so that it can issue a completion of probate proceedings confirmation. No notification was sent to the Austrian Gallery as part of testamentary compliance confirmation; by contrast, the other legatees indicated in the will were in fact notified.

3. If one were to accept the *Finanzprokurator*'s view that Ferdinand Bloch-Bauer wanted to establish an obligation via his declaration and that the Austrian Gallery accepted this offer, then *the contents* of an acknowledgement agreement of this kind would have had to have been *the contents of Adele Bloch-Bauer's instructions*, i.e. an obligation on the part of Ferdinand Bloch-Bauer to donate the pictures to the Austrian Gallery upon his own death. Under Austrian law it would be *legally impossible* for Ferdinand Bloch-Bauer (as testator) to establish an agreement-based obligation of this kind. At best it would have been feasible as a "contract of legacy". These are only permitted between spouses and require that the necessary forms be observed.

4. The *Finanzprokurator*'s alternative assumption concerning an *agreement regarding an inter vivos gift* can be refuted by our arguments so far and by the contents of the declaration. One cannot conclude from Ferdinand Bloch-Bauer's declaration to faithfully fulfill Adele Bloch-Bauer's request that the paintings be left to the Austrian Gallery *after his death* that they were to be donated to the Austrian Gallery "immediately", i.e. *in the lifetime* of Ferdinand Bloch-Bauer. If one were to assume there was an intention to donate, the only relevant content would be a promise to donate the paintings to the Gallery after his death. But then the form requirements regarding a donation due upon death would have had to have been observed (§ 956 Section 2 of the General Civil Code; § 1 Section 1 lit d of the Law Regarding Notarial Acts), and in the present case none of those requirements was fulfilled.

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5. Even if one were to assume that in making the declaration Ferdinand Bloch-Bauer's intention was to give the paintings to the Gallery immediately, i.e. during his lifetime, the declaration regarding the obligation would be void pursuant to § 943 of the General Civil Code, because the *formal requirements regarding a notarial act were not observed.* These formal requirements could only have been waived if the promise to donate had been followed by an actual surrender. But Ferdinand Bloch-Bauer *did not* carry out an actual surrender. The agreement regarding constructive possession postulated by the *Finanzprokurator* does not meet the prerequisites of an actual surrender as defined in § 943 of the General Civil Code. We reject the Supreme Court's two decisions, in which by way of an exception it accepted an agreement regarding constructive possession as an actual surrender if the donor subsequently adhered to his intention to give and thereby indicated that he did not require protection against excessive haste. Furthermore, they are not applicable to the present case.

6. The *Finanzprokurator* points out that Ferdinand Bloch-Bauer asked the Gallery to be allowed to retain the pictures, and considers this an agreement regarding constructive possession. But it is doubtful whether Ferdinand Bloch-Bauer ever made such a statement. There is no indication thereof in the available documents from the period leading up to Ferdinand Bloch-Bauer's death in 1945. In arguing against this, the *Finanzprokurator* cites two documents from the ensuing period, one of which (letter of the lawyer Dr. Rinesch to Robert Bentley dated 6th December 1947) by no means supports his view. That means the only source is the account provided by Dr. Grimschitz, whose credibility is, for various reasons, doubtful. But even if one assumed that Ferdinand Bloch-Bauer did make such a declaration, his request would not have the necessary declaratory value as defined in § 863 of the General Civil Code to transfer ownership of the paintings to the Gallery.

7. We do not accept the *Finanzprokurator*'s view that it is sufficient for the actual surrender that Ferdinand Bloch-Bauer never denied his intention to make the donation and that it can be deduced without doubt from the surrender of *Kammer Castle on Lake Attersee* that he intended to abide by the donation. In reality Ferdinand Bloch-Bauer *never confirmed an earlier donation.* To infer legal consequences from silence runs

counter to the general principles of jurisprudence. It is not now possible to assume that the actual and executed donation of *Kammer Castle on Lake Attersee* implies an intention to abide by an imaginary previous "overall donation". *Someone who gives just one picture does not thereby declare that he has already given other pictures and intends to abide by that situation.* Thus the letter of thanks to the Gallery in 1936 does not even mention the other paintings.

Thus, up to 1938, no valid title arose from which the Austrian Gallery could have inferred rights in or to the paintings in question. The Austrian Gallery did not obtain a estate law or contract law claim to a transfer of ownership. Even less did it become owner of the paintings. The only exception was *Kammer Castle on Lake Attersee*, which Ferdinand Bloch-Bauer donated to the Austrian Gallery in 1936 of his own free will. It became the Gallery's property as a donation rather than on the basis of Adele Bloch-Bauer's will.

8. The *Finanzprokurator* 's assertion that by handing over *Adele Bloch-Bauer I, Adele Bloch-Bauer II* and *Apple Tree II* Dr. Führer had effectively carried out Adele Bloch-Bauer's testamentary instructions or Ferdinand Bloch-Bauer's promise of donation is without any basis in law. Without power of attorney from Ferdinand Bloch-Bauer, Dr. Führer was not in a position to fulfill such an obligation. It is obvious that Ferdinand Bloch-Bauer did not grant an authorization of this kind. The fact that in handing over *Adele Bloch-Bauer I* and *Apple Tree I* Dr. Führer invoked Adele Bloch-Bauer's will is irrelevant, because the will did not establish any obligation on the part of Ferdinand Bloch-Bauer, and he did not authorize Dr. Führer to fulfill it. Dr. Führer obviously invoked the will in order to cover up his own transactions, which in substance run counter to the testamentary-compliance theory, as he did not give the Austrian Gallery a single picture without material reciprocation. In view of this it hardly matters that Ferdinand Bloch-Bauer's alleged obligation was not yet due at that time.

9. Contrary to the *Finanzprokurator's* view, the fact that the Ferdinand Bloch-Bauer's heirs (represented by Dr. Rinesch) did not enter a restitution claim after 1945 does not constitute conclusive consent to Dr. Führer's actions. A restitution claim was not made

because an explicit agreement was made with the Austrian Gallery to relinquish the paintings to it.

Thus, in the period between 1938 and 1945, no basis was laid either for a claim by the Austrian Republic against Ferdinand Bloch-Bauer for transfer of ownership of the paintings, nor was an existing title effectively asserted.

III. Applicability of the Federal Act Regarding the Restitution of Artworks from Austrian Federal Museums and Collections dated 4th December 1998, Federal Legal Gazette I 1998/181

1. The Restitution Act 1998 empowers Austria's Minister of Finance, Minister of Education, Science & Culture, Minister for Economic Affairs and Minister of Defense to return artworks from Austrian museums and collections, including the Federal Movables Agency, *to their original owners* or legal successors upon death *without remuneration*, provided one of the three legal elements set forth in § 1 Paragraphs 1 to 3 is applicable.

2. The *legal element set forth in Paragraph 3* concerns artworks which, following restitution proceedings, could not be returned to their original owners or legal successors upon death, passed into the ownership of the Federal Government without remuneration as ownerless assets and are still in the ownership of the Federal Government. This was obviously not so in the present case.

3. The prerequisite for authorization pursuant to *§ 1 Paragraph 2* of the Restitution Act 1998 is that the artworks passed into the ownership of the Federal Government lawfully, but had previously been the subject of legal acts as defined in § 1 of the Annulment Act. After 1945 the paintings passed lawfully into the ownership of the Federal Government pursuant to an agreement between Ferdinand Bloch-Bauer's heirs and the Austrian Gallery. Between 1938 and 1945 all the paintings were the subject of legal transactions or legal acts covered by § 1 of the Annulment Act 1946. In light of the wording of § 1 Paragraph 2 of the Restitution Act 1998, an authorization to restitute the paintings would basically be applicable. However, in light of the legislator's intentions, §

1 Paragraph 2 must be interpreted restrictively. Lawful acquisition by the Republic is meant to apply only to acquisition from third parties – in particular authorized dealers or at auctions – and *not to acquisition from parties with a valid claim*. If the latter type of acquisition were covered by § 1 Paragraph 2, Paragraph 1 would lose almost all of its sphere of applicability, because acquisition without remuneration as defined in Paragraph 1 was also lawful, and the pictures in question were usually also the subject of legal transactions as defined in the Annulment Act 1946. Thus § 1 Paragraph 2 is not applicable to the present case.

4. The prerequisite set forth in § 1 Paragraph 1 of the Restitution Act 1998 is that the artworks were the *subject of restitution* to their original owners or legal successors upon death and after 8th May 1945 *in the course of proceedings* arising therefrom pursuant to the federal Law Regarding the Ban on the Export of Objects of Historical, Artistic or Cultural Significance passed into the *ownership of the Federal Government* without remuneration. The legislator's intention was to reverse conduct by the authorities that had been lawful in the past, namely the granting of export permits for artworks in exchange for artworks expropriated by the Nazi regime. The legislator's approach was based on the findings of the Commission for Research into Provenance, and § 1 Paragraph 1 presupposed a specific course of events: After the war expropriated art objects were restituted; the owner wanted to export them; but could only obtain an export permit by relinquishing various pieces to the Republic.

5. In the present case, *Adele Bloch Bauer I, Adele Bloch Bauer II*, and *Apple Tree I* were *not restituted*; instead, Ferdinand Bloch-Bauer's heirs came to an agreement with the Austrian Gallery that the pictures should *remain* with the Gallery permanently, and that the heirs would not demand that they be restituted. The fact that there was no restitution in the literal sense of § 1 Paragraph 1 is not an obstacle to its applicability. It makes *no difference* whether the paintings were first returned by the Republic and then surrendered back into its ownership in connection with export proceedings, or whether the party entitled to restitution agreed to a *short-cut procedure* and waived a restitution demand in order to obtain export permits for other pictures. Thus § 1 Paragraph 1 is applicable by way of analogy, especially as the legislator based his wording on the

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findings of the Commission for Research into Provenance, which at that time had examined only a small number of the artworks in the collections, with the result that the law makes no mention of short-cut procedures.

6. After the war *Houses in Unterach am Attersee* and *Beech Forest (Birch Forest)* were initially not in the possession of the Republic of Austria; they were in the possession of Dr. Führer and the Vienna City Collections respectively. The key issue is whether the prerequisite for fulfillment of the legal element "subject of a restitution" as set forth in § 1 Paragraph 1 of the Restitution Act 1998 is that the artworks were first restituted by *the Republic.* If initial restitution by the Republic is not a prerequisite, then *Houses in Unterach am Attersee* does fulfill this legal element, because the painting was (informally) returned to Ferdinand Bloch-Bauer's heirs (handed over to their representative Karl Bloch-Bauer). The situation regarding *Beech Forest (Birch Forest)* is similar to the situation regarding *Adele Bloch-Bauer I, Adele Bloch-Bauer II* and *Apple Tree I*: The heirs only waived a restitution demand because they had reached a short-cut agreement with the Austrian Gallery that it should ask for the return of the painting from the City Collections. In place of a relinquishment of possession order ("to-and-fro movement"), the procedure was shortened via a kind of assignment.

The actions of the Advisory Council set up pursuant to § 3 of the Restitution Act 1998 do not appear to be oriented to whether the artworks were first returned by the Republic. If it is sufficient that the pictures were taken by whomsoever during the Nazi period, then the prerequisite "subject of a restitution" is fulfilled for *Houses in Unterach am Attersee* and *Beech Forest (Birch Forest)* as well.

7. A further prerequisite for the applicability of § 1 Paragraph 1 is that the paintings were surrendered to the Republic without remuneration and in the course of export permit proceedings. The transfer of ownership to the Republic was not carried out "voluntarily" as defined in the laws regarding donations; it was carried out in order to obtain an export permit. Therefore relinquishment "without remuneration" as required by § 1 Paragraph 1 should not be understood in the technical civil-law sense. The key point is that the Federal Government gave no material quid pro quo to the parties having a valid claim to

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the artworks; it merely granted export permits for other artworks. One possible counter-argument to the argument that there was no remuneration is as follows: The relinquishment of the artworks was based on the acknowledgement of the Gallery's claim to the paintings pursuant to Adele Bloch-Bauer's will and Ferdinand Bloch-Bauer's declaration to the probate court. However, in light of the actual legal situation, the Gallery **did not have a valid claim;** moreover, the claim appeared doubtful to Ferdinand Bloch-Bauer's heirs as well as to the authorities. The acknowledgement was made merely with a view to **facilitating the granting of export permits** for the remaining artworks. The Austrian Gallery's "consideration" was that Dr. Garzarolli agreed to intercede on the heirs' behalf with regard to the granting of export permits, and then in fact did so. In light of the direct connection between the acknowledgement of the Gallery's claim and the agreement to grant export permits for the remaining artworks, it is fair to argue that **the relinquishment was "without remuneration"** as defined in § 1 Paragraph 1.

8. The fact that transfer of ownership without remuneration as defined in § 1 Paragraph 1 of the Restitution Act 1998 preceded the granting of an export permit is not an obstacle to the applicability of an authorization pursuant to § 1 Paragraph 1 of the Restitution Act 1998. The transfer of ownership was a *prerequisite for the granting of the export permit.* Indeed in her reply to a written parliamentary question about artworks in the possession of the Republic of Austria, *the current Minister of Education, Science & Culture* stated that there was an evident connection between the relinquishment of the paintings and the granting of an export permit.

To sum up: § 1 Paragraph 1 of the Restitution Act 1998 is applicable at least to *Adele Bloch Bauer I, Adele Bloch Bauer II* and *Apple Tree I.* Whether the same is true of *Houses in Unterach am Attersee* and *Beech Forest (Birch Forest)* depends on whether it is irrelevant that after 1945 the paintings were in the possession of Dr. Führer and the City of Vienna respectively rather than the Republic. In light of the practices of the Advisory Council established pursuant to § 3 of the Restitution Act 1998, on balance it is fair to say that § 1 Paragraph 1 is probably applicable to those two paintings as well.

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Curiculum Vita - Deutsch
Prof. Dr. Welser und Ass. Prof. Dr. Rabl

o. Univ.-Prof. Dr. Rudolf Heinz Welser

Daten

- Studium der Rechtswissenschaften, 1963 Promotion zum Doktor der Rechtswissenschaften
- Gerichtspraxis
- Rechtsanwaltsanwärter
- Universitätsassistent für Zivilgerichtliches Verfahren und für Zivilrecht
- Habilitation an der Universität Wien
- 1970: Universitätsdozent für Zivilrecht
- Berufungen nach Innsbruck, Linz und Wien
- Seit 1971 Ordinarius für bürgerliches Recht und Vorstand des Instituts für Zivilrecht der Universität Wien
- 1967 Theodor Körner-Preis
- 1970 Kardinal Innitzer-Preis
- 1979 Walther Kastner-Preis
- o.Univ.-Prof. Dr. Rudolf Welser ist seit vielen Jahren als anerkannter Gutachter und Schiedsrichter im Bereich des Privatrechts tätig. Persönliche Angaben müssen aus Geheimhaltungsgründen unterbleiben.

Publikationen

1967 - 1990:

- Über 150 wissenschaftliche Veröffentlichungen; zahlreiche Monographien und Beiträge in Fachzeitschriften

1991:

- Die Ärztehaftung im österreichischen Recht, Festvortrag anläßlich der 20. Österreichischen Orthopädentagung 24. - 27. 5. 1989, veröffentlicht von der Orthopädischen Universitätsklinik Wien, Verlag der Wiener Medizinischen Akademie 1991.
- Widerrufsvorbehalt und Teilkündigungsvereinbarung bei entgeltwerten Leistungen des Arbeitsgebers, DRdA 1991, 1-8.
- Erbverzicht und Schenkung auf den Todesfall, NZ 1991, 84 - 87.
- Grundriß des bürgerlichen Rechts, Band II[9] (gemeinsam mit H. Koziol).
- Gentechnologie und schadenersatzrechtliche Haftung, in: Gentechnologie im österreichischen Recht, Studie im Auftrag des Bundesministeriums für Wissenschaft und Forschung (Wien 1991) 191 - 223.
- Das neue Erbrecht, Vortrag, gehalten vor der Wiener Juristischen Gesellschaft am 7.

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11. 1990, JBl 1991, 163.

1992:

- Prospektkontrolle und Prospekthaftung nach dem KMG, ecolex 1992, 301 - 309.
- Der zwei- und dreifache Importeur, ecolex 1992, 471 - 472.
- Grundriß des bürgerlichen Rechts, Band I[9] (gemeinsam mit H. Koziol).

1993:

- Besprechung OGH 6 Ob 565/92 (Fiktiver Verbesserungsaufwand als Mangelschaden), ecolex 1993, 377 – 379.
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- Natural- oder Geldersatz beim Werkmangel, ecolex 1993, 233 – 235.
  Entscheidung des verstärkten Senates und Reform des Gewährleistungsrechts, ÖJZ 1993, 753 - 759.

1994:

- Posterior tempore, potior iure! Eine unbegreifliche Entscheidung zur Doppelveräußerung, NZ 1994, 73 - 78.
- Das Legat einer fremden Sache, NZ 1994, 197 - 204.
- Erbrecht. Von der Erbschaft bis zur Erbschaftssteuer, Broschüre der Creditanstalt - Bankverein (gemeinsam mit Univ.-Prof. DDr. Eduard Lechner), Erster Teil: Erbrecht 15 - 96.
- Schadenersatz statt Gewährleistung. Konsequenzen aus der neuesten Judikatur (unter Mitarbeit von Dr. Irene Welser), Manz 1994.
- Hinterlassung des Pflichtteils als Vermächtnis und Abrechnungsgemeinschaft nach § 786 Satz 2 ABGB, NZ 1994, 269 -273.

1995:

- Gewährleistung länger, aber mit Fußangeln, Die Presse vom 23. Jänner 1995.
- Die schadenersatzrechtliche Haftung für gentechnische Eingriffe am Menschen (gemeinsam mit Dr. Andreas Kletecka), Imago Hominis 1995, Band II/Nr. 4, 285 - 289.
- Der Entwurf für ein neues Gewährleistungsrecht, ecolex 1995, 11 – 18.
- Rechtsgrundlagen des Anlegerschutzes, ecolex 1995, 79 - 82.
- Der Gesetzentwurf zu einem neuen Gewährleistungsrecht, Vortrag, gehalten vor der Wiener Juristischen Gesellschaft am 22. 2. 1995, ÖJZ 1995, 383 - 384.
- Grundriß des bürgerlichen Rechts, Band I[10] (gemeinsam mit H. Koziol).

1996:

002906

- Die Haftung aus Kaufvertrag und Werkvertrag. Gewährleistung, Garantie, Schadenersatz, Produkthaftung, Broschüre der Creditanstalt - Bankverein (gemeinsam mit Dr. Irene Welser).
- Die bevorstehende Reform des österreichischen Gewährleistungsrechts, Selim Kaneti´ye Armagan (Festgabe für Selim Kaneti) 1996, 59 - 63.
- Grundriß des bürgerlichen Rechts, Band II[10] (gemeinsam mit H. Koziol).

1997:

- Darstellung des gesamten Erbrechts (§§ 531 - 824 ABGB) in dem von Rummel herausgegebenen Kommentar zum ABGB, 3. Auflage.
- Der Vorschlag einer EU-Richtlinie über den Verbrauchsgüterkauf, in: Recht in Österreich und Europa, Festschrift für Karl Hempel zum 60. Geburtstag 323 – 331.
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- Einsetzung auf bestimmte Teile und gesetzliches Erbrecht, NZ 1997, 345 –348.

1998:

- Vorschläge zur Neuregelung der Anrechnung beim Pflichtteil, NZ 1998, 40-48.

1999:

- Y2k – Das Jahr-2000-Problem (gemeinsam mit Irene Welser) (Manz).

2000:

- Grundriß des Bürgerlichen Rechts, Band II, 11. Auflage.
- Reform des Gewährleistungsrechts – Die europäische Richtlinie über den Verbrauchsgüterkauf und ihre Bedeutung für ein neues Gewährleistungsrecht, 14. ÖJT, Band II/1, Wien 2000 (gemeinsam mit Brigitta Jud), Manz 2000.
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2001:

- Zur Reform des Anrechnungsrechts – Ergebnisse einer Umfrage im Notariat, GedHeft der NZ für Winfried Kralik 2001, 105 ff.
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- Formgebot – Formfreiheit im Zivilrecht (Vortrag 6.6.2001), Schriftenreihe des Ludwig-Boltzmann-Instituts für Rechtsvereinheitlichung.
- Die Verbrauchsgüterkauf-Richtlinie und ihre Umsetzung in Österreich und Deutschland (Vortrag Freiburg 12. 9. 2001)

Ass.-Prof. Dr. Christian Rabl

Daten

- 1989-1993 Studium der Rechtswissenschaften an der Universität Wien
- Seit 1993 Assistent am Institut für Zivilrecht der Universität Wien (Prof. Welser)
- 1996: Promotion zum Doktor der Rechtswissenschaften
- Gerichtspraxis
- 1997: Förderpreis der Juristischen Blätter
- Seit 2001: Assistenzprofessor am Institut für Zivilrecht der Universität Wien

Publikationen

1996:

- § 777 und die Anpassung einer letztwilligen Verfügung, NZ 1996, 49

1997:

- Verwendungsanspruch des wahren Erben gegen den Fiskus - ist der Heimfall gegenüber dem wahren Erben gerechtfertigt? NZ 1997, 141
- Gläubigerverzug und beiderseits zu vertretende Unmöglichkeit, JBl 1997, 488 – 502
- § 1026 ABGB und Konkurs des Machthabers, NZ 1997, 302 – 310

1998:

- Schadenersatz wegen Nichterfüllung, 150 Seiten, Verlag MANZ 1998
- Anm zu OGH 28. 10. 1997, 4 Ob 276/97k, ecolex 1998, 123 – 124 (Erlöschen der Vollmacht durch Konkurs des Machthabers und Gutglaubensschutz des Dritten)
- Die historische Entwicklung der Anrechnung von Vorempfängen und Vorschüssen auf den Pflichtteil seit den Vorentwürfen zum ABGB, NZ 1998, 7 - 15
- Die Nichterfüllung letztwilliger Auflagen, NZ 1998, 97 – 107
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1999:

- Das Nachlaßinventar – Inhalt und Zweck, NZ 1999, 129-140
- Die Haftung des Händlers nach dem Produkthaftungsgesetz, JBl 1999, 490-515
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2000:

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- Der „teilweise behebbare" Qualitätsmangel, ecolex 2000, 270-271
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2001:

- Altes Testament – neues Testament. Das Verhältnis letztwilliger Verfügungen zueinander, 130 Seiten, Manz April 2001
- Mitarbeit an Koziol/Welser, Grundriß des Bürgerlichen Rechts, Band II, 12. Auflage, bearbeitet von Rudolf Welser, MANZ 2001
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- 13 Jahre Produkthaftungsrecht (Rechtsprechungsübersicht), ecolex 2001, 508-509
- Die Haftung des Scheinherstellers nach PHG, ecolex 2001, 662-663
- Anm zu OGH 28. 3. 2001, 7 Ob 49/01h, ecolex 2001/238 (Haftung des Scheinherstellers wegen Instruktionsfehler)
- Rezension: P. Bydlinski, Grundzüge des Privatrechts für Ausbildung und Wirtschaftspraxis, 4. Auflage, in JBl 2001/2002

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Resumes - English of Prof. Dr. Welser and Ass. Prof. Dr. Rabl

Professor Rudolf Heinz Welser

Professional History

- Studied law; **1963: Doctor of Law.**
- Court traineeship.
- Legal associate.
- University teaching assistant (civil proceedings and civil law).
- Qualified as university lecturer, University of Vienna.

1970: University Lecturer in Civil Law

- Offered appointments in Innsbruck, Linz and Vienna.

1971 to present: Professor of Civil Law and Chairman of the Institute of Civil Law, University of Vienna.

1967: Theodor Körner Prize.

1970: Kardinal Innitzer Prize.

1979: Walther Kastner Prize.

Professor Welser has many years of experience as a provider of advisory opinions and arbitrator in private law. For reasons of confidentiality, his personal details are not included in this resume.

Publications

1967-1990:

- More than 150 scholarly publications. Numerous monographs and journal articles.

1991:

- Doctors' liability under Austrian law. Lecture in honor of the 20th Austrian Orthopaedic Convention, 24th to 27th May 1989. Published by the University Orthopaedic Clinic, Vienna. Vienna Medical Academy Press, 1991.
- Countermand provisos and partial termination agreements in instances of monetary payments by an employer, *Das Recht der Arbeit (DrdA)* [*Labor Law] 1991, 1-8.*

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- Renunciation of future inheritance and donation upon death, *Österreichische Notariatszeitung (NZ) [Austrian Notaries' Journal])*, 1991, 84 - 87.
- *Outline of Civil Law, Volume II, 9th edition (with H. Koziol).*
- Genetic engineering and liability for damages, in: *Genetic Technology under Austrian Law, study carried out for the Ministry of Science and Research, (Vienna 1991) 191 - 223.*
- The new law of inheritance. Lecture to the Vienna Legal Association on 7th November 1990, *Juristische Blätter (JBl)* [*Journal of Law] 1991, 163.*

1992:

- Monitoring of and liability for statements made in prospectuses pursuant to the Capital Market Act, *ecolex 1992, 301 - 309.*
- The two- and threefold importer, *ecolex 1992, 471 - 472.*
- *Outline of Civil Law, Volume I, 9th edition (with H. Koziol).*

1993:

- Commentary regarding Supreme Court ruling 6 Ob 565/92 (fictitious expenditures on improvements as consequential harm caused by a defect), *ecolex 1993, 377 – 379.*
- Prior heir exempted from a number of otherwise applicable statutory restrictions; reversionary heir's action with a view to cancellation of an entry, *NZ 1993, 140 - 143.*
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1994:

- Posterior tempore, potior iure! An incomprehensible ruling regarding double sale, *NZ 1994, 73 - 78.*
- Bequest of an item of property of another party, *NZ 1994, 197 - 204.*
- Law of inheritance. From inheritance to inheritance tax. Brochure issued by Creditanstalt Bankverein (with Professor Eduard Lechner). Part 1: Law of Inheritance, 15 - 96.
- *Damages Instead of Guarantee: Implications of the Most Recent Court Rulings, (with Dr. Irene Welser), Manz 1994.*
- Leaving the statutory forced share as a legacy, and settlement community pursuant to § 786 Section 2 of the General Civil Code , *NZ 1994, 269 -273.*

1995:

002911

- Longer warranty, but with catches, *Die Presse, 23rd* January 1995.
- Liability for damages associated with genetic engineering interventions on human beings (with Dr. Andreas Kletecka), *Imago Hominis 1995, Volume II/No. 4, 285 - 289.*
- The draft for a new warranty law, *ecolex 1995, 11 – 18.*
- Legal principles of investor protection, *ecolex 1995, 79 - 82.*
- The draft for a new warranty law, lecture to the Vienna Legal Association on 22nd February 1995, *ÖJZ 1995, 383 - 384.*
- *Outline of Civil Law, Volume I, 10th edition (with H. Koziol).*

1996:

- Liability arising from purchase agreements and work agreements. Warranty, guarantee, damages, product liability. Brochure for Creditanstalt Bankverein (with Dr. Irene Welser).
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Assistant Professor Christian Rabl

Professional History

1989-1993: Studied law at the University of Vienna.

Since 1993: Assistant at the Institute of Civil Law, University of Vienna (Professor Welser).

1996: Doctor of Law.

Court traineeship.

1997: *Juristische Blätter Prize.*

Since 2001: Assistant Professor at the Institute of Civil Law, University of Vienna.

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1996:

- § 777 and modifications to wills, *NZ 1996, 49.*

1997:

- The true heir's claims against the fiscal authorities with regard to use: Is the state's right of escheat justified? *NZ 1997, 141.*
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Kurzfassung Rechtsgutachten Deutsch

Rechtsgutachten

zur Frage, ob die Republik Österreich in der Zeit zwischen 1923 und 1948 einen Anspruch auf die Klimt-Bilder "Adele Bloch-Bauer I", "Adele Bloch-Bauer II", "Apfelbaum I", "Buchenwald (Birkenwald)" und "Häuser in Unterach am Attersee" oder das Eigentum daran erworben hat und ob eine Ermächtigung zur unentgeltlichen Rückgabe der Bilder an die Erben nach Ferdinand Bloch-Bauer gemäß § 1 des Bundesgesetzes über die Rückgabe von Kunstgegenständen aus den Österreichischen Bundesmuseen und Sammlungen vom 4. 12. 1998 besteht

erstattet von

o. Univ.-Prof. Dr. Rudolf Welser,
Ordinarius für bürgerliches Recht und
Vorstand des Instituts für Zivilrecht der Universität Wien

und

Ass.-Prof. Dr. Christian Rabl,
Universitätsassistent
am Institut für Zivilrecht der Universität Wien

Kurzfassung der wesentlichen Ergebnisse

I. Die Republik Österreich hat in der Zeit zwischen 1923 und 1948 weder einen Anspruch auf die Klimt-Bilder noch das Eigentum daran erworben.

1. Adele Bloch-Bauers testamentarische Bitte an ihren Gatten Ferdinand Bloch-Bauer, die Bilder nach seinem Tod der Österreichischen Galerie zu hinterlassen, stellt einen unverbindlichen Wunsch dar und begründet keine erbrechtlichen Ansprüche. Selbst wenn man einen Verpflichtungswillen unterstellt, wäre dieses Testiergebot als Eingriff in die Testierfreiheit Ferdinand Bloch-Bauers unwirksam. Nur wenn die Bilder im Eigentum Adele Bloch-Bauers standen, könnte das unwirksame Testiergebot in ein fideikommissarisches Nachlegat umgedeutet werden. Eine solche Umdeutung ist wegen Eingriffs in die Testierfreiheit unzulässig, wenn die Bilder im Eigentum Ferdinand Bloch-Bauers standen. Für die Eigentümerschaft Ferdinand Bloch-Bauers spricht nicht nur seine Erklärung vor dem Verlassenschaftsgericht, sondern auch die gesetzliche Vermutung des § 1237 alte Fassung ABGB. Eine gegenteilige Vorstellung Adele Bloch-Bauers ist aus ihrem Testament nicht abzuleiten.

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2. Mit seiner Erklärung gegenüber dem Verlassenschaftsgericht, die Bitte seiner Frau getreulich erfüllen zu wollen, hat Ferdinand Bloch-Bauer deren Erfüllung nur unverbindlich in Aussicht gestellt. Dadurch hat er gegenüber der Österreichischen Galerie keine verbindliche Rechtspflicht, die Bilder letztwillig zu vermachen, übernommen. Eine solche Bindung wäre rechtlich unmöglich, für eine Schenkung auf den Todesfall fehlt nicht nur der Verpflichtungswille, sondern auch die notwendige Form. Noch weniger kann in der Erklärung der Wille Ferdinand Bloch-Bauers erkannt werden, die Bilder der Österreichischen Galerie bereits zu Lebzeiten zu schenken. Selbst wenn man einen derartigen Bindungswillen unterstellte, fehlte noch immer die notwendige Form des Notariatsaktes oder die Vornahme einer wirklichen Übergabe der Bilder durch Ferdinand Bloch-Bauer.

3. Die Veräußerung der Bilder "Adele Bloch-Bauer I", "Adele Bloch-Bauer II" und "Apfelbaum" an die Österreichische Galerie und "Buchenwald (Birkenwald)" an die Städtische Sammlung Wien durch den staatlich zur Vermögensliquidation Ferdinand Bloch-Bauers eingesetzten RA Dr. Führer in den Jahren 1938 bis 1945 kann dem geflüchteten Ferdinand Bloch-Bauer rechtsgeschäftlich nicht zugerechnet werden. Dadurch wurde weder eine Verpflichtung Ferdinand Bloch-Bauers begründet noch erfüllt.

II. Die Voraussetzungen für eine Ermächtigung zur unentgeltlichen Rückgabe der Bilder an die Erben nach Ferdinand Bloch-Bauer gemäß § 1 des Bundesgesetzes über die Rückgabe von Kunstgegenständen aus den Österreichischen Bundesmuseen und Sammlungen vom 4. 12. 1998 bestehen.

1. Der Tatbestand des § 1 Z 3 des RestitutionsG 1998 ist nicht verwirklicht. Demgegenüber erfüllen die Bilder den Wortlaut des Rückgabetatbestandes der Z
2. Durch die Transaktionen Dr. Führers waren sie alle Gegenstand von Rechtsgeschäften oder Rechtshandlungen im Sinne des § 1 NichtigkeitsG 1946 und sind nach 1945 durch die Einigung zwischen RA Dr. Rinesch als Vertreter der Erben Ferdinand Bloch-Bauers und der Österreichischen Galerie rechtmäßig in das Eigentum des Bundes übergegangen. Allerdings ist die Z 2 nach dem gesetzgeberischen Zweck auf den rechtmäßigen Erwerb von Dritten (insbesondere im Rahmen von Versteigerungen oder von befugten Gewerbsmännern) zu beschränken. Der Erwerb vom wirklich Berechtigten ist nicht erfaßt, weil ansonsten die Ermächtigung des § 1 Z 1 RestitutionsG 1998 jeden Anwendungsbereich verlöre.
   Die Ermächtigung nach § 1 Z 1 RestitutionsG 1998 setzt voraus, daß die Kunstgegenstände Gegenstand von Rückstellungen an den ursprünglichen Eigentümer oder dessen Rechtsnachfolger von Todes wegen waren und nach dem 8. Mai 1945 im Zuge eines daraus folgenden Verfahrens nach den Bestimmungen des Ausfuhrverbotsgesetzes unentgeltlich in das Eigentum des Bundes übergegangen sind. Im vorliegenden Fall wurden die Bilder "Adele Bloch-Bauer I", "Adele Bloch-Bauer II", "Apfelbaum I" nicht zurückgestellt, sondern es einigten sich die Erben Ferdinand Bloch-Bauers mit der Österreichischen Galerie darauf, daß die Bilder endgültig bei der Galerie verbleiben, also nicht zurückgefordert werden. An einer solchen Abwicklung im kurzem Weg darf die Anwendbarkeit der Z 1 nach dem gesetzgeberischen Zweck nicht scheitern. Ob auch die Bilder "Häuser in Unterach am Attersee" und "Buchenwald/ Birkenwald" das Tatbestandsmerkmal "Gegenstand von Rückstellungen" erfüllen, hängt davon ab, ob es nach § 1 Z 1 darauf ankommt, daß die Kunstgegenstände zunächst durch die Republik zurückgestellt wurden. Verneint man dies, würden sie das

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Tatbestandsmerkmal erfüllen.
Alle Bilder wurden der Republik unentgeltlich im Sinne des § 1 Z 1 übereignet, weil keine materielle Gegenleistung erbracht wurde und eine rechtliche Verpflichtung der Erben Ferdinand Bloch-Bauers nicht bestand. Die Übereignung erfolgte in einem unmittelbaren Zusammenhang mit der in Aussicht gestellten Erleichterung der Ausfuhrgenehmigung für die restlichen Kunstwerke. Einen evidenten Zusammenhang zwischen der Überlassung der Bilder und der Genehmigung der Ausfuhr erkannte im konkreten Fall auch die Bundesministerin für Unterricht und kulturelle Angelegenheiten in einer schriftlichen parlamentarischen Anfragenbeantwortung.

3. Im Ergebnis ist somit eine Anwendung des § 1 Z 1 RestitutionsG 1998 zumindest auf die Bilder "Adele Bloch-Bauer I", "Adele Bloch-Bauer II" und "Apfelbaum I" zu bejahen. Ob dasselbe für "Häuser in Unterach" und "Buchenwald/Birkenwald" gilt, hängt davon ab, ob es für die Anwendbarkeit des § 1 Z 1 irrelevant ist, daß sich die Bilder nach 1945 nicht bei der Republik, sondern bei Dr. Führer bzw der Gemeinde Wien befunden haben. Nach der Praxis des nach § 3 RestitutionsG 1998 eingerichteten beratenden Beirats wäre die Anwendbarkeit eher zu bejahen.

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Summary of the Main Conclusions - English

Legal Opinion

regarding the question of whether, in the period between 1923 and 1948, the Republic of Austria acquired a claim to or ownership of the paintings Adele Bloch-Bauer I, Adele Bloch-Bauer II, Apple Tree I, Beech Forest (Birch Forest), and Houses in Unterach am Attersee, and whether, pursuant to § 1 of Austria's Federal Act Regarding the Restitution of Artworks from Austrian Federal Museums and Collections dated 4th December 1998, authority exists to restitute the paintings without remuneration to the heirs of Ferdinand Bloch-Bauer.

Professor Rudolf Welser
Professor of Civil Law and
Chairman of the Institute of Civil Law, University of Vienna
and
Assistant Professor Christian Rabl
Assistant Professor at the
Institute of Civil Law, University of Vienna

Brief Summary of the Main Conclusions

I. In the period between 1923 and 1948, the Republic of Austria did not acquire a claim to or ownership of the Klimt paintings.

1. Adele Bloch-Bauer's testamentary request to her husband Ferdinand Bloch-Bauer to leave the paintings to the Austrian Gallery after his death constitutes a non-binding wish, and therefore does not constitute the basis for any estate law claims. Even if one assumed there was an intention to establish an obligation, that testamentary order would be ineffective, as it would encroach upon Ferdinand Bloch-Bauer's testamentary freedom. It would only be possible to convert the ineffective testamentary order into a reversionary-heir legacy if the paintings were the property of Adele Bloch-Bauer. A conversion of this kind is impermissible, as it would encroach upon testamentary freedom if the paintings were the property of Ferdinand Bloch-Bauer. Ferdinand Bloch-Bauer 's declaration to the probate court, and the legal presumption pursuant to § 1237 (old version) of the General Civil Code, are indications that the paintings belonged to Ferdinand. Moreover, one cannot infer from Adele Bloch-Bauer's will that she believed the paintings belonged to her.

2. In making his declaration to the probate court that he intended to faithfully fulfill his wife's request, Ferdinand Bloch-Bauer merely non-bindingly held out the prospect of fulfilling that request. In doing so, he did not establish a binding legal obligation with regard to the Austrian Gallery that he would bequeath the paintings. In any case, it

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would not have been legally feasible to establish a binding obligation of this kind, because not only did Ferdinand Bloch-Bauer have no intention of establishing an obligation to make a donation due upon death, but also the formal requirements were not met. Furthermore, Ferdinand Bloch-Bauer's statement of intent is definitely not an indication that he wished to donate the paintings to the Austrian Gallery during his lifetime. Even if one were to assume he intended to bind himself in this way, the formal requirements (a notarial act) were not met, nor was there an actual surrender of the paintings.

3. The sale of Adele Bloch Bauer I, Adele Bloch Bauer II and Apple Tree I to the Austrian Gallery and of Beech Forest (Birch Forest) to the Vienna City Collections by Dr. Führer, the lawyer officially assigned the task of liquidating Ferdinand Bloch-Bauer's assets between 1938 and 1945, cannot be deemed a legal transaction attributable to Ferdinand Bloch-Bauer. The sale neither constituted the basis of nor fulfilled an obligation on the part of Ferdinand Bloch-Bauer.

II. The prerequisites for authorization to restitute the paintings to the heirs of Ferdinand Bloch-Bauer without remuneration pursuant to § 1 of Austria's Federal Act Regarding the Restitution of Artworks from Austrian Federal Museums and Collections dated 4th December 1998 are met.

1. The legal element set forth in § 1 Paragraph 3 of the Restitution Act 1998 is not applicable. Nevertheless, the paintings do fulfill the wording of the legal element regarding restitution set forth in Paragraph 2: As a result of Dr. Führer's transactions, all the paintings were the subject of legal transactions or legal acts as defined in § 1 of the Annulment Act, and after 1945 passed lawfully into the ownership of the Federal Government pursuant to an agreement between Ferdinand Bloch-Bauer's heirs and the Austrian Gallery. However, in light of the legislator's intentions, § 1 Paragraph 2 must be interpreted restrictively, such that it applies only to acquisition from third parties, in particular from authorized dealers or at auctions. Paragraph 2 does not apply to acquisition from parties with a valid claim, because if it did, Paragraph 1 would lose its entire sphere of applicability.

2. The prerequisite for authorization pursuant to § 1 Paragraph 1 of the Restitution Act 1998 is that the artworks were the subject of restitution to their original owners or legal successors upon death and after 8th May 1945 in the course of proceedings arising therefrom passed into the ownership of the Federal Government without remuneration pursuant to the federal Law Regarding the Ban on the Export of Objects of Historical, Artistic or Cultural Significance.

   Adele Bloch Bauer I, Adele Bloch Bauer II, and Apple Tree I were not restituted; instead, Ferdinand Bloch-Bauer's heirs came to an agreement with the Austrian Gallery that the pictures should remain with the Gallery permanently, and that the heirs would not demand that they be restituted. In light of the legislator's intentions, a short-cut procedure of this kind is not a barrier to the applicability of Paragraph 1. The question of whether Houses in Unterach am Attersee and Beech Forest (Birch Forest) also fulfill that legal element hinges on whether the prerequisite for fulfillment of the legal element "subject of a restitution" as set forth in § 1 Paragraph 1 of the Restitution Act 1998 is that the artworks were first restituted by the Republic. If that

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is not a prerequisite, then those two paintings do fulfill that legal element.

All the paintings were surrendered to the Republic without remuneration as defined in § 1 Paragraph 1, because the Federal Government gave no material quid pro quo, and Ferdinand Bloch-Bauer's heirs were not under any legal obligation. The transfer of ownership was carried out in direct connection with the offer to facilitate the granting of export permits for the remaining artworks. Indeed in her reply to a written parliamentary question about artworks in the possession of the Republic of Austria, the current Minister of Education, Science & Culture stated that there was an evident connection between the relinquishment of the paintings and the granting of an export permit.

3. To sum up: § 1 Paragraph 1 of the Restitution Act 1998 is applicable at least to Adele Bloch Bauer I, Adele Bloch Bauer II and Apple Tree I. Whether the same is true of Houses in Unterach am Attersee and Beech Forest (Birch Forest) depends on whether it is irrelevant that after 1945 the paintings were in the possession of Dr. Führer and the City of Vienna respectively rather than the Republic. In light of the practices of the Advisory Council established pursuant to § 3 of the Restitution Act 1998, on balance it is fair to say that § 1 Paragraph 1 is probably applicable to those two paintings as well.

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Restitutionsgesetz 1998

[Erste Version Restitutionsgesetz 1998 vom 25. September 1998]
[Bundesgesetz Rückgabe von Kunstgegenständen]
[English translation of the important parts of the art restitution law]

BUNDESGESETZBLATT

FÜR DIE REPUBLIK ÖSTERREICH

Jahrgang 1998 Ausgegeben am 04. Dezember 1998 Teil I

181. Bundesgesetz: Rückgabe von Kunstgegenständen aus den Österreichischen Bundesmuseen und Sammlungen
(NR: GP XX RV 1390 AB 1464 S. 146.
BR: AB 5802 S. 646)

181. Bundesgesetz über die Rückgabe von Kunstgegenständen aus den Österreichischen Bundesmuseen und Sammlungen

Der Nationalrat hat beschlossen:

§1. Der Bundesminister für Finanzen wird ermächtigt, jene Kunstgegenstände aus den österreichischen Bundesmuseen und Sammlungen, wozu auch die Sammlungen der Bundesmobilienverwaltung zählen, unentgeltlich an die ursprünglichen Eigentümer oder deren Rechtsnachfolger von Todes wegen zu übereignen, welche

1.Gegenstand von Rückstellungen an die ursprünglichen Eigentümer oder deren Rechtsnachfolger von Todes wegen waren und nach dem 08. Mai 1945 im Zuge eines daraus folgenden Verfahrens nach den Bestimmungen des Bundesgesetzes über das Verbot der Ausfuhr von Gegenständen von geschichtlicher, künstlerischer oder kultureller Bedeutung, StGBl. Nr. 90/1918, unentgeltlich in das Eigentum des Bundes übergegangen sind und sich noch im Eigentum des Bundes befinden;

2.zwar rechtmäßig in das Eigentum des Bundes übergegangen sind, jedoch zuvor Gegenstand eines Rechtsgeschäftes gemäß § 1 des Bundesgesetzes vom 15.Mai 1946 über die Nichtigerklärung von Rechtsgeschäften und sonstigen Rechtshandlungen, die während der deutschen Besetzung Österreichs erfolgt sind, in das Eigentum der

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Republik Österreich gelangt sind, BGBl. Nr. 106/1946, waren und sich noch im Eigentum des Bundes befinden;

3.nach Abschluß von Rückstellungsverfahren nicht an die ursprünglichen Eigentümer oder deren Rechtsnachfolger von Todes wegen zurückgegeben werden konnten, als herrenloses Gut unentgeltlich in das Eigentum des Bundes übergegangen sind und sich noch im Eigentum des Bundes befinden.

§ 2. (1) Der Bundesminister für Unterricht und kulturelle Angelegenheiten, der Bundesminister für wirtschaftliche Angelegenheiten und der Bundesminister für Landesverteidigung werden ermächtigt,

1.die ursprünglichen Eigentümer oder deren Rechtsnachfolger von Todes wegen festzustellen und die Kunstwerke an diese zu übereignen;

2.jene Kunstgegenstände gemäß § 1, welche nicht an die ursprünglichen Eigentümer oder deren Rechtsnachfolger von Todes wegen rückübereignet werden können, weil diese nicht festgestellt werden können, an den Nationalfonds der Republik Österreich für Opfer des Nationalsozialismus zur Verwertung zu übereignen, der den Verwertungserlös für die in § 2a des Bundesgesetzes über den Nationalfonds der Republik Österreich für Opfer des Nationalsozialismus, BGBl. Nr. 432/1995, genannten Zwecke zu verwenden hat.

(2) Die genannten Bundesminister haben vor der Übereignung den nach § 3 eingerichteten Beirat anzuhören. Durch die Bestimmungen dieses Bundesgesetzes wird keinerlei Anspruch auf Übereignung begründet.

(3) Der Bundesminister für Unterricht und kulturelle Angelegenheiten hat den Nationalrat über die erfolgte Übereignung von Kunstgegenständen in einem Bericht jährlich zu informieren.

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Erste Version Restitutionsgesetz 1998 vom 25. September 1998

1390 der Beilagen zu den Stenographischen Protokollen des Nationalrates XX. GP

Ausgedruckt am 25. 9. 1998

Regierungsvorlage

Bundesgesetz über die Rückgabe von Kunstgegenständen aus den Österreichischen Bundesmuseen und Sammlungen

Der Nationalrat hat beschlossen:

§ 1. Der Bundesminister für Finanzen wird ermächtigt, jene Kunstgegenstände aus den österreichischen Bundesmuseen und Sammlungen, wozu auch die Sammlungen der Bundesmobilienverwaltung zählen, unentgeltlich an die ursprünglichen Eigentümer oder deren Rechtsnachfolger von Todes wegen zu übereignen, welche

1. Gegenstand von Rückstellungen an die ursprünglichen Eigentümer oder deren Rechtsnachfolger von Todes wegen waren und nach dem 8. Mai 1945 im Zuge eines daraus folgenden Verfahrens nach den Bestimmungen des Bundesgesetzes über das Verbot der Ausfuhr von Gegenständen von geschichtlicher, künstlerischer oder kultureller Bedeutung, StGBl. Nr. 90/1918, unentgeltlich in das Eigentum des Bundes übergegangen sind und sich noch im Eigentum des Bundes befinden;

2. zwar rechtmäßig in das Eigentum des Bundes übergegangen sind, jedoch zuvor Gegenstand eines Rechtsgeschäftes gemäß § 1 des Bundesgesetzes vom 15. Mai 1946 über die Nichtigerklärung von Rechtsgeschäften und sonstigen Rechtshandlungen, die während der deutschen Besetzung Österreichs erfolgt sind, in das Eigentum der Republik Österreich gelangt sind, BGBl. Nr. 106/1946, waren und sich noch im Eigentum des Bundes befinden;

3. nach Abschluß von Rückstellungsverfahren nicht an die ursprünglichen Eigentümer oder deren Rechtsnachfolger von Todes wegen zurückgegeben werden konnten, als herrenloses Gut unentgeltlich in das Eigentum des Bundes übergegangen sind und sich noch im Eigentum des Bundes befinden.

§2. (1) Der Bundesminister für Unterricht und kulturelle Angelegenheiten, der Bundesminister für wirtschaftliche Angelegenheiten und der Bundesminister für Landesverteidigung werden ermächtigt,

1. die ursprünglichen Eigentümer oder deren Rechtsnachfolger von Todes wegen festzustellen und die Kunstwerke an diese zu übereignen;

2. jene Kunstgegenstände gemäß § 1, welche nicht an die ursprünglichen Eigentümer oder deren Rechtsnachfolger von Todes wegen rückübereignet werden können, weil

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diese nicht festgestellt werden können, an den Nationalfonds der Republik Österreich für Opfer des Nationalsozialismus zur Verwertung zu übereignen, der den Verwertungserlös für die in § 2 des Bundesgesetzes über den Nationalfonds der Republik Österreich für Opfer des Nationalsozialismus, BGBl. Nr. 432/ 1995, genannten Zwecke zu verwenden hat.

(2) Die genannten Bundesminister haben vor der Übereignung den nach § 3 eingerichteten Beirat anzuhören. Durch die Bestimmungen dieses Bundesgesetzes wird keinerlei Anspruch auf Übereignung begründet.

§ 3. (1) Beim Bundesministerium für Unterricht und kulturelle Angelegenheiten wird ein Beirat eingerichtet, der die in § 2 genannten Bundesminister bei der Feststellung jener Personen, denen Kunstgegenstände zu übereignen sind, zu beraten hat.

(2) Mitglieder des Beirates sind:

1. je ein Vertreter des Bundesministeriums für wirtschaftliche Angelegenheiten, des Bundesministeriums für Justiz, des Bundesministeriums für Unterricht und kulturelle Angelegenheiten sowie des Bundesministeriums für Landesverteidigung;

2. ein Vertreter der Finanzprokuratur;

3. je ein Experte auf dem Gebiet der Geschichte sowie der Kunstgeschichte.

(3) Für jedes Mitglied ist ein Ersatzmitglied zu bestellen.

(4) Der Beirat kann weiters Sachverständige und geeignete Auskunftspersonen beiziehen.

(5) Die Bestellung und Abberufung des Vorsitzenden, dessen Stellvertreters sowie die Bestellung und Abberufung der in Abs. 2 genannten Mitglieder des Beirates obliegt dem Bundesminister für Unterricht und kulturelle Angelegenheiten. Die Bestellung erfolgt jeweils auf ein Jahr. Neuerliche Bestellungen sind zulässig.

(6) Der Bundesminister für Unterricht und kulturelle Angelegenheiten oder der Vorsitzende berufen den Beirat zu Sitzungen ein.

(7) Zu einem Beschluß des Beirates ist die Anwesenheit von mindestens der Hälfte der Mitglieder und die Mehrheit der abgegebenen Stimmen erforderlich.

(8) Der Beirat beschließt seine Geschäftsordnung, die vom Bundesminister für Unterricht und kulturelle Angelegenheiten zu genehmigen ist, mit einfacher Mehrheit. Die Geschäftsordnung hat unter Bedachtnahme auf Abs. 1 die Tätigkeit des Beirates möglichst zweckmäßig zu regeln. Die Geschäftsordnung ist zu genehmigen, wenn sie dieser Voraussetzung entspricht.

§ 4. Die Bestimmungen des Denkmalschutzgesetzes, BGBl. Nr. 533/1923, in der Fassung des Bundesgesetzes BGBl. Nr. 473/1990 über die freiwillige Veräußerung von Denkmalen, die sich im alleinigen Eigentum des Bundes befinden, sowie die Bestimmungen des Bundesgesetzes über das Verbot der Ausfuhr von Gegenständen von geschichtlicher, künstlerischer oder kultureller Bedeutung, StGBl. Nr. 90/1918, in

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der Fassung des Bundesgesetzes BGBl. Nr. 605/1987 finden auf die Übereignung sowie die Ausfuhr von Gegenständen, die nach den Bestimmungen dieses Bundesgesetzes ausgefolgt werden, auf die Dauer von 25 Jahren nach Inkrafttreten dieses Bundesgesetzes keine Anwendung.

§ 5. Die durch dieses Bundesgesetz unmittelbar veranlaßten Zuwendungen sind von allen Abgaben befreit.

§ 6. Mit der Vollziehung dieses Bundesgesetzes sind betraut:

1. hinsichtlich der §§ 1 und 5 der Bundesminister für Finanzen;

2. hinsichtlich der §§ 2 und 3 der Bundesminister für Unterricht und kulturelle Angelegenheiten, der Bundesminister für wirtschaftliche Angelegenheiten und der Bundesminister für Landesverteidigung, soweit ihr Wirkungsbereich betroffen ist;

3. hinsichtlich des § 4 der Bundesminister für Unterricht und kulturelle Angelegenheiten.

Vorblatt

Problem:

In den Österreichischen Bundesmuseen und Sammlungen, wozu auch die Sammlungen der Bundesmobilienverwaltung zählen, befinden sich Kunstgegenstände, welche im Zuge oder als Folge der NS-Gewaltherrschaft in das Eigentum des Bundes gelangt sind.

Problemlösung:

Regelung der Ermächtigung des Bundesministers für Finanzen, Kunstgegenstände aus den Österreichischen Bundesmuseen und Sammlungen, die im Zuge oder als Folge der NS-Gewaltherrschaft in das Eigentum des Bundes gelangt sind, an die ursprünglichen Eigentümer oder deren Rechtsnachfolger von Todes wegen herauszugeben und Festlegung der Zuständigkeiten für die Abwicklung der Rückgaben.

Ziele:

Rückgabe der nach Abschluß der Provenienzforschung in den Österreichischen Bundesmuseen und Sammlungen im Sinne der Problemstellung identifizierten Kunstgegenstände an die ursprünglichen Eigentümer oder deren Rechtsnachfolger von Todes wegen.

Alternativen:

Beibehalten der bestehenden Rechtslage.

Kosten:

Die Vollziehung kann mit den bestehenden Personalressourcen bewältigt werden und zieht unbedeutende budgetäre Auswirkungen nach sich.

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Konformität mit EU-Recht:

Ist gegeben.

Erläuterungen:

Allgemeiner Teil

Im Rahmen der Rückstellungsgesetzgebung nach Ende des Zweiten Weltkrieges hat die Republik Österreich unter anderem auch Kunstgegenstände, welche ihren damaligen Eigentümern unrechtmäßig entzogen worden sind, an die ursprünglichen Eigentümer oder deren Rechtsnachfolger von Todes wegen zurückgestellt, wobei sich in eindeutigen Fällen oftmals ein formelles Rückstellungsverfahren erübrigt hat. Mit den beiden Kunst- und Kulturgutbereinigungsgesetzen 1969 und 1986 sowie der Novelle im Jahr 1995, auf Grund welcher jene Kunst- und Kulturgüter, die nicht an die ursprünglichen Eigentümer oder deren Rechtsnachfolger von Todes wegen zurückgegeben werden konnten und an den Bundesverband der Israelitischen Kultusgemeinden Österreichs übergeben worden sind, hat die bisherige Rückstellungsgesetzgebung in diesem Bereich ihren Abschluß gefunden.

Auf Grund von Ergebnissen der in den 90er Jahren begonnenen Aufarbeitung des archivalischen Materials zum Thema Raub und Restitution von Kunst- und Kulturgutgegenständen und konkreter Anlaßfälle, wurde im Jänner 1998 verfügt, daß die Archive der Bundesmuseen und Sammlungen sowie des Bundesdenkmalamtes für eine systematische Aufarbeitung ausgewertet werden, um Einsicht in die Geschehnisse in der Zeit zwischen 1938 und 1945 sowie in die Ergebnisse der Restitutionen nach dem Ende des Zweiten Weltkrieges zu erlangen. Unabhängig davon wurden auch Erhebungen in den Sammlungen der Bundesmobilienverwaltung durchgeführt.

In weiterer Folge wurde im Bundesministerium für Unterricht und kulturelle Angelegenheiten eine "Kommission für Provenienzforschung" eingesetzt, die mit der Aufgabe betraut wurde, die in der fraglichen Zeit erworbenen Kunstgegenstände systematisch zu katalogisieren, um alle Fragen über die Besitzverhältnisse während der Zeit der NS-Herrschaft und der unmittelbaren Nachkriegszeit aufzuklären.

Nunmehr liegen erste Ergebnisse der Tätigkeit dieser Kommission vor und betreffen folgende Kategorien von Kunstgegenständen:

1. Kunst- und Kulturgegenstände, die im Zuge von Verfahren nach dem Ausfuhrverbotsgesetz zurückbehalten wurden und als "Schenkungen" oder "Widmungen" in den Besitz der Österreichischen Museen und Sammlungen eingegangen sind. Sämtliche, der in diese Kategorie einzureihenden Kunstgegenstände waren bereits Gegenstand von Rückstellungen, wurden auch tatsächlich an die Eigentümer zurückgestellt und sind daher auch entsprechend gut dokumentiert. Im Gegenzug für die Erteilung einer Ausfuhrbewilligung nach dem Ausfuhrverbotsgesetz wurde mit den Ausfuhrwerbern vereinbart, daß einzelne dieser Werke an österreichische Museen gehen sollten. Aus heutiger Sicht und auf Grund der Tatsache, daß bei den beiden Kunst- und Kulturgutbereinigungsgesetzen die Anwendung der Bestimmungen des Ausfuhrverbotsgesetzes ausdrücklich ausgenommen wurde, ist die damals gewählte Vorgangsweise nicht zu rechtfertigen.

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2. Kunst- und Kulturgegenstände, welche zwar rechtmäßig in das Eigentum des Bundes gelangt sind, jedoch zuvor Gegenstand eines Rechtsgeschäftes gewesen sind, das nach den Bestimmungen des sogenannten Nichtigkeitsgesetzes nichtig ist. Einige Museumsdirektoren haben in der Nachkriegszeit im guten Glauben Kunstgegenstände am Kunstmarkt bei befugten Händlern erworben, wobei sich erst zu einem späteren Zeitpunkt Zweifel an der Unbedenklichkeit der Herkunft ergeben haben. Im Zuge der Provenienzforschung sind Fälle dieser Art bekannt geworden.

3. Kunst- und Kulturgegenstände, die trotz Durchführung von Rückstellungen nicht an die ursprünglichen Eigentümer oder deren Rechtsnachfolger von Todes wegen zurückgegeben werden konnten und als herrenloses Gut in das Eigentum des Bundes übergegangen sind.

Mit dem vorliegenden Gesetzesentwurf soll die rechtliche Grundlage geschaffen werden, diese Kunstgegenstände an ihre ursprünglichen Eigentümer oder deren Rechtsnachfolger von Todes wegen zurückzugeben.

Die Zuständigkeit zur Erlassung dieses Bundesgesetzes ergibt sich aus Artikel 17 B-VG in Verbindung mit Artikel 10 Abs. 1 Z 6 - ("Zivilrechtswesen") - sowie Artikel 10 Abs. 1 Z 2 - ("Warenverkehr mit dem Ausland") - Z 4 - ("Bundesfinanzen") und Z 13 B-VG - ("Denkmalschutz").

Es wird darauf hingewiesen, daß gemäß Artikel 42 Abs. 5 B-VG gegen Beschlüsse des Nationalrates, die Verfügungen über Bundesvermögen betreffen (§ 1), der Bundesrat keinen Einspruch erheben kann.

Für die Durchführung dieses Bundesgesetzes entsteht kein zusätzlicher Personal- und nur ein geringfügiger Sachaufwand.

Besonderer Teil

Zu § 1:

Im Zuge der Provenienzforschung konnten drei Kategorien von Kunstwerken identifiziert werden, bei denen aus heutiger Sicht eine Rückgabe in Betracht zu ziehen ist. Da die Erhebungen noch nicht abgeschlossen sind und die einzelnen Kunstgegenstände, die von der haushaltsrechtlichen Ermächtigung erfaßt werden sollen, noch nicht vollständig feststehen, wurde aus rechtspolitschen Erwägungen einer generellen Gesetzesbestimmung der Vorzug gegeben. Damit soll auch die rechtliche Möglichkeit geschaffen werden, bereits identifizierte Kunstgegenstände einer raschen Rückgabe zuzuführen, andererseits für zukünftige, derzeit noch nicht bekannte, Fälle auf eine bereits bestehende gesetzliche Grundlage zurückgreifen zu können ohne erneut den Nationalrat befassen zu müssen. Damit soll der Vollziehung ein rasches Reagieren ermöglicht werden.

Als "Kunstgegenstände" im Sinne dieses Bundesgesetzes ist Kunst- und Kulturgut jeder Art, wie es von den Bundesmuseen und der Nationalbibliothek
sowie den Sammlungen der Bundesmobilienverwaltung, für die dieses Bundesgesetz gilt, gesammelt wird, zu verstehen, als Sammlungen die Unterteilungen der Bundesmuseen.

Zu § 2 und 3:

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Der vorliegende Gesetzesentwurf bezweckt primär, daß die Kunstgegenstände an die ursprünglichen Eigentümer oder deren Rechtsnachfolger von Todes wegen zurückgegeben werden sollen. Da jedoch auf Grund der Erfahrungen mit der Abwicklung von ähnlichen gesetzlichen Regelungen und der Tatsache, daß seit den unrechtmäßigen Vermögensverschiebungen in der Regel nahezu 60 Jahre vergangen sind, davon auszugehen ist, daß nicht in allen Fällen eine derartige Übereignung erfolgen kann, soll Sorge dafür getroffen werden, daß jedenfalls auch in diesen Fällen letztlich Opfer des NS-Regimes unterstützt werden können.

Die Abwicklung der Rückübereignungen selbst bzw. die Übereignung an den Nationalfonds der Republik Österreich für Opfer des Nationalsozialismus obliegt den zuständigen Bundesministern, wobei der Bundesminister für Landesverteidigung insoweit betroffen ist, als sich herauszugebende Kunstgegenstände im Heeresgeschichtlichen Museum befinden, der Bundesminister für wirtschaftliche Angelegenheiten hinsichtlich der Sammlungen der Bundesmobilienverwaltung. Vor der Entscheidung über die Übereignungen in beiden Kategorien haben die zuständigen Bundesminister den gemäß § 3 eingerichteten Beirat anzuhören, der die dazu notwendige Sachkunde zur Verfügung stellen wird. Die Mitglieder üben ihre Funktion ehrenamtlich aus. Durch das in Aussicht genommene Gesetz werden keine subjektiven Rechte begründet. Allfällige Eigentumsansprüche wären nach den Bestimmungen des bürgerlichen Rechts geltend zu machen.

Zu § 4:

Diese Regelung folgt den Bestimmungen bei den Kunst- und Kulturgutbereinigungsgesetzen, die sicherstellen sollen, daß zurückgegebene Kunstgegenstände, ungeachtet der Herkunft der neuen Eigentümer jedenfalls ausgeführt werden können. Damit sollen auch der ins Auge gefaßten Rückübereignung nicht neuerlich Schranken gesetzt werden.

Zu § 5:

Durch diese Bestimmung soll sichergestellt werden, daß alle Rückgaben bzw. sonstige mögliche Zuwendungen, etwa an eine Einrichtung, von allen Bundesabgaben befreit sind.

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Ing. Leo Hoschka, Vienna **Last Release from: 03/07/04 05:24**

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Bundesgesetz Rückgabe von Kunstgegenständen

Kurztitel

Bundesgesetz: Rückgabe von Kunstgegenständen aus den Österreichischen Bundesmuseen und Sammlungen (NR: GP XX RV 1390 AB 1464 S. 146. BR: AB 5802 S. 646.)

Kundmachungsorgan

BGBl. I Nr. 181/1998

Typ

BG

Teil

1

Datum

19981204

Text

Bundesgesetz über die Rückgabe von Kunstgegenständen aus den Österreichischen Bundesmuseen und Sammlungen

Der Nationalrat hat beschlossen:

§ 1. Der Bundesminister für Finanzen wird ermächtigt, jene Kunstgegenstände aus den österreichischen Bundesmuseen und Sammlungen, wozu auch die Sammlungen der Bundesmobilienverwaltung zählen, unentgeltlich an die ursprünglichen Eigentümer oder deren Rechtsnachfolger von Todes wegen zu übereignen, welche

1. Gegenstand von Rückstellungen an die ursprünglichen Eigentümer oder deren Rechtsnachfolger von Todes wegen waren und nach dem 8. Mai 1945 im Zuge eines daraus folgenden Verfahrens nach den Bestimmungen des Bundesgesetzes über das Verbot der Ausfuhr von Gegenständen von geschichtlicher, künstlerischer oder

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kultureller Bedeutung, StGBl. Nr. 90/1918, unentgeltlich in das Eigentum des Bundes übergegangen sind und sich noch im Eigentum des Bundes befinden;

2. zwar rechtmäßig in das Eigentum des Bundes übergegangen sind, jedoch zuvor Gegenstand eines Rechtsgeschäftes gemäß § 1 des Bundesgesetzes vom 15. Mai 1946 über die Nichtigerklärung von Rechtsgeschäften und sonstigen Rechtshandlungen, die während der deutschen Besetzung Österreichs erfolgt sind, in das Eigentum der Republik Österreich gelangt sind, BGBl. Nr. 106/1946, waren und sich noch im Eigentum des Bundes befinden;

3. nach Abschluß von Rückstellungsverfahren nicht an die ursprünglichen Eigentümer oder deren Rechtsnachfolger von Todes wegen zurückgegeben werden konnten, als herrenloses Gut unentgeltlich in das Eigentum des Bundes übergegangen sind und sich noch im Eigentum des Bundes befinden.

§ 2. (1) Der Bundesminister für Unterricht und kulturelle Angelegenheiten, der Bundesminister für wirtschaftliche Angelegenheiten und der Bundesminister für Landesverteidigung werden ermächtigt,

1. die ursprünglichen Eigentümer oder deren Rechtsnachfolger von Todes wegen festzustellen und die Kunstwerke an diese zu übereignen;

2. jene Kunstgegenstände gemäß § 1, welche nicht an die ursprünglichen Eigentümer oder deren Rechtsnachfolger von Todes wegen rückübereignet werden können, weil diese nicht festgestellt werden können, an den Nationalfonds der Republik Österreich für Opfer des Nationalsozialismus zur Verwertung zu übereignen, der den Verwertungserlös für die in § 2a des Bundesgesetzes über den Nationalfonds der Republik Österreich für Opfer des Nationalsozialismus, BGBl. Nr. 432/1995, genannten Zwecke zu verwenden hat.

(2) Die genannten Bundesminister haben vor der Übereignung den nach § 3 eingerichteten Beirat anzuhören. Durch die Bestimmungen dieses Bundesgesetzes wird keinerlei Anspruch auf Übereignung begründet.

(3) Der Bundesminister für Unterricht und kulturelle Angelegenheiten hat den Nationalrat über die erfolgte Übereignung von Kunstgegenständen in einem Bericht jährlich zu informieren.

§ 3. (1) Beim Bundesministerium für Unterricht und kulturelle Angelegenheiten wird ein Beirat eingerichtet, der die in § 2 genannten Bundesminister bei der Feststellung jener Personen, denen Kunstgegenstände zu übereignen sind, zu beraten hat.

(2) Mitglieder des Beirates sind:

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1. je ein Vertreter des Bundesministeriums für wirtschaftliche Angelegenheiten, des Bundesministeriums für Justiz, des Bundesministeriums für Unterricht und kulturelle Angelegenheiten sowie des Bundesministeriums für Landesverteidigung;

2. ein Vertreter der Finanzprokuratur;

3. je ein von der Rektorenkonferenz zu nominierender Experte auf dem Gebiet der Geschichte sowie der Kunstgeschichte.

(3) Für jedes Mitglied ist ein Ersatzmitglied zu bestellen.

(4) Der Beirat kann weiters Sachverständige und geeignete Auskunftspersonen beiziehen.

(5) Die Bestellung und Abberufung des Vorsitzenden und dessen Stellvertreter aus dem Kreise der in Abs. 2 genannten Mitglieder sowie die Bestellung und Abberufung der weiteren in Abs. 2 genannten Mitglieder des Beirates obliegt dem Bundesminister für Unterricht und kulturelle Angelegenheiten. Die Bestellung erfolgt jeweils auf ein Jahr. Neuerliche Bestellungen sind zulässig.

(6) Der Bundesminister für Unterricht und kulturelle Angelegenheiten oder der Vorsitzende berufen den Beirat zu Sitzungen ein.

(7) Zu einem Beschluß des Beirates ist die Anwesenheit von mindestens der Hälfte der Mitglieder und die Mehrheit der abgegebenen Stimmen erforderlich.

(8) Der Beirat beschließt seine Geschäftsordnung, die vom Bundesminister für Unterricht und kulturelle Angelegenheiten zu genehmigen ist, mit einfacher Mehrheit. Die Geschäftsordnung hat unter Bedachtnahme auf Abs. 1 die Tätigkeit des Beirates möglichst zweckmäßig zu regeln. Die Geschäftsordnung ist zu genehmigen, wenn sie dieser Voraussetzung entspricht.

§ 4. Die Bestimmungen des Denkmalschutzgesetzes, BGBl. Nr. 533/1923, in der Fassung des Bundesgesetzes BGBl. Nr. 473/1990 über die freiwillige Veräußerung von Denkmalen, die sich im alleinigen Eigentum des Bundes befinden, sowie die Bestimmungen des Bundesgesetzes über das Verbot der Ausfuhr von Gegenständen von geschichtlicher, künstlerischer oder kultureller Bedeutung, StGBl. Nr. 90/1918, in der Fassung des Bundesgesetzes BGBl. Nr. 605/1987 finden auf die Übereignung sowie die Ausfuhr von Gegenständen, die nach den Bestimmungen dieses Bundesgesetzes ausgefolgt werden, auf die Dauer von 25 Jahren nach Inkrafttreten dieses Bundesgesetzes keine Anwendung.

§ 5. Die durch dieses Bundesgesetz unmittelbar veranlaßten Zuwendungen sind von allen Abgaben befreit.

§ 6. Mit der Vollziehung dieses Bundesgesetzes sind betraut:

1. hinsichtlich der §§ 1 und 5 der Bundesminister für Finanzen;

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2. hinsichtlich der §§ 2 und 3 der Bundesminister für Unterricht und kulturelle Angelegenheiten, der Bundesminister für wirtschaftliche Angelegenheiten und der Bundesminister für Landesverteidigung, soweit ihr Wirkungsbereich betroffen ist;

3. hinsichtlich des § 4 der Bundesminister für Unterricht und kulturelle Angelegenheiten.

Klestil

Klima

Dokumentnummer

BGBL/OS/19981204/1/0181&&

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English translation of the important parts of the art restitution law

Federal Law On Return of Art Objects From the Austrian Federal Museums and Collections

The National Assembly has resolved:

s 1. The Minister of Finance is empowered to transfer to the original owners or their legal heirs without monetary compensation those art objects from the Austrian federal museums and collections, which also includes the collections of the federal movable property administration, which

1. Were objects of restitution to their original owners or their legal heirs, and after May 8, 1945 came into the possession of the federal government without monetary compensation in the course of a subsequent proceeding concerning the requirements of the federal law prohibiting the export of objects of historical, artistic or cultural importance, and are still in the possession of the federal government;

2. Were objects that were indeed legally transferred into the possession of the federal government, however previously landed in the possession of the Republic of Austria as a result of a legal transaction pursuant to section 1 of the federal law of May 15, 1946 on the declaration of invalidity of legal transactions and other legal proceedings that occurred during the German occupation of Austria, and are still in the possession of the federal government;

Restitutionsgesetz 1998 (Deutsch)

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Gloria Sultano Patrick Werkner

Oskar Kokoschka: Kunst und Politik 1937–1950

Böhlau Verlag Wien · Köln · Weimar

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Der Kontakt zwischen dem Künstler und seinem Modell, dem „Präsidenten" Bloch-Bauer, hielt bis in die Kriegsjahre. So sollte Bloch-Bauer noch aus dem Schweizer Exil im Jahre 1941 OK folgendes schreiben:

„Lieber Freund und Professor!
Es hat mich riesig gefreut nach so langer Zeit von Ihnen zu hören, insbesonders, daß es Ihnen gut geht und Sie der mutige Streiter geblieben sind! Im Radio habe ich gehört, daß Beneš ein Bild von Ihnen der Tate-Collection gespendet hat![19] Schön!
Nach Amerika wäre ich an Ihrer Stelle gegangen und wenn es noch möglich ist, gehen Sie sofort! Europa wird ein Trümmerhaufen, vielleicht die ganze Welt, für Kunst ist auf Jahrzehnte hier kein Platz! Meine Leute sind in Canada in Vancouver, möchten, daß ich komme, ich bin aber schon zu alt! Denke aber doch daran, obwohl ich glaube, daß ich die ‚Überfuhr' versäumt habe. Auf Monate ist kein Schiffsplatz, kein Klipper zu haben! Ihr Freund Dr. Ehrenstein war gestern bei mir. Er hat ein Visum für Amerika bekommen, aber wie er hinüber kommen kann?
Mir hat man in Wien und Böhmen alles genommen. Nicht ein Andenken ist mir geblieben! Vielleicht bekomme ich die 2 Porträts meiner armen Frau (Klimt) und mein Porträt. Das soll ich diese Woche erfahren! Sonst bin ich total verarmt und habe vielleicht auf einige Jahre bescheiden zu leben, wenn man dieses Vegetieren Leben nennen kann. In meinem Alter, allein, ohne jemand meiner alten Dienerschaft, ist oft furchtbar. Ich habe glücklicherweise einige gute Freunde hier in Genf und Lausanne. Nun bin ich schon ‚amortisiert', will das abwarten und erleben, ob es eine Gerechtigkeit noch gibt, dann leg' ich gerne ‚meinen Hobel hin'!
Was man von Wien und Prag hört ist furchtbar!
Nun wünsche ich Ihnen, von Herzen, alles Beste und verbleibe mit herzlichen Grüßen
Ihr alter treuer Ferdi herzlichst.
PS Moll ist ein Ober-Nazi!
PPS Werfels sind in Hollywood."[20]

Im Sommer 1936 bezog OK ein Turmatelier am Moldauufer, wo das Porträt des tschechoslowakischen Präsidenten Thomas G. Masaryk[21], die Verkörperung eines streitbaren Humanisten, fertiggestellt werden sollte. Das war OKs erste politische Bildnis-Allegorie, die seine wachsende Konzentration auf politische und zeitgeschichtliche Vorgänge widerspiegelt. Sie zeigt neben Masaryk auch das idealisierte Porträt des tschechischen Humanisten, Jan Amos Comenius. Kokoschka äußerte sich zum ideologischen Hintergrund in einem Interview im Februar 1935, noch vor Fertigstellung des Gemäldes:

„Was ist das für eine Volksschule heute in der ganzen Welt? [...] Fast Säuglinge noch, werden die Kinder für den Krieg gedrillt, statt daß sie reif fürs Leben gemacht werden! Deshalb nimmt die Zahl der Arbeitslosen von Jahr zu Jahr zu, niemand kann Arbeit geben, finden oder leisten, denn nur eine Industrie floriert: die Kriegsindustrie.

Vor vielen Jahren, damals, als die Not der Kinder in Österreich nach dem Krieg wuchs und alle Grenzen überschritt, sprach ich mit Eugenie Schwarzwald, jener Frau in Wien, die sozial handelt,

19 Dabei handelt sich um das Gemälde „Polperro II", das Edvard Beneš, der ehemalige tschechoslowakische Präsident, der Tate Gallery im Februar 1941 geschenkt hatte.

20 Ferdinand Bloch-Bauer an OK, ohne Datum, ca. erste Jahreshälfte 1941. ZBZ, Nachlaß OK 70 ff. + Zuwachs 96.

21 Vgl. Wingler, Werk des Malers, Nr. 298, S. 325.

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Letter dated April 2, 1941 from Ferdinand Bloch-Bauer to the artist Oskar Kokoschka:

Dear friend and professor!

It pleased me very much to hear from you after such a long time, especially that you are doing well and that you are still the brave fighter! I heard on the radio that Benes donated a picture of yours to the Tate Gallery! Nice!

In your position I would have gone to America and if it is still possible, go immediately! Europe will be a heap of ruins, perhaps the whole world; for art there will be no place here for decades! My people are in Canada in Vancouver, would like that I come, but I am already too old! I think about it, although I believe that I have missed the 'ferry.' For months there is no seat on a ship, not a clipper available! Your friend Dr. Ehrenstein was here with me yesterday. He obtained a visa for America, but how can he get over there?

In Vienna and Bohemia they took away <u>everything</u> from me. Not even a souvenir was left for me. <u>Perhaps</u> I will get the 2 portraits of my poor wife (Klimt) and my portrait. I should find out about that this week! Otherwise I am totally impoverished and probably will have to live very modestly for a few years, if you can call this vegetation living. At my age, alone, without any of my old attendants, it is often terrible. I have luckily a few good friends here in Geneva and Lausanne. Now I am already 'amortised,' will wait and find out, whether justice will still come, then I will gladly lay my hammer down!

What one hears from Vienna and Prague is terrible!

Now I wish you, from my heart, all the best and remain with heartfelt greetings

Your old dear true Ferdi.

Sultano & Werkner, *Oskar Kokoschka. Kunst und Politik 1937-1950*, p. 124 (2003 Böhlau Vienna) (translated from German, emphasis in original).

Zentralbibliothek Zürich,
Nachl. O. Kokoschka, 70 ff.

([Rhoda-Bauer, Ferdinand?] an
Oskar Kokoschka, Zürich, 2.4., ohne
Jahr)

Zürich 2/IV

Lieber Freund und Confrater!

Es hat mich riesig gefreut nach so langer
Zeit von Ihnen zu hören, dass es
Ihnen gut geht und Sie der muthige Streiter
geblieben sind! Im Radio habe ich gehört
dass Benesch ein Bild von Ihnen der Tate-
Collection gespendet hat! Schön!
Nach Amerika möchte ich an Ihre Stelle
gegangen und wenn es noch möglich ist
gehen Sie sofort! Europa wird ein
Trümmerhaufen, vielleicht die ganze Welt,
für Kunst ist auf Jahrzehnte kein Platz!
Meine Leute sind in Canada in
Vancouver, malen, dass ich komme nicht
bin aber schon zu alt! Denke aber doch
daran einmal ich glaube dass sich die
„Ueberfuhr" nochmals lohnt. Auf Hawaii
ist kein Schiffsplatz bis Klippen zu
haben! Ihr Freund Dr Ehrenstein war
gestern bei mir. Er hat das Visum
für Amerika bekommen aber nie er
hinüber kommen kann? Alle hat man
in Wien und Böhmen Alles genommen,
Nicht ein Andenken ist mir geblieben!
Vielleicht bekomme ich die 2 Contrate

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meinen armen Frau (Klimt) und mein Porträt
Das will ich diese Woche erfahren! Sonst
bin ich total verarmt und habe vielleicht
auf einige Jahre hinaus zu leben, wenn
man dieses negativen Leben nennen kann.
In meinem Alter, allein, ohne Jemand mei-
nen alten Dienst hat oft furchtbar. Ich
habe glücklicher weise einige gute Freunde
hier in Genf und Lausanne. Nun ich hier
schon „montiert" will das Ende abwarten
und erleben ob es eine Gerechtigkeit mehr
gibt dann leg' ich gerne „meinen
Kübel hin"!

Was man von Wien und Prag hört ist
furchtbar!

Nun wünsche ich Ihnen, mein Herzens,
alles Beste und verbleibe mit
herzlichsten Grüssen Ihr alter
treuer

Stefan Zweig

Adolf ist ein Ober-Nazi!
Werfels sind in Hollywood.

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Nachl. O. Kokoschka 70 ff.
([Moll], Carl an O. Kokoschka)

29.

Mein lieber Oskar.

Dass Du mir gar Tagenlang nicht schreibst, ist wohl nicht weiter, nur dass Du Dich so belastet, damit allein, es zeigt mir eben, dass es gar nicht möglich ist, nicht mit einer Existenz-basis gerechnet hat. Schreiben kann man nebenbei nicht. Gilli Garzer hat auch in einem Bureau gesessen. Eben habe ich angerufen und gehört, dass er die letzten geschrieben hat. Onkel Ferdinand ist ganz allein von Wien verschwunden, wird nicht gut gelaunt sein. Keiner will aber einsehen, wie viel er selbst verschuldet hat. Die Bewegungsfreiheit mindert sich naturgemäss ein, wenn man nicht gegen die fortschreitenden Elemente zu Felde ziehen muss. Dass Du Dich mit Vorliebe diesen Elementen anschliesst, macht mich traurig. Ich möchte so gerne etwas zu Deinem Wohl beitragen, da merkst es mir unmöglich. Ich hatte eine Idee mit Italien - Freunde - die Dich mögen - wären glücklich gewesen Dir etwas helfen zu können. Deine Politik macht es unmöglich. Da der Abend sich dem Kreuz zieht, dort scheinbar nicht hin selbst ist natürlich anderseits für Dich das einzige. Aus praktischen Gründen war es ja ohnedies das richtige - nur sind die Verhältnisse drüben auch nicht rosig - aber, bei der grösse des Horizontes, immer noch das beste.

Dass Du mein Vorwort im Katalog deiner Ausstellung desavouiert hast - zu dem erbittertsten Feinde deines Vaterlandes offiziell übergegangen bist, hat mich am traurigsten gemacht. Wenn auch der unmittelbare Anlass geringfügig Eitelkeit war, muss es doch tiefer in Deinem empfindsamen Innern

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Wir haben also die gestrandete Eitelkeit. Wo [redacted] nun
das Wohl und Wehe von 75 Millionen Handels, soll es von
Bedeutung sein wenn einem Burschen weltvollster
Menschen auf die Hühneraugen getreten wird? Und –
ist dies nicht nötig gewesen? Wohl nur offenbar –
und jetzt offenbar. Der ganze Franzosen hat nun
ausgelacht – bis mir endlich die Börse überhaupt
hat und Händler mit ihnen gerechnet haben.
Für den offiziellen pr gehören hat zeit mehr als hundert
Jahren keinen Akzentsatz bedeutet.
pa – darüber sich abhandlung reden – aber
du willst nicht hören was dein wahrer Freund dir
sagen – du liebst lieber in den Illusionen
was dir Gehalt gesündigt scheint.
Vor einem halben Jahre schriebst du mir dass
alles vor Prag weg. Hättest du mir angefleht.
Versäume nicht dich um Onkel Ferdinand zu
kümmern – er ist ein talentvoller Kerl – vermag
ganz andere Ansichten hat wie ich – und – er hat
dich gern. Solche Lotterbüben darf man nicht
durch lügen lassen.
Mein Leben concentrirt sich ganz ausschließlich
auf Mami, mein Nesthäkchen und unser
dreijähriges wunderbrokkenes Sonnenschein
Lotal am Hund.
Wir küssen euch Beide herzlichst
Dein
Carl

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[illegible]

002942

Professor Rudolf Heinz Welser

Professional History

Studied law; **1963**: Doctor of Law.

Court traineeship.

Legal associate.

University teaching assistant (civil proceedings and civil law).

Qualified as university lecturer, University of Vienna.

1970: University Lecturer in Civil Law

Offered appointments in Innsbruck, Linz and Vienna.

1971 to present: Professor of Civil Law and Chairman of the Institute of Civil Law, University of Vienna.

1967: Theodor Körner Prize.

1970: Kardinal Innitzer Prize.

1979: Walther Kastner Prize.

Professor Welser has many years of experience as a provider of advisory opinions and arbitrator in private law. For reasons of confidentiality, his personal details are not included in this resume.

Publications

1967-1990:

More than 150 scholarly publications. Numerous monographs and journal articles.

1991:

Doctors' liability under Austrian law. Lecture in honor of the 20th Austrian Orthopaedic Convention, 24th to 27th May 1989. Published by the University Orthopaedic Clinic, Vienna. Vienna Medical Academy Press, 1991.

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1993:

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1996:

Liability arising from purchase agreements and work agreements. Warranty, guarantee, damages, product liability. Brochure for Creditanstalt Bankverein (with Dr. Irene Welser).

Upcoming reform of Austrian warranty law. Selim Kaneti´ye Armagan. (Publication in honor of Selim Kaneti) 1996, 59 - 63.

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1997:

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Proposal regarding and the EU directive concerning purchase of consumer goods, in: *Law in Austria and Europe* (publication in honor of Karl Hempel's 60th birthday), 323 – 331.

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1998:

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1999:

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Warranty reform: Implications for the administration of justice. In: *Regarding Commercial Law*, publication in honor of Heinz Krejci's 60th birthday (Verlag Österreich 2001).

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Outline of Civil Law, Volume II, 12th edition.

Defects in construction services, warranties and damages, in Straube/Aicher (ed.), *Handbook of Construction Contract Law and Construction Liability Law* (2001).

Form requirements/absence of form requirements in civil law (lecture given on 6th June 2001). Series of publications published by the Ludwig Boltzmann Institute of Legal Uniformity.

The consumer goods purchase directive and its implementation in Austria and Germany (lecture given in Freiburg on 12th September 2001).

Assistant Professor Christian Rabl

Professional History

1989-1993: Studied law at the University of Vienna.

Since 1993: Assistant at the Institute of Civil Law, University of Vienna (Professor Welser).

1996: Doctor of Law.

Court traineeship.

1997: *Juristische Blätter* Prize.

Since 2001: Assistant Professor at the Institute of Civil Law, University of Vienna.

Publications

1996:

§ 777 and modifications to wills, *NZ* 1996, 49.

1997:

The true heir's claims against the fiscal authorities with regard to use: Is the state's right of escheat justified? *NZ* 1997, 141.

Creditor default and impossibility of performance attributable to both parties, *JBl* 1997, 488 – 502.

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Comments regarding Supreme Court ruling dated 28th October 1997, 4 Ob 276/97k, *ecolex* 1998, 123 – 124 (expiration of the power of attorney due to bankruptcy of the authorized party, and good-faith protection for the third party).

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1999:

Contents and purpose of the estate inventory, *NZ* 1999, 129-140.

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2001:

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Co-wrote *Outline of Civil Law, Volume II, 12th edition* (Koziol/Welser), MANZ 2000.

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Comments regarding Supreme Court ruling dated 28th March 2001, 7 Ob 49/01h, *ecolex* 2001/238 (ostensible manufacturer's liability associated with instruction errors).

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	WEIBLICHES BILDNIS. LEINWAND, 152 : 133 CM. BE= SITZERIN FRAU GEH.=RAT FRITZA RIEDLER, BERLIN
	DIE JURISPRUDENZ. LEINWAND, 437 : 300 CM. BE= SITZER DER KÜNSTLER
	FREUNDINNEN. PERGAMENT, 50 : 20 CM. BESITZER H. O. MIETHKE, WIEN
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	SONNENBLUMEN. LEINWAND, 110:110 CM. BESITZER HERR KARL WITTGENSTEIN, WIEN
	ROT UND SCHWARZ. LEINWAND, 96:50 CM. BESITZER DER KÜNSTLER
	BUCHENWALD. LEINWAND, 100:100 CM. BESITZER HERR REGIERUNGSRAT MORITZ GALLIA, WIEN
	WEIBLICHES BILDNIS. LEINWAND, 140:140 CM. BESITZERIN FRAU MARIE HENNEBERG, WIEN
	DER GOLDENE APFELBAUM. LEINWAND, 100:100 CM. BESITZER DER KÜNSTLER
	PHILOSOPHIE. LEINWAND, 430:300 CM. BESITZER HERR AUGUST LEDERER, WIEN
	SALOME. LEINWAND, 84:42 CM. BESITZERIN FRAU SOFIE LOEW-UNGER, WIEN
	DAS LEBEN EIN KAMPF. LEINWAND, 100:100 CM. BESITZER HERR KARL WITTGENSTEIN, WIEN

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	FRAGMENTE AUS DEM BEETHOVENFRIES. 1902.
	FRAGMENTE AUS DEM BEETHOVENFRIES. 1902.
	MAUERGRUND, KASEINFARBEN, DIMENSIONEN DES GANZEN FRIESES: 2·15:30 M. BES.: HERR CARL REININGHAUS, WIEN
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	VISION. 1907. LEINWAND, 110:110 CM. BESITZER: DER KÜNSTLER
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5.
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GUSTAV KLIMT

*

MAX EISLER

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002959

VERZEICHNIS DER TAFELN

DAS FRÜHWERK (1880—1898)

1. Jugend (Lavierte Tuſchezeichnung; 38·5 × 26 *cm*; Hiſtoriſches Muſeum der Stadt Wien)
2. Figurenſtudie zum Bilde des alten Burgtheaters — Junge Frau in Mantille (Zeichnungen in ſchwarzer Kreide, weiß gehöht, auf grauem Kartonpapier; 44 × 30 *cm*; Sammlung Auguſt Lederer, Wien)
3. Liebe (Öl auf Leinwand; 59 × 48·5 *cm*; Hiſtoriſches Muſeum der Stadt Wien)
4. Die Skulptur (Bleiſtiftzeichnung auf grauem Karton; 44 × 30 *cm*; Sammlung Auguſt Lederer, Wien)
5. Die Tragödie (Der Rahmen in ſchwarzer Kreide, die Füllung ſchwarze Kreidezeichnung, ſtellenweiſe mit Gold gehöht; 39·5 × 28·5 *cm*; Hiſtoriſches Muſeum der Stadt Wien)
6. Die Muſik — Schubert am Klavier (Supraporten im Muſikzimmer des Palais Dumba in Wien; Öl auf Leinwand; jedes Bild 110 × 163 *cm*)

DIE REIFE (1898—1908)

7. Die hohe Pappel (Öl auf Leinwand; 80 × 80 *cm*; Frau Magda Mauthner-Markhof)
8. Birken (Öl auf Leinwand; 80 × 80 *cm*; ehemals in der Galerie Miethke, Wien)
9. Der goldene Apfelbaum (Öl auf Leinwand; 100 × 100 *cm*; Privatbeſitz, Wien)
10. Kreuz in einem Bauerngarten (Öl auf Leinwand; 110 × 110 *cm*; Sammlung Auguſt Lederer, Wien)
11. Bildnis der Frau Sonja Knips (Öl auf Leinwand; 141 × 141 *cm*; Sammlung Knips, Wien)
12. Bildnis der Frau Marie Henneberg (Öl auf Leinwand; 140 × 140 *cm*; Frau Marie Henneberg, Wien)
13. Bildnis der Frau Fritza Riedler (Öl auf Leinwand; 152 × 133 *cm*; Sammlung Riedler, Berlin)
14. Bildnis des Fräulein Emilie Flöge (Öl auf Leinwand; 181 × 84 *cm*; Frau Emilie Flöge, Wien)
15. Waſſerſchlangen (Öl auf Leinwand; 80 × 145 *cm*; Herr Wilhelm Steiner, Wien)
16. Der Kuß (Öl auf Leinwand; 180 × 180 *cm*; Moderne Staatsgalerie, Wien)
17. Die drei Lebensalter (Öl auf Leinwand; 180 × 180 *cm*; Staatsgalerie, Rom)
18. Tod und Leben (Erſter Zuſtand; Öl auf Leinwand; 200 × 180 *cm*; ehemals im Beſitze des Künſtlers)
19. Die Philoſophie (Sammlung Auguſt Lederer, Wien)
20. Die Medizin (Moderne Staatsgalerie, Wien)
21. Die Jurisprudenz (Sammlung Auguſt Lederer, Wien)

   } Deckenbilder für die Aula der Wiener Univerſität (Öl auf Leinwand; jedes 430 × 300 *cm*)

22. Wandmoſaik im Speiſezimmer des Hauſes Stocklet in Brüſſel (Geſamtanſicht und Detail)
23. Zwei Kreidezeichnungen zum Wandfries in der Ausſtellung von Max Klingers „Beethoven", Wien 1902 (Sammlung Auguſt Lederer, Wien)

24 a. Studie zum Bilde der Danaë (Kreide auf Grobpapier; 44 × 30 *cm*; Sammlung Auguſt Lederer, Wien)

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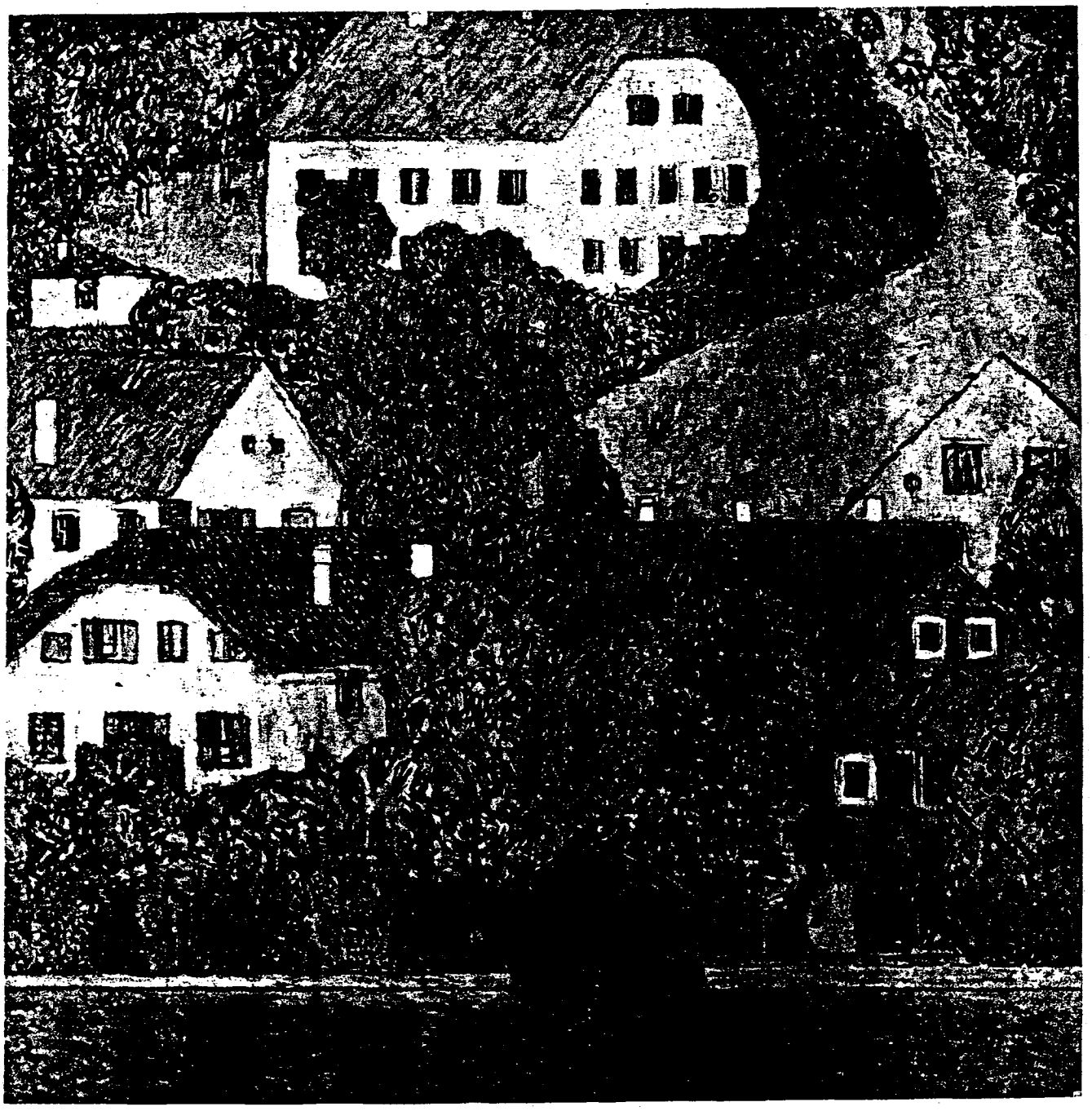
DIE SPÄTZEIT (1908—1918)

24 b. Weiblicher Akt (Rötelzeichnung auf Japan; 55 × 35 *cm*; Herr Guſtav Nebehay, Wien)
25. Sitzende alte Frau (Kreide auf Japan; 55 × 35 *cm*; Sammlung Auguſt Lederer, Wien)
26. Ruhendes Mädchen (Kreide auf Japan; 55 × 35 *cm*; Herr Dr. Siegfried Rathe, Wien)
27. Der ſchwarze Federnhut (Öl auf Leinwand; 79 × 63 *cm*; Herr Rudolf Kahler, Wien)
28. Die Jungfrau (Öl auf Leinwand; 190 × 200 *cm*; Moderne Galerie, Prag)
29. Mädchenbildnis (Öl auf Leinwand; 200 × 100 *cm*; Sammlung Otto Primaveſi, Wien)
30. Der Pelzkragen (Öl auf Leinwand; 96 × 46 *cm*; Sammlung Richard Lányi, Wien) — Damenbildnis (Öl auf Leinwand; 168 × 130 *cm*; Privatbeſitz Wien)
31. Landſchaft (Öl auf Leinwand; 110 × 110 *cm*; Sammlung Ferdinand Bloch Wien)

*

Den Kunſtverlegern Gerlach & Wiedling, Wien verdanken wir für die Tafeln Nr. 1, 3 und 5, Hugo Heller & Co., Wien für die Tafeln Nr. 8 bis 17, 19 bis 21, 27 und 28, Franz Hanfſtaengl, München für die Tafel Nr. 6 und Gilhofer & Ranſchburg, Wien für die Tafel Nr. 25 die freundliche Erlaubnis der Wiedergabe.

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From: E. Randol Schoenberg <randols@bslaw.net>
Date: Friday, May 9, 2003 9:50 AM
Subject: F.A.Z. 9.5.2003

Meisterwerke

Neue Dokumente im Streit um Klimt-Gemälde aufgetaucht

08. Mai 2003 Seit Jahren tobt der Streit um sechs kapitale Bilder von Gustav Klimt, für die Restitutionsansprüche geltend gemacht werden. Nun sind überraschend Dokumente zu Adele Bloch-Bauers Rolle in der damaligen Kunstszene aufgetaucht.

Wie der Kunsthistoriker Stephan Koja und der Historiker Andreas Kugler in einem Beitrag für die Frankfurter Allgemeine Zeitung schreiben, liege die „Brisanz der in den letzten Wochen - teils im Archiv der Österreichischen Galerie Belvedere, teils in Privatbesitz - neu entdeckten Dokumente" darin, „daß sie es erstmals ermöglichen, Adele Bloch-Bauers eigenständiges Kunstinteresse, ihr Eigentum an den Klimt-Gemälden und ihr langjähriges Engagement für die Österreichische Galerie zu belegen".

Dabei sei es für Adele Bloch-Bauer und ihre „wohlüberlegten Intentionen entscheidend" gewesen, im damaligen Direktor der „Modernen Galerie", Franz Haberditzl, „ein nahezu ideales Gegenüber" gefunden zu haben. Wie immer die Dokumente juristisch zu bewerten sind, so stellen sie die bisherige Auseinandersetzung doch in ein neues Licht.

Die Gemälde Klimts sind Herzstück und Hauptattraktion der Sammlung der „Österreichischen Galerie" in Wien. Nachdem ein Gericht in Kalifornien Ende 2002 die gegen die Republik Österreich angestrengte Klage der Bloch-Bauer-Erbin Maria Altmann zugelassen hat, prüft das amerikanische Justizministerium derzeit, ob in diesem Fall ein souveräner Staat vor ein amerikanisches Gericht zitiert werden kann.
F.A.Z.

Feuilleton Frankfurter Allgemeine Zeitung, 09.05.2003, Nr. 107, S. 33

Wem gehört dieses Gemälde?

Um die sechs berühmtesten Klimt-Bilder wird seit Jahren erbittert gestritten: Neue Dokumente zu einer dramatischen

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Affäre / Von Stephan Koja und Andreas Kugler

WIEN, 8. Mai

Wenn die Österreichische Galerie Belvedere in knapp einem Monat mit einem Festakt ihren hundertsten Geburtstag begeht, wird gewissermaßen auch die Heimkehr ihres 1938 abgesetzten Direktors Haberditzl gefeiert. Es ist Egon Schieles großartiges Porträt des Museumsdirektors, das nicht nur als Neuerwerbung präsentiert wird, sondern es auch in exemplarischer Weise ermöglicht, den Fragen nach Bedeutung und Wert eines Kunstwerkes und nach Aufgaben und Leistungen eines Museums nachzugehen. Franz Martin Haberditzl, 1882 in Wien geboren, übernahm 1915 die Leitung der bald "Österreichische Galerie" benannten Nachfolgerin der 1903 auf Drängen der Secessionisten um Gustav Klimt gegründeten "Modernen Galerie". Der Not der Zeit gehorchend und zugleich die Gunst der Stunde nutzend, gelang es Haberditzl, eine ungeheure Wirkung zu entfalten. Der Gründung des "Barockmuseums" (1923), das als erstes "Schloßmuseum" international Aufsehen erregte, folgten im neu hinzugewonnenen Oberen Belvedere die "Galerie des 19. Jahrhunderts" (1924) und die "Moderne Galerie" (1929) in der Orangerie des Schloßkomplexes. Zahlreiche Ausstellungen, populäre und wissenschaftliche Publikationen, eine wirklich enorme Anzahl von Erwerbungen (weit über 500 Werke von mehr als 250 Künstlern), und das alles mit wenigen Mitarbeitern und minimalen finanziellen Möglichkeiten, lassen an einen energischen Macher denken. Doch ganz im Gegenteil; Haberditzl war durch ein schweres Leiden schon 1920 zum Rollstuhlfahrer und fast ganz bewegungsunfähig geworden. 1938, als er - als Freund "entarteter Kunst" und mit einer Halbjüdin verheiratet - von den Nazis seines Amtes enthoben wurde, endete eine Epoche, in der Haberditzl eigene Wege gefunden hatte, seinen Aufgaben gerecht zu werden.

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Charakteristisch war hier in erster Linie seine Fähigkeit, mit Menschen umzugehen. Vorgesetzte und Untergebene, Künstler und Mäzene, Geschäftsleute und Besucher vermochte er in einer eigentümlichen Mischung aus konventioneller Zurückhaltung, warmherziger Anteilnahme und geistreichem Esprit zu faszinieren. So schrieb Egon Schiele: "Er ist ganz anders, als man sich einen Museumsmann vorstellt . .. Er versteht es, mit fesselndem Ausdruck die überraschendsten Dinge über sie zu erzählen. . . . Doch das ist nicht das eigentlich Erstaunliche . .. verblüffender war für mich vielmehr seine Fähigkeit der Einfühlung in das Wesen neuzeitlicher Künstler, also auch in das meine. Das ist doch allerhand von einem Manne, der wie er Museums-‚Beamter' ist, soviel Überzeugung gegenüber ‚hohen Vorgesetzten' mutig zu vertreten." 1917, ein Jahr vor Schieles frühem Tod, entstand das meisterhafte Porträt, das auch zum Zeugnis einer Freundschaft wurde.

Beispielhaft für Haberditzls Talent, Menschen über Jahre für seine Anliegen zu interessieren, ist auch eine Gönnerin, deren Name zum Stichwort eines ganz anderen Zusammenhangs wurde: Adele Bloch-Bauer. Sechs Hauptwerke Gustav Klimts hängen heute aufgrund ihres Testaments (1923) in der Österreichischen Galerie Belvedere und sind seit Jahren umstrittenster und wertvollster Mittelpunkt aller Restitutionsdebatten. Haben ihr als verheirateter Frau diese Bilder je gehört? Hatte ihr Gatte nach ihrem Tod das Recht und den Wunsch, eine vielleicht bloß unverbindliche testamentarische Bitte abzuändern?

Als Tochter des Bankdirektors Moriz Bauer 1881 geboren, heiratete Adele Bauer mit achtzehn Jahren den Großindustriellen Ferdinand Bloch, dessen Bruder Gustav bereits mit Adeles Schwester Therese verheiratet war. Schon in dieser Zeit lernte sie den berühmten und

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wohl auch berüchtigten Gustav Klimt kennen. Als junge Frau erlebte sie die harte Kritik an ihrem Vater, der für Karl Kraus in der "Fackel" zum Inbegriff allen kapitalistischen Übels wurde. Früh mußte sie sich mit dem engen Rahmen gesellschaftlicher Zwänge abfinden, der der hochintelligenten Frau gesteckt war. Ihre Entwicklung zur überzeugten Sozialdemokratin, Freundin wichtiger Politiker wie des Staatskanzlers Karl Renner und des bedeutenden Reformers des Gesundheitswesens, Julius Tandler, ist gewiß als Weg der Emanzipation zu begreifen, der sie zur Gastgeberin eines anspruchsvollen Salons sowie zur Kunstförderin machte und der sich auch in den beiden berühmten Porträts von Gustav Klimt widerspiegelt: vom goldenen Käfig zum bunten Kunstraum, könnte man salopp formulieren.

Die Brisanz der in den letzten Wochen - teils im Archiv der Österreichischen Galerie Belvedere, teils in Privatbesitz - neu entdeckten Dokumente und Zusammenhänge liegt darin, daß sie es erstmals ermöglichen, Adeles eigenständiges Kunstinteresse, ihr Eigentum an den Klimt-Gemälden und ihr langjähriges Engagement für die Österreichische Galerie zu belegen. Zweifellos war es gerade für Adele Bloch-Bauer und ihre wohlüberlegten Intentionen entscheidend, in Direktor Haberditzl ein nahezu ideales Gegenüber zu finden.

Adele Bloch-Bauer kam sehr früh mit moderner Kunst in Kontakt. Befreundet mit Alma Mahler-Werfel, Berta Zuckerkandl, Stefan Zweig und Oskar Kokoschka, verheiratet mit einem der großzügigsten Mäzene des Staatsgalerievereins, kannte sie auch die handelnden Personen der "Szene". Bereits 1906, ein Jahr nach dem Tod ihres sehr vermögenden Vaters, kaufte sie in der Galerie Miethke sechzehn bereits damals sehr wertvolle Skizzen von Klimt. Hat sie gar selbst Gustav Klimt als Maler ihres ersten Porträts von 1907 ausgewählt?

"Empfangsbestätigung: Die unterzeichnete Direktion der österreichischen Staatsgalerie bestätigt hiemit sechs Gemälde und zwar zwei Porträts und vier Landschaften von Gustav Klimt aus dem Besitze von Frau Bloch-Bauer, Wien IV. Schwindgasse 10, in das Depot der österreichischen Staatsgalerie in Verwahrung genommen zu haben mit der Berechtigung, diese Kunstwerke als Leihgabe auszustellen. Wien, am 12. April 1919. Dr. Franz Haberditzl."

Schon 1919 also, trennte sich Adele nicht nur von ihren vier Landschaften, sondern auch von den beiden persönlichen und prestigeträchtigen Porträts zugunsten eines Museums, das, abgesehn von der Vision seines Direktors, aus wenigen Räumen bestand. In der Ausstellung "Neuerwerbungen 1918 - 1921" werden die Gemälde der Öffentlichkeit präsentiert. Ebenfalls aus dem Jahr 1919 datiert ein Brief Adeles an Haberditzl, der sie ganz offensichtlich als initiative Besitzerin ihrer Bilder zeigt, die als Freundin Klimts knapp zwei Jahre nach dessen Tod bemüht ist, verantwortungsvoll mit ihrem Besitz umzugehen: "Sehr geehrter Herr Regierungsrat. Heute Nachmittag sprach ich den Kunsthistoriker Dr. Eissler. Er bat mich ihm für einige Tage die eine meiner, von Klimt gemalte(n) Landschaft(en) zu borgen. Dieses Werk soll polychrom von der Staatsdruckerei reproduziert werden und in einem Buch Dr. Eisslers erscheinen. Ich habe meine Einwilligung gegeben und Herrn Dr. Eissler versprochen, Sie zu bitten ihm die Landschaft zu borgen. Ich glaube, Dr. Eissler möchte jene Landschaft haben, welche ich in Klimts Nachlass kaufte und welche, da sie unfertig war, unter Glas gegeben wurde. Dr. Eissler versprach, das Bild wie seinen Augapfel zu hüten und es nach ein paar Tagen wieder zu Ihnen zu senden. Ich hoffe sehr geehrter Herr Regierungsrat Ihnen keine Scherereien zu machen. Ich glaube aber es dem Andenken meines treuen Freundes Klimt schuldig zu sein ein Werk von seiner Hand der Allgemeinheit zugänglich zu machen.

Ich verbleibe, sehr geehrter Herr Regierungsrat Ihre aufrichtig ergebene Adele Bloch-Bauer." Zugunsten der Allgemeinheit und gehütet wie ein Augapfel, wird das Bild nur kurz seinem neuen Verfüger entrissen.

Interessant ist in diesem Zusammenhang, daß Adele Bloch-Bauer die Gemälde anläßlich ihres Umzugs 1920 in das prächtige und kostbar eingerichtete Haus in der Elisabethstraße nicht zurückforderte, obwohl sie zu diesem Zeitpunkt noch nicht ausgestellt werden konnten. Erst Ende 1922, als die Räume des Museums geschlossen wurden, um die Umbauarbeiten für das neu entstehende "Barockmuseum" zu ermöglichen (Eröffnung Mai 1923), kamen die sechs Klimts zu ihr zurück. Sie hätten, wie alle anderen zeitgenössischen Werke, erst Jahre später - die "Moderne Galerie" eröffnete 1929 - wieder ausgestellt werden können. Zu diesem Zeitpunkt entstand in Adeles Wohnbereich also ein einzigartiges Gedenkzimmer für Gustav Klimt. Streng getrennt von den Gesellschaftsräumen hingen die sechs großformatigen Gemälde, ergänzt durch eine Fotografie, die Gustav Klimt in langem Arbeitsmantel zeigt, und eine Plastik von Georg Ehrlich.

Zu diesem Zeitpunkt besprach Haberditzl mit Adele Bloch-Bauer weitere Förderungsideen und sicher auch die Zukunft der sechs Klimts. "Wien, 13. Dezember, 1922, I. Elisabethstrasse 18; Herrn Regierungsrat Dr. Haberditzl. Über Ihren Wunsch erkläre ich Ihnen gerne in verbindlicher Form, dass ich, falls ich das Bild ‚Verwundetentransport' von Pettenkofen . . . erwerbe, Verfügungen treffen werde, dass dieses Bild später einmal, entweder von mir der österreichischen Galerie als Vermächtnis zufällt, oder der österreichischen Galerie zu meinem Einkaufspreis . . . zum Kaufe angeboten werden muss." Deutlich wird in diesem Schreiben einmal mehr, daß Adele Bloch-Bauer sehr eigenständig als Mäzenin auftritt.

Ihre Bemühungen gelten einem Bild, das ihr am Herzen liegt - kaum ein anderes österreichisches Bild des neunzehnten Jahrhunderts gibt die Trost- und Perspektivenlosigkeit des Krieges besser wieder.

Des weiteren wird dokumentiert, daß sie in Übereinstimmung mit ihrem Mann handelt, der dem Brief seine Unterschrift anfügte. Die Worte: "Über Ihren Wunsch erkläre ich . . ." lassen überdies auch auf die Hartnäckigkeit Haberditzls schließen. In dieser ist vermutlich der Hauptgrund zu finden, daß Adele fast zur gleichen Zeit, im Januar 1923, knapp zweiundvierzigjährig und gesund, ein Testament formulierte, das eindeutig Zeugnis von den sozialdemokratischen Idealen der Verfasserin gibt. Der Wiener Arbeiterverein "Kinderfreunde", der Wiener Verein "Die Bereitschaft", die österreichische Staatsgalerie mit den sechs Klimtgemälden und die Wiener Volks- und Arbeiterbibliothek werden darin von ihr bedacht. Haberditzl gelang es immer wieder, testamentarische Begünstigungen zu vereinbaren. Hier darf man jedoch keinesfalls den geschickten Erbschleicher assoziieren. In einer Zeit, in der die Enteignung der längst öffentlichen Sammlungen des Kaiserhauses als republikanische Tat akzeptiert wurden entsprach es dem Denken weiter Kreise, ihren Kunstbesitz der Allgemeinheit zu überantworten. Ganz besonders entsprach es den politischen Überzeugungen Adele Bloch-Bauers.

Nach dem Tod Adele Bloch-Bauers im Januar 1925 versprach Ferdinand Bloch- Bauer die testamentarischen Bestimmungen seiner Frau getreulich zu erfüllen. Das erstaunt wenig, war er doch, wie schon zuvor, weiterhin in engem Kontakt mit der Österreichischen Galerie. 1928 schenkte er ihr ein Gemälde Herbert Boeckls und im Jahre 1934 die Plastik "Geschwister" von Georg Ehrlich aus Adeles Klimtraum. 1936, als er sein eigenes Porträt von Kokoschka in das Ensemble einfügen wollte, wanderte die erste der vier Klimtlandschaften als "Widmung von Adele und Ferdinand

Bloch-Bauer" ins Belvedere, nachdem er bereits in den Jahren zuvor Adeles Gemälde zu Ausstellungen verliehen hatte. Daß Ferdinand ausdrücklich auch die politischen Motive seiner verstorbenen Frau teilte, beweisen die großen Summen, die er 1938 in die Mobilisierung der Arbeiterschaft investierte, bevor die Entsetzlichkeiten des Nationalsozialismus mit so vielen anderen auch seine Existenz zerstörten.

Im Oktober 1945, als Ferdinand im Züricher Exil ein Testament zugunsten seiner Nichten und Neffen verfaßte, wußte er nachweislich, daß jene Klimts aus Adeles Besitz, deren Aufenthalt bekannt war, "an die Österreichische Galerie laut Testament der Frau Bloch-Bauer übermittelt (worden waren): Klimt: Damenbildnis vor Goldgrund, Klimt: Apfelbaum". Wäre das nicht sein Wunsch gewesen, hätte der bis zuletzt souverän agierende Ferdinand sicherlich protestiert.

Auch für Franz Martin Haberditzl wurde das Jahr 1938 zur grausamen Zäsur. Von den Nazis abgesetzt, verdrängt von seinem engsten Mitarbeiter Bruno Grimschitz, ging seine innere Emigration so weit, daß er seine Wohnung vom Herbst 1938 bis zu seinem Tod im Januar 1944 nicht mehr verließ. So gesehen wurde die großzügige Widmung von Adele und Ferdinand Bloch-Bauer, die wunderbaren Gemälde Gustav Klimts, auch zur Erinnerung an jene Aufbruchsstimmung, die der Museumsmann Haberditzl in den zwanziger Jahren zu entfachen wußte.

Stephan Koja ist Kunsthistoriker und Kurator der Sammlung des neunzehnten Jahrhunderts an der Österreichischen Galerie Belvedere in Wien. Andreas Kugler ist Historiker und Direktionsassistent am Österreichischen Theatermuseum in Wien.

Kastentext:

Seit Jahren tobt der Streit um sechs kapitale Bilder von Gustav Klimt in der "Österreichischen Galerie" im Belvedere, für die Restitutionsansprüche geltend gemacht werden. Jetzt sind in Wien plötzlich Dokumente an den Tag gekommen, die belegen, daß die Werke tatsächlich im Besitz von Adele Bloch-Bauer waren, die sie dem Museum testamentarisch vermacht hat. Nachdem ein Gericht in Kalifornien Ende 2002 die gegen die Republik Österreich angestrengte Klage der Bloch- Bauer-Erbin Maria Altmann zugelassen hat, prüft das amerikanische Justizministerium nun, ob in diesem Fall ein souveräner Staat vor ein amerikanisches Gericht zitiert werden kann. Die aufgetauchten Papiere stellen die Auseinandersetzung in ein völlig neues Licht. F.A.Z.

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From: E. Randol Schoenberg <randols@bslaw.net>
Date: Friday, May 9, 2003 9:55 AM
Subject: orf 9.5.2003

Klimt-Gemälde: "Jetzt haben wir einen Beweis"

Übersicht

"Der Artikel in der heutigen 'F.A.Z.' überrascht mich nicht. Was die Zeitung schreibt, ist etwas, was wir schon lange vermutet haben, aber noch nie beweisen konnten. Jetzt haben wir einen harten Beweis", erklärte Gottfried Toman von der Finanzprokuratur am Freitag.

Erfreut zeigte sich Toman über die nun bekannt gewordenen neuen Dokumente im
Rechtsstreit um sechs Klimt-Gemälde, die sich derzeit in der Österreichischen Galerie befinden.

Beweislage zu Gunsten Österreichs

Im Zusammenhang mit Recherchen zu dem früheren Staatsgalerie-Direktor Franz
Haberditzl sei man in der Österreichischen Galerie unter anderem im Familienarchiv der Haberditzls auf eine Korrespondenz zwischen Adele Bloch-Bauer und Haberditzl gestoßen.

"Durch diese neu aufgefundenen Dokumente hat sich die Beweislage zu Gunsten
der Republik Österreich wesentlich verbessert, zumal die bisherige Behauptung der Republik, dass Adele in ihrem Testament über ihr Eigentum disponiert hat, nunmehr bewiesen werden kann. Es ist weiters beweisbar, dass
diese Gemälde schon 1919 an die Österreichische Galerie als Leihgabe gegangen sind", so Toman.

"F.A.Z."-Bericht

Die "Frankfurter Allgemeine Zeitung" ("F.A.Z.") berichtet am Freitag von neuen Dokumentenfunden im Zusammenhang mit den Klimt-Gemälden aus dem früheren Besitz der Familie Bloch-Bauer, um die derzeit ein Rechtsstreit zwischen der Republik Österreich und der Bloch-Bauer-Erbin Maria Altmann anhängig ist.

Die Papiere "belegen, dass die Gemälde tatsächlich im Besitz von Adele Bloch-Bauer waren, die sie dem Museum testamentarisch vermacht hat" und stellten "die Auseinandersetzung in ein völlig neues Licht", heißt es.

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Autoren des Beitrages sind Stephan Koja, der Kustos der Sammlung des 19. Jahrhunderts der Österreichischen Galerie Belvedere, und der Historiker Andreas Kugler, Direktionsassistent am Österreichischen Theatermuseum.

Neue Dokumente bestätigt

In der Österreichischen Galerie bestätigt man gegenüber der APA das Auftauchen neuer Dokumente "im Zuge anderer Recherchen". Die "F.A.Z." zitiert u.a. die Empfangsbestätigung des damaligen Staatsgalerie-Direktors Franz Haberditzl vom 12.4.1919 über "zwei Porträts und vier Landschaften von
Gustav Klimt aus dem Besitze von Frau Bloch-Bauer (...) mit der Berechtigung, diese Kunstwerke als Leihgabe auszustellen". In einem weiteren
Brief aus 1919 zeige sich Adele Bloch-Bauer "als initiative Besitzerin ihrer
Bilder", so der Artikel.

Nach dem Tod Adele Bloch-Bauers im Jänner 1925 habe Ferdinand Bloch-Bauer versprochen, die testamentarischen Bestimmungen (in denen sie u.a. ihren Mann bat, nach seinem Tode die Bilder der Republik Österreich bzw. der Österreichischen Galerie zu schenken) seiner Frau getreulich zu erfüllen.

Das Testament

"Im Oktober 1945, als Ferdinand im Züricher Exil ein Testament zugunsten seiner Nichten und Neffen verfasste, wusste er nachweislich, dass jene Klimts aus Adeles Besitz, deren Aufenthalt bekannt war, 'an die Österreichische Galerie laut Testament der Frau Bloch-Bauer übermittelt (worden waren): Klimt: Damenbildnis vor Goldgrund, Klimt: Apfelbaum' ", heißt es in dem "F.A.Z."-Artikel: "Wäre das nicht sein Wunsch gewesen, hätte
der bis zuletzt souverän agierende Ferdinand sicherlich protestiert."

Lesen Sie dazu mehr in kultur.ORF.at

Zitat aus neuem Buch

In dem kürzlich erschienenen Buch "Oskar Kokoschka. Kunst und Politik 1937-1950" von Gloria Sultano und Patrick Werkner wird allerdings aus einem
Brief Ferdinand Bloch-Bauers zitiert:

"Mir hat man in Wien und Böhmen alles genommen. Nicht ein Andenken ist mir geblieben! Vielleicht bekomme ich die zwei Porträts meiner armen Frau (Klimt) und mein Porträt", schrieb er 1941 an Oskar Kokoschka.

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From: E. Randol Schoenberg <randols@schoenberglaw.com>
Date: Sunday, June 23, 2002 10:06 AM
Subject: latest from Vienna re: Zuckerkandl

Wiener Irrwege eines Klimt-Porträts: Notverkauf, Schenkung, Nötigung?
Im Belvedere landete Klimts Bildnis der Amalie Zuckerkandl. Die letzte, vielleicht rechtmäßige Station einer tragischen Odyssee.

VON HANS HAIDER

Zwei Familien, zwei Anwaltskanzleien streiten um das Porträt "Amalie Zuckerkandl", das Gustav Klimt vor seinem Tod 1918 nicht ganz fertiggestellt
hatte. Am 11. September 2001 kam das Bild in die Österreichische Galerie ins
Belvedere. Es ist dort nicht ausgestellt.

Weil das Porträt in einer Inventarliste des Zuckerindustriellen Ferdinand Bloch-Bauer 1938 aufscheint, erhebt dessen Nichte Maria Altmann Anspruch darauf; sie ließ Österreich in Los Angeles im Sommer 2000 auf Herausgabe klagen. Das auf runde sechs Millionen Euro geschätzte Bild sei als Nazi-Raubgut auf den Kunstmarkt gekommen.

Doch auch Nachkommen der Porträtierten A. Z. versuchen den Nachweis, daß der
Witwer Ferdinand Bloch-Bauer (seine Frau Adele starb 1925, sie bedachte mit
ihren eigenen Klimt-Bildern im Testament die Österreichische Galerie) nach der ersten Inventarisierung das Bild an A. Z. zurückgeben ließ; bekannt ist
ein enges Verhältnis zwischen Bloch-Bauer und A. Z., ihr Bild hing in seinem
Schlafzimmer.

Bald darauf habe Hermine Müller-Hofmann, eine Tochter der 1942 deportierten
und umgekommenen A. Z., den Klimt der 1938 "arisierten" Neuen Galerie in Wien verkauft. Deren Kurzzeit-Eigentümerin Dr. Vita Künstler legte in einem
Schenkungsvertrag vom 17. März 1988 fest: Das Bild kommt nach ihrem Tod ins
Belvedere. Sie starb 2001 im Alter von 101 Jahren.

Nach einer Darstellung dieses Zanks in der "Presse" (23. Mai) meldeten sich

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Verwandte von Dr. Künstler: die Familie Richard und Catherine Polsterer: Sie verwahren unpublizierte "Erinnerungen an die Neue Galerie", die ihre Tante hinterlassen hat. Dort hat sie, noch lange vor dem Beginn der Kunstrestitutions-Debatte, den Weg des Bildes beschrieben (siehe nebenstehend "im Wortlaut").

Ein Notverkauf der völlig verarmten Hermine Müller-Hofmann ist die wahrscheinlichere Variante als die von Maria Altmann behauptete. Zumal auch Ruth Pleyer, die für den "Standard", für Hubertus Czernin und den Altmann-Anwalt Randol Schoenberg Recherchen über das Schicksal der Bloch-Bauer-Kunstsammlung anstellte, ein ähnliches Zeugnis aktenkundig machte: Sie entdeckte Frau Müller-Hofmann (eine fromme Aktivistin der Legio Mariae) kurz vor deren Tod im Jahr 2000 im Altersheim:

"Freiwillige Schenkung"

"Die alte Dame war klar wie eh und je. Sie hat mir gesagt, Ferdinand Bloch-Bauer habe aus dem Exil dafür gesorgt, daß das Bild - uns sagte sie damals - zurückgegeben wurde."

Der Künstler-Neffe Ernst Budischowsky versuchte im Winter 2000 dem Anwalt Schoenberg den Weg des Bildes aufzuklären. Er wußte von einem Kauf 1941, und daß die Besitzer damals Müller-Hofmann hießen. "Daß die Verkäufer fliehen wollten ist klar - daß sie Geld brauchten, ist anzunehmen".

Ob die 1600 Reichsmark, an die sich Dr. Künstler als Preis erinnerte, dem Marktwert entsprachen, ist schwer zu klären. Für die moralische Beurteilung, die Vita Künstlers Nachkommen am Herzen liegt, ist das Angebot wesentlich, den Kauf nach 1945 rückgängig zu machen.

Das Zuckerkandl-Porträt blieb ein halbes Jahrhundert in der Künstler-Wohnung hängen, zuerst in der Brandgasse, dann in der Cottage-Gasse. Den Aufstieg an diese gute Adresse finanzierte die inzwischen verwitwete Vita Künstler durch den Verkauf eines Schiele-Bildes - ein Geschäft, das Klimts "Amalie Zuckerkandl" erstmals in die Zeitungen brachte.

Käufer von Schieles "Winterbäumen" (1911/12) war der New Yorker Unternehmer, Sammler und damalige US-Botschafter Ronald Lauder. Dem Wissenschaftsminister

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Hans Tuppy und dem Denkmalamtspräsidenten Gerhard Sailer wurde vorgeworfen,
sie hätten nach politischen Interventionen - es war am Höhepunkt der Waldheim-Krise - die Ausfuhrbewilligung erteilt.

Am 28. Jänner 1988 rechtfertigte sich Generalkonservator Ernst Bacher: Von Schieles "Winterbäumen" gibt es mehrere Varianten in österreichischem Besitz, zudem hat sich die Vorbesitzerin als Gegenleistung für die Ausfuhrgenehmigung bereit erklärt, das Bildnis Amalie Zuckerkandl von Klimt
der Österreichischen Galerie zu schenken.

Eine Neuauflage jenes Nötigungsmusters "Ausfuhrgenehmigung gegen freiwillige
Schenkung", mit dem die Republik im ersten Nachkriegsjahrzehnt viele an NS-Opfer restituierte Kunst einbehalten hat! Erst das von Elisabeth Gehrer vorbereitete Kunstrestitutionsgesetz 1998 erlaubte es dem Staat, solche Pseudoschenkungen rückgängig zu machen.

Sollen die Erben nach Künstler den Klimt zurückbekommen - oder die nun den Anspruch stellenden Nachkommen von Hermine Müller-Hofmanns Schwester Nora Stiasny, an die bereits unter anderen Titeln Klimts "Apfelbaum II" und "Landhaus am Attersee" von der Österreichischen Galerie restituiert wurden.
Blieb vom Verkauf 1941 - der nun laut Gesetz nichtig ist, wenn es sich um einen Notverkauf handelte - ein deutlicherer Anspruch begründet als durch eine durch kein Gesetz aushebelbare "Schenkung" unter Zwang 1988?

Damals sprach auch Ernst Bacher von einem "Notverkauf": Vita Künstler brauchte Geld für eine für ihr hohes Alter geeignetere Wohnung.

22.06.2002 Quelle: Print-Presse

Kultur News

IM WORTLAUT

Aus den "Erinnerungen an die Neue Galerie" von Vita Künstler. Das 24-Seiten-Typoskript wurde um 1970 verfaßt - für Jane Kallir, die in New York Otto Kallir-Nirensteins in der Emigration in Paris gegründete Galerie Saint -Etienne fortführt. Mit ihr arbeitete Künstler für einen Schiele-Katalog zusammen. Die Neue Galerie war im Haus Grünangergasse 1 in Wien I. untergebracht. Kallir -Nirenstein schrieb die erste Schiele-Monographie und stellte 1931 als erster den Nachlaß des 1908 aus dem
Leben geschiedenen Richard Gerstl aus. "Neue Galerie" benannte letztes Jahr
in New York Ronald S. Lauder sein Privatmuseum.

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"Anläßlich eines Besuches im Frühjahr 1924 fragte mich Otto Nirenstein, was
ich nach der Promovierung zu tun gedenke. Auf meine Antwort: "eine Anstellung suchen", bot er mir spontan die Sekretärinnenstelle bei sich an.
Daraus wurde eine wunderschöne Zusammenarbeit durch viele Jahrzehnte, durch
die Emigration und den zweiten Weltkrieg zwar unterbrochen, aber in freundschaftlichem Gedenken nie getrennt. Ich hatte zwar im Jahre 1938 offiziell die Galerie "nazifiziert", führte sie aber im Sinn von Dr. K. weiter, immer in der Hoffnung, sie ihm in absehbarer Zeit wieder heil übergeben zu können. 1949 war das endlich der Fall. Weil Dr. K nicht mehr nach Wien zurückkommen wollte, blieb ich bis 1952 als seine Partnerin in der
Galerie, die ich dann seiner nach Wien zurückgekehrten Tochter Evamarie übergab.

Mitten im Krieg wurde mir auch ein Klimtbild von Prof. Müller-Hofmann angetragen, der ebenfalls Geld brauchte. Es handelte sich um das unvollendete Porträt seiner Schwiegermutter, der Frau Amalia Zuckerkandl. Ich erwarb das Bild für die Galerie um den vereinbarten Preis von 1600 Mk. Um die gleiche Zeit war aber das Buch meines Mannes "Kleiner Führer zu Kunst
und Kultur von Wien" erschienen, und er erhielt vom Verlag Hölzl einen einmaligen Betrag von 2000 Mk. dafür. Mein Mann kam natürlich bald in die Galerie, das Klimtbild zu besichtigen, und verliebte sich gleich so, daß er
mir den Vorschlag machte, um seine gerade erhaltenen 2000 Mk. das Bild von der Galerie zu kaufen, damit ich doch einen kleinen Gewinn verbuchen könnte,
der für die Weiterführung für mich ja essentiell war.

Und so kam das Klimt-Bild zuerst in das Bureauzimmer meines Mannes beim Berglandverlag am Schwarzenbergplatz und später dann in unsere Wohnung. Nach
Kriegsende habe ich Frau Müller-Hofmann (ihr Mann war inzwischen gestorben)
gefragt, ob sie das Bild zurück haben wolle, worauf sie meinte, es wäre bei
ihnen verbombt worden, da ihre Wohnung im Augartenpalais zerstört worden war, sie sei froh, daß es erhalten geblieben wäre und gönne es uns."

22.06.2002 Quelle: Print-Presse
Ergebnisliste | neue Suche |

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FREIMÜLLER / NOLL / OBEREDER / PILZ

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Dr. Georg Freimüller
Univ.-Doz. Dr. Alfred J. Noll
Dr. Alois Obereder
Mag. Michael Pilz
Dr. Erwin Senoner
Dr. Michael Celar

Herrn
E. Randol Schoenberg
12121 Wilshire Boulevard, Suite 800
90025-1168 Los Angeles, California
ex ante via telefax 001/3108262944

Vienna, 18th November 2003
02/Hof/1 - 4/mm - 175898.doc
Secretary: Mrs. Mann, DW 12

„Amalie Zuckerkandl"

Dear Randy,

attached you can find the agreement between the heirs (signed by myself) and the draft of the letter to the Restitutions-Beirat (also signed by myself).

Attached at last is the original letter to the Restitutions-Beirat (already signed by myself) – would you please give your signature and return me this letter so I can forward it to the Restitutions-Beirat.

Best personal regards

Alfred J. Noll

Encl.

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VEREINBARUNG

zwischen Maria Altmann, Francis Gutmann, George Bentley, Trevor Mantle einerseits und den Erben nach Amalie Zuckerkandl andererseits über das Klimt-Gemälde „Amalie Zuckerkandl"

1. Für den Fall einer Restitution des Bildes durch die Republik Österreich an eine der beiden Familien wird vereinbart, dass das Bild innerhalb eines Zeitraumes von 12 (zwölf) Monaten verkauft wird; die Modalitäten des Verkaufs (über öffentliche Auktion oder durch Privatverkauf) werden im Einvernehmen geregelt. Sollte eine Einigung über den Verkaufspreis nicht erzielt werden, dann hat die Familie, die für einen höheren Verkaufspreis optiert, das Recht, das Bild käuflich zu erwerben (als Verkaufspreis gilt dann das als zu niedrig empfundene Kaufanbot nach Maßgabe der im nachfolgenden Punkt 2. getroffenen Regelung über die Aufteilung des Verkaufspreises). Bis zu einer entsprechenden Einigung soll das Bild in der „Österreichischen Gallerie – Belvedere" verbleiben.

2. Die Aufteilung des Verkaufspreises richtet sich danach, wem das Bild von der Republik Österreich zurückgestellt wird:

a) wenn das Bild an Maria Altmann et al. rückgestellt wird, erhalten diese 2/3 des Verkaufspreises, die Erben nach Amalie Zuckerkandl 1/3;

b) wenn das Bild den Erben nach Amalie Zuckerkandl rückgestellt wird, erhalten diese 2/3 des Verkaufspreises, Maria Altmann et al. 1/3.

3. Beide Familien werden gegenüber der Republik Österreich erklären, dass sie – einerlei ob das Bild an Maria Altmann et al. oder an die Erben nach Amalie Zuckerkandl rückgestellt wird – nach Rückstellung des Bildes keine Ansprüche gegenüber der Republik Österreich geltend machen werden und dass sie im Falle einer Inanspruchnahme durch Dritte die Republik Österreich schad- und klaglos halten werden. Über den Inhalt dieser Vereinbarung wird gegenüber der Republik Österreich Stillschweigen gewahrt.

4. Maria Altmann et al. werden gegenüber der Republik Österreich erklären, dass sie nach einer positiven Empfehlung des Restitutionsbeirates, das Bild an eine der beiden Familien zu restituieren, das Bild aus der in Los Angeles anhängigen Klage gegen die Republik Österreich herauszunehmen wird – dies allerdings nur vorbehaltlich einer nachfolgenden Ausfolgung des Bildes an eine der beiden Familien und ohne Anspruchsverzicht gegenüber der Republik Österreich, solange das Bild nicht tatsächlich an eine der beiden Familien rückgestellt wurde.

5. Sollte es zu keiner positiven Empfehlung des Restitutions-Beirates kommen, steht es Maria Altmann et al. frei, das Bild entweder in der Klage zu belassen oder das Bild – zur Erwirkung einer Empfehlung des Restitutions-Beirates – aus der Klage zu nehmen. Maria Altmann kann die Rechtswirkung dieser Vereinbarung einseitig für erloschen erklären, wenn es a) zu einer endgültig abschlägigen Entscheidung durch die Republik Österreich kommt und das Bild an keine der beiden

Familien restituiert wird, oder b) wenn Maria Altmann et al. im derzeit anhängigen Verfahren vor dem Supreme Court gegen die Republik Österreich obsiegt.

6. Jede der beiden Familien trägt die Kosten ihrer Rechtsvertretung selbst; Kosten, die im Zusammenhang mit dem Verkauf des Bildes erwachsen, werden im Verhältnis gem. Pkt.2 dieser Vereinbarung geteilt.

7. Alle sich aus diesem Vertrag ergebenden Streitigkeiten werden nach der Schieds- und Vergleichsordnung des Schiedsgerichts der Bundeskammer der gewerblichen Wirtschaft, Wien, von einem oder mehreren gemäß dieser Ordnung ernannten Schiedsrichter endgültig entscheiden. Die Parteien verpflichten sich, die im Schiedsspruch ihnen auferlegten Verpflichtungen in den darin angeführten Fristen zu erfüllen.

Maria Altmann im eigenen Namen
und für Francis Gutmann, George Bentley
und Trevor Mantle (die insgesamt 75 %
des Erbes nach Ferdinand Bloch-Bauer
repräsentieren)

Für die Erben nach Amalie Zuckerkandl:

UNIV.-DOZ. DR. ALFRED J. NOLL
RECHTSANWALT
1080 WIEN, ALSER STRASSE 21
Tel. 406 05 51 Serie, PSK 93.051.255

Entwurf des beabsichtigten Schreibens an den Restitutions-Beirat:

Sehr geehrte Damen und Herren!

Zunächst dürfen wir Ihnen zur Kenntnis bringen, dass wir die Erben nach Amalie Zuckerkandl (Alfred J. Noll) und Frau Maria Altmann, Francis Gutmann, George Bentley und Trevor Mantle (Randy Schoenberg) rechtsfreundlich vertreten.

Hinsichtlich des Klimt-Bildes „Amalie Zuckerkandl" haben beide Familien ihren Anspruch auf Rückstellung des derzeit in der „Österreichischen Gallerie – Belvedere" befindlichen Bildes gegenüber der Republik Österreich angemeldet. Der Restitutions-Beirat hat die Sache bis dato nicht in Behandlung gezogen und keine Empfehlung über die Rückstellung abgegeben.

Nach ausführlicher Besprechung der Sach- und Rechtslage und nach gründlichem Studium der verfügbaren historischen Unterlagen ist es nun zu einer Einigung zwischen den beiden Familien gekommen. Im Auftrag und im Namen beider Familien wird sohin gegenüber der Republik Österreich die unwiderrufliche Erklärung abgegeben, dass beide Familien im Falle einer Rückstellung des Gemäldes an eine der beiden Familien die entsprechende Entscheidung der Republik Österreich akzeptieren werden. Darüberhinaus wird versichert, dass im Falle der Rückstellung des Bildes an eine der beiden Familien die andere Familie daraus keine weitergehenden Ansprüche gegenüber der Republik Österreich geltend machen wird und beide Familien gemeinsam die Republik Österreich diesbezüglich schad- und klaglos halten.

Gleichzeitig erklären Frau Maria Altmann et al., dass nach einer positiven Empfehlung auf Rückstellung des Gemäldes durch den Beirat (einerlei an welche der beiden Familien), das Bild aus der in Los Angeles anhängigen Klage gegen die Republik Österreich herausgenommen wird – dies allerdings nur vorbehaltlich einer nachfolgenden Ausfolgung des Bildes an eine der beiden Familien und ohne Anspruchsverzicht gegenüber der Republik Österreich, solange das Bild nicht tatsächlich an eine der beiden Familien rückgestellt wurde.

Wir dürfen der Hoffnung Ausdruck verleihen, dass mit dieser Erklärung die Voraussetzungen dafür geschaffen sind, damit es im Hinblick auf das Klimt-Gemälde „Amalie Zuckerkandl" nun zu einer raschen Beschlussfassung durch den Beirat kommen kann.

Im übrigen verbleiben wir

mit freundlichen Grüßen

Für Maria Altmann und diese im eigenen Namen und für Francis Gutmann, George Bentley und Trevor Mantle (die insgesamt 75 % des Erbes nach Ferdinand Bloch-Bauer repräsentieren):

Randy Schoenberg

Für die Erben nach Amalie Zuckerkandl:

UNIV.DOZ.DR. ALFRED J. NOLL
RECHTSANWALT
1080 WIEN, ALSER STRASSE 21
Tel. 406 05 51 Serie, PSK 93.051.255

Alfred J. Noll

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E. Randol Schoenberg
BURRIS & SCHOENBERG, LLP
Wilshire-Bundy Plaza
12121 Wilshire Blvd., Suite 800
Los Angeles, California 90025-1168

Alfred J. Noll
FREIMÜLLER/NOLL/OBEREDER/PILZ
Rechtsanwälte
Alserstraße 21
1080 Wien

An den

Restitutions-Beirat

beim BM für Bildung, Wissenschaft und Kultur

Minoritenplatz 5

1014 Wien

Los Angeles / Wien, den 20. November 2003

Betrifft: Restitution des Klimt-Gemäldes „Amalie Zuckerkandl"

Sehr geehrte Damen und Herren!

Zunächst dürfen wir Ihnen zur Kenntnis bringen, dass wir die Erben nach Amalie Zuckerkandl (Alfred J. Noll) und Frau Maria Altmann, Francis Gutmann, George Bentley und Trevor Mantle (Randy Schoenberg) rechtsfreundlich vertreten.

Hinsichtlich des Klimt-Bildes „Amalie Zuckerkandl" haben beide Familien ihren Anspruch auf Rückstellung des derzeit in der „Österreichischen Gallerie – Belvedere" befindlichen Bildes gegenüber der Republik Österreich angemeldet. Der Restitutions-Beirat hat die Sache bis dato nicht in Behandlung gezogen und keine Empfehlung über die Rückstellung abgegeben.

Nach ausführlicher Besprechung der Sach- und Rechtslage und nach gründlichem Studium der verfügbaren historischen Unterlagen ist es nun zu einer Einigung zwischen den beiden Familien gekommen. Im Auftrag und im Namen beider Familien wird sohin gegenüber der Republik Österreich die unwiderrufliche Erklärung abgegeben, dass beide Familien im Falle einer Rückstellung des Gemäldes an eine der beiden Familien die entsprechende Entscheidung der Republik Österreich akzeptieren werden. Darüberhinaus wird versichert, dass im Falle der Rückstellung des Bildes an eine der beiden Fa-

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18. NOV. 2003 12:30 KZL F/N/O/P +43 1 4069601 NR. 108 S. 6

milien die andere Familie daraus keine weitergehenden Ansprüche gegenüber der Republik Österreich geltend machen wird und beide Familien gemeinsam die Republik Österreich diesbezüglich schad- und klaglos halten.

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Im übrigen verbleiben wir

mit freundlichen Grüßen

Für Maria Altmann und diese im eigenen Namen und für Francis Gutmann, George Bentley und Trevor Mantle (die insgesamt 75 % des Erbes nach Ferdinand Bloch-Bauer repräsentieren):

- Law Offices of -
Randy Schoenberg Gutris & Schoenberg, L.L.P.
12121 Wilshire Blvd., Suite 800
Los Angeles, California 90025-1168

Für die Erben nach Amalie Zuckerkandl:

UNIV.-DOZ. DR. ALFRED J. NOLL
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Alfred J. Noll

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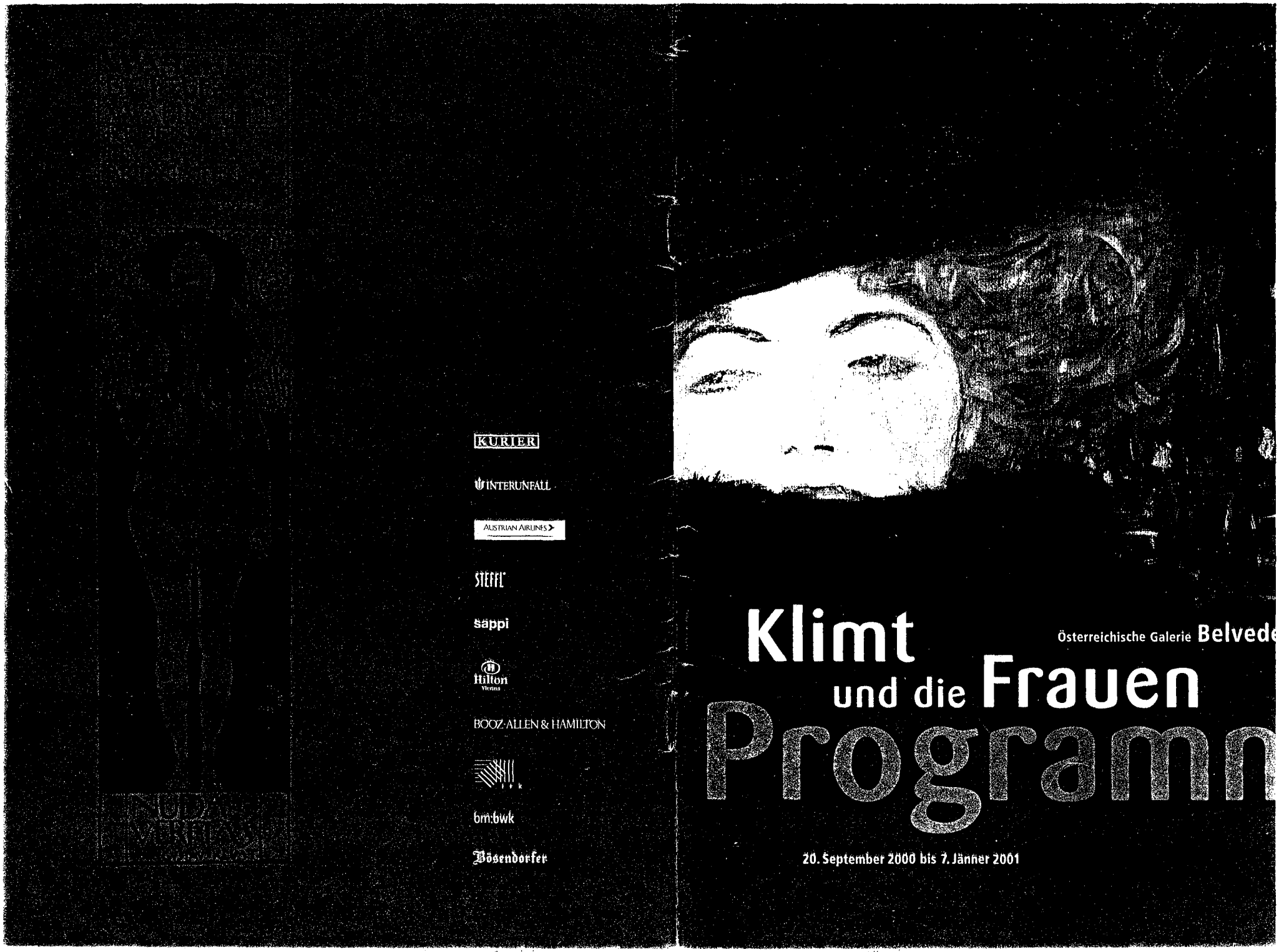
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Klimt
und die Frauen
Programm
20. September 2000 bis 7. Jänner 2001



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ÖSTERREICHISCHE GA
BELVEDERE

Vermittlungsprogramm

Donnerstagsgespräche

Begegnungen mit Gustav Klimt

In diesem Führungszyklus sprechen renommierte ExpertInnen aus den Bereichen Kunstgeschichte, Philosophie, Psychologie, Musikgeschichte und Mode über spezielle Aspekte im Werk Gustav Klimts und der Kultur der Wiener Jahrhundertwende.

► Donnerstag, 19.00 Uhr
Dauer: ca. 1,5 Stunden; Führungskarte: ATS 50,–
Treffpunkt: Klimt-Informationsstand in der Sala Terrena
Voranmeldung unbedingt erforderlich:
T: (+43-1) 79557/262, F: (+43-1) 79557/268,
E-Mail: kunstvermittlung.klimt@belvedere-wien.at

21. September 2000, 19.00 Uhr

Dr. Tobias G. Natter

Der Blick des Kurators

Der Kurator der Ausstellung »Klimt und die Frauen«, Tobias G. Natter, ist Kunsthistoriker und Kustos der Sammlung des 20. Jahrhunderts in der Österreichischen Galerie Belvedere. Darüberhinaus war er bereits mehrfach als Gastkurator des Jüdischen Museums der Stadt Wien tätig. Zahlreiche Ausstellungen und Publikationen zur österreichischen und internationalen Kunst des 19. und 20. Jahrhunderts, wie z.B. Carl Moll und Oskar Kokoschka.

28. September 2000, 19.00 Uhr

Dr. Marian Bisanz-Prakken

Gustav Klimt und die Anfänge der Wiener Secession

Marian Bisanz-Prakken absolvierte das Studium der Kunstgeschichte an der Universität Groningen/Niederlande und arbeitete im Zuge von Forschungsaufenthalten in Florenz und Wien. Sie ist als Kuratorin der Graphischen Sammlung Albertina in Wien tätig, wo sie sich schwerpunktmäßig mit der niederländischen Graphik des 17. Jahrhunderts und den Zeichnungen Gustav Klimts auseinandersetzt. Zahlreiche Ausstellungen und Publikationen über Gustav Klimt und die Anfänge der Wiener Secession.



Madama d'Ora
(Dora Kallmus)
Alma Mahler, 1909
Bildarchiv ÖNB Wien



Drachenrobe Longpao
(weiblich)
spätes 19. Jahrhundert
MAK, Wien

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5. Oktober 2000, 19.00 Uhr

Univ. Prof. Dr. Susanne Rode-Breymann

»... in jenem traumgrauen Farbenmärchen wandeln«. Alma Mahler und Gustav Klimt

Susanne Rode-Breymann studierte Musik und Musikwissenschaft a hochschule und der Universität Hamburg. Promotion 1988 mit eine Alban Berg und Karl Kraus. Seit 1996 Hochschuldozentin an der Ho für Musik und Theater Hannover, seit 1999 Dozentin für Historische wissenschaft an der Hochschule für Musik in Köln. Mitherausgeber bücher Alma Mahlers (Alma Mahler, Tagebuch-Suiten 1898–1902).

12. Oktober 2000, 19.00 Uhr

Dr. August Ruhs und Mag. Petra Schröck

Der andere Blick. Eine psychoanalytisch orientierte Werkbetrachtung

August Ruhs ist Facharzt für Psychiatrie und Neurologie, Psychoana der Universitätsklinik für Tiefenpsychologie und Psychotherapie unc Praxis tätig. Zudem lehrt er im Rahmen von Kuratorenausbildung u pädagogik. Die unkonventionelle Kunstbegegnung »Der andere Blic *August Ruhs und Petra Schröck, Kunsthistorikerin, stieß bereits bei* Sonderausstellungen der Österreichischen Galerie auf große Reson

19. Oktober 2000, 19.00 Uhr

Dr. Angela Völker

Von Ball-Entrées, Reformkleidern, Drachenroben und slowakischer Stickerei. Gustav Klimt und die Mode der

Angela Völker ist Kunsthistorikerin und leitet seit 1977 die Textilabt Museums für Angewandte Kunst in Wien (MAK). Ihre Forschungsscl und Publikationen befassen sich mit Textilien des 19. und 20. Jahrh Orientteppichen.

23. November 2000, 19.00 Uhr

Univ. Prof. Dr. Kurt Fischer

Die Weltanschauung des Wiener Fin-de-Siècle

Honorarprofessor Kurt Fischer studierte in Berkeley (Kalifornien), ist Institut für Philosophie an der Universität Wien und ist am Institut tätig. Forschungsschwerpunkte bilden die Themen »Nietzsche und d hundert« und »Philosophie aus Wien«. Er verfasste zahlreiche Aufsä amerikanischen und österreichischen Philosophie und ist Herausgeb »Österreichische Philosophie von Brentano bis Wittgenstein. Ein Les



Gustav Klimt
Frauenkopf, 1917/1918
Neue Galerie, Linz

7. Dezember 2000, 19.00 Uhr

Univ. Doz. Dr. Sabine Plakolm-Forsthuber

Metamorphosen des Weiblichen

Sabine Plakolm-Forsthuber ist Kunsthistorikerin und lehrt am Institut für Kunstgeschichte an der Technischen Universität Wien. Zahlreiche Publikationen zur österreichischen Kunst und Architektur des 20. Jahrhunderts, wie z.B. über Ausstellungsbauten der Wiener Secession. Den Schwerpunkt ihrer Arbeit bildet die Frauenforschung (»Künstlerinnen in Österreich 1897–1938«).

14. Dezember 2000, 19.00 Uhr

Univ. Doz. Dr. Peter Haiko

Die Idee des Gesamtkunstwerkes – Zum Verhältnis von Malerei und Architektur in Wien um 1900

Peter Haiko ist als außerordentlicher Universitätsprofessor am Institut für Kunstgeschichte in Wien tätig. Der Forschungsschwerpunkt seiner wissenschaftlichen Arbeit liegt in der österreichischen Kunst des 19. und 20. Jahrhunderts. Seine zahlreichen Publikationen befassen sich bevorzugt mit Wiener Kunst und Architektur um 1900 (z.B. Otto Wagner, Adolf Loos).

21. Dezember 2000, 19.00 Uhr

Dr. Regine Schmidt

Gustav Klimt und Felix Dörmann: »Die kleine Braut«

Die Co-Kuratorin der Ausstellung »Klimt und die Frauen«, Regine Schmidt, ist seit 1976 als Kuratorin des 20. Jahrhunderts an der Österreichischen Galerie Belvedere tätig. Ein Schwerpunkt der zahlreichen von ihr kuratierten Ausstellungen ist das Thema Emigration und Verfolgung von Künstlern, z. B. George Mayer-Marton und Gerhart Frankl.

4. Jänner 2001, 19.00 Uhr

Mag. Erhard Stöbe

Byzanz oder Japan? Gustav Klimts goldene Bilder

Erhard Stöbe studierte Malerei in Wien. Von 1970 bis 1978 war er als Restaurator am Kunsthistorischen Museum tätig und anschließend Lehrbeauftragter für Malerei an der Hochschule für Angewandte Kunst in Wien bei Bazon Brock und Peter Weibel. Seit 1988 leitet er die Restaurierabteilung der Österreichischen Galerie Belvedere. Eigene Ausstellungstätigkeit seit 1967.

Gustav Klimt
Wasserschlangen I,
1904–1907
Österreichische Galerie
Belvedere, Wien



002880

Überblicksführungen

Bei diesem Ausstellungsrundgang werden die Hauptwerl Klimts und die Eigenarten seiner Frauendarstellungen im besprochen. Vor dem biographischen Hintergrund und d schaftlichen Umfeld im Wien um 1900 werden stilistisch lungen und thematische Bezüge aufgezeigt.

- Regelmäßige Führungstermine:
  Deutsch: Sonntag, 14.30 Uhr, Englisch: Samstag, 14.30 U
  Dauer: ca. 1 Stunde; Führungskarte: ATS 40,–
  Treffpunkt: Klimt-Informationsstand in der Sala Terrena

- Für Gruppen außerdem jederzeit nach Voranmeldung:
  T: (+43-1) 79557/262, F: (+43-1) 79557/268,
  E-Mail: kunstvermittlung.klimt@belvedere-wien.at
  ATS 600,– pro Führungsbetreuung, Sa/So ATS 1000,–
  (maximal 20 Personen pro Gruppe)

- Führungen werden auf Anfrage auch in Englisch, Französisch, Italienisch, Spanisch und Japanisch angebot
  Fremdsprachenaufpreis: ATS 100,–
  Ein akustisches Führungsgerät in deutscher und englisch Sprache ist jederzeit um ATS 45,– erhältlich.

Abend-Sonderführungen / Klimt at Night

- Schenken Sie Ihren Gästen einen außergewöhnlichen Ab nützen Sie den Rahmen der Klimt-Ausstellung, um kulina Genüsse mit einem exklusiven Kunsterlebnis zu verbinde

  Abend-Sonderführungen:
  täglich außer Donnerstag ab 18.30 Uhr möglich
  »Klimt at Night«: täglich ab 22.00 Uhr
  Informationen und Buchungen:
  T: (+43-1) 79557/262, F: (+43-1) 79557/268,
  E-Mail: kunstvermittlung.klimt@belvedere-wien.at

- Anmietung der historischen Räumlichkeiten des Schlosse Belvedere für Abendveranstaltungen (Cocktails, Dinner, E Täglich außer Donnerstag; Information und Buchungen:
  T: (+43-1) 79557/140, E-mail: wodni@belvedere.at

Kunstgespräche

In dialogisch aufgebauten Ausstellungsrundgängen in kleinen Gruppen bildet jeweils ein spezielles Schwerpunktthema Anlass und Anstoß für eine offene Auseinandersetzung mit den Werken Gustav Klimts.

► Dauer: ca. 1,5 Stunden; Führungskarte: ATS 50,–
Treffpunkt: Klimt-Informationsstand in der Sala Terrena
Auch für Gruppen als Kunstgespräch oder Spezialführung möglich
Voranmeldung unter T: (+43-1) 79557/262, F: (+43-1) 79557/268,
E-Mail: kunstvermittlung.klimt@belvedere-wien.at

Dienstag, 10. Oktober 2000, 16.30 Uhr

Christian Huemer

Der Heilige Frühling: Wie Jugend zum Stil wurde.

»Wir hatten das Gefühl, dass eine Zeit für uns, unsere Zeit begann, in der endlich Jugend zu ihrem Recht kam,« schreibt Stefan Zweig in ›Die Welt von Gestern‹ über die Wiener Jahrhundertwende. In Politik, wie in Literatur und Kunst regte sich Unbehagen und Widerstand gegen die scheinbar stabile Welt der Väter, mit ihrem Glauben an Vernunft, Ordnung und die ewigen Normen des Schönen. Im Bereich der Kunst wurde Klimt schnell zur Leitfigur der Revolte der Jugend, die der Moral des Schweigens und Versteckens die »nackte Wahrheit« entgegenstellte und über alle Grenzen hinweg nach einer neuen Formensprache Ausschau hielt.



Gustav Klimt
Bildnis Emilie Flöge, 1902
Historisches Museum, Wien

Dienstag, 14. November 2000, 16.30 Uhr

Tamara Loitfellner

Über Geliebte, Musen und weibliche Mäzene.

Unter dem Aspekt »Legende und Wahrheit« werden Lebensgeschichten von Damen aus dem Großbürgertum wie die der Industriellengattin Adele Bloch-Bauer untersucht und besprochen. Ebenso stehen Klimts langjährige Geliebte Emilie Flöge, sowie seine Modelle für Allegorien und Femme fatale-Darstellungen im Mittelpunkt des Gespräches. Klimts Interpretationen und Weiblichkeitsimaginationen werden mit der Frage nach dem Selbstempfinden, den weiblichen Lebensentwürfen und der künstlerischen und gesellschaftlichen Bedeutung dieser realen Frauen der Wiener Jahrhundertwende konfrontiert.

366200

Dienstag, 12.Dezember 2000, 16.30 Uhr

Petra Schröck

Golden Girls. Gustav Klimt und das Frauenbild der Moder

Vor dem Hintergrund der europäischen Kunstströmungen un Jahrhundertwende werden die repräsentativen Frauenbilder Klimts den Meisterwerken von Manet, Singer Sargent bis zu Munch und Kokoschka gegenübergestellt. Ausgehend von K »Idolen im goldenen Schrein« sollen aktuelle Bezüge zum Fr in der zeitgenössischen Kunst – von Andy Warhols »Gold M bis in die Gegenwart – aufgezeigt und diskutiert werden.

In Kooperation mit dem italienischen Kulturinstitut bieten wir zusätz folgende zwei Themenführungen an. Zu beiden Terminen finden jeweils um 17.00 Uhr Themenführungen in italienischer Sprache stat

Mittwoch, 25. Oktober, 16.30 Uhr

Wolfgang Kocher

Klimt und Ravenna

Kein anderer Künstler der Jahrhundertwende lässt so oft We schiedenster Epochen der Kunstgeschichte in seine Arbeiten wie Gustav Klimt. Vom Impressionismus über die Meister de hunderts, der Renaissance bis zur Mosaikkunst des Frühchris spannt sich der Bogen. Gleich zweimal machte sich Klimt au Weg nach Ravenna, um die Mosaiken von San Vitale zu stuc Diese Reisen sollten zur wichtigsten Inspirationsquelle für se »Goldene Periode« werden.

Mittwoch, 15. November, 16.30 Uhr

Sylvia Mraz

Tradition und Neubeginn: Die Malerei Gustav Klimts und das Frauenbild in der italienischen Kunst

»Das Weib ist das Hauptwerk« sagt Klimt in Anlehnung an K und die zahlreichen Darstellungen von Mädchen, Müttern ur mes fatales innerhalb seines Œuvres scheinen dies zu bestät Vergleich mit ausgewählten Künstlern der italienischen Rena wie Botticelli oder Giorgione, die ebenfalls auf mannigfaltige Frau« in den Mittelpunkt ihrer Kunst stellten, wird die Verän der Sichtweise auf das Sujet im Laufe der Jahrhunderte bis z stilistischen Umsetzung in der Kunst Gustav Klimts deutlich.

002991

Diskussionsreihe mit Künstlerinnen

»Frauenzimmer und Weibsbilder«

»[...] denn der Mann macht sich das Bild des Weibes, und das Weib bildet sich nach diesem Bilde.«
(Friedrich Nietzsche, Fröhliche Wissenschaft)

In dieser Diskussionsreihe stellen bekannte zeitgenössische Künstlerinnen, die in ihrem eigenen Schaffen ein besonderes Interesse an Repräsentationen von Weiblichkeit zeigen, das Frauenbild Gustav Klimts und der Wiener Jahrhundertwende zur Diskussion. Was bedeutet Frau-Sein bzw. Künstlerin-Sein an der Schwelle zum 21. Jahrhundert? Welche Aspekte reizen heute noch zur Auseinandersetzung mit Gustav Klimt? Die Diskussionen werden von KunsthistorikerInnen moderiert. Im Anschluß laden wir Sie zu einem Cocktail ein.

Samstag, 23. September 2000, 16.30 Uhr

Dorit Margreiter

Abbildungen

In Dorit Margreiters Arbeiten geht es um Fragen der weiblichen, kulturellen und ethnischen Identität. So setzt sie sich beispielsweise im Video »Short Hills« mit der Darstellung der identitätsstiftenden Wirkung massenmedialer Leitbilder auseinander, die Architektur und Körper gleichermaßen berühren.
(Dorit Margreiter, geboren 1967 in Wien, lebt in Wien)

Samstag, 7. Oktober 2000, 16.30 Uhr

Elke Krystufek

Krystufeks Kunst basiert auf einer Dialektik von Exhibitionismus und Voyeurismus. In ihren Arbeiten ist sie selbst der aktive Beobachter und das passive Bild, eine Verschmelzung von Subjekt und Objekt. Diesem Verhältnis liegt die These Sigmund Freuds zugrunde, nach der »jeder Exhibitionist im Unterbewußtsein auch Voyeur ist«. Ihre Freiheit im Umgang mit dem eigenen Körper verwendet sie als Spiegel der Realität und Form des Dialoges mit der Gesellschaft. 1993 bis 1995 entstand die Serie »Elke Krystufek liest Otto Weininger«, in der sie explizit auf das Frauenbild der Wiener Jahrhundertwende bezug nimmt.
(Elke Krystufek, geboren 1970 in Hinterbrühl/Niederösterreich, lebt in Wien)



Elke Krystufek
Woman of Colour, 1997
Österreichische Galerie
Belvedere, Wien

Gustav Klimt
Adam und Eva, 1917/1918
Österreichische Galerie
Belvedere, Wien



Samstag, 21. Oktober 2000, 16.30 Uhr

Christine und Irene Hohenbüchler

Die Distanz zwischen Traum und Wirklichkeit

Mit ihrer Arbeit wollen die Künstlerinnen Brücken zwischen dem Allgemeinen und dem Individuellen, der Norm und der Abweichung, der realen und künstlichen Welt legen. Die persönliche Autorenschaft ist dabei nicht mehr ausschlaggebend. Ihre Aufmerksamkeit gilt gewöhnlichen Bereichen, die mit Bedeutungen um so stärker versehen sind, je natürlicher und selbstverständlicher diese erscheinen, so etwa Kleidungsstücke, Handarbeiten oder Erzählungen des weiblichen Alltags.

(Christine und Irene Hohenbüchler, geboren 1964 in Wien, leben in Eichgraben/Niederösterreich)



Maitz
ius der Serie
els‹ (Ray), 1997/1998

Samstag, 11. November 2000, 16.30 Uhr

Petra Maitz

more playfulness ... models

Die Häkelarbeiten von Petra Maitz sind einerseits autonome Objekte und andererseits provokant-ironische Transformationen. Ihre »medialen Auflösungen« variieren das Thema Selbstbefragung und Geschlechterdifferenz in Fotografie, Malerei, Zeichnung und Fadenarbeit.

(Petra Maitz, geboren 1962 in Wien, lebt in Berlin)

Samstag, 2. Dezember 2000, 16.30 Uhr

Maria Hahnenkamp

Vor/Nach-Bilder: Über das Dilemma mit den Abbildern

Maria Hahnenkamps künstlerische Arbeit setzt sich mit gesellschaftlichen Projektionen von Weiblichkeit auseinander, die sie als Realitätsmomente einer kritischen Analyse unterzieht. Dabei nimmt sie auf Manifestationen gesellschaftlicher Rollenbilder einer scheinbar intakten Weiblichkeit bezug. Sie lenkt den Blick auf Indikatoren der Verführung, indem sie eine Ikonographie von Textilien und Nähzeug, Kosmetikverpackungen, Brautattributen, Haar- und Körperschmuck verwendet, wobei sie dominierendes Weiss als Symbol der Jungfräulichkeit einsetzt.

(Maria Hahnenkamp, geboren 1959 in Eisenstadt, lebt in Wien)

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Samstag, 16. Dezember 2000, 16.30 Uhr

Ilse Haider

Kontrolle des Weiblichen

Ilse Haider geht es in ihren vexierbildhaften Bild-Objekten um die Untersuchung geschlechtsspezifischer Darstellungen und Medienklischees, wobei sie in ironischer Weise Images aus dem Fundus der Kunstgeschichte oder illustrierter Magazine benutzt. Trägermaterialien sind beispielsweise Wattestäbchen, Teller, Wäscheklammern oder andere feminin besetzte Haushaltsmaterialien.

(Ilse Haider, geboren 1965 in Salzburg, lebt in Wien)

Samstag, 6. Jänner 2001, 16.30 Uhr

Victorine Müller

Skandalös

Den Abschluss dieses Zyklus bildet eine Performance der Schweizer Künstlerin Victorine Müller, die ihren Körper als Medium radikalen Transformationsprozessen unterzieht. Ihre Performances sind gezielte Inszenierungen und generieren einen unprätentiösen Raum paradoxer Emotionen zwischen Klaustrophobie, Angst und Befreiung (»Durchströmung«, »Electric Venus«, »Häutung«). In den Ausstellungsräumen setzt sie sich im Sinne einer experimentellen Intervention mit Klimts Frauenbild auseinander.

(Victorine Müller, geboren 1961 in Grenchen, lebt in Zürich)

▸ Dauer: ca. 1,5 Stunden
Teilnehmerbeitrag: ATS 80,– (inkl. Cocktail)
Treffpunkt: Klimt-Informationsstand in der Sala Terrena
Voranmeldung unbedingt erforderlich:
T: (+43-1) 79557/262, F: (+43-1) 79557/268,
E-Mail: kunstvermittlung.klimt@belvedere-wien.at

Die Österreichische Galerie Belvedere bietet zur Ausstellung speziell auf die unterschiedlichen Schulstufen abgestimmte Überblicksführungen und Aktionsprogramme an.

- Führungsbeitrag pro betreuter Gruppe ATS 500,–
  Eintritt: mit Führung ATS 25,– pro Schüler / ohne Führung ATS 30,–
  Schüler bis 14 Jahre freier Eintritt
  Treffpunkt: Klimt-Informationsstand in der Sala Terrena
  Voranmeldung unbedingt erforderlich (mind. 1 Woche vorher)
  T: (+43-1) 79557/262, F: (+43-1) 79557/268,
  E-Mail: kunstvermittlung.klimt@belvedere-wien.at

Nach der Führung erhalten LehrerInnen eine kostenlose Lehrer-Informationsmappe zur Nachbereitung im Unterricht. Kinderführer zur Ausstellung für Kinder bis 12 Jahre liegen am Klimt-Informationsstand auf.

Überblicksführungen

In einem dialogisch orientierten Ausstellungsrundgang werden die Hauptwerke Gustav Klimts und die Eigenarten seiner Frauendarstellungen besprochen. Vor dem biographischen Hintergrund und dem gesellschaftlichen Umfeld im Wien um 1900 werden mit Hilfe von Vergleichsbeispielen stilistische Entwicklungen und thematische Bezüge aufgezeigt.

- Für SchülerInnen ab ca. 14 Jahren; Gruppengröße:
  max. 20 SchülerInnen pro Gruppe; Dauer: ca. 1 Stunde



Mitglieder der Wiener Secession auf der Beethoven-Ausstellung: Gustav Klimt, Kolo Moser, Wilhelm List, Maximilian Kurzweil, Carl Moll u. a. Photographie von Moriz Nähr 1902

Gustav Klimt
Judith II (Salome), 1909
Galleria d'Arte Moderna, Venedig



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Aktionsprogramme

Oberstufe

- Für SchülerInnen von 15 bis 18 Jahren; Gruppengröße:
  max. 20 SchülerInnen pro Gruppe; Dauer: ca. 1 Stunde

Der Kunst ihre Freiheit

Ausgehend vom Motto der Wiener Secession von Ludvig H »Der Zeit ihre Kunst. Der Kunst ihre Freiheit« wird der Freih in der Kunst an Leben und Werk Gustav Klimts und seiner I diskutiert und bis in die unmittelbare Gegenwart geführt. D auch auf die Rolle des Künstlers/der Künstlerin und auf der wert der Kunst in der Gesellschaft hingewiesen.

Sinnliche Muse – Grausames Kind

Im Rahmen dieses Aktionsprogrammes werden gemeinsam schiedenen Frauenbilder in den Werken Gustav Klimts erarl (Muse, Modell, Femme Fatale) und die spezifische Erotik de Jugendstiles untersucht. Anhand des berühmtesten Werkes Kuss« werden Interpretationsmöglichkeiten des Geschlecht nisses aufgezeigt und mit Publikationen jener Zeit in Bezie gebracht (z. B. Otto Weininger »Geschlecht und Charakter«

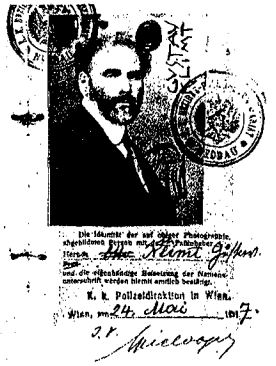
Unterstufe und Hauptschule

- Für SchülerInnen von 10 bis 14 Jahren; Gruppengröße:
  max. 15 SchülerInnen pro Gruppe; Dauer: ca. 1 1/4 Stunden
  Zusätzlicher Service für Unterstufen und Volksschulen:
  Morgenöffnung im Museum: Di–Fr von 9.00 bis 10.00 Uhr
  Kreative Arbeit für Kinder bis zur 6. Schulstufe

Mosaik und Mustermix

Wertvolle Materialien und merkwürdige Muster kennzeichn Kleider der Wiener Gesellschaftsdamen, die Klimt mit Vorlie trätierte. Wir betreiben Materialkunde und Musteranalyse, i Entwürfen und Einflüssen auf die Spur zu kommen. Beobac und Phantasie sind gefragt!

002994



Klimts Reisepaß
Albertina, Wien





Gustav Klimt
Damenbildnis (Ria Munk II),
1917/1918
Neue Galerie Linz

Wien, London, Paris oder Japan?

Das Leben und die Reiseerlebnisse Gustav Klimts sollen gemeinsamen Ausstellungsrundgang im Mittelpunkt stel anschaulicher Vergleichsbeispiele werden die Motive unc der Einflüsse aus Kunst und Kultur ferner Länder in Klim erforscht.

Volksschule

- Für SchülerInnen von 6 bis 10 Jahren; Gruppengröße: max. 15 SchülerInnen pro Gruppe; Dauer: ca. 1 1/4 Stund Zusätzlicher Service für Unterstufen und Volksschulen: Morgenöffnung im Museum: Di–Fr von 9.00 bis 10.00 U

Ein Tag mit Gustav Klimt

Gustav Klimt war ein aufregender Künstler und eine inte Persönlichkeit. Wir erfahren viel über sein Leben und sei lernen seine Gefährtin Emilie Flöge kennen, machen eine an den Attersee und begegnen vielen seiner Freunde unc kollegen. Auch Guki, eine seiner Lieblingskatzen, die bei Atelier gelebt hat, werden wir treffen. Der Tag endet mit Überraschung.

Wer war Sonja K.?

Ein Porträt und viele Studien und Zeichnungen gibt es vc zu der Gustav Klimt ein besonderes Verhältnis gehabt ha Wir begeben uns als Forscher auf die Suche nach verstec und Symbolen, um zu erkunden wer diese geheimnisvoll wirklich war. Mit Hilfe eines Steckbriefes kommen wir de auf die Schliche.

LehrerInnenvoreröffnung

- Dienstag, 19. September, 14.00 Uhr (Einlass ab 13.30 Uhr Voreröffnung der Ausstellung für Lehrer und Lehrerinnen und Präsentation der Vermittlungsprogramme für Schüle Alterstufe. Lehrerinformationsmappen stehen für Sie an j zur Verfügung.

002995

Kindersonntage

»Im Paradies der Bilder«

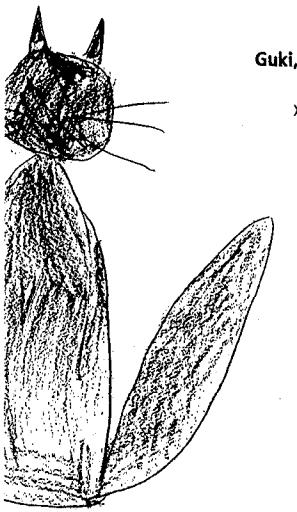
Ein Programm auch für den allerersten Museumsbesuch. Auf der Suche nach dem »Paradies der Bilder« werden bei einem Spaziergang durch die Ausstellung die Kunstwerke spielerisch erkundet. Das Klimt-Kinder-Atelier lädt anschließend zum selbständigen Herstellen eigener Kunstwerke ein.

- Für KunstliebhaberInnen von 5 bis 12 Jahren und ihre Eltern
  Voranmeldung nicht erforderlich
  Für Kinder freier Eintritt; Materialbeitrag ATS 30,– pro Kind
- Kinderführungen durch die Ausstellung »Klimt und die Frauen« finden jeweils sonntags um 12.00, 13.00, 14.00 und 15.00 Uhr statt. Das Klimt-Kinder-Atelier ist jeweils von 11.00 bis 16. 00 Uhr geöffnet. Außerdem steht ein Kinderführer mit Rätselspiel für jedes Kind gratis zur Verfügung.
  Treffpunkt: ab 11.00 Uhr beim Klimt-Informationsstand in der Sala Terrena

Hilton-Klimt-Brunch

- Sonntag von 11.00–14.30 Uhr ▷Preis: ATS 395,– pro Person inkl. Klimt-Cocktail; Kinder bis 6 Jahre gratis; Kinder von 6–12 Jahren 50% Ermäßigung; Reservierung: T: (+43-1) 71700-0

ian, 6 Jahre
t-Katze Guki
sschule Hainburg



Guki, unsere Katze führt die Kinder jeden Sonntag durch die Ausstellung:

»Miau! Ich bin Guki! Ich bin eine besondere Katze – ich bin die Katze des berühmtesten Künstlers des Wiener Jugendstiles und bin (fast) immer dabei wenn Gustav malt. Ich beobachte und verfolge ihn ganz leise auf Samtpfoten. Ich verrate Euch geheimnisvolle und spannende Dinge über sein Leben und seine Kunst. Wenn Ihr wollt könnt Ihr mich jeden Sonntag auf meinen Abenteuern in das Paradies der Bilder begleiten. Seid gespannt!«



Gustav Klimt
mit Katze, 1910
Bildarchiv ÖNB Wien

4 verschiedene Programme mit Guki
werden jeden Sonntag abwechselnd angeboten:

Das verborgene Paradies

In aufregender Detektivarbeit entschlüsseln wir die geheimen Botschaften der Zeichen und Symbole in Gustav Klimts Kunstwerken. Am Ende entdecken wir vielleicht sogar ein geheimnisvolles Paradies in den Bildern?

Termine

Sonntag, 24. September 2000
Sonntag, 22. Oktober 2000
Sonntag, 19. November 2000
Sonntag, 7. Jänner 2001

Im Paradiesgarten

Diesmal machen wir uns auf die Suche nach dem Paradies in der Natur, das wir vielleicht in den gemalten Landschaftsdetails, den darin lebenden Tieren oder besonderen Wasserwesen wie Goldfisch und Wasserschlange entdecken. Habt Ihr gewusst, daß es auch goldene Apfelbäume gibt?

Termine

Sonntag, 1. Oktober 2000
Sonntag, 29. Oktober 2000
Sonntag, 26. November 2000

Bezaubernd schön!

Wir bestaunen die noble Schönheit der feinen Damen und Mädchen, die Gustav Klimt vor 100 Jahren gemalt hat. So ein Styling sieht man nicht alle Tage! Unsere Erkundung soll herausfinden, ob das Paradies vielleicht auch in Luxus, Gold und Pracht von Schmuck, Kleidern und Frisuren zu finden ist. Was meint Ihr?

Termine

Sonntag, 8. Oktober 2000
Sonntag, 5. November 2000
Sonntag, 10. Dezember 2000



stav Klimt
V-Postkarte Nr. 123
Emilie Flöge, 1908
chlaß Emilie Flöge

Liebe Emilie ...

So beginnen fast 400 Postkarten, Telegramme und Briefe, die Gustav Klimt an seine Freundin Fräulein Emilie Flöge geschrieben hat. Ob das Paradies in der Liebe zu finden ist? Was ist aus den Kunstwerken und Fotos der Ausstellung herauszulesen? In unserem selbst gestalteten Brief an Emilie werden wir vieles verraten.

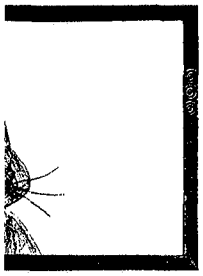
Termine

Sonntag, 15. Oktober 2000
Sonntag, 12. November 2000
Sonntag, 17. Dezember 2000

Kinder-Malwettbewerb

Wer malt das schönste Bild vom Paradies?

Im berühmtesten Bild von Gustav Klimt »Der Kuss« findet Ihr Hinweise auf seine Vorstellung vom Paradies. Aber ist das Paradies für alle Menschen dasselbe? In einem Kindermalwettbewerb sollt Ihr Eure eigene Vorstellung vom Paradies entwerfen. Die einzige Vorgabe für Euer Kunstwerk ist das Format eines Quadrates von ca. 20 x 20 cm (d.h. alle 4 Seiten eines Zeichenblattes sind 20 cm lang), denn Ihr müßt wissen, daß Gustav Klimt am liebsten auf quadratischen Leinwänden gemalt hat. Eurer Phantasie (in Thema, Farbe, Material) sind keine Grenzen gesetzt!



► Schickt Eure Paradiesvorstellungen an:
Österreichische Galerie Belvedere, Kunstvermittlung Klimt,
Kennwort »Paradies«
Einsendeschluß: Montag 27. November 2000

Es gibt viele tolle Preise zu gewinnen! Als Hauptpreis winkt ein Flug mit den »Austrian Airlines« in eine europäische Hauptstadt mit 2 Übernachtungen im dortigen Hotel »Hilton« für ein Kind und eine erwachsene Begleitperson. Preisverleihung beim Kinder-Nikolo-Fest bei Gustav Klimt.



Gustav Klimt
Helene Klimt, 1898
Kunstmuseum Bern,
Leihgabe aus Privatsammlung

Kinder-Nikolo-Fest bei Gustav Klimt

Der Ausstellungshöhepunkt für Kinder ist das Kinder-Nikolo-Fest *bei Gustav Klimt. Da wird ganz schön was los sein im Museum!* Viele tolle Überraschungen warten auf Euch: Kinderführungen, Kinder-Künstler-Atelier, Kinder-Schminken, Puppentheater, Kinderdisco, Kindergalerie: Eine Kinderjury prämiert gemeinsam mit den Kuratoren der Ausstellung die schönsten Paradiese des Malwettbewerbes.

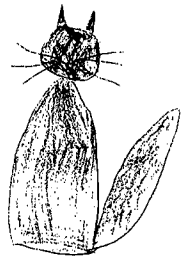
► Sonntag, 3. Dezember 2000, 11.00 bis 16.00 Uhr
Treffpunkt: ab 11.00 Uhr beim Klimt-Informationsstand
in der Sala Terrena; Materialbeitrag: ATS 40,– pro Kind

Happy Birthday!

Kindergeburtstag mit Gustav Klimt

Für Geburtstagskinder und ihre Freunde gibt es eine Kinderführung durch die Klimt-Ausstellung, Spiele, Spaß + Betreuung.
Als besondere Kostbarkeit bekommen die Geburtstagsgäste ein selbst gestaltetes Geschenk aus Blattgold. Dabei werden die Kinder unter fachkundiger Anleitung eines Restaurators in die Geheimnisse des Vergoldens eingeführt. Auch Guki hat sich eine Überraschung einfallen lassen!

► Für Kinder von 5 bis 10 Jahren; Dauer: ca. 1,5 Stunden
Für 6 bis maximal 10 Kinder;
Preis exkl. Kinderjause im Café Belvedere: ATS 1500,– (Gruppenpreis)
Freitag nachmittags ab 14.00 Uhr bzw. nach Vereinbarung
Treffpunkt: Klimt-Informationsstand in der Sala Terrena
Voranmeldung unbedingt erforderlich (mind. 1 Woche vorher)
T: (+43-1) 79557/262, F: (+43-1) 79557/268,
E-Mail: kunstvermittlung.klimt@belvedere-wien.at



Lesungen mit Salonkonzert

Es musiziert das »Wiener Show-Orchester«
(SolistInnen des Wiener Schubert Konservatoriums)

► Exklusive Vorbesichtigung der Ausstellung jeweils ab 18.30 Uhr
Karten: ATS 450,– (inkl. 1 Glas Sekt)
Reservierung unbedingt erforderlich:
T: (+43-1) 79557/262, F: (+43-1) 79557/268,
E-Mail: kunstvermittlung.klimt@belvedere-wien.at

Freitag, 6. Oktober 2000, 19.30 Uhr

Karlheinz Hackl

Amouröser Schnitzler

Unter dem Motto »Amouröser Schnitzler« liest Karlheinz Hackl aus Erzählungen und Dramen Arthur Schnitzlers. Die vorgetragenen, überaus humorvollen Stücke, zentrieren sich um die für das Wiener Fin-de-Siècle typischen Themen wie Sinnlichkeit, Liebe und Tod. Der Abend wird begleitet von Klaviermusik von Arnold Schönberg, Alban Berg und Gustav Mahler.

Freitag, 3. November 2000, 19.30 Uhr

Andrea Eckert

Von und über Gustav Klimt

Texte »Von und über Gustav Klimt« liest Andrea Eckert an diesem Abend. In Schriften von Berta Zuckerkandl, Alma Mahler, Ludwig-Hevesi, Felix Salten, Egon Schiele und anderen Zeitgenossen Klimts sowie in wenigen autobiographischen Zeugnissen finden sich eindrucksvolle Schilderungen, die ein facettenreiches Bild des Künstlers und dessen Umfeld liefern. Klavierstücke von Arnold Schönberg und Alban Berg sorgen für die musikalische Untermalung des Abends.



Anton Kolig
Bildnis Berta Zuckerkandl, 1915
Historisches Museum, Wien

002997

Freitag, 15. Dezember 2000, 19.30 Uhr

Erwin Steinhauer

Betrachtungen über Frauen, Kunst und das wahre Paradies

Erwin Steinhauer rezitiert an diesem Abend ein satirisches Potpourri von Notizen, Lyrik und Gedanken unterschiedlicher Schriftsteller der Zeit um und nach der Jahrhundertwende wie Peter Altenberg, Herrmann Bahr, Gottfried Benn, Franz Kafka, Karl Kraus, Otto Weininger und Walter Benjamin. Als gedanklicher roter Faden dienen Briefzitate Gustav Klimts an Emilie Flöge. »G'stanzeln« aus den 20er und 30er Jahren, vorgeführt an Klavier und Violine, *unterstreichen das Thema der Lesung.*

Ein Abend mit Marcel Prawy

► Karten: ATS 450,– (inkl. 1 Glas Sekt)
Reservierung unbedingt erforderlich:
T: (+43-1) 79557/262, F: (+43-1) 79557/268,
E-Mail: kunstvermittlung.klimt@belvedere-wien.at

Freitag, 17. November 2000, 19.30 Uhr

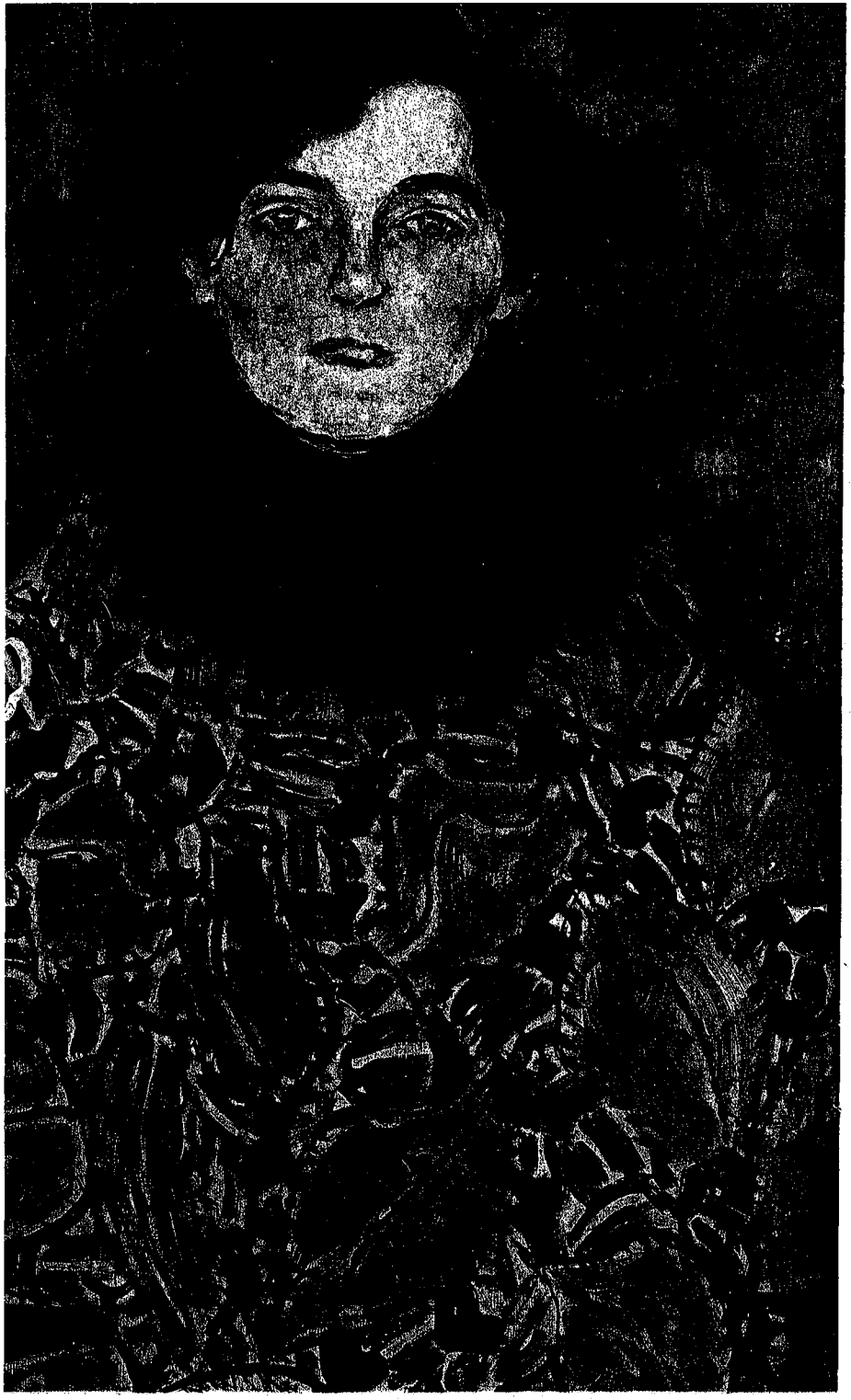
Marcel Prawy

Singende Damen im Geiste Klimts

»Klimts Genie als Maler stand nicht im luftleeren Raum. Er ist der grandiose Höhepunkt eines Zeitgefühls. Es umfasst auch die Musik von Mahler, Richard Strauss, Lehár und Korngold. In der Ausstellung sehen wir Klimt. Bei meiner Veranstaltung wollen wir Klimt hören.« (Marcel Prawy)



Gustav Klimt
Schubert am Klavier, 1899
verbrannt



Gustav Klimt
Johanna Staude, 1917/1918
Österreichische Galerie
Belvedere, Wien

En Vogue

Eine Klimt-Kutoglu-Modegala

Klimt Damen von heute in Kutoglu-Kreationen

► Dienstag, 7. November 2000; Beginn: 19.30 Uhr

Der in Wien lebende, international bekannte österreichisch/türkische Modedesigner Atil Kutoglu kleidet Damen der internationalen und Wiener Gesellschaft und Models in exklusiv von ihm zu diesem Anlaß entworfene Modelle. Diese Kreationen werden in einer Installation mit Puppen zu den Damenporträts von Klimt vom 8. bis 19. November im Oberen Belvedere zu sehen sein. Kutoglus Schnitte und Designs zeigen Einflüsse und Parallelen zum Werk Gustav Klimts. Der Einsatz von Gold, Transparenz und byzantinisch-geometrisierender Ornamentik spiegelt sich vor allem in seinen luxuriösen Abendroben wider. Besondere Affinitäten zwischen Gustav Klimt und Atil Kutoglu zeigen sich auch in der gesellschaftlichen Schicht der jeweiligen Auftraggeberinnen und Modellen aus öffentlich und künstlerisch einflussreichen Kreisen des Fin-de-Siècles und der Gegenwart. Es erwartet Sie eine festliche Inszenierung mit einer Modegala und Cocktail-Empfang.

► Karten: ATS 550,– (ein Teil der Einnahmen kommt einem wohltätigen Zweck zugute); Reservierung unbedingt erforderlich:
T: (+43-1) 79557/262, F: (+43-1) 79557/268,
E-Mail: kunstvermittlung.klimt@belvedere-wien.at



Kutoglu Kaftan
Goldbesticktes Musseline Kleid,
samtverbrämter Mantel
Foto: Georg Schlosser

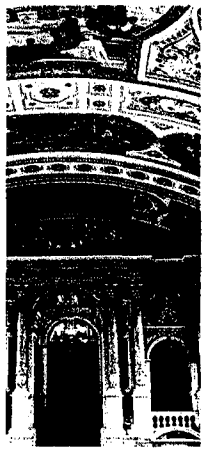
002998

002999

Klimt in Wien

Eine Kunstreise auf den Spuren Gustav Klimts

Das Projekt der Kunst-Tour »Klimt in Wien« wird anläßlich der Ausstellung »Klimt und die Frauen« in der Österreichischen Galerie Belvedere ins Leben gerufen und versteht sich als exklusives Kulturvermittlungs-Service zu Leben und Werk Gustav Klimts. Im Rahmen der je nach Wahl ein- oder zweitägigen Kunstreise innerhalb Wiens sollen wichtige künstlerische Wirkungsstätten Gustav Klimts besucht und durch fachkundiges Personal eingehend erläutert werden. Höhepunkt ist die aktuelle Ausstellung »Klimt und die Frauen« in der Österreichischen Galerie Belvedere, die die weltweit größte Sammlung an Gemälden des Künstlers beherbergt. Das Angebot richtet sich an besonders kulturinteressierte BesucherInnen jeder Altersgruppe. Um dieses ganz dem Künstler Gustav Klimt gewidmete Wochenende auch kulinarisch so angenehm wie möglich zu gestalten, sind gemeinsame Mittagessen und Pausen in entspannter Atmosphäre eingeplant. Den Abschluß der Tour bildet jeweils ein exklusiver Sektempfang im Carlonesaal des Barockschlosses Belvedere.



ener Burgtheater,
·dliche Feststiege
stav Klimt und die Maler-
mpagnie, 1886–1888
ndesdenkmalamt, Wien

► Kooperationspartner: Arch-Foundation, Burgtheater Service-Center, *Historisches Museum der Stadt Wien, Kunsthistorisches Museum* Wien, Österreichische Galerie Belvedere, Secession, Vereinigung bildender Künstler

(©: Österreichische Galerie Belvedere, Kunstvermittlung Klimt: Christian Huemer, Tamara Loitfellner, Petra Schröck)

Anmeldungsmodalitäten:

Die Anmeldung erfolgt ausschließlich mittels eines speziellen Anmeldebogens über »Kunstvermittlung Klimt«. Anmeldung bis spätestens 3 Tage vor dem Termin. Anmeldebogen anfordern bei: *Österreichische Galerie Belvedere, Kunstvermittlung Klimt,* T: (+43-1) 79557/262, F: (+43-1) 79557/268, E-Mail: kunstvermittlung.klimt@belvedere-wien.at oder direkt beim Klimt-Informationsstand in der Sala Terrena des Oberen Belvedere

Hinweis: Beide Touren finden bei jedem Wetter und erst ab einer Teilnehmeranzahl von 15 Personen statt!



Atelier Gustav Klimt
Feldmühlgasse 11, Wien
Bildarchiv ÖNB, Wien

Große Tour »Klimt in Wien«

► Samstag, 21. Oktober und Sonntag, 22. Oktober 2000
Jeweils von 9.30 bis ca. 17.00 Uhr

Samstag: Klimt und der Historismus

► Treffpunkt: 9.30 Uhr (pünktlich!)
vor dem Wiener Burgtheater (Busabholung)

vormittags: **Hermesvilla**, 1130 Wien, Ausstellungsbesuch: »Hans Makart (1840–1884). Malerfürst« und Besichtigung der Fresken von *Gustav Klimt und der Maler-Compagnie in den ehemaligen Privat*räumen von Kaiserin Elisabeth ▷Mittagspause im Restaurant des Wiener Burgtheaters ▷nachmittags: **Wiener Burgtheater**, 1010 Wien: Führung durch die von Gustav Klimt und der Maler-Compagnie ausgestaltete Feststiege. Anschließend Spaziergang durch den Burggarten zum **Kunsthistorischen Museum**, 1010 Wien: Besichtigung des von Gustav Klimt und der Maler-Compagnie ausgemalten Treppenhauses ▷Ende ca. 17.00 Uhr beim Kunsthistorischen Museum

Sonntag: Klimt und die Secession

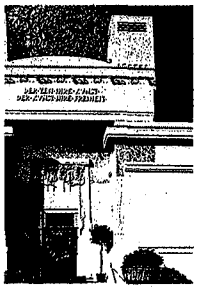
► *Treffpunkt: 9.30 Uhr (pünktlich!)*
vor dem Wiener Burgtheater (Busabholung)

vormittags: Besuch des letzten **Ateliers Gustav Klimts** in Hietzing, 1130 Wien. Die der Öffentlichkeit ansonsten nicht zugänglichen Räumlichleiten werden anlässlich der Ausstellung »Klimt und die Frauen« vorgestellt. ▷Mittagspause in dem von Adolf Loos eingerichteten »Café Museum«, einem Künstlertreffpunkt der Wiener Jahrhundertwende, 1010 Wien ▷nachmittags: Besichtigung des **Beethovenfrieses** von Gustav Klimt in der Secession, Vereinigung bildender Künstler, 1010 Wien ▷Ausstellungsbesuch **»Klimt und die Frauen«** in der Österreichischen Galerie Belvedere, 1030 Wien ▷Abschließend Sektempfang im Carlone-Saal des Schlosses Belvedere ▷Ende der Tour ca. 17.00 Uhr in der Österreichischen Galerie Belvedere

Kleine Tour »Klimt in Wien«

► Samstag, 14. Oktober, von 9.30 bis ca. 17.30 Uhr
Treffpunkt: 9.30 Uhr (pünktlich!)
vor dem Wiener Burgtheater (Busabholung)

Vormittags: **Wiener Burgtheater**, 1010 Wien: Führung durch die von Gustav Klimt und der Maler-Compagnie ausgestalteten Feststiege ▷Anschließend Spaziergang durch den Burggarten zum **Kunsthistorischen Museum**, 1010 Wien: Besichtigung des von Gustav Klimt und der Maler-Compagnie ausgemalten Treppenhauses ▷Mittagspause im Restaurant des Kunsthistorischen Museums ▷nachmittags: Besichtigung des **Beethovenfrieses** von Gustav Klimt in der Secession, Vereinigung bildender Künstler, 1010 Wien ▷Ausstellungsbesuch »**Klimt und die Frauen**« in der Österreichischen Galerie Belvedere, 1030 Wien ▷Abschließend Sektempfang im Carlone-Saal des Schlosses Belvedere ▷Ende der Tour ca. 17.30 Uhr in der Österreichischen Galerie Belvedere.



ph Maria Olbrich
ssion, 1898
n

Preise

► Große Tour »Klimt in Wien«: ATS 1.200,– pro Person
Für Kinder bis 14 Jahre, die von ihren Eltern begleitet werden, wird jeweils nur der Anteil für den Reisebus von ATS 390,– pro Kind verrechnet. Das Kunstvermittlungs-Service ist frei. Über 14 Jahre ist der volle Preis zu bezahlen. Der kulinarische Teil (Mittagessen) ist nicht im Preis inbegriffen und nicht verpflichtend.

► Kleine Tour »Klimt in Wien«: ATS 750,– pro Person
Für Kinder bis 14 Jahre, die von ihren Eltern begleitet werden, wird jeweils nur der Anteil für den Reisebus von ATS 135,– pro Kind verrechnet. Das Kunstvermittlungs-Service ist frei. Über 14 Jahre ist der volle Preis zu bezahlen. Der kulinarische Teil (Mittagessen) ist nicht im Preis inbegriffen und nicht verpflichtend.

Zusätzlich kann die Kleine Tour »Klimt in Wien« jederzeit nach Vereinbarung für geschlossene (Reise)gruppen ab 15 Personen angeboten und organisiert werden.

Terminübersicht

Mo | 18 | September
19.30 Uhr
Preview und Dinner für den Verein der Freunde der Österreichischen Galerie Belvedere

Di | 19 | September
14.00 Uhr
LehrerInnenvoreröffnung
19.00 Uhr
Eröffnung

Do | 21 | September
19.00 Uhr
Donnerstagsgespräch
mit Dr. Tobias G. Natter

Sa | 23 | September
14.30 Uhr
Überblicksführung Englisch
16.30 Uhr
Diskussionsreihe
mit Dorit Margreiter

So | 24 | September
14.30 Uhr
Überblicksführung Deutsch
ab 11.00 Uhr
Kindersonntag:
»Das verborgene Paradies«
Hilton-Klimt-Brunch

Do | 28 | September
19.00 Uhr
Donnerstagsgespräch
mit Dr. Marian Bisanz-Prakken

Sa | 30 | September
14.30 Uhr
Überblicksführung Englisch

So | 01 | Oktober
ab 11.00 Uhr
Kindersonntag: »Im Paradiesgarten«
Hilton-Klimt-Brunch
14.30 Uhr
Überblicksführung Deutsch

Do | 05 | Oktober
19.00 Uhr
Donnerstagsgespräch mit
Dr. Susanne Rode-Breymann

Fr | 06 | Oktober
19.30 Uhr
Lesung mit Salonkonzert
mit Karlheinz Hackl:
»Amouröser Schnitzler«

Sa | 07 | Oktober
14.30 Uhr
Überblicksführung Englisch
16.30 Uhr
Diskussionsreihe mit Elke Krystufek

So | 08 | Oktober
ab 11.00 Uhr
Kindersonntag: »Bezaubernd schön!«
Hilton-Klimt-Brunch
14.30 Uhr
Überblicksführung Deutsch

Di | 10 | Oktober
16.30 Uhr
Kunstgespräch: »Der Heilige Frühling: Wie Jugend zum Stil wurde«

Do | 12 | Oktober
19.00 Uhr
Donnerstagsgespräch mit Dr. August Ruhs und Mag. Petra Schröck

Sa | 14 | Oktober
9.30 Uhr
Kleine Tour »Klimt in Wien«
14.30 Uhr
Überblicksführung Englisch

So | 15 | Oktober
ab 11.00 Uhr
Kindersonntag: »Liebe Emilie ...«
Hilton-Klimt-Brunch
14.30 Uhr
Überblicksführung Deutsch

Do | 19 | Oktober
19.00 Uhr
Donnerstagsgespräch
mit Dr. Angela Völker

Sa | 21 | Oktober
9.30 Uhr
Große Tour »Klimt in Wien«, 1. Teil
14.30 Uhr
Überblicksführung Englisch
16.30 Uhr
Diskussionsreihe mit
Christine und Irene Hohenbüchler

So | 22 | Oktober
9.30 Uhr
Große Tour »Klimt in Wien«, 2. Teil
ab 11.00 Uhr
Kindersonntag:
»Das verborgene Paradies«
Hilton-Klimt-Brunch
14.30 Uhr
Überblicksführung Deutsch

Mi | 25 | Oktober
16.30 Uhr
Kunstgespräch:
»Klimt und Ravenna«

Sa | 28 | Oktober
14.30 Uhr
Überblicksführung Englisch

So | 29 | Oktober
ab 11.00 Uhr
Kindersonntag: »Im Paradiesgarten«
Hilton-Klimt-Brunch
14.30 Uhr
Überblicksführung Deutsch

Do | 02 | November
18.30 Uhr
IFK Vortragsreihe,
Ursula Renner-Henke: »Viennese Beauty – Das Phantasma ›Frau‹ in Bildern und Texten der Jahrhundertwende«

Fr | 03 | November
19.30 Uhr
Lesung mit Salonkonzert
mit Andrea Eckert:
»Von und über Gustav Klimt«

Sa | 04 | November
14.30 Uhr
Überblicksführung Englisch

So | 05 | November
14.30 Uhr
Überblicksführung Deutsch

Di | 07 | November
ab 11.00 Uhr
Kindersonntag:
»Bezaubernd schön!«
Hilton-Klimt-Brunch
19.30 Uhr
Klimt-Kutolglu-Modegala

Do | 09 | November
18.30 Uhr
IFK Vortragsreihe, Werner Hofmann:
»Ja, das Leben ist ein Weib!«

Sa | 11 | November
14.30 Uhr
Überblicksführung Englisch
16.30 Uhr
Diskussionsreihe mit Petra Maitz

003060

So | 12 | November
ab 11.00 Uhr
Kindersonntag: »Liebe Emilie ...«
Hilton-Klimt-Brunch
14.30 Uhr
Überblicksführung Deutsch

Di | 14 | November
16. 30 Uhr
Kunstgespräch: «Über Geliebte, Musen und weibliche Mäzene«

Mi | 15 | November
16.30 Uhr
Kunstgespräch: »Tradition und Neubeginn: Die Malerei Gustav Klimts und das Frauenbild in der italienischen Kunst«

Do | 16 | November
18.30 Uhr
IFK Vortragsreihe,
Ilona Sármány-Parsons:
»Frauendarstellungen von Klimt im europäischen Kontext«

Fr | 17 | November
19.30 Uhr
Ein Abend mit Marcel Prawy:
»Singende Damen im Geiste Klimts«

Sa | 18 | November
14.30 Uhr
Überblicksführung Englisch

So | 19 | November
ab 11.00 Uhr
Kindersonntag:
»Das verborgene Paradies«
Hilton-Klimt-Brunch
14.30 Uhr
Überblicksführung Deutsch

Do | 23 | November
19.00 Uhr
Donnerstagsgespräch mit
Univ. Prof. Dr. Kurt Fischer

Sa | 25 | November
14.30 Uhr
Überblicksführung Englisch

So | 26 | November
ab 11.00 Uhr
Kindersonntag:
»Im Paradiesgarten«
Hilton-Klimt-Brunch
14.30 Uhr
Überblicksführung Deutsch

Do | 30 | Dezember
18.30 Uhr
IFK *Vortragsreihe, Monika Wagner:*
»Frauen und andere Pretiosen in Klimts Materialästhetik«

Sa | 02 | Dezember
14.30 Uhr
Überblicksführung Englisch
16.30 Uhr
Diskussionsreihe
mit Maria Hahnenkamp

So | 03 | Dezember
11.00–16.00 Uhr
Kinder-Nikolo-Fest
Hilton-Klimt-Brunch
14.30 Uhr
Überblicksführung Deutsch

Do | 07 | Dezember
19.00 Uhr
Donnerstagsgespräch mit
Univ. Doz. Dr. Sabine Plakolm-Forsthuber

Sa | 09 | Dezember
14.30 Uhr
Überblicksführung Englisch

So | 10 | Dezember
ab 11.00 Uhr
Kindersonntag:
»Bezaubernd schön!«
Hilton-Klimt-Brunch
14.30 Uhr
Überblicksführung Deutsch

Di | 12 | Dezember
16.30 Uhr
Kunstgespräch: »Golden Girls. Gustav Klimt und das Frauenbild der Moderne«

Do | 14 | Dezember
19.00 Uhr
Donnerstagsgespräch mit
Univ. Doz. Dr. Peter Haiko

Fr | 15 | Dezember
19.30 Uhr
Lesung mit Salonkonzert
mit Erwin Steinhauer:
»Betrachtungen über Frauen, Kunst und das wahre Paradies«

Sa | 16 | Dezember
14.30 Uhr
Überblicksführung Englisch
16.30 Uhr
Diskussionsreihe mit Ilse Haider

So | 17 | Dezember
ab 11.00 Uhr
Kindersonntag: »Liebe Emilie ...«
Hilton-Klimt-Brunch
14.30 Uhr
Überblicksführung Deutsch

Do | 21 | Dezember
19.00 Uhr
Donnerstagsgespräch
mit Dr. Regine Schmidt

Sa | 23 | Dezember
14.30 Uhr
Überblicksführung Englisch

Sa | 30 | Dezember
14.30 Uhr
Überblicksführung Englisch

So | 31 | Dezember
13.30 Uhr
Überblicksführung Deutsch

Do | 04 | Jänner
19.00 Uhr
Donnerstagsgespräch
mit Mag. Erhard Stöbe

Sa | 06 | Jänner
14.30 Uhr
Überblicksführung Englisch
16.30 Uhr
Performance mit Viktorine Müller

So | 07 | Jänner
ab 11.00 Uhr
Kindersonntag:
»Das verborgene Paradies«
Hilton-Klimt-Brunch
14.30 Uhr
Überblicksführung Deutsch
ab 19.00 Uhr
Finissage

Kurzinformation

Klimt und die Frauen

20. 9. 2000 bis 7. 1. 2001

Österreichische Galerie Belvedere
Oberes Belvedere
Prinz Eugen-Straße 27
A-1030 Wien

Öffnungszeiten, Schliesstage

Di bis So 10 bis 18 Uhr
Do 10 bis 21 Uhr
Mo geschlossen

So 24. 12., Mo 25. 12. 2000
geschlossen
Do 26.10., Mi 8.12., Di 26. 12. 2000
und Sa 6. 1. 2001 geöffnet
So 31. 12. 2000 bis 15 Uhr geöffnet
Mo 1. 1. 2001 ab 12 Uhr geöffnet

Eintrittspreise

Normal ATS 120.–
(Vorverkauf ATS 140.–)
Familienticket ATS 240.–
(Vorverkauf ATS 260.–)
Ermäßigt (Senioren, Studenten bis 27 Jahre) ATS 80.–
(Vorverkauf ATS 100.–)
Schüler ab 15 ATS 50.–
Kinder bis 14 frei

Tickethotline

Vorverkaufstickets
bei Österreich Ticket (allgemein)
T: (+43-1) 96 096
www.oeticket.com
IfB (Deutschland, Schweiz)
T: (+49-7531) 5802-25

Information

T: (+43-1) 79 557/262
F: (+43-1) 79 557/268
kunstvermittlung.klimt
@belvedere-wien.at
www.klimt-frauen.at
www.belvedere.at

Klimt – Painter of Women

20. 9. 2000 until 7. 1. 2001

Österreichische Galerie Belvedere
Upper Belvedere
Prinz Eugen-Straße 27
A-1030 Vienna

Opening hours

Tues. to Sun. 10 until 18
Thurs. 10 until 21
Closed on Mon.

Closed on Sun. 24.12
and Mon. 25.12.2000
Open on Thurs. 26.10., Wed. 8.12.,
Tues. 26.12.2000 and Sat. 6.1.2001
Sun. 31.12. 2000 open until 15
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Lecture

Dr. Tobias G. Natter

"The World is Feminine":
The Viennese Fin-de-Siècle and Gustav Klimt

THURSDAY, MARCH 8

7:30 pm

FREE ADMISSION

The Friends of the Graphic Arts, the Grunwald Center for the Graphic Arts, and the UCLA Hammer Museum present a lecture by Dr. Tobias G. Natter, Keeper of the Collection of the 20th Century, Austrian Gallery (Österreichische Galerie Belvedere), Vienna.

This lecture is sponsored through the generous support of:
The Austrian Cultural Institute, New York
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would kindly like to invite you to two lectures in Los Angeles by the renowned Austrian curator of the exhibition "Klimt and Women"

Dr. Tobias G. NATTER

8 March, at the UCLA Hammer Museum

„The World is Feminine: The Viennese Fin-de-Siècle and Gustav Klimt"

and

15 March, at the LACMA

„Oskar Kokoschka: From Portraitist to Cityscape Painter"

003003

GAC The Graphic Arts Council of the Los Angeles County Museum of Art

CONTINUING LECTURE SERIES

The Graphic Arts Council is proud to announce a Special Lecture
"Oskar Kokoschka: From Portraitist to Cityscape Painter"
by Dr. Tobias Natter
Curator of 20th Century Art, Austrian Gallery,
Upper Belevedere, Vienna

Tuesday, March 13, 2001, 7:30 p.m.
Dorothy Collins Brown Auditorium

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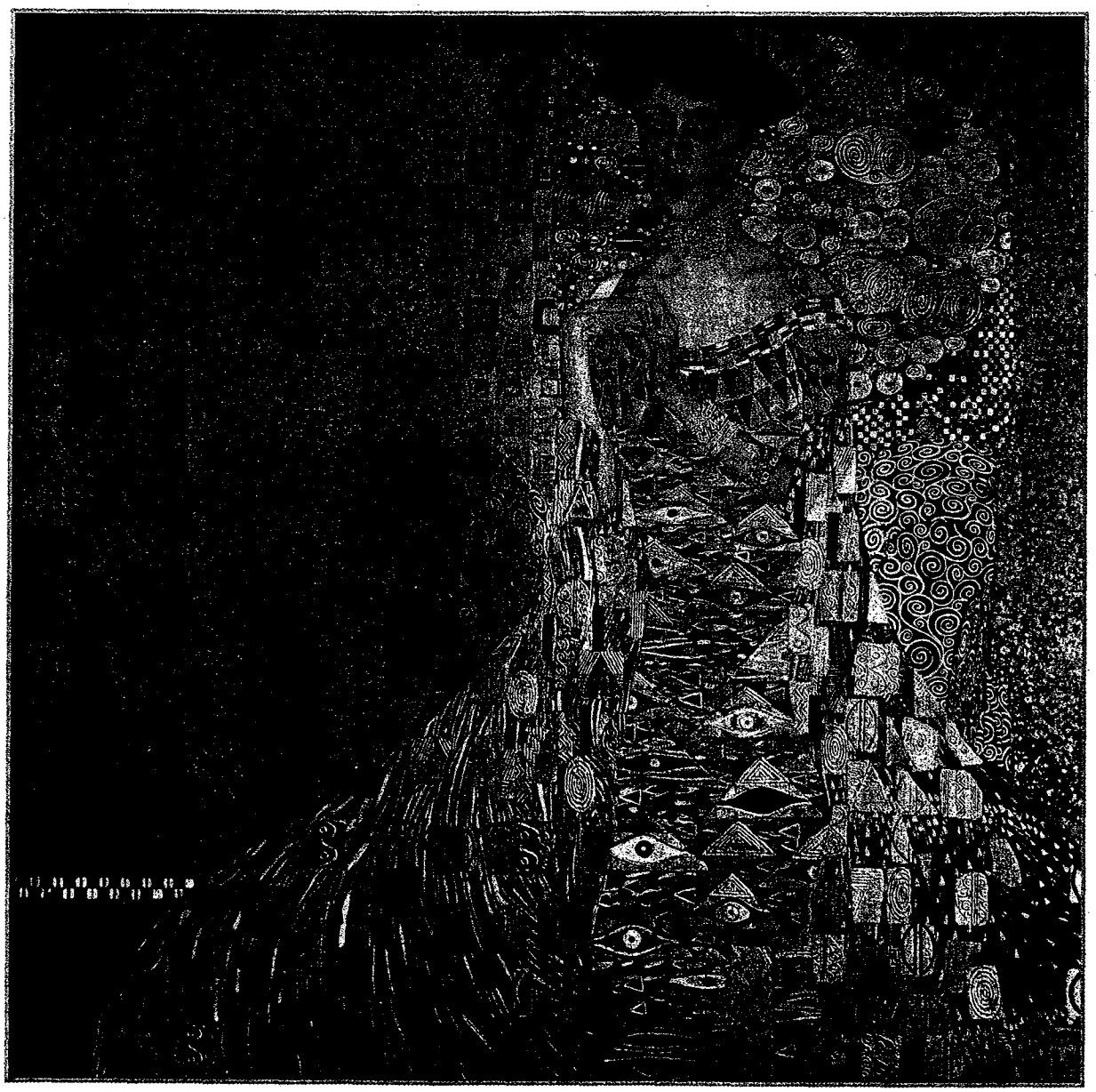
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and Friends of the Graphic Arts Grunwald Center for the Graphics Arts, UCLA.

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AUSTRIAN INFORMATION

WASHINGTON, D.C. Volume 53, No. 7/8, July/August 2000

VIENNA MODERNISM
1890 - 1910



AUSTRIAN INFORMATION, in a series of issues, will present its readers with Austrian Modernism.
Picture above: "Lady in Gold" (Portrait Adele Bloch-Bauer) by Gustav Klimt, oil, 1907, Austrian Gallery

003005

RAV TOV Annual Dinner
REMARKS BY AMBASSADOR PETER MOSER
V'Yoel Moshe Hall
590 Bedford Avenue
Williamsburg, New York
2 May 2000

Dear Friends,
First of all, I would like to thank you for having invited me to be your guest speaker tonight. This invitation comes at a critical time for Austria because of international criticism and sanctions against the new coalition government including the Freedom Party of Austria (FPÖ). The international reactions reflect concerns which have different reasons and justifications. The sanctions of the 14 EU member states are certainly an overreaction, difficult to reconcile with the spirit of the EU treaties and a diversion from common problems all 15 EU member states share: the growing problem of immigration and the dissatisfaction with EU institutions. Other concerns mix Austria's past with the present coalition government and neglect to look into Austria's stable democracy and record of human rights.

When I received your letter mentioning your appreciation for what Austria has done for the many Jewish refugees and emigrants from the former Soviet Union and communist countries, I was deeply moved. In a similar way I was moved when the Hungarian Ambassador in Washington, D.C. invited me last year to organize an Austrian Hungarian commemorative ceremony to celebrate the 10th anniversary of Austria's opening of the Iron Curtain. Austria and Hungary at that time allowed the first great number of East German refugees to cross the green border between themselves. The celebration took place in an estate of a former Hungarian refugee who came to the United States via Austria in 1956 when about 200,000 Hungarians found first accommodations in Austria during the uprising and revolution in Hungary.

When I accept these expressions of gratitude towards Austria, I experience mixed feelings. Surprise, gratitude, but also shame and guilt. I realize how blessed one is living in a free and prospering democracy whereas others suffer not so far away. I realize how much more should be done to help and I am reminded that in the past, back in 1938, there were also many refugees from Austria, their misery and fear caused by Austrians themselves. Our Jewish fellow citizens had to run for their lives, leaving behind them what they had called home. Those who had been lucky found a new home in one of the few countries which had been willing to help. The unfortunate ones stayed behind and had become victims of the Holocaust. Of the approximately 180,000 Jews who had been living in Austria in 1938, about 110,000 were forced to leave the country, some 65,000 were murdered.



Peter Moser,
Austrian Ambassador to the U.S.

For Austria herself the loss of the Jewish community has been tragic and severe in various degrees. Much of what the world owes to Viennese culture, art and science was created by the strong and vibrant Jewish community in Vienna during the Habsburg Empire. In the multinational and multiethnic monarchy Vienna became one of the most important centers of European Jewish life, more so than other capital cities. Approximately 8 - 10% of the Viennese population was Jewish. Whereas Jews were able to prosper and to succeed in Austrian society, there existed nevertheless a strong anti-semitism of basically religious, catholic background which was exploited by leading politicians for demagoguery and popular support.

After World War I, when the Habsburg monarchy came to an end, the young Austrian Republic was economically a destitute country. Cut off from the former economic and industrial centers of the monarchy, beset with inflation and political instability and suffering from fierce ideological disputes between the right and the left. Nobody put much trust into its survival. The leading political parties therefore supported Austria's unification with Germany ("Anschluß"). This, however, was forbidden by the peace treaties of 1919. The economic crisis in the late 20's and early 30's made things worse.

Nevertheless, 15 years after the end of World War I, when Hitler seized power in Germany in January 1933 and established Nazi rule, Austria rejected the idea and goal of unification with Germany. Both leading parties, the Social Democrats and Christian Socials witnessed and observed with horror the suppression of political freedom and democratic life in Germany. Both parties erased the unification paragraph in their respective party programs. They did not want the unification with this kind of Germany. Only the small Austrian Nazi Party fought for immediate "Anschluß," supported by German money and agents. Already in 1933 the Nazi Party was banned in Austria. When the Nazis attempted, again with support from Germany, to overthrow the government by armed force in 1934 the uprising was squashed although the Austrian Federal Chancellor was assassinated during this attempted coup d'état. The Nazis had thus failed and fled into Germany where they were trained as terrorists and agents. Austria herself became an authoritarian corporate state with an one-party system and continued to resist the mounting pressure from Nazi-Germany. Austria condemned the German racial laws of Nuremberg in

1935 and kept her borders open for political and racial refugees from Germany at a time when the whole world maintained normal relations with Hitler and even honored the regime by participating in the Olympic Games in Berlin in 1936. The only foreign supporter of Austria at that time was Mussolini's Italy. However, once Hitler and Mussolini formed an alliance, Austria was finally standing alone. The western democracies had been too weak to resist Hitler's policy of dismantling the order of the peace treaties of 1919 step by step. Finally, in 1938 Austria was invaded by Hitler to prevent a plebiscite prepared by Austria in favor of keeping its independence from Germany. Hitler was correct in his assumption that the majority of the Austrians including the Social Democrats probably would have voted for an independent Austria and against the "Anschluß." Without any support from abroad and challenged by the Austrian Nazis from within, Austria became the first state to fall victim to Hitlerite aggression and western appeasement.

Having said all that, what happened immediately after the Germans took over is one of the most shameful, horrible and distressing chapters of Austria's past. The Austrian Nazis and Nazi supporters—according to historical studies grown to an estimated 25 - 30% of the population—surfaced from the underground and started, even before the German troops and police could establish order, to humiliate, brutalize, rob and loot the Jewish population with unprecedented hatred. The Jewish population of Austria, so far under the protection of the Austrian state, now became outlawed. While the Austrian Nazi thus surfaced with a vengeance, a great number of other Austrians condoned their action or were at least bystanders who did not speak out, while their former fellow citizens were brutalized right before their eyes. On the other hand it shall not be forgotten that together with former politicians and their supporters about 80.000 Austrians were arrested by the Gestapo in the very first days of the Anschluß. Among these political prisoners were also some of the future leaders of both socialist and conservative parties of the Second Republic in 1945. Austria was eradicated. Inside Germany she lost her territorial unity and was split up in single districts under direct control of Berlin. Even the name "Austria" was abolished.

At the same time many Austrian Nazis rose to rank and file in the Nazi hierarchy. They became perpetrators of war crimes and the Holocaust. In November 1943 the Allied Powers reassessed their attitude towards the Anschluß of 1938 and signed the Moscow Declaration by which Austria was declared to be the first victim of the Hitlerite aggression, but was also reminded to bear responsibility for the war crimes and atrocities committed by Austrians.

When Austria finally reemerged as a state in 1945, Austria faces this responsibility by carrying out denazification measures and by enacting strict laws to punish Austrian Nazis and war criminals. The respective laws and measures were severe. There were over 130,000 cases involving war crimes and violations. 540,000 Austrians were registered as Nazi-party members and fell thus under the denazification laws. Of these about 100,000 were discharged from public office and the same number was banned from working in the public sector. There were death sentences and imprisonments. Looking back to these measures today one could criticize that while a lot of emphasis had been given to personal guilt of individual perpetrators no discussion of a suitable common policy to make atonements to the victims of the Holocaust and the refugees of 1938 was put in place.

The new Austrian Government, which consisted mainly of victims of Hitler's persecution themselves, did not invite the fellow citizens of 1938 to come back to Austria. It is uncertain if they would have come back in great numbers, having found new homes and careers abroad, suffering from traumatic memories of 1938 and doubting the future of a country devastated by war, with destroyed and looted industrial plants, housing shortages due to heavy allied bombing, starvation, inflation and divided among the four Allied Powers at the edge of the communist bloc. The Austrian government and the people concentrated on the reconstruction of the economy and of their daily life. There was little time spent on thoughts about the refugees and victims of the Holocaust. Everyone saw his own problems first. Nevertheless, restitution measures were introduced (all together 7 major laws and legislation for pensions and victim compensation) but these measures took a slow pace and were carried out rather reluctantly. Only in 1961 could the Claims Conference thus attest Austria to have done the bulk of the restitutions. Following the example of other European states, Austria too has recently appointed a historian commission which is in charge of looking through these restitutions to find out if there are any shortcomings and leftovers. The question of slave and forced labor is now speedily dealt with, the open restitution questions will also be tackled.

What—apart from the immediate task of reconstruction and the scarcity of means to share—has contributed to the indifferent attitude and lack of sensibility for the Jews of 1938 and the victims after the end of Word War II? Certainly there was the fact that many Austrians found consolation in the role of Austria as a victim of Hitlerite aggression. They transplanted this victimhood from the state of Austria to their personal conceptions and experiences in order to shield themselves from their individual past during the Nazi years. In many cases consolation became an excuse. Many individuals avoided to look back and accept the fact that they had been intimidated, were looking away or simply had been opportunists. They did not want to remember and when reminded, reacted defensively.

In 1955 Austria finally got back her independence and became a neutral nation in the shadow of the Iron Curtain. Now Austria herself could determine her fate for the first time since 1938. The ideological divide between the conservatives and socialists of the First Republic had been overcome. The common experience of the political leaders from both camps in the dark years of the Nazi period and their combined struggle for reconstruction and independence in occupied post-war Austria was a solid foundation for a speedy recovery. Maybe for the first time in the XXth century Austrians had a reason to be proud of their state and to feel comfortable and self-confident as Austrians. The temptations of the past to become a part of Germany were history. The existence of Austria was firmly based on the recognition of the Big Powers and the international community as well as on the friendly relations with her neighbors.

Austria did not and does not forget however, what suffering and need mean. When in 1956, just one year after Austria's independence, 200,000 Hungarian refugees crossed the border into Austria they had been helped and sheltered with open hearts. The same happened in 1968 during the crisis of the Prague Spring when about 100,000 Czechs and Slovaks came to Austria,

when 60,000 Poles came in 1979 and again and again until now during the conflicts in our immediate neighborhood: 95,000 Bosnians, Albanians, Kosovars.

Austria regards her independence and her status as a neutral country not only as a gift but also as an obligation. Until today, 500,000 Jews from the Soviet Union and other Eastern European countries have passed through Austria (400,000 in the 70's alone).

The help of the Austrian government is matched by private donations and direct spending for relief in war-stricken areas. Per capita Austria is leading among western nations in this field.

Austria is also participating since 1960 in peacekeeping operations in different parts of the world. We are keeping the peace in Cyprus and on the Golan Heights between Israel and Syria.

Looking back to the XX[th] century, one can say that Austria has gone a long way. The downfall of the Empire, a First Republic nobody wanted in the beginning, a desperate and lost struggle against absorption by Hitler-Germany, the horrible years of war, the Holocaust with Austrian perpetrators, the liberation 1945, the independence 1955 and now, at the beginning of a new century, one of the most advanced nations within the European Union.

The involvement in Nazi crimes has become part of our history. We are proud of the sunshine periods of our long history and so we have to accept these dark and shameful years as well. Today's generation cannot take the direct responsibility for what had happened, but it can learn a sense of responsibility coming from the past. We cannot take refuge in the excuse that we were not born at the time or still had been small children. Our duty and obligation is to convey our honest concern and deep regret to the victims and their descendants. We do not hesitate to ask for forgiveness. Federal Chancellor Vranitzky in 1993 and President Klestil in 1994 have taken important steps before the Austrian Parliament and the Knesset in Israel to acknowledge the past and in coming to terms with it. To ask for forgiveness means also to do everything in our power to avoid these horrible experiences in all parts of the world. The least we can do is what you have acknowledged when you sent me your invitation—to help others in need and not to close our hearts as we have done in the past. It is up to me to thank you for giving me this opportunity to hold this address in a spirit of humility and sincerity.♦

Letters from Vienna: Jewish Life Before Deportation



Briefe aus Wien: Jüdisches Leben vor der Deportation differs from every other existing memoir or correspondence with Austrians or Germans before the Nazis sent them to their deaths. For it integrates the perceptions and conditions of the Jewish population of Vienna from 6 April 1940 to November 1941 with the official Nazi laws—some openly announced and others secret—that mandated their deportation and eventual elimination.

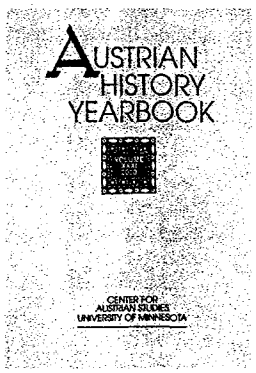
"You ask me, Mimerl, about our state of health—except for our nerves and our pocketbooks all goes well," reads one letter from a mother in Vienna to her daughter in New York (August 1940). "You shouldn't worry about our *hats*. We won't buy any for the winter, but we'll need some badly for the spring," she writes again (October 1940). These two seemingly banal sentences, however, are part of the code the two had arranged between them: pocketbooks stand for the Nazis and the Gestapo, and hats stand for the money they will need.

Subsequently, the mother's letters concentrate less on the worries about her children in their new country and more about the increasing hardships. And we learn how the "Jewish laws" finally led them to beg for help to travel to Cuba in order to await entry to the United States. But just then Cuba suddenly closed its borders, and the Nazis enforced their (secret) edict to round up and deport 50,000 persons. Mimerl's entire family was among them; they were shot in Riga in January 1942.

Edith Kurzweil is "Mimerl's" daughter. She is a professor of sociology at Adelphi University, and editor of *Partisan Review*. In *Letters from Vienna*, she has reproduced summaries of over one hundred of the relevant laws—none of which have previously been available to the general public.

The book, available in German only, can be ordered from *Partisan Review*, 236 Bay State Road, Boston, MA 02215, Tel. (617) 353-4260, Fax (617) 353-7444.

Austrian History Yearbook Volume XXXI



This book is published annually by the Center for Austrian Studies in cooperation with the Conference Group for Central European History and the Society for Austrian and Habsburg History. The editorial offices are at the Center for Austrian Studies.

It is a peer-reviewed annual journal for the study of the Habsburg monarchy and the Republic of Austria. It also publishes articles dealing with the other post-1919 successor states, if the work has a clear thematic link to the monarchy or the Republic of Austria. It welcomes any significant historical dimension or uses of historical modes of analysis.

Volume XXXI includes the 15[th] Annual Robert A. Kann Memorial lecture "The 'National Question' Revisited: Reflections on the State of the Art" by Dennison Rusinow; the articles "Frederick II of Prussia, Austria, and the Hungarian Protestants" by Joachim Bahlcke; "Competition, Community, and Privilege in Eighteenth-Century Vienna: The Viennese Pastry Bakers" by Celia J. Goedde; "Exhibiting a War in Progress: Entertainment and Propaganda in Vienna, 1914-1918" by Maureen Healy; "Imperial Loyalties and Private Concerns: Nation, Class, and State in the Correspondence of Austrian-Hungarian POWs in Russia, 1916-1918" by Alon Rachamimov; and "The Prehistory of the Fourth Party Movement in Austria, 1947-1949" by Lothar Höbelt.

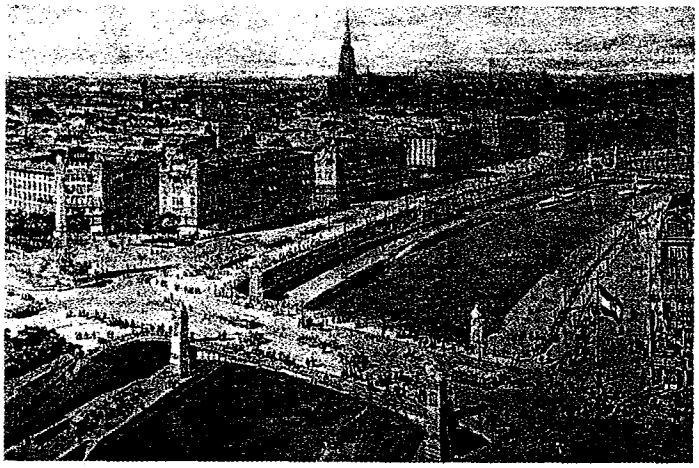
In addition, the volume contains 30 book reviews and several documents.

The *Yearbook* is regularly listed in *International Current Awareness Services*. Selected material is indexed in the *International Bibliography of the Social Sciences*.

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VIENNA MODERNISM
1890 - 1910
VIENNA MODERNISM AND ITS PLACE IN HISTORY



Otto Wagner (1841-1918): Design for the new course of the Danube Canal 1897, wash drawing, History Museum of the City of Vienna

Intensive academic interest in Vienna Modernism, the artistic and cultural developments of the two decades between 1890 and 1910, started in the 1960s. In the time immediately following the Second World War, artefacts from this period could be acquired on the art market at relatively low prices. Architecture was undoubtedly the discipline which aroused most interest and the appreciation for this fin-de-siècle architecture had been shown even earlier on.

The momentum for the booming interest in Vienna Modernism came from abroad, aided greatly by the work of cultural scholars such as Carl E. Schorske, who taught in the United States. It is Schorske, in particular, who can be called the pioneer of research into Vienna Modernism. His magnum opus, *Fin-de-Siècle Vienna,* is still a standard reference work on this period. The next phase in the evolution of in-depth research was triggered by the large-scale exhibitions on the subject which were organized in the 1980's: Arte in Vienna in Venice (1983), *Traum und Wirklichkeit* in Vienna (1985) and *L'Apocalypse joyeuse* in Paris (1986). In all three exhibitions, an enthusiastic public was given insights, through an unusually comprehensive selection of exhibits, into the historical developments and the artistic achievements of the epoch as well as the ensuing trends leading up to 1938.

Vienna Modernism became the research topic par excellence. The nearer we moved to the end of the 20th century, the more interest centered on the glamour of the era 100 years ago. The question of "How could there be such a concentration of unsurpassed excellence in art and culture in only two decades?" became the decisive question for researchers. It also induced many tentatively to examine the possibility of such a climax reoccurring in our days. Scholars sought, and still are seeking, to identify the conditions that allowed this "status of excellence."

VIENNA–SETTING THE SCENE

A City Which Breeds Polarity

It would be erroneous to believe that the turn of the century was a period of triumphant upswing or unwavering faith in the future. Quite the contrary: the intellectual and cultural climate oscillated between extreme highs and lows, between firm belief in progress and gloomy prophecies of doom. People were fascinated by the achievements and possibilities of technology and industrialization. However, there was also great concern about the limits of mechanization, urbanization, and all the problems connected with them. As the general view of life became more rational, the longing for irrationality found increasingly vehement expression. Salvation ideologies were having a field day.

The cultural pessimism of Ludwig Wittgenstein (1889-1951) and the strange and absurdly hopeless world of Franz Kafka (1883-1924) are crystallized manifestations of the collapse of customary edifices of ideas. Wittgenstein thought that it was everyone for himself now that socio-cultural order had broken down. Arthur Schnitzler (1862-1931), physician and playwright, and thus twofold therapist of his world, portrayed Viennese society on its way to decline and death. The underlying mood was one of hopelessness and resignation.

The state and society were moving from stability to instability. People lived their lives in a saturated feeling of security, because, from the late 1860's, they experienced an unusually long period of peace. Moreover, relative affluence made many look to the future with confidence. And yet, under the untroubled surface, there was seething unrest: there were a number of unresolved political and social problems—such as the issue of nationalities or the issue of social inequalities which was festering at all levels. Crisis management failed because of a lack of holistic approaches. The century came to a close and with it the optimistic attitude towards progress. The conviction that everything was possible had to be thoroughly reconsidered. In addition, developments were asynchronous. A wave of modernization that hit the Dual Monarchy later than other regions made the century stumble as it approached the finishing line.

This is why Vienna Modernism is both linked to the glory of Klimt's paintings and superlative achievements in the field of science, and is also overshadowed by aberrant political phenomena such as virulent anti-Semitism, by political tension and disputes, particularly between the various nationalities. The excellence of artistic and scientific feats was able to eclipse these problems, but not to resolve them. The turn of the century was a period of transition, ambivalent in many ways, in which all the seeds for the disasters of the 20th century were sown. In the two decades between 1890 and 1910, Vienna was an eldorado of the arts, inseparably linked to rare highlights in music and literature. Names such as Egon Schiele (1890-1918) and Oskar

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Kokoschka (1886-1980), Gustav Mahler (1860-1911) and Arnold Schönberg (1874-1951), Carl Menger (1840-1921) and Hans Kelsen (1881-1973) are synonymous with world class in culture and the humanities. It seems plausible that it was this very contrast of polarities, of progressive and reactionary, of libertarian and conservative, of "dream and reality" (György Lukács), which gave rise to the particular intellectual climate and the creative atmosphere that made for what was remarkable about this period. There are those who believe that Modernism consisted in this combination of fundamental opposites.



L. Wittgenstein Franz Kafka O. Kokoschka Gustav Klimt Alfred Loos Sigmund Freud

Whenever one examines areas of political and cultural life in that era, one is constantly fascinated to discover the "antinomies of Modernism" (Johannes Weiß). Peace policies for a world of tomorrow stood side by side with an insensate urge to destroy, emancipation (of women, fringe groups, minorities) was counterbalanced by vile mechanisms of suppression. All this was accompanied by a general longing for harmony, for a cessation of antinomies, for a way of salvation which would solve all questions.

This dream of harmony also finds expression in the general trend towards a *Gesamtkunstwerk* or 'symbiosis of the arts,' combining art, science and metaphysics. Friedrich Nietzsche (1844-1900) and Richard Wagner (1813-1883), Hermann Bahr (1863-1934) and Gustav Mahler, as well as Gustav Klimt (1862-1918) and his successors, the artist of the *Secession* and the *Wiener Werkstätte*, were looking for a way to achieve totality of art. Actually, the results can be seen as many drafts for a pluralist world. Norbert Leser, the political philosopher, developed a theory of ambivalence in this context, while Schorske deliberately presented the cultural bloom of Modernism against the backdrop of political disintegration.

The representatives of Modernism did not want their conception of art to be seen merely as a contrast to former trends or styles, i.e. as a normal change when one generation succeeds another, but they also wanted it to gain recognition as a futuristic principle. Like the concentric circles which ripple outwards from a stone thrown into the water, Modernism in Vienna was first mentioned in the essays of Hermann Bahr, then went on to conquer literature, exert a shaping influence on the visual arts in the *Secession* movement and pace the way for Expressionism, which set out to progress beyond Modernism in the decade after 1900. Hermann Bahr himself declared later that he had erroneously mistaken the red hue of the sunset of the Austro-Hungarian monarchy for the first flush of dawn.

A major element of Vienna Modernism was no doubt its penchant for subjectivity. The high value placed on the individual, which was left over from the liberal era, created the biosphere for the world of thought of Sigmund Freud (1856-1939), and also for the tenets of the Vienna School of Economics and its main representative Carl Menger, which was based on methodological individualism.

At this time of change, the natural sciences were mainly dominated by an empirical approach, the world being perceived as an entity in its totality, far removed from any metaphysical concept of philosophy or the natural sciences. Ernst Mach (1838-1916), the physicist and philosopher, may be regarded as an exemplary proponent of this approach.

Others concerned themselves with a restricted section of the world: Karl Kraus (1874-1936) and Ludwig Wittgenstein analyzed the domain of language, Adolf Loos' (1870-1933) radical examinations were restricted to architecture, the Wiener Kreis (Vienna Circle) around the philosopher Moritz Schlick (1882-1936) concentrated on whether statements were true or false.

It would be a mistake to describe Vienna Modernism as an indigenous creation which bloomed in complete isolation from the European culture around it. Germany provided decisive influences: Friedrich Nietzsche and Richard Wagner played an important role, and the cultural worlds of Paris and Rome had an impact on what was happening in Vienna. Hermann Bahr, a man of letters and an essayist, almost served as a "switchboard": he reported in Vienna what others thought or wrote elsewhere. The Cambridge school of thought made a lasting impression on the work of the philosopher Ludwig Wittgenstein. The conceptions of Adolf Loos, the architect, were fine-tuned and polished after he had studied buildings in Paris and Chicago. The idea for the *Wiener Werkstätte* (Vienna Workshops) was actually imported from Great Britain and was seen as an answer to historicism and a means of overcoming it. Hence, Vienna Modernism should be assessed in the light of influences from abroad and against the backdrop of the political and societal backwardness latent in Austria.

In its turn, Vienna Modernism had a considerable effect beyond the borders of Austria. One has to recall, in this context, the Stoclet Palais in Brussels, a synthesis of the arts created by the great Josef Hoffmann (1870-1956) and the *Wiener Werkstätte*. Joseph Maria Olbrich (1867-1908), who designed the *Secession* building, was of seminal importance for the Darmstadt artists' colony *Luisenhöhe*. Gustav Mahler conducted in numerous major cities in Europe and the United States, Oskar Kokoschka's paintings began their triumphant conquest of gallery in Germany. In the late 1920's, when the threatening specter of anti-Semitism took on an increasingly more substantial form in the wake of economic decline, Austria's intelligentsia started to emigrate. Among them were the law expert Hans Kelsen, who went first to Germany and then to the United States, and the ingenious economist Josef Schumpeter (1883-1950). Ludwig Wittgenstein found a new spiritual home in Cambridge. By 1938, the last traces of Vienna Modernism had vanished. Those of its representatives who had the means emigrated, mostly to Great Britain or the U.S., and it was there

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that interest in the roots of Vienna Modernism originated.

This gave rise to the—entirely logical—question as to the factors that encouraged this outburst of creativity. One can certainly understand the desire for a repetition of such a period of extremely concentrated intellectual and artistic creation. Researchers devoted their attention to the issue of a "creative environment," partly with the ulterior motive, that—once identified—it could be created a second time. The intensity of their investigation helps one to understand assessments as that of Alan Janik, who dubbed the two decades between 1890 and 1910 a "Silicon Valley of the mind." Meanwhile, a number of theories have been formulated about the "conditions of excellence" (the term used by the *Österreichische Forschungsgemeinschaft*, which has been studying the history of Vienna around 1900 for more than a decade). The Austrian historian Robert A. Kann (1906-1981), who taught in the United States for many years, preferred to have the prerequisites defined. It is remarkable to note—and almost an irony of history—that at the time the artist themselves perceived the atmosphere in Vienna as a hindrance rather than as something which furthered their art.

The main proponents of Vienna Modernism belonged to the younger generation and were born into liberal middle-class families. Their fathers had acquired standing by their successful economic undertakings in the liberal era. They did not feel restricted by the barriers erected by a society focused on the aristocracy, but they felt threatened by the increasing power of the proletariat. These young proponents came from an inhomogenous section of the population but reacted to the world about them with a demand for homogeneity. The loathed the mixture of styles in historicism, and they reviled the random stylistic diversity of the *Ringstrasse* era. The artistic style that people such as Karl Kraus, Adolf Loos or Arnold Schönberg opposed and condemned was exemplified by Makart's copiously lavish interiors, by the obsessions with decoration—which they considered superficial—found in bankers' mansions, and the unbridled proliferation of linguistic arabesques. The purist's language, sound and form were exploring the limits of their discipline, they were fighting for purity. Since a work of art was considered a completely autonomous entity, any association with an everyday functional purpose was denounced as a sacrilege.

One of the reasons for the superlative intellectual achievements of that era is believed to have been the tensions and the exchanges of ideas between the provincial metropolises of the Dual Monarchy and its capital, Vienna. These were the circumstances which acted as a ferment for the creative boost at the turn of the century. The submetropolises served as rehearsal stages for the cosmopolitan central stage—Vienna.

Another element which was thought to have contributed to this springtime of creativity was the repressive attitude taken by the Catholic Church against anything new. This is considered to have kindled a spirit of resistance, creativity born out of opposition.



Ernst Mach *Moritz Schlick* *Gustav Mahler* *A. Schönberg* *Arthur Schnitzler* *Karl Kraus*

Residential City and Small-town Metropolis

Vienna, the imperial residence of the Habsburg dual monarchy, had hardly any tradition relating to the middle classes. Vienna had always been a city of aristocrats and nobles, and a temporary residence of the court, where the ruler spent the winter. It had never been possible for the middle classes to establish themselves there and so leave their imprint on the city. This deep-felt lack of a middle-class tradition became very obvious when the decision was taken to construct a new city hall. Vienna imitated the style of Western-European middle-class metropolises and trade centers. The city deliberately wanted to make up for previous omissions. Historians interpret the splendid buildings on Ringstrasse and the temples of culture of the liberal era as middle-class sacral buildings. The tendency to sacralize cultural venues, which is still felt today, may well be traced back to a feeling prevalent in the middle classes in the last quarter of the 19th century that they had a great deal to catch up on.

In the second half of the 19th century, an imposing wave of modernization hit Vienna in the wake of the demolition of the city fortifications. It was as though the city had been freed of its fetters. Spacious buildings, broad, tree-lined streets, and modern transport routes were constructed. Swift progress was made in the creation of the infrastructure needed by a modern metropolis, and of facilities for supply of water and energy. New means of transport, such as railways, bicycles and cars, replaced the horse as a yardstick for the speed of travelling. It is said that nothing encouraged the emancipation of women as much as the bicycle. Railways, in their turn, improved the mobility of poorer sections of the population and led to a rapidly growing influx of people to the big cities, especially Vienna.

These developments stood in sharp contrast with the widespread impoverishment of the lowest echelons of society. The abject poverty of the brick workers, the increasing pauperization of the proletarian masses living in the suburbs, and serious mishaps in social development were more than the government could cope with in the post-liberal era. Many negative consequences were even exacerbated by the retrograde attitude of the leadership of the country, for it was thought that dirigistic measures were adequate for mastering these problems. Another factor in the equation was a highly sophisticated bureaucratic system which had a stabilizing effect on the situation. Some historians even regard it as positively "technocratic" (Wolfgang Mantl).

(to be continued in next issue)

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The Future of Austrian Rivers

River Restoration Projects in Austria

For the Generations to Come

For decades, Austria's rivers have been manipulated and regulated with a focus on technology rather than ecology. The consequence: monotonous rivers and streams, unable to perform their vitally important natural functions.

Today's challenge is to combine river restoration with flood protection. Clean water in well-structured, living rivers has to be the chief goal.

The foundation for revitalization of Austria's rivers has been laid. Restoration is the challenge for future generations.

Rivers Need Space

Six arguments for restoration:

1. Better flood protection

Modern water engineering is increasingly based on "passive flood protection." Rivers are given the space they need in order to cope with floods. This ensures that water levels do not rise too high, but spread in width—an effective protection for settlements situated down river.

2. Clean water

The more diversified a river is, the better it can filter organic contaminants and purify itself.

3. More biodiversity

Floodplains are among the most diversified habitats in the world. For example, the floodplains along the Danube east of Vienna accommodate about 5,000 animal species and more than 600 ferns and flowering plants. However, the biodiversity of a floodplain forest can only develop if the landscape is designed by the river and not by man.

4. Safe ground water

One of the most serious problems with regulated rivers is the deepening of the river bottom. Consequently, ground water levels drop, floodplain forests and riverbanks dry up; intact floodplain forests are the most inexpensive water-supply systems available. They absorb, filter and store the water in their natural soils.

5. Attractive recreation

Fishing, canoeing, swimming, cycling, hiking—a natural river landscape offers recreation facilities of a high and rare quality.

6. Lower costs

Regulated rivers cost a lot of money. The continuous maintenance of the banks involves annual costs that can be saved if a river is given sufficient space to develop its natural dynamics.

A Force of Its Own

Six principles for restoration:

1. Natural development

Rivers should be given more space again to allow natural development. Rivers and streams should be permitted to choose their own course, building banks freely, without being interfered with, restricted or inhibited.

2. Allow erosion

Side erosion is essential. Steep banks, eroded by floods, provide irreplaceable habitats and breeding grounds for many species.

3. Natural debris

Dead trees along riverbanks and accumulated driftwood are essential structural elements of a river. During restoration, such elements should be left where they are whenever possible.



Weirs interrupt continuity of rivers

4. Free-flowing

A river needs free-flowing stretches, void of artificial obstructions. Dams and barrage weirs block and prevent the natural development of rivers, and make upstream migration, vital for the reproduction of certain fish species, more difficult or impossible.

5. More ecology in settlement areas

In densely populated areas, instead of building canals, ecological measures can be taken. Diversified living environments and recreational areas can be created, with bank vegetation and bays.

6. Let nature grow

Letting the dynamics of nature do their job is far better than any artificial vegetation scheme.

The Kingdom of Animals

Intact river landscapes provide some of the most diversified and valuable habitats nature has to offer.

Wherever the dynamics of rivers are unhindered, homes for a great number of plants and animals develop. The survival of many bird and fish species, such as kingfisher and brown trout, depend on the diversified structures both in and around the river. Rare dragonflies, endangered frogs, the white-tailed eagle, European otter, and European beaver will return to our restored rivers.

River regulation has had a severe impact on many bird species. Birds, such as kingfisher and little ringed plover, rely on eroded steep, gravel, and shingle banks for breeding. River regulation destroys these natural breeding grounds, seriously threatening species survival. The return of the magnificent white-tailed eagle can only be realized if we respect its need for unspoilt floodplain landscapes.

Where the Money Flows

Funds to finance restoration projects:

1. Water engineering

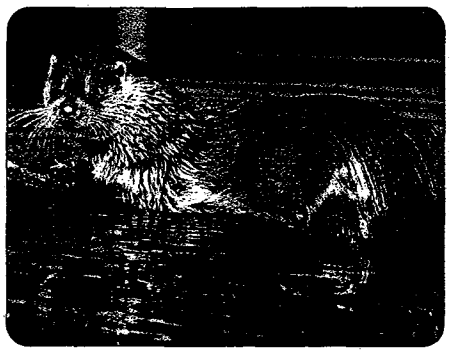
According to the law applicable to the funding of water works, federal funds may be used to improve water ecology, if these measures contribute to the improvement of flood protection.

2. Nature conservation

Measures directed at the protection of nature and species, can be realized and supported with the help of various nature conservation programs, offered by the respective provincial governments.

3. Agriculture

ÖPUL, the Austrian Agri-Environmental Program, offers financial compensation to farmers willing to set aside agricultural land for the development of biotopes.



Otters return to rivers

4. European Union

Within the EU, several funds are available, including the Rural Development Program and the EU initiative of

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INTERREG, for the support of cross-border projects. The LIFE nature funds rank among the most important EU instruments.

5. Private Sponsors

Finally, financial support provided by private sponsors cannot be overlooked.



Oxbows hinder river dynamics

Conquering New Lands

Modern water management combines ecology and flood protection. The following objectives for river management are intended to improve the ecological situation of Austria's rivers:

- Existing floodplains should be preserved, and new ones created;
- No further building permitted within floodplains;
- Minimal interference along natural stretches of water and expansion of passive flood protection;
- Existing flood protection (regulation, dams, detention basins) must be improved from an ecological point of view, taking into account the original character of the river in question.

Free Rivers

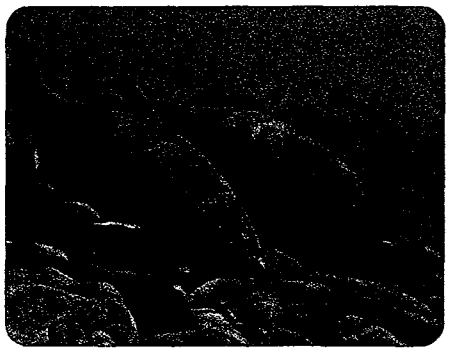
All projects have one thing in common: they exemplify a modern approach to water engineering, combining flood prevention and ecology. These projects illustrate the broadscope of restoration measures available. They include small projects, like on the Kamp and Katschbach, and large-scale projects, like on the Drava and Pielach. They involve lowland rivers, such as the March and Lafnitz, and alpine rivers, such as the Lech and Großache. The majority of these projects are realized by the Federal Offices of Water Engineering and by the Waterway Administration Office, in cooperation with nature conservation organizations and the local public. The following projects are models for the future.

Danube

Water for the Danube Floodplains

In 1996, one of the most ambitious and largest restoration projects to date was launched: the reconnection of oxbows to the Danube and the restoration of natural water dynamics in the floodplains. The project was carried out by the Waterway Administration (WSD) with the support of WWF and the Danube Floodplain National Park. It was completed in 1998.

The following results could be achieved: before the opening of oxbows, the Regelsbrunner Au was flooded only 20 days per year; today water reaches the Au 220 days per year. New branches were created, and have become wider and deeper. One sidearm, previously less than 15 meters wide and 1.5 meters deep, is now 60 meters in width and up to 7 meters in depth, as a result of the new river dynamics. Further restoration projects are in the works.



Fish need running water and rocks

Drava

The Growth of Floodplains

The Upper Drava is a typical mountain river. The Drava was once a wild river with side arms and oxbows. Today, there exist only remnants of this original landscape. The river has been systematically regulated since the end of the last century, changing its character considerably.

On positive note, the water flow is unobstructed for a distance of 60 kilometers.

Thus, the Drava still provides habitats of an outstanding quality, sheltering a wide variety of endangered species. A river management concept, focusing on restoration and long-range conservation, was completed in 1997. Designated a Natural 2000 site in 1999, this concept is being realized within the framework of a LIFE project. The European Union provides almost one-third of the total ATS90 million costs. Restoration of the Drava—widening the river, recultivating native floodplain forest, allowing dynamic processes, and connecting the Drava with its lateral branches to an increasing extent, lessens the deepening of the bottom of the river, and increased its ecological value.

Gail

City River

A river management plan, with a model for ecological river development, drawn up in the early and mid 1990's, outlined two goals.

First the deepening of the bottom of the Gail had to be stopped. Second, the ecological status of the river had to be improved, creating a viable habitat for nature and the Villach citizens.

The Gail was widened along a 4 kilometer stretch, right beside the city of Villach, Carinthia. This prevented further deepening of the river bottom and increased the structural variety of the Gail. Shallow zones, gravel banks and islands were created, giving the Gail more space within the confines of its dams. The result: five new fish species have returned, and the area is now used for recreation.

Großache

More Nature, More Safety

The restructuring of this alpine river in Tyrol is a model for effective combination of flood protection and nature conservation. First, the bottom of the Großache was deepened over a distance of 5.5 kilometers, to a level below that of the village Kirchdorf. Ecologically, the Großache had to recover its original mountain river characteristics. Widening the riverbed reduced flow velocity and structurally improved the riverbanks. After the restoration, the river



River beds were deepened

had 16 hectares more space. Through natural river dynamics, islands and gravel banks can now develop. Alpine floodplain forest will grow. Birds, like the Sandpiper and Ringed Plover can breed.♦

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Interrupted Modernity
Austria's Jewish Architects in Exile

(continuation from last issue)

Victor Gruen
Inventor of the shopping mall

Climbing the social ladder from poor immigrant to owner of a big company is an American dream. Victor Grünbaum made it come true. Born on 18 July 1903 in Vienna, he set up his first architectural office in 1932 in Vienna's city center. He rebuilt shops and apartments, including the home of the Austrian social democratic party's leader, Otto Bauer. The noted Austrian architect and architectural critic Otto Kapfinger thinks that Grünbaum's early designs for shops in Vienna had a determining influence on his later activities as an urban planner.



Victor Gruen

Grünbaum had many interests. In 1926, he founded the "Political Cabaret." He was a close friend of the left-wing writer Jura Soyfer, later a victim of the Nazis. With Soyfer, Grünbaum until 1938 wrote plays in which he made no secret of his socialist convictions.

In 1938, as a result of the Nazis' policy of "aryanisation," Grünbaum was down-graded to a humble employee in his own office. His new boss, formerly his subordinate, gave him the task of designing buildings and interiors for "Strength through Joy," the Nazi sports and tourism scheme for the masses. But he did not stay on that job very long, for soon he managed to emigrate.

In the United States, Grünbaum, who called himself Victor Gruen after 1943, very soon found a solid footing. In 1940, he settled in Los Angeles in order to redesign a big retailing company's chain of shops. Soon the commissions got bigger. In 1947, he designed his first large department store complete with a parking deck on the roof. His firm expanded at breathtaking speed. In 1949, with another émigré architect from Vienna, Rudolf Baumfeld, he founded "Victor Gruen Associates," a company which with a staff of 300 was to become one of the biggest architectural firms in the United States. It still exists with offices in Los Angeles, Washington and New York. From the beginning, Gruen's credo was to create an environment worth living in. "It is not much use to construct a building by itself. It is environmental architecture which today challenges our creativity. Architectural styles are secondary."

In 1954, Victor Gruen set new standards in Detroit with the first multi-functional shopping center. It was a town in itself where people could do more than just shop. Two years later, Gruen's first roofed-over shopping center was opened in Southdale, south of Minneapolis. The "shopping mall" was born. It consisted of shops, a school, an auditorium and a skating rink. Victor Gruen's idea was that malls should be a substitute for traditional city centers. People were to be given an opportunity to enjoy urban life in an environment protected from the weather.

From the late fifties, Victor Gruen more and more turned to urban planning. Today, his concept is more topical than ever: reduce the pressure of car traffic on inner city areas by establishing pedestrian precincts and city bus lines, without pushing essential city center functions out to the periphery. This was also the idea underlying Gruen's proposals of 1969 for the renewal of Vienna's city center. From 1973, Victor Gruen, with his fourth wife, again lived in Vienna, where he died on 14 February 1980. By that time, his invention, the shopping mall, had spread all over the world.

Friederich Kiesler
Visionary in architecture

Friedrich (or Frederick) Kiesler, architect, painter, sculptor and philosopher, was not a "typical" émigré. He had come to New York in 1926 in order to design an exhibition and a year later decided to remain in the United States. Born on 22 September 1890 in Czernowitz (now Chernovtsy, Ukraine), Kiesler studied architecture, painting and copper engraving in Vienna, but never took a degree. He organized exhibitions and designed stage settings. As early as the twenties, he started to work with new shapes. He developed surrealistic visions of elastic spaces for which he also created a philosophical basis.

In 1929, Kiesler was able to execute his first project in New York. Three years later, Philip Johnson, today the grand old man of modern architecture, featured Kiesler's Film Guide Cinema in his famous exhibition "Modern Architecture," in the context of which he invented the term "International Style." But this kind of functionalism was exactly what Kiesler did not want. For him, the ideal architectural form is the oval. "The eggshell is the most outstanding example known to us of a construction of the highest possible resistance. From this simple example we can learn something." Organic architecture fascinated Kiesler throughout his life.

In 1950, he conceived the "Endless House," a futuristic oval shape without visible supports or other static elements. Thereby he pursued a profoundly democratic ideal: houses were to be cheap, quick to build and flexible. But he was never able to translate his vision into reality.



Poster by Friedrich Kiesler, 1924

A project of his which was actually executed was his "House of the Shrine" in Jerusalem. This museum, which houses the Dead Sea Scrolls, was opened in 1964.

In December 1965, Frederick Kiesler died. He was not only an artist and a visionary, for he also showed considerable practical foresight by leaving Austria eleven years before the Nazi occupation. It is only recently that Austria is slowly beginning to rediscover him.♦

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Historikerkommission (Hg.):

Ulrike Felber, Peter Melichar, Markus Priller, Berthold Unfried, Fritz Weber (Projektleitung):

Eigentumsänderungen in der österreichischen Industrie 1938 – 1945 /Teil I

Branchen- und Falldarstellungen /Teil II

Wien 2002

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Ulrike Felber, Dr. phil. Historikerin, Universitätslektorin und Ausstellungskuratorin. Forschungen und Publikationen zur Wirtschafts-, Kultur- und Zeitgeschichte, u.a. Wege aus der Krise. Freie Gewerkschaften und Wirtschaftspolitik in der Ersten Republik (1990), Smart Exports. Österreich auf den Weltausstellungen 1851-2000 (2000, gem. mit E. Krasny und Ch. Rapp). Ausstellungen und Museumsprojekte, u.a.: Zeitgeschichte Museum Ebensee und KZ-Gedenkstätte Ebensee.

Peter Melichar, Dr. phil. geb. 1960 in Dornbirn. Studium (Geschichte, Philosophie) in Wien. Seit 1986 Ausstellungsarbeit (100 Jahre SPÖ/1988, Ostarrichi-Österreich/1996) und Forschungstätigkeit, u.a. für die „Unabhängige Expertenkommission Schweiz – Zweiter Weltkrieg". Arbeitsschwerpunkte: Sozialgeschichte des Intellektuellen (18.-20. Jh.), des Militärs (19.-20. Jh.), des Bürgertums. Lektor an der Universität Wien.

Markus Priller, Mag. phil. geb 1971 in Winterthur (CH), 1990 –1993 Anstellung bei Versicherungsdedektei in Rom. 1995-1996 Unica Stipendiat an der UNIVERSIRTE LIBRE in Brüssel. (Geschichte und Filmwissenschaften) 1998 – 2000 Projektstudium Film & Geisteswissenschaften Universität Wien (Abschluss Juli 2000)1999-2000 Kurator des Projekts Heimat –Denken (Diagonale Graz). 2001-2002 Ausbildung zum Wirtschafts- und Kommunikationstrainer.

Berthold Unfried, Dr. phil. geb. 1960, Historiker, Lehrtätigkeit an den Universitäten Wien und Bern, wissenschaftliche Publikationen aus jüngster Zeit zur Kulturgeschichte des Stalinismus, zu Praktiken institutionalisierter Selbstthematisierung und zu Formen kollektiver Erinnerung; daneben publizistische Tätigkeit.

Fritz Weber, Univ.-Doz. Dr. phil., (Projektleiter) Historiker, Lehrtätigkeit an der Wirtschaftsuniversität Wien, der Universität Wien und an der Universität Salzburg; Studium in Graz, Bochum und Salzburg, 1989/90 Jean-Monnet-Fellow am European University Institute in San Domenico di Fiesole (Florenz). Mitarbeit an verschiedenen Ausstellungen, unter anderem „Wien 1938" (1987/88), „Österreich 1938" (Mauthausen und Wien, 1997/98). Veröffentlichungen zur politischen, Wirtschafts- und Bankengeschichte sowie zur Kulturgeschichte.

Partei und der VVst aus, welche Betriebe „arisiert" und welche liquidiert werden sollten. Oberziele waren auf Seiten der Wirtschaftsverbände die Liquidierung von Konkurrenz, auf Seiten der Vertreter des Staates Wirtschaftsrationalisierung durch staatlichen Eingriff in die Privatwirtschaft (durch Liquidierung, Standortrationalisierung, Kapitalisierung durch Kredite, Entschuldung oder Produktionsrationalisierung), auf Seiten der Partei die Zuführung von Parteileuten in die Wirtschaft und Versorgung der Parteiklientel mit Kleinhandelsgeschäften. Die Politik der Arisierung erscheint nicht in erster Linie ideologisch (antisemitisch) motivierter Selbstzweck, sondern als Auftakt zu einer großangelegten Wirtschaftsbereinigung in Form eines Eingriffs des Staats in die gesamte (also auch die sogen. „arische") Privatwirtschaft gedacht. Diesem Projekt kam der Krieg zuvor.

Rationalisierung unter dem Gesichtspunkt der Eingliederung in die staatlich reglementierte deutsche Ernährungsplanwirtschaft im Produktionsbereich, Liquidierung im Handel: so könnte man die Ergebnisse der NS-Wirtschaftspolitik von Arisierung und Liquidierung in der Lebensmittelbranche zusammenfassen.

12 ARISIERUNGEN UND RESTITUTIONEN IN DER ZUCKERINDUSTRIE (BERTHOLD UNFRIED)

12.1 Österreichische ZuckerindustrieAG, Bruck/Leitha

Die Österreichische ZuckerindustrieAG (ÖZAG) mit der Fabrik in Bruck/Leitha und dem Firmensitz in Wien 1 stand 1938 unter Kontrolle der Gruppe Bloch-Bauer.[3296] Geschäftsführer war Karl Bloch-Bauer, Präsident sein Onkel Dr. Ferdinand Bloch-Bauer. Beide waren zum Zeitpunkt des „Anschlusses" bereits in der CSR resp. in der Schweiz. Als jüdische Stützen des Schuschnigg-Regimes hatten sie allen Grund, eine Verhaftung zu befürchten. Schon am 14.März erschien die Gestapo in der Firma, beschlagnahmte Kassa und Geschäftsbücher und veranlasste die Einsetzung eines kommissarischen Verwalters. Außerdem wurde ein Steuerstrafverfahren gegen die Firma eingeleitet. In einem 24-seitigen Prüfungsbericht listete der Buchprüfer Guido Walcher im Mai 1938 detailliert die Delikte der Firmenchefs auf: Buchfälschungen, Veruntreuung von Firmengeldern in der Höhe von 2,5 Mio ÖS seit 1929, Gewinnverschleierung, Steuerhinterziehung, Schwarzgeldzahlungen an Würdenträger des

[3296] Zur Firmengeschichte: Jakob Baxa: Österreichische Zuckerindustrie-Aktiengesellschaft 1909-1959, Wien 1960.

Schuschnigg-Regimes.[3297] In einer Selbstanzeige bekannten Ferdinand Bloch-Bauer und der geschäftsführende kaufmännische Direktor Viktor Pfeifer Anfang April 1938 unzulässige Entnahmen seitens des Geschäftsführers in der Höhe von rd. 1,2 Mio ÖS seit 1934 und Steuerhinterziehung durch Unterbewertungen in der Höhe von rd. 200000.- ÖS.[3298] Ferdinand und Karl Bloch-Bauer erkannten die persönliche Verantwortung für die Schmiergeldzahlungen an Politiker und Journalisten an, obwohl sie, so ihre Verteidigung, im Interesse der Firma erfolgt und im Schuschnigg-Regime habituell gewesen seien. Offenbar wurde ihnen dafür in Aussicht gestellt, ihre Kunstsammlung behalten zu dürfen.[3299]

Trotzdem die Firmenverantwortlichen geflüchtet waren und das Gros der Aktien sich im Ausland befand, war das Steuerstrafverfahren ein Druckmittel in der Hand des Staates, denn es bot eine Zugriffsmöglichkeit auf das Unternehmen. Die Höhe der Strafe konnte den Aktienkurs beeinflussen. Dazu konnte mit einer de facto Beschlagnahme des greifbaren Firmenvermögens oder überhaupt mit einer Verstaatlichung gedroht werden. Diese Möglichkeit dürfte der Beauftragte der Länderbank bei seinen Gesprächen in der Schweiz zwecks Erwerbs der Aktien erwähnt haben.[3300] Deswegen schuf das Steuerstrafverfahren einen „Schwebezustand, der für die Repatriierung der in der Schweiz liegenden Aktien günstig schien", wie die VVst bemerkte.[3301]

Die Mehrheitsaktionäre der ÖZAG hatten zu jenen vorausblickenden Industriellen gehört, die den „Anschluss" kommen sahen. Eine Woche zuvor (am 5.3.1938) trafen sich die 89%

[3297] Guido Walcher: Bericht über die Überprüfung der Geschäftsbücher und Belege der Österreichischen ZuckerindustrieAG, 20.5.1938, in: BMVS 303044-35/1965 (Kt. 5361). Vgl. auch den Zwischenbericht v. 29.4.1938 in: ÖSTA, AdR, VVst Stat. 7881 I. Die Ergebnisse dieser Prüfung wurden nach 1945 vom BMVS als zutreffend anerkannt: „Da die Feststellungen des Berichtes sich im wesentlichen mit den der Prokuratur bisher zugänglich gewordenen anderen Unterlagen (Steuerakten) decken, darf angenommen werden, dass der Prüfungsbericht objektiv richtig ist." - Bericht der Finanzprokuratur an das BMF, Wien 4.2.1956, ÖSTA, AdR, BMVS (BMF) 303044-35/1965 (Kt. 5361). Auch in dem Bericht der US-Property Control nach 1945 werden seine Daten verwendet - Albert Perry jr.: Report on Brucker Zuckerfabrik, National Archives Washington, RG 59, Legal Adviser, Box 22

[3298] Ferdinand Bloch-Bauer und Viktor Pfeifer an die Steueradministration für den 1. Bezirk (Abschrift o.D.) (8.4.1938), AdR, VVst Stat. 7881 I (Kt.717). Da es sich um eine Abschrift handelt, ist nicht ersichtlich, ob Ferdinand Bloch-Bauer persönlich zeichnete. Er befand sich zu diesem Zeitpunkt schon im Ausland.

[3299] Wie aus einem Besprechungsprotokoll der FLD vom 13.11.1954 erwähnt wird, das den Fall Revue passieren lässt - ÖSTA, AdR, FP VI/18206

[3300] Wie aus einem Schreiben der Schweizerischen Bankgesellschaft an das Eigentümersyndikat hervorgeht, zit. in der Teilerkenntnis der RK beim LG f. ZRS Wien, 3.5.1956, in: ÖSTA, AdR, FP VI/18206

[3301] Rechtsamt der VVst an Staatskommissar, Wien 1.4.1939, ÖSTA, AdR, VVst Stat. 7881 II (Kt.717).

„jüdischen" Großaktionäre in Zürich, schlossen sich zu einem Syndikat zusammen, das die Aktien in bezug auf einen Verkauf vereinigte, und deponierten sie bei der Schweizerischen Bankgesellschaft.[3302] Was veranlasste die Aktionäre der bei einer Schweizer Bank liegenden Aktien schließlich zum Verkauf an die von der VVst beauftragte Länderbank? In einem Bericht der Property Division der US-Besatzungsmacht nach 1945 wird die Verhaftung eines Neffen des Präsidenten, Leopold Bloch-Bauer, im März 1938 als Druckmittel angegeben. Er sei erst freigekommen, nachdem er sich zur Einwirkung auf die Durchführung des Geschäfts verpflichtet habe.[3303] Ob die zehntägige Haft des Neffen reichte, das Bloch-Bauer-Syndikat zum Verkauf seiner Aktien zu bewegen, sei dahingestellt. Im Juni 1938 bot das Schweizer Syndikat seine Aktien erfolglos zum Stückpreis von RM 160.- der Länderbank zum Kauf an. Eine stärkeres Druckmittel mag das Steuerstrafverfahren gegen den Präsidenten gewesen sein. Der Gestaltungsspielraum bei der Bemessung der nachzuzahlenden Steuern und der Festsetzung der Strafe gab der Finanzbehörde Einflussmöglichkeiten auf den Aktienkurs der ÖZAG. Das Strafhöchstausmaß hätte die Firmenaktiven entscheidend schwächen können. Jedenfalls verkaufte das Bloch-Bauer-Syndikat mit RM 75.- seine Aktien um einiges billiger als der Oberfinanzpräsident seine konfiszierten Pakete und der „arische" Industrielle Patzenhofer von der Siegendorfer Zuckerfabrik, die beide um RM 90.- bis 92.- lukrierten.[3304]

Die VVst beauftragte nun die Länderbank mit dem Ankauf der ÖZAG auf dem internationalen Markt auf Rechnung dessen, der ihr dafür das verbindliche Höchstangebot stelle. Bei der Bewertung der Firma und damit des inneren Wertes der Aktien gab es zwei Unbekannte, auf die die Wirtschaftsprüfer keine präzise Antwort in Hinblick auf ihre möglichen Auswirkungen geben konnten: die Unsicherheitsfaktoren der Kosten des Steuerstrafverfahrens und der Veränderungen der Ertragslage durch die Eingliederung in die deutsche Zuckerplanwirtschaft.
In dieser Situation bremste der deutsche Lebensmittelindustrielle Clemens Auer ein Bremer Konsortium (Brinkmann), das mit seinem Anbot die Ergebnisse einer langwierigen Prüfertätigkeit abwarten wollte, mit einem Anbot auf Risiko aus. Er erwarb die Aktienmehrheit von der Länderbank (der Gewinn von RM 5.- ging vermutlich an die Bank), die sie für rd. 75 RM/Stück in der Schweiz gekauft hatte, um einen Preis von rd. RM 80.- Von der VVst wurden ihm dafür rd. RM 292000.-, d.i. ein Betrag von RM 2,14/Aktie als

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[3302] Albert Perry jr.: Report on Brucker Zuckerfabrik, National Archives Washington, RG 59, Legal Adviser, Box 22
[3303] Industry Report No.6, National Archives Washington, RG 59, Legal Adviser, Box 22

Entjudungsauflage vorgeschrieben. Dieser Betrag deckte sich in etwa mit den Berechnungen des inneren Werts der Aktien seitens der Revision- und Treuhand.[3305]

Das Aktienkapital bestand aus 10 Mio ÖS: 80000 Aktien mit einem Nominale von ÖS 125.-. Zum Börsenwert 1938 gibt es im Rückstellungsverfahren merkwürdige Schwankungen in den Angaben von ÖS 100.-[3306] über das Nominale von ÖS 125.-[3307] bis zu ÖS 300.-. Letzteres war die Behauptung der Antragsteller, die von daher auch einen Erwerb der Aktien seitens Auers unter dem halbem Wert ins Treffen führten.[3308] Im Oktober 1945 bezifferte die Wiener Börse den ungefähren Wert der (allerdings nicht amtlich notierten) Aktien für März 1938 mit rd. ÖS 300.- und für Dezember desselben Jahres mit RM 90.-. Bis Oktober 1939 sei er wieder auf RM 110.- gestiegen.[3309] Nach einer Auskunft, welche der Vertreter der US-Property Control 1947 ebendort einholte, sollen die Aktien der ÖZAG im März 1938 320-350 ÖS wert gewesen sein.[3310] Die Bewertung der Antragsteller ignoriert allerdings das den Kurs der Aktie drückende Steuerstrafverfahren, als ob dieses keine realen, sondern von den NS-Behörden erfundene Grundlagen gehabt hätte. In der Vermögensanmeldung vom April 1938 war der Wert der Aktie mit ÖS 250.- beziffert worden.[3311] Ein Jahr später korrigierte der Anwalt der Bloch-Bauer, Dr. Gustav Rinesch, den Wert der Aktie auf RM 75.-[3312] Das war der Ankaufskurs der Länderbank. Soviel zu Angaben über den „Wert" der ÖZAG-Aktien. Je nach Angaben verlor die Aktie zwischen März 1938 und Oktober 1939 2/3 bis die Hälfte ihres Werts. Dazwischen lag allerdings das Steuerstrafverfahren, das den Wert der Aktie zweifellos minderte. Am 17.4. 1939 wurde das Strafausmaß festgesetzt: Die Steuernachzahlungen für die ÖZAG selbst wurden mit 1,35 Mio RM festgesetzt, zusätzlich rd. 487000.- RM für die

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[3304] Obwohl auch auf Patzenhofer „considerable pressure" ausgeübt worden sein soll - RG 59, Legal Adviser, Box 22.

[3305] Die VVst entnahm daraus lt. Auflagenberechnung v. 21.7.1939 (Hartwagner) den Sachwert der Aktie mit RM 83,65.- - ÖSTA, AdR, VVst Stat. 7881 II (Kt.717). Das entsprach ziemlich genau dem Nominalwert von ÖS 125.-.

[3306] Lt. einer Aktennotiz eines Mitarbeiters des BMVS (Kreis) v. 7.8.1945 soll sich der Aktienkurs der ÖZAG zum Zeitpunkt des Erwerbs durch Auer im Wiener Freiverkehr um ÖS 100.- bewegt haben - ÖSTA, AdR, BMVS (BMF) 303044-35/1965 (Kt. 5361)

[3307] „Der damalige Kurs betrug etwa RM 80.- für einen Nominalbetrag von 125 Schilling, umgerechnet also etwa 100%, behauptete der Steuerberater Auers 1946 - Stellungnahme Dr. Hesselbarth, Berlin 29.5.1946, in: ÖSTA, AdR, VVst Stat. 7881 I

[3308] Das sei lt. Auskunft der Wiener Börsenkammer der Aktienkurs im März 1938 gewesen, behauptete der Anwalt der Rückstellungswerber, Dr. Rinesch, 1955 - Memorandum 29.4.1955. Auch wiedergegeben in einem Bericht der Finanzprokuratur an das BMF, Wien 5.1.1956, beide BMVS (BMF) 303044-35/1965 (Kt. 5361). Dass die Aktie zwischen 300.- und 350.- ÖS vor dem „Anschluss" wert gewesen sei, wird auch in Berichten der US-Besatzungsbehörde nach 1945 festgestellt - Industry Report No.6, National Archives Washington, RG 59, Legal Adviser, Box 22.

[3309] Wiener Börse an RA Dr. Rinesch, 10.10.1945, ÖSTA, AdR, FP VI/18206

[3310] Albert Perry jr.: Report on Brucker Zuckerfabrik, National Archives Washington, RG 59, Legal Adviser, Box 22

[3311] ÖSTA, AdR, VVst, VA 33686 (Gustav Bloch-Bauer) u. 44332 (Karl Bloch-Bauer)

[3312] Rinesch an VVst, 23.5.1939, BDA Wien, Restitutionsmaterialien, K 32

Tochterfirmen AG für landwirtschaftliche Betriebe und Vereinsmolkerei. Durch Teilnachlass und durch Überwälzung von 806000 RM auf die persönliche Rechnung von Ferdinand Bloch-Bauer ermäßigte sich die Steuerschuld im November 1939 auf rd. 850000 RM.[3313]

Zur Abdeckung der persönlichen Steuerschulden des Präsidenten wurde auch der Firmensitz in der Wiener Elisabethstrasse herangezogen, der sein Privateigentum war. Er wurde im Zuge des Steuerstrafverfahrens um 250000 RM an die Deutsche Reichsbahn veräußert. Das Oberfinanzpräsidium Wien hatte 21000 Aktien (aus dem Besitz der Familie Löw in Angern) zur Sicherstellung von Steuerrückständen der Firma beschlagnahmt, die Auer um RM 90.- erwarb. Verhandlungsgrundlage war ein von der Finanzbehörde errechneter Aktienwert von RM 98.-. Der Oberfinanzpräsident hatte seine eigene Betriebsprüfungsabteilung, die den Wert der Betriebe dem Interesse an höheren Steuereinnahmen gemäß höher bemaß als die im Auftrag der VVst arbeitenden Wirtschaftsprüfer. In Würdigung der von Auer vorgebrachten Gründe für die zu erwartende Ertragsminderung der Zuckerfabrik verkaufte der Oberfinanzpräsident an Auer um RM 90.-[3314] Auer hatte damit die Aktienpakete auf dem freien Markt um RM 75.- erworben, davon 3300 Bloch-Bauer-Aktien über Vermittlung der Böhmischen Escompte-Bank aus Prag (Ferdinand Bloch-Bauer war tschechischer Staatsbürger). Es handelte sich dabei um ein Aktienpaket, das bereits von der Finanzbehörde beschlagnahmt war. Das Finanzamt Wieden hatte auch 3300 Aktien für die Steuerschuld Bloch-Bauers gepfändet.[3315] Einerseits figurieren 3300 Aktien Bloch-Bauer in den Ankaufsaufstellungen der Länderbank[3316], andrerseits dieselbe Stückzahl auch unter den von der Finanzbehörde beschlagnahmten Aktien.[3317] Ferdinand Bloch-Bauer dürfte nachträglich seine Zustimmung zum Verkauf dieses Aktienpaketes zur Abdeckung der Steuerschulden gegeben haben.[3318]

Damit hielt Auer 96% der ÖZAG-Aktien. Er konnte nun daran gehen, die offenen Finanzfragen des erworbenen Unternehmens einer Klärung zuzuführen. Es gelang ihm, die Finanzbehörde dazu zu bewegen, das Steuerstrafverfahren nach Zahlung von RM 300000.-

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[3313] Nach Darstellung von Albert Perry jr.: Report on Brucker Zuckerfabrik, National Archives Washington, RG 59, Legal Adviser, Box 22

[3314] Niederschrift Oberfinanzpräsident Wien, 14.8.1939, RG 59, Legal Adviser, Box 22

[3315] RA Dr. Berger/Stenitzer an VVst/Mörixbauer, 12.6.1939, ÖSTA, AdR, VVst Stat. 7881 I

[3316] So scheinen z.B. in der Aufstellung an die VVst v. 22.6.1939 3300 am 21.12.1938 über die Böhmische Escompte-Bank erworbene Aktien von Ferdinand Bloch-Bauer auf - ÖSTA, AdR, VVst Stat. 7881 II (Kt.717).

[3317] S. auch KV Henninger an VVst Rechtsabtlg., Wien, 1.4.1939 über die Ausfolgung der 3.300 Bloch-Bauer-Aktien an den Vertreter des FA Wieden - ÖSTA, AdR, VVst Stat. 7881 II (Kt.717).

[3318] So die Finanzprokuratur in ihrem Bericht vom 4.2.1956, ÖSTA, AdR, FP VI 18206; darauf deutet auch das Schreiben der Länderbank an Landesstatthalter Birthelmer v. 22.10.1938 über die Verhandlungen zum Erwerb der Aktien hin - ÖSTA, AdR, VVst Kt. 1388, M. 60

niederzuschlagen.[3319] Die Investitionen, die er tätigte, um die ÖZAG „in ihrer Leistungsfähigkeit an die altreichsdeutsche Zuckerwirtschaft anzupassen," und die nach seinen eigenen Aufstellungen allein für den Zeitraum vom 1.4.-30.9.1939 rd. 1,3 Mio RM ausmachten, fanden teilweise im Kaufpreis der Aktien von der Finanzbehörde ermäßigende Berücksichtigung.

Im Februar 1940 wandelte Auer in einer Aktionärsversammlung, in der er als einziger Aktionär und Inhaber von 96% des Aktienkapitals auftrat, die AG in eine Personengesellschaft um. Bei dieser Gelegenheit zog er den Kaufpreis der ÖZAG aus der Firma heraus. Damit habe er, so später die Argumentation der Rückstellungswerber, die Firma de facto umsonst erworben[3320] (lässt man die Steuernachzahlungen ausser Betracht). Im März 1944 wandelte der Wirtschaftsmanager Auer, der einem späteren Bericht zufolge[3321] einen Zusammenbruch des NS-Wirtschaftssystems aus inneren Widersprüchen erwartete und seine unbeschränkte Haftung für die Firma reduzieren wollte, die Personengesellschaft in eine Kommanditgesellschaft mit sich selbst als Kommanditisten und Karl Rigal als persönlich haftenden Gesellschafter um. Der Zuckermanager Rigal, der bis zu ihrer Schließung die Hirmer Zuckerfabrik geleitet hatte, wurde damit zum unmittelbaren Betriebsleiter. Dass er vor 1938 Österreicher war, sollte im Rückstellungsverfahren eine Rolle spielen.

Fast wäre Auer 1939 noch über eine Affäre gestolpert, in der es um das Wesen des Geschäftes ging, das er zwischen freiem Markt und NS-Behörden tätigte. In einer Besprechung warf ihm der Handelsminister Fischböck persönlich vor, die „jüdische" Herkunft der über die Länderbank erworbenen Aktien verschleiert zu haben, um der Arisierungsauflage zu entgehen. Diese unliebsame Besprechung, im Verlauf derer sich Auer derart erregte, „dass Herr Minister Fischböck die Verhandlung abbrach"[3322], dürfte eine Folge von Angaben durch Auers erfolglosen Konkurrenten, des Brinkmann-Konsortiums, gewesen sein. Auer habe im Februar 1939 die von der Länderbank im Auftrag der VVst/Mörixbauer gekauften 41372 Aktien aus überwiegend jüdischem Besitz als verbindlicher Bieter noch vor Erhalt der definitiven Kaufgenehmigung der VVst erworben. Auer habe damit versucht, die VVst zu umgehen und sich die Arisierungsauflage zu sparen. Es entspann sich eine erregte Debatte darüber, welche Aktien als „jüdisch" anzusehen seien. Dahinter stand natürlich die Frage des

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[3319] Nach einem Bericht der Finanzprokuratur v. 5.1.1956, ÖSTA, AdR, BMVS 303044-35/1965 (Kt. 5361)
[3320] WrStLA, 2RK 166/56
[3321] ÖV Dr. Schmid an BMF, 20.5.1954, ÖSTA, AdR, BMVS 303044-35/1965 (Kt. 5361)

staatlichen Anteils an dem Arisierungsgeschäft. Der Minister Fischböck und die VVst standen nämlich auf dem Standpunkt, dass Bankgeschäfte von „Juden" genehmigungs- und abgabenpflichtig waren, auch wenn sie international getätigt wurden. Aktien blieben „jüdisch", auch wenn sie von einer Schweizer Bank verkauft würden. Die Charakterisierung als „jüdisch" bedeutete, dass die VVst den Differenzbetrag zwischen dem Kaufpreis der Aktien und ihrem durch Wirtschaftsprüfungsberichte ermittelten Sachwert (von RM 80,14.- als Entjudungsauflage einheben konnte. Die Angelegenheit konnte in einer Besprechung in der VVst Anfang Februar 1939 beigelegt werden[3323] und Auer zahlte für den ganz überwiegenden, als „jüdisch" klassifizierten Aktienteil die von der VVst verlangten Abgaben.

Nach 1945 wurde dieser Kauf auf dem regulären Aktienmarkt über die Länderbank von dem (verhafteten) Auer ins Treffen geführt für seine Argumentation, es habe sich um gar keine Arisierung gehandelt. Jeder hätte die angebotenen Aktienpakete zum Marktpreis kaufen können. Die Transaktion sei ohne Zwangsausübung geschehen und der Kaufpreis den Verkäufern zur freien Verfügung gestanden. Die Seite der Antragsteller argumentierte wie Fischböck 1939: Auer habe wissen müssen, dass es sich um Aktien aus jüdischem Besitz gehandelt habe. Das war spätestens seit der Fischböcksitzung nachweisbar. Ausserdem hatte Auer Arisierungsauflagen bezahlt. Gegen Auers Begehren nach Ersatz des Kaufpreises wandten die Antragsteller ein, dass sich Auer ohnehin den Kaufpreis anlässlich der Umwandlung in eine Einzelgesellschaft zurückgeholt habe (was er allerdings auch hätte tun können, wenn er die Aktien nicht über die VVst erworben hätte: das Aktienkapital war zum Eigentum der Einzelfirma geworden, aus dem Auer sein beim Kauf eingesetztes Kapital herauszog und den Rest zur Kommanditeinlage der Kommanditgesellschaft umwandelte). Er könne nicht gut die Erstattung des Kaufpreises der Aktien verlangen, weil er ihn sich schon selbst zurückgeholt habe.

12.1.1 Restitution

Die Rückstellung der Brucker Zuckerfabrik wurde zu einem Gegenstand der Auseinandersetzung zwischen britischer und sowjetischer Besatzungsmacht, auf innerösterreichischer Ebene ein politischer Fall ÖVP gegen SPÖ und Arbeiterkammer. Die Hälfte der ehemaligen ÖZAG-Aktionäre waren US-Staatsbürger geworden, ein Viertel, darunter die meisten Bloch-Bauers, britische und kanadische Staatsbürger. Die Bloch-Bauers

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[3322] Aktenvermerk betr. Besprechung zwischen Herrn Minister Fischböck und (Assessor Keune) über die Zuckerfabrik Bruck, 28.1.1939, ÖSTA, AdR, VVst Stat. 7881 IV (Kt.717)
[3323] Aktennotiz über die Besprechung in der VVst am 4.2.1939, ÖSTA, AdR, VVst Stat. 7881 IV (Kt.717).

kamen als Funktionäre der britischen Besatzungsmacht zurück und veranlassten die Einsetzung ihrer Vertrauensleute Alfred Wanke und Mario Bizzarro (letzterer als Vertreter der britischen Besatzungsbehörde) als öffentliche Verwalter der Zuckerfabrik.[3324] Der als britischer Offizier nach Wien zurückgekehrte Bloch-Bauer-Sohn Robert Bentley ließ Auer und seinen kaufmännischen Direktor Viktor Pfeifer kurzfristig verhaften. Die sowjetische Besatzungsbehörde, die Anspruch auf die Zuckerfabrik als „deutsches Eigentum" erhob, enthob Wanke und Bizarro und setzte im April 1946 den Altkommunisten Anton Krischan (Krizsan) als ÖV ein, der als „roter Direktor" in den Dreißiger Jahren Leiter eines Zuckertrusts in der Sowjetunion gewesen war. Damit war aus dem Rückstellungsfall zwischen den von Bloch-Bauer angeführten Rückstellungswerbern und dem „Ariseur" Auer ein Konflikt zwischen der britischen und US-amerikanischen („Bekanntlich besteht an der Firma ein überwiegendes anglo-amerikanisches Kapitalinteresse..."[3325]) und der sowjetischen Besatzungsmacht geworden. Zwar wurde die Bestellung des Krischan durch das OLG Wien abgewiesen und die alten ÖV wieder eingesetzt. Doch verblieb ihnen nicht mehr als der Firmensitz in Wien zu „verwalten", da die Fabrik selbst in Bruck/Leitha in der sowjetischen Besatzungszone lag und sich ihrem Einfluss entzog. Der Rückstellungsfall ruhte damit bis zum Staatsvertrag.

Nach Übergabe des USIA-Betriebs 1955 lebte der Rückstellungsfall neu auf. Nach dem 5.Rückstellungsgesetz wurde die von Auer aufgelöste ÖZAG im Oktober 1957 wiederbegründet. Die Gesellschaft fungierte von diesem Zeitpunkt an (vor Wiederbegründung die alten Aktionäre) als Antragstellerin im Rückstellungsverfahren gegen die Auersche Zuckerfabrik. Im März 1956 wurde Robert Bentley=Robert Bloch-Bauer, der Sohn und Erbe des Ferdinand Bloch-Bauer, als Vertreter der vier Eigentümergruppen von Rückstellungswerbern im Hinblick auf die absehbar erfolgreiche Durchführung des Rückstellungsverfahrens nach Interventionen des kanadischen Botschafters bei Aussenminister Figl direkt eingesetzt.

Die Rückstellung erfolgte in juristischen Gefechten zwischen dem gewandten Anwalt der Rückstellungswerber, Dr. Rinesch, und der Finanzprokuratur. Sie endeten 1957 mit

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[3324] Die Abläufe finden sich zusammengefasst in mehreren Berichten der mit der ÖV befassten Abt. 35 des BMVS (ÖSTA, AdR, BMVS 303044-35/1965, Kt. 5361).
[3325] RA Dr. Gustav Rinesch an BMVS/Abt. ÖV, Dr. Stangelberger, 7.5.1946, ÖSTA, AdR, VVst Stat. 7881 III (Kt.717)

Vergleichen.[3326] Teilverfahren zogen sich noch bis in die 60er Jahre und bis in die Sammelstellen hinein, so in der Auseinandersetzung um ein von der Reichsbahn beschlagnahmtes Grundstück.[3327] Die zahlreichen juridischen Finessen, die sich insbes. aus den komplizierten Firmenkonstruktionen ergaben, welche den definitiven Abschluss des Vergleichs auf die Zeit nach Wiederherstellung der ÖZAG 1957 verzögerten (Verfahren zunächst nach dem 3. und, nach Wiederherstellung der ÖZAG, nach dem 5. Rückstellungsgesetz), können hier nicht nachgezeichnet werden. Die Rückstellung aller Aktien ohne Aufrechnung von Aufwendungen und Erträgnissen erfolgte durch Erkenntnis der Wiener Rückstellungskommission vom 16.10.1956.[3328] Rekurse des Auer gegen den Beschluss auf entschädigungslose Rückstellung wurden bis zur ORK hin abgewiesen, da ihm die Passivlegitimation fehle.[3329] Es verblieb die Republik Österreich, auf die lt. Staatsvertrag der Kommanditistenanteil des Kommanditisten und deutschen Staatsbürgers Auer übergegangen war, als Rückstellungsgegnerin. Die Rückstellungswerber machten weitere Forderungen, etwa nach Bankguthaben der Auer-Firma geltend. Es folgte der Beitritt der Finanzprokuratur, der im Jan. 1958 den definitiven Vergleich zur Folge hatte: „Im Hinblick auf den ... Beitritt der Finanzprokuratur zieht der Vertreter der Rückstellungswerberin das gegen die Republik Österreich gerichtete Rückstellungsbegehren zurück."[3330] Als Ergebnis blieb die Rückstellung der ÖZAG gegen Entschädigungsleistungen für die Steuerforderungen von 1938 (s.u.).

12.1.2 Bewertung

Eine zentrale Rolle im Fall der Brucker Zuckerfabrik spielte das Steuerverfahren. Dabei stellt sich zunächst die Frage über das Zeitgebundene und den über spezifisch nationalsozialistische Stereotypen hinausgehenden Realitätsgehalt der Prüfungsberichte vom Mai 1938 über grobe Unregelmäßigkeiten der Bloch-Bauer-Firmenleitung. Obwohl sie von Elementen des NS-Jargons nicht frei sind, scheint der Sachverhalt doch nicht bloß von NS-Vorurteilen konstruiert. Es ist klar, dass ein als „jüdisch" qualifizierter Industrieller im Jahre 1938 auf kein faires Steuerstrafverfahren rechnen konnte. Das Verfahren wurde zweifellos dazu verwendet, den Kurs der Aktien zu drücken und damit die Arisierung zu ermöglichen. Ebenso unzweifelhaft aber lagen diesem Strafverfahren real begangene strafbare Wirtschaftsdelikte

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[3326] Die Vergleiche aus den Rückstellungsverfahren 2RKJ 30/55 und 2RK 4/55 finden sich zusammengefasst im Handelsgericht Wien, HRA B 9070, Bd. 1
[3327] ÖSTA, AdR, FP VI/18206
[3328] WrStLA 2RK 166/56; auch im Handelsregisterakt HRA B 9070, Bd. 1
[3329] 6.4.1957, WrStLA 2RK 166/56
[3330] Verhandlung der Rückstellungskommission v. 15.1.1958, WrStLA 2RK 166/56

zugrunde, die den Wert der Firma unabhängig davon belasteten, dass ihre Eigentümer „Juden" waren. Im Unterschied zu dem Straferkenntnis gegen die Gruppe Löw (21600 Aktien) von 1938 wurde jenes gegen Bloch-Bauer nach 1945 nicht aufgehoben.[3331] Bloch-Bauer hätte einwenden können, dass diese Delikte bei ihm geahndet wurden, weil er als „Jude" galt, während bei „Ariern" der Staat seine Durchgriffsmöglichkeiten gegen solche habituellen Delikte nicht so akkurat einsetzte. Im Geschäftsleben übliche illegale Praktiken wurden als „typisch jüdisch" charakterisiert. Gegen Geschäftsleute, die als „Juden" gekennzeichnet waren, konnte aufgrund der Judensondergesetzgebung in der Wirtschaft aufgrund solcher Delikte bis zur Konfiskation ihres gesamten greifbaren Vermögens vorgegangen werden, ohne dass sich ein solches Verfahren in den üblichen Widerständen verfing. An diesem Beispiel zeigt sich schön der hybride Charakter der Arisierung in der Industrie zwischen staatlichem Eingriff in die Wirtschaft und NS-Ideologie.

Wie die Arisierung war auch die Rückstellung eine Frage der politischen Machtverhältnisse. Die Bloch-Bauers setzten sich als britische und kanadische Staatsbürger mit Unterstützung ihrer Regierungen gegen den deutschen Ariseur Auer durch. Dem Auer wurde nun seine deutsche Staatsbürgerschaft zum Nachteil, welche die Firma zu „deutschem Eigentum" machte. Die Durchsetzung der Rückstellung wurde den Rückstellungswerbern bis 1955 durch die sowjetische Besatzungsmacht unmöglich gemacht. In den Bestätigungen nach 1945 wandelt sich der „aufrechte Nationalsozialist" Auer in einen unpolitischen Ernährungswirtschaftsfachmann, für den sogar der linkssozialistische Wirtschaftspolitiker Viktor Agartz wegen Unabkömmlichkeit vorsichtig eintrat.[3332] Auer handelte zweifellos weder als „aufrechter Nationalsozialist" noch als „aufrechter Demokrat", sondern als Geschäftsmann, der seine Geschäftsinteressen im Rahmen des jeweiligen politischen Systems unter Verwendung der jeweils gängigen Begrifflichkeiten und Kategorisierungen sowie unter Ausnützung der Möglichkeiten, die diese boten, verfolgte. Dass er als deutscher Staatsbürger nach 1945 in der Auseinandersetzung um die Firma die schlechteren Karten hatte, wird ihm selbst klar gewesen sein.

Insgesamt ist die Rückstellung als Fall für Industrielle zu werten, die als alliierte Staatsbürger eine gute Ausgangsposition und mit ihrem Rückstellungsverfahren Erfolg hatten. Darin zeigt

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[3331] Bericht der Finanzprokuratur, 5.1.1956, ÖSTA, AdR, BMVS 303044-35/1965 (Kt. 5361); Erkenntnis der ORK, 29.8.1958, WrStLA 2RK 166/56, Abschrift in: ÖSTA, AdR, BMVS 213250-35/63 (Kt. 5300)
[3332] Beide Bestätigungen finden sich im Konvolut ÖSTA, AdR, VVst 7881 I, das auch Stücke aus der Zeit nach 1945 enthält.

sich deutlich der Unterschied zu den Rückstellungsfällen im Bereich Gewerbe und Kleinhandel, wo die Rückstellungswerber nicht unbedingt auf effiziente alliierte Unterstützung ihrer Anliegen zählen konnten, keine spezialisierten Anwälte vom Format des Gustav Rinesch zur Verfügung hatten und im übrigen oft, wenn es nämlich liquidiert worden war, auch auf kein rückstellbares Geschäft zugreifen konnten.

Die Frage nach den Geschädigten und nach den Profiteuren ist im Fall der Brucker Zuckerfabrik nicht eindeutig zu beantworten. Der Rückstellungsvergleich war lakonisch: er bestand darin, dass das Unternehmen mit sämtlichen Aktiven und Passiven (mit Ausnahme des oberösterreichischen Schlosses Aigen, das dem Ariseur Auer, der es separat von der Zuckerfabrik erworben hatte, offenbar als Unterpfand einer Abmachung mit den Rückstellungswerbern verblieb) zurückgestellt wurde. Zurückgestellt wurden auch die strittigen 3300 Stück Bloch-Bauer-Aktien, denn, so wurde argumentiert, wenn die Steuerforderungen an Bloch-Bauer 1938 auch berechtigt waren, hätte ihm die Art ihrer Begleichung freigestellt werden müssen, mit anderen Worten, in dieser Hinsicht sei die Konfiskation seiner Aktien NS-spezifisch gewesen. Als Kompensation für die 1938 fällig gestellten Steuerforderungen sollte die Republik von den Rückstellungswerbern 1,5 Mio ÖS erhalten.[3333] Der Republik verblieb zudem das Restvermögen von Auers Unternehmen, rd. 1 Million ÖS.[3334] Auf der anderen Seite betrugen allein die Steuerguthaben aus Vorauszahlungen der Brucker Zuckerfabrik zum Zeitpunkt des Rückstellungsvergleichs, die den Rückstellungswerbern zufielen, rd. 2,5 Mio ÖS.[3335]

Im November 1946 hatte der ÖV den Wert des Unternehmens „unverbindlich" mit 15 Mio ÖS angenommen.[3336] Der Streitwert wurde 1955 mit 50 Mio ÖS festgesetzt - das war weniger als die Hälfte jenes Betrages, um den der Betrieb kurze Zeit später verkauft wurde (s.u.). Der Wert der neugegründeten ÖZAG wurde 1957 mit 110,4 Mio ÖS, d.i. pro Aktie 1380 ÖS (Nominale 1000ÖS) festgelegt. Der Nominalwert der Aktie war 1938 125 ÖS gewesen, Auer hatte sie um rd. 80 RM gekauft. Das Eigenvermögen der ÖZAG hatte per

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[3333] Die Aufrechnung der gegenseitigen Forderungen aus der strittigen Liegenschaft und den ebenfalls seinerzeit für Steuerschulden als Pfand entzogenen 3.300 Bloch-Bauer-Aktien resp. den Steuerforderungen, die 1,5 Mio ÖS zugunsten der Republik ergab und die Basis für den Vergleich v. 27.7.1956 war, findet sich in einem Bericht der Finanzprokuratur an das BMF v. 19.12.1957, beiliegend dem Akt BMF 320194/44-35/57, in: ÖSTA, AdR, BMVS 213250-35/63 (Kt. 5300).

[3334] AdR BMF 72086-17b/66, Kt. 5481 (Hinweis Peter Böhmer)

[3335] RA Dr. Rinesch an BMF, Wien, 29.3.1958, in: ÖSTA, AdR, BMVS 213250-35/63 (Kt. 5300). Es ist nicht ganz klar, ob das dem BMF resp. der FP bewusst war.

[3336] Vermögensanmeldung WrStLA, VEAV 3. Bez. 458

Umwandlungsbilanz vom 31.12.1939 samt Aktienbeteiligungen rd. 14,4 RM betragen.[3337] Entzogene Aktienbeteiligungen an der Ennser Zuckerfabrik wurden ohne Rückzahlung des Kaufpreises (und auf der anderen Seite unter Verzicht auf die Erträgnisse) zurückgestellt.[3338]

Die Eigentümer von 1938, allen voran die Bloch-Bauers bekamen ziemlich sicher nicht weniger zurück, als ihnen 1938/39 entzogen worden war. Mit dem Vergleich scheinen sie, in Erinnerung an die Wirtschaftsdelikte des Karl Bloch-Bauer, seinen „bodenlosen Leichtsinn" in der Führung der Fabrik vor 1938, über den sich der Hauptbetreiber der Restitution, Robert Bentley (Bloch-Bauer) noch 1956 als Grund für die Verluste aus dem Steuerverfahren alterierte, zufrieden gewesen sein.[3339] Vermögenswerte, die zur Abdeckung dieser nicht NS-spezifischen Steuerschulden 1938 von der Steuerbehörde herangezogen worden waren, wie den Firmensitz in der Elisabethstraße in Wien, beließ der Vergleich in staatlichem Besitz. Nach 1945 setzen sich jene Aktionäre (Ferdinand Bloch-Bauer und seine Kinder Robert Bloch-Bauer und Maria Altmann sowie der „arische" Zuckerindustrielle Patzenhofer[3340]), deren Rückstellungsansprüche aufgrund der Wirtschaftsdelikte aus den 30er Jahren am zweifelhaftesten erschienen, im Windschatten der anderen Geschädigten mit diesen gleich. Aufgrund der sowjetischen Beschlagnahme blieben ihnen die Nutzungsrechte an dem Unternehmen für weitere zehn Jahre entzogen. Kurz vor dem Abschluss des Rückstellungsverfahrens verkauften sie im Februar 1957 ihre Ansprüche an ein Zuckerkonsortium (Leipnik-Lundenburger, Ennser, Hohenauer/Strakosch und Siegendorfer Zuckerfabrik) - lt. Handelsregister um 118,6 Mio, lt. Angaben des Auer um 120 bis 140 Mio ÖS[3341] - und blieben in Nordamerika resp. in England. Die Industriellenfamilie wurde zwar

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[3337] Streitwert aus Äusserung der Finanzprokuratur, 11.9.1957, WrStLA 2RK 166/56; Zahlen neue ÖZAG 1957 aus der Gründungsprüfung der neugegründeten ÖZAG durch den WU-Professor Dr. Bouffier v. 30.9.1957 im HRA B 9070, Bd.1; Bilanzzahlen 1939 wiedergegeben in Äußerung RA Dr. Rinesch, 13.11.1957, WrStLA 2RK 166/56

[3338] Vergleich, RK beim LG f. ZRS Wien, 27.4.1957, in: BMVS 213250-35/63 (Kt. 5300)

[3339] Brief Robert Bentley an Thea, Salzburg 9.8.1956, Bundesdenkmalamt (BDA) Wien, Restitutionsmaterialien, K 32

[3340] Deren Aktien werden in dem Bericht von Albert Perry jr.: Report on Brucker Zuckerfabrik, National Archives Washington, RG 59, Legal Adviser, Box 22, als adäquat bezahlt bezeichnet. Patzenhofer bekam seine Anteile zurück, weil nach der Rechtsprechung der ORK die Veräußerung der Anteile des politisch nicht verfolgten Miteigentümers, wenn sie wegen der Veräußerung der Anteile des politisch verfolgten Miteigentümers erfolgte, ebenfalls als Vermögensentziehung zu werten war - s. dazu Teilerkenntnis der RK beim LG f. ZRS Wien, 3.5.1956, in: ÖSTA, AdR, FP VI/18206.

[3341] Lt. einer Niederschrift über eine Vorsprache des Anwalts des Auer bei der Finanzprokuratur, Wien, 31.3.1958, beiliegend dem Akt BMF 320194/44-35/57, in: ÖSTA, AdR, BMVS 213250-35/63 (Kt. 5300). Der Verkaufspreis der rd. 71.000 (von insgesamt rd. 79.000) Akten der Gruppen Bloch-Bauer, Löw, Pick und Graetz ergibt sich aus der Gründungsprüfung der neugegründeten ÖZAG durch den WU-Professor Dr. Bouffier v. 30.9.1957 im HRA B 9070, Bd. 1. Der Unterschied zwischen dem dort angegebenen und dem durch Auer genannten höheren Kaufpreis erklärt sich also wahrscheinlich dadurch, dass sich ersterer auf die 71.000 Aktien der og. Gruppen bezieht.

für den Verlust ihrer Firma entschädigt, etablierte sich aber nicht wieder in Österreich. Der Ariseur Auer verlor aufgrund seiner schlechten Stellung als Inhaber von nach 1945 konfisziertem „deutschen Eigentum" seine Investitionen. Doch dürfte auch er nicht kompensationslos ausgegangen sein. Zumindest glaubte die Finanzprokuratur interne Abreden zwischen ihm und den Rückstellungsberechtigten zu erkennen.[3342] Insgesamt scheint der nach 1945 geschlossene Vergleich keine Interessen wesentlich verletzt zu haben.

12.2 Hohenauer Zuckerfabrik, Brüder Strakosch (OHG, Familienbesitz)

„Hohenau ist ein Städtchen von etwa 3-4000 Einwohnern und es liegt etwa 2 km von der tschechischen Grenze. Die Bevölkerung setzt sich aus etwa 60% Tschechen respektive Slowaken zusammen und ist auch heute noch als weitgehendst kommunistisch verseucht zu betrachten. Die wenigen vorhandenen Deutschen sind fast ausnahmslos in Positionskämpfe mit den anderen Deutschen verwickelt. Es ist schon viel deutsches Blut nach Hohenau hineingeflossen, jedoch wurde dies zum großen Teil dadurch unwirksam, dass die deutschen Familien ihre Arteigenheit mehr oder weniger einbüßten. Ich glaube auch, mit Recht die Undisziplinertheit der Positionskämpfe darauf zurückführen zu dürfen, dass der vielfach anzutreffende Mischlingstyp der Bevölkerung sich in Bezug auf den Charakter auswirkt." Dieser Charakter wirke sich ebenso ungünstig auf die Hohenauer Zuckerfabrik aus, führte der mit einer Untersuchung beauftragte SS-Obersturmführer von Kalckstein in seinem „Bericht über die Zustände in und um die Hohenauer Zuckerfabrik" aus, wie die jüdischen Eigentümer, die Familie Strakosch.[3343] Diese Verseuchung wollte der betont nationalsozialistische KV Baron Walter Baillou auf allen Ebenen energisch bekämpfen.

Die Strakoschs scheinen in der Firma nicht unbeliebt gewesen zu sein. Sie hatten für die Arbeiterschaft ein umfangreiches System von Fürsorge- und Wohlfahrtseinrichtungen (Arbeiterwohnungen, Pensionsfonds u.Ä.) errichtet. Die Vertreter der „nationalsozialistische(n) und nationale(n) Beamtenschaft" versicherten dem Firmenchef am ersten Arbeitstag nach dem „Anschluss" ihrer Treue: „An der Schwelle einer neuen Zeit stehend, erachten wir es als geboten, Ihnen ... und allen Ihren Familienangehörigen im Namen

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[3342] Bericht der Finanzprokuratur an das BMF v. 19.12.1957, beiliegend dem Akt BMF 320194/44-35/57, in: ÖSTA, AdR, BMVS 213250-35/63 (Kt. 5300) Bericht der Finanzprokuratur an das BMF v. 19.12.1957, beiliegend dem Akt BMF 320194/44-35/57, in: BMVS 213250-35/63 (Kt. 5300)

[3343] Anhang zu Brief NSDAP/NÖ an VVst/Rafelsberger, Wien 11.6.1938, AdR, VVst 612 III (Kt. 342b); Zur Unternehmerfamilie Strakosch s. Marie-Theres Arnbom: Lieben, Mandl&Cie. Fünf Familienporträts aus Wien vor 1938, Wien 2002.

From: Berthold Unfried <berthold.unfried@univie.ac.at>
To: "E. Randol Schoenberg" <randols@bslaw.net>
Cc: <eva.blimlinger@oesta.gv.at>, Maria Altmann <maria@cga.net>
Date: Thursday, March 20, 2003 12:37 AM
Subject: AW: AW: Bloch-Bauer

Dear Mr. Schönberg,

If you took a look at my report, that would save us some time debating over
things that are not stated there or are not the object of the study.
Once again: Counting Ferdinand's assets before 1938 and after 1945 was not my business. I was not writing on the history of Ferdinand's fortune. My study on the Brucker Zucker is essentially a story on the intervention of the state into private industry. Secondly, I look at the 1956/57 settlement
and try to give some evaluation of its results and its circumstances.

The tax affair:

The tax-report of 1938 was in its essence confirmed by 2 post-1945 assessments: an investigation by the Austrian Finanzministerium - here you may say it was partial - and the US-Property Control-report concluded that the results were essentially factual. I do not think that the US-Property Control had Nazis working in its ranks.

So it only was a question of who was to be charged and I am not surprised that everyone concerned had his own opinion on this question. To make it more complicated, it was a mixture of different taxes - Körperschaftssteuer
for the company and personal Einkommensteuer for Ferdinand - difficult to accurately disentangle today. In any case, in replacement of the 1939 deal to use Ferdinand's shares to cover a lump sum negociated out of the tax-claims (a procedure declared illegal 1956 by the Rückstellungskommission), this tax-question was discussed in details in the
restitution-negociations and settled definitely in the 1956 settlement. Rinesch brought forward formal juridical objections, but like Ferdinand and
Karl 1938/39, he did not question the delicts themselves.

Would they have been sanctioned under the Schuschnigg-regime, if the Nazis had not taken power? In my view, a futile question, because evidently they had not been sanctioned and, but this is somehow historical speculation, would probably not have been if this regime had continued. The BBs had evidently been in close relations with high regime-officials and a part of

the disappeared money was apparently used just to entertain these close relations. For me, historically the most worthy aspect is, that the tax-affair - of course not a unique case - sheds light on the power-relations between the state and private business in the pre-1938 regime.

Rinesch was a specialist in sugar-restitutions. He also negociated the successful restitution of the Strakosch-company (By the way, Strakosch came
back to run his factory irrespective of the brutal way his family had been treated by the Nazis in 1938). He was a close friend of the BB-family. His covering of the Bruck-restitution gives the impression of a competent, keen
and tough negociator of the BB-interests. These are the reasons for my estimate that he was probably the best lawyer in place. Of course, I cannot
"prove" this, it is an estimate. Writing history is a lot on such estimates;
it cannot be done with "proofs".

Finally take a look at the financial dimensions:
- The company was sold in 1957 for at least 118,6 Mio ATS
- The settlement was based on a 82 Mio ATS estimate of the company's value.
Rinesch's estimate had been 43 Mio.
- In the settlement, the tax-fine was negociated at 1,5 Mio ATS (plus Elisabethstr. which was estimated at ca. 850000 ATS in mutual agreement)
- On the other hand, the restitution included 2,5 Mio ATS company-tax advance payments which were not counter-claimed by the Finanzprokuratur.

The settlement:

Both sides were interested in a settlement. The Finanzprokuratur had no interest to make this juridical case eternal.
The essential thing about the settlement seems to me, that there is no sign
of discontent let alone a feeling of duress on the part of the BB-negociators of the settlement. In this time, they seem to have been more
frustrated with Karl than with the Austrian state.
The settlement - I repeat this - was a result of competent and tough negociations with, it seems to me, good terms for the restitution-claimants.
The question of the post-1938 profits of the company and all other pre-1945
financial movements (prices etc.) was part of the settlement. That means, Rinesch negociated these claims against others, dropped some etc.
Decidedly,

he was in his time in a better position to judge on these items than anyone
else, including of course myself, half a century later.
I am not speaking of "the Jews" but of concrete individuals. On the contrary, I judge, that the "Jewishness" of the restitution-claimants seems
not to have played a preponderant role in the restitution.

I do not unterstand why Ferdinand's heirs did not have access to documents concerning the tax-affair. Were Ferdinand's papers inaccessible to them? What happened to his archives?
As his memoranda show, Rinesch knew this affair perfectly well.

I do not seize the logic of your complaint, that the "state of Austria took
an adversary position to the claimants, rather than helping them". In the Brucker case, the state got the company handed over by Soviet administration
and, consequently, the restitution claims had to be adressed against the state in the form of a civil law procedure. The legal representation of the
state is the Finanzprokuratur. In the documents, I cannot see that the Finanzprokuratur had been driven by the resentments of eventual former NS-party members in its ranks. It simply worked in a logic of the pursuit of
the interests of the state.
Would you, as a lawyer of one side in a civil law procedure, "help" your opponent? I suppose in our legal system this is considered to be the business of his legal representative and having to do with the pursuit of interests beyond sympathy or justice (Gerechtigkeit).

In this context, what do you mean by "fair"? Do you mean, that the BBs were
tricked in the restitution? That they were somehow forced to accept the settlement? That Rinesch was representing them badly? That there were irregularities in the procedure?

The material I have seen does not substantiate any of such suppositions.

Another thing is the bitterness of many survivors of the Nazi terror which I
understand perfectly well. But our discussion is on material issues of the Brucker Zucker-restitution. I cannot see the reasons of bitterness on just this level.

Sincerely yours,

Berthold Unfried

-----Ursprüngliche Nachricht-----
Von: E. Randol Schoenberg [mailto:randols@bslaw.net]
Gesendet: Freitag, 14. März 2003 16:35
An: Berthold Unfried
Cc: eva.blimlinger@oesta.gv.at; Maria Altmann; E. Randol Schoenberg
Betreff: Re: AW: Bloch-Bauer

> Bloch-BauerDear Mrs. Altmann, dear Mr. Schönberg,
>
> Thank you for your remarks on my case-study of the Österreichische
> ZuckerfabrikAG (ÖZAG). Criticism is far more stimulating to an author than
> no reaction. The ensuing discussion may shed more light on complicated
> histories.

Thank you for your response. I would have hoped that this dialogue would have occurred BEFORE publication of your report, but, as we say in English "better late than never." I am writing this form home without your article
in front of me, so I apologize if I make any mistakes.

> May I respond to your objections point by point:
>
> 1) Ferdinand Bloch-Bauer's Testament gives of course his view of the affair.
> The crucial point seems to me that he was held personally responsible - as
> president of the company - for the financial irregularities committed by his
> nephew Karl, the ÖZAG general manager. It is not surprising that Ferdinand
> was not happy with this and had every interest to deny his
> co-responsibility. The tax-evasion suit is a core history in the whole
> affair (see 6-7).
>

I find this statement remarkable. By WHOM was Ferdinand found "personally responsible"? Does that play no role in your analysis? Or do you simply assume that the Nazis were correct about everything? and that the post 1955
Austrian government played fairly with Austrian Jewish families seeking restitution? Perhaps you could send me the documentation that allows you to

dismiss Ferdinand's own view of the situation. I have not seen it. The off-handed comment by Robert to his wife Thea only reflects his frustration
that the Austrian authorities were using every possible excuse to avoid restitution of the shares, including allegations of Karl's "mismanagement".
Did the Nazis or Austria similarly review the books of all non-Jewish industries to find "tax" problems? Or is it possible that Ferdinand Bloch-Bauer was singled out for "special treatment". You see, you say NOTHING about the motives of the Nazi and Austrian officials who were dealing with the Bloch-Bauers and assume that EVERYTHING that is set forth in the "official" records is true. I am sorry if our perspective is a bit different than yours. The way I look at it is to ask myself the question "Would Ferdinand Bloch-Bauer or his heirs have had to pay ANYTHING were it not for the Anschluss in 1938?" I believe the answer is "NO." So then when
you see that he immediately in 1938 had to forfeit not only all of his shares, but his house and his personal property, because of this alleged tax
liability, and then after the war his heirs had to forfeit again his home (why was this not restituted prior to the 1956 deal?) and never recovered most of his personal property, just to recover the shares, the only conclusion you can reach is that persons who held Ferdinand and his heirs personally liable were not playing fair. That is the overall conclusion of
the Historical Commission reports, but there is no hint of that in your report, is there?

> 2) The Leopold-episode appears in the Property Control-report. It may have
> been brought forward to support the violent character of the "aryanization".
> If correct or not, I conclude that it had not played a major role. I think,
> we agree in this assessment.
>
> 3) I found Robert Bentley mentioned as a British officer in the restitution
> files. This was probably a confusion with Karl Bloch-Bauer, who, in various
> reports, appears as "Stabskapitän der britischen Armee". I shall correct
> this according to Mrs. Altmann's memory.
>

I believe he was a Czech or Canadian officer, but Maria will know better.

> 4)-5) I apologize for making son and daughter out of nephew and niece and

> shall of course correct it for the publication. However, this alters in no
> way the story about the company: the Bloch-Bauer (BB)-group had to concede a
> negociated lump sum together with the Elisabethstraße-house in compensation
> for pre-1938 tax claims by the state.
>

Yes, and this is even though these same tax claims had also been paid for by the rest of Ferdinand's real and personal property, most of which was never recovered (there is no 1938 asset report, auction catalogue or other document to confirm the value), including also his home outside Prague that was taken for Konstantin von Neurath and then Reinhard Heydrich, and never returned to this day.

> 6)-7) Here we are again at the heart of the whole restitution-history - the
> tax claims resulting of the company's management in the pre-1938 period.
>
> The settlement 1956/57 was not delayed, taking into account that the
> restitution process could in reality only start after the factory had been
> handed over from Soviet administration (who had confiscated and run it as
> "German property") to the Austrian state in Aug. 1955.
>

Were the shareholders compensated for the loss of use/profits from 1938-1956 or damage to the property? (Was the share value also damaged by loss of property in Cezchoslovakia?) Do you find this fair?

> I think your assessment that Ferdinand and his heirs had to pay twice is
> wrong. They got back the 1938 confiscated (to cover the tax claims)
> Ferdinand-shares.

They got the shares, but not all of the rest of his property that had been sold to pay the tax liability the first time. See above.

> The NS-methods to cover the state's claims against the
> company resp. its responsible managers were declared illegal and void

Do you also find it was "illegal and void" in 1938 to assess these taxes

against Ferdinand? Then how can you conclude that the re-imposition of these same taxes in 1956 was perfectly fine?

>- the
> Rückstellungskommission concluded (16.10.1956) that the confiscated
> Ferdinand-shares were to be restituted exactly because it could not be
> assumed that he would have sold his assets also under another regime
(or,
in
> other words: that it would have had to be left to him in which way to
settle
> his tax-liabilities).

> But the claims themselves were not declared void.

This is the problem. And who made this decision, not to declare the 1938 tax claims void?

> These claims had been declared valid and not NS-specific by post-1945
> investigations and were at the basis of the 1956/57 settlement.

Yes. And by whom? What was the basis? Were the Bloch-Bauer's treated fairly? Or did the post-war authorities take advantage of the Nazi tax claims to re-take the property? That's the real question.

> The tax
> question was a main issue in the 1956 settlement negociated between
Rinesch
> and the Finanzprokuratur.
>

Yes. the Finanzprokuratur took the same position as the Nazis in 1938. But
that doesn't seem to affect your analysis.

> As of a subjective appreciation of the terms of the settlement, it was
> Robert Bentley himself who made Karl BBs "bodenlosen Leichtsinn"
responsible
> for the compensations the BB-group had to pay in the settlement.
"Tatsache
> ist, dass die Erben das Haus Elisabethstr. etz. nur verloren haben, weil
er
> bei Bruck so leichtsinnig gewirtschaftet hat." (4.1.1957)
>

Yes. I was the one who voluntarily sent this document to you (you did not ask for it). But so what? All it means is that poor Robert (who was also pressured by Karl to give up half of his share of Ferdinand's estate) was

frustrated that the Austrian authorities were again using claims of Karl's alleged "mismanagement" to coerce a settlement out of the heirs.

> I have nothing to "justify" in my study, I try to show the interests and the
> motivations of the different actors of the restitution process in its time.

I missed this in the analysis of the sugar company. The overall report of the Historical Commission was that especially in the 1950s the Austrian government played very rough with Austrian Jewish families. But that's not
your conclusion with the Bloch-Bauers. You conclude everything was fair.

> I am looking at the history of the company. For an evaluation, I try to show
> the circumstances of the settlement. I conclude that the BB-group was in no
> bad position in the negociations - the family apparently had good
> connections to top Austrian officials; the Canadian ambassador intervened
> for Bentley at foreign minister Figl who on his part intervened, etc.; the
> status of Karl BB as a member of an occupation army; the best specialized
> lawyer available.

Do you really think Dr. Rinesch was the best lawyer available? On what do you conclude that? After 1955 there was no occupation, so Karl was of no help. My impression was that the political situation was inot in favor fo the Bloch-Bauers after 1955. Stefan Templ recently reported that the Finanzprokuratur who handled the negotiations was a former Nazi. Is that true? Who was it?

> The price for which the company was sold in 1957 - at
> least 118,6 Mio ATS - seems to have been a good market price in this time,
> taking into account that the amount in dispute (Streitwert) had been fixed
> at 50 Mio and that no one forced the representatives of the BB-group to sell
> the company.
>
> I still cannot come to the conclusion that the settlement left the
> restitution-claimants bad off.

Here it is. The Jews were not the real victims. How would you like all of

your property taken from you and not returned for 18 years? Would you be happy to receive just a small portion of it back? And have to give up and sell some of what you recovered to pay taxes that you never should have had
to pay?

> I repeat that my purpose is not to assess
> what individuals, eg. Ferdinand BB, had 1938 and what he resp. his heirs
> personally received back.

Is the purpose then to avoid this question?

> In this sense, it is actually more accurate to
> express my evaluation rather in terms of: "Der Rückstellungsvergleich
> scheint nicht ungünstig für die Rückstellungswerber" than with "∑bekamen
> sicher nicht weniger zurück, als ihnen 1938/39 entzogen worden war", as a
> comparative calculation of the 1938 and the 1956/57 assets seems
> impracticable.

But as you can see, this is where your analysis fails completely. The fact
is that Ferdinand Bloch-Bauer's heirs "bekam sicher weniger zurück, als ihnen 1938/39 entzogen worden war" -- the exact OPPOSITE of your conclusion.
By focusing only on the sugar factory and assuming the government was right
to re-assess the alleged tax liabilities, you miss the whole point of this exercise.

>
> I have no information if some shareholders got it better in the restitution
> than others. If this were true, than it would be a debatable issue more
> between the Rückstellungswerber, who had been discriminated in 1938 as
> "Jews" in the same way as the BBs, than between the BB-group and the state.

I don't understand this. I told you that Ferdinand's heirs, led by Robert Bentley, were pressured by the other family members and forced to "settle" for less than what they deserved. The Austrian government put them in this
position, by taking an aggressive approach post 1955, claiming that Ferdinand owed tax liabilities. Was there ever a court ruling post 1955 on
these alleged tax liabilities? Isn't it possible that in the face of the government's aggressive position (led by a former Nazi Finanzporkuratur), the family decided to settle rather than continue fighting the Austrian

government for property that had been taken 18 years earlier?

> In any case, the BB-group concluded the settlement and sold jointly with the
> Picks and the other shareholders. This is also family-history and difficult
> to assess from outside without archival evidence.
>

Difficult, but not impossible if you put yourself in their position. After
the 1955 state treaty, these families had very little leverage and I think the Historical Commission concluded overall that these late "settlements" were made in lieu of years of expensive litigation with poor prospects for winning because by then Austrian sentiment was very much against the exiled
Austrian Jews.

> I hope that my explanations have made more comprehensible my approach and
> some key items of my interpretation. Although I have been working myself
> through heaps of archive-material and consider my interpretation as
> consistent, I do not claim exclusive possession of an ultimate truth. I may
> however assure you, that my research was not interest-driven in order to
> "justify" any past actions or present claims.
>

I hope you also take my criticism as friendly. I don't have any ill feelings toward you, just frustration.

> May I finish asking you a couple of questions in order to get even more
> clarification into the history? I would be interested to know the reasons
> and the time of the decision not to return to Austria but to sell the ÖZAG.

What do you mean by "the decision not to return"? Would you have returned to Austria if you were Jewish? Maria can answer this for herself, but I think it is obvious.

> Secondly, how you, Mrs. Altmann, and the others involved, judged on the
> settlement in 1956/57, and what were the reasons to accept it. I would be
> grateful for further information.
>

I think I answered that above. After 18 years (11 after the Nazis were

defeated) wouldn't you have settled? Or would you have attempted to litigate with the state in the Austrian courts of the late 50s a claim concerning alleged tax liabilities incurred in the 1930s when your chief witness (Ferdinand Bloch-Bauer) was dead and you had no access to any of the documents to prove your innocence? If you think the Austrians did not take advantage of this situation, I think you are not reading the history correctly.

The main problem with Austrian restitution after the war is that the state of Austria took an adversary position to the claimants, rather than helping them. Where was the Austrian federal office that surviving Jewish families could go to for help recovering their property? It never existed. If your property is stolen, you go to the police and ask for their help recovering it. Right? Did the Austrian state ever offer to help the Austrian Jews recover their property? I think we all know the answer to that question, even without a report by the Historical Commission.

Randy

From: Berthold Unfried <berthold.unfried@univie.ac.at>
To: "E. Randol Schoenberg" <randols@bslaw.net>
Cc: <eva.blimlinger@oesta.gv.at>
Date: Friday, March 14, 2003 2:38 AM
Subject: AW: Bloch-Bauer

Dear Mrs. Altmann, dear Mr. Schönberg,

Thank you for your remarks on my case-study of the Österreichische ZuckerfabrikAG (ÖZAG). Criticism is far more stimulating to an author than no reaction. The ensuing discussion may shed more light on complicated histories.
Before going into the details, let me precise that the purpose of my study was not to evaluate individual claims resulting of a restitution process. My overall object was to describe and to explain strategies and argumentations of the actors in the "aryanization" and restitution of a sugar company. I try to scrutinize what happened and what were the logics of the proceedings. Finally, I try to give an estimation of the restitution settlement, but on a general basis, not on the basis of a monetary calculation per person - that would be an accountants' job.

May I respond to your objections point by point:

1) Ferdinand Bloch-Bauer's Testament gives of course his view of the affair. The crucial point seems to me that he was held personally responsible - as president of the company - for the financial irregularities committed by his nephew Karl, the ÖZAG general manager. It is not surprising that Ferdinand was not happy with this and had every interest to deny his co-responsibility. The tax-evasion suit is a core history in the whole affair (see 6-7).

2) The Leopold-episode appears in the Property Control-report. It may have been brought forward to support the violent character of the "aryanization". If correct or not, I conclude that it had not played a major role. I think, we agree in this assessment.

3) I found Robert Bentley mentioned as a British officer in the restitution files. This was probably a confusion with Karl Bloch-Bauer, who, in various reports, appears as "Stabskapitän der britischen Armee". I shall correct this according to Mrs. Altmann's memory.

4)-5) I apologize for making son and daughter out of nephew and niece and shall of course correct it for the publication. However, this alters in no way the story about the company: the Bloch-Bauer (BB)-group had to concede a negociated lump sum together with the Elisabethstraße-house in compensation for pre-1938 tax claims by the state.

6)-7) Here we are again at the heart of the whole restitution-history - the tax claims resulting of the company's management in the pre-1938 period.

The settlement 1956/57 was not delayed, taking into account that the restitution process could in reality only start after the factory had been handed over from Soviet administration (who had confiscated and run it as "German property") to the Austrian state in Aug. 1955.

I think your assessment that Ferdinand and his heirs had to pay twice is wrong. They got back the 1938 confiscated (to cover the tax claims) Ferdinand-shares. The NS-methods to cover the state's claims against the company resp. its responsible managers were declared illegal and void - the Rückstellungskommission concluded (16.10.1956) that the confiscated Ferdinand-shares were to be restituted exactly because it could not be assumed that he would have sold his assets also under another regime (or, in other words: that it would have had to be left to him in which way to settle his tax-liabilities). But the claims themselves were not declared void. These claims had been declared valid and not NS-specific by post-1945 investigations and were at the basis of the 1956/57 settlement. The tax question was a main issue in the 1956 settlement negociated between Rinesch and the Finanzprokuratur.

As of a subjective appreciation of the terms of the settlement, it was Robert Bentley himself who made Karl BBs "bodenlosen Leichtsinn" responsible for the compensations the BB-group had to pay in the settlement. "Tatsache ist, dass die Erben das Haus Elisabethstr. etz. nur verloren haben, weil er bei Bruck so leichtsinnig gewirtschaftet hat." (4.1.1957)

I have nothing to "justify" in my study, I try to show the interests and the motivations of the different actors of the restitution process in its time. I am looking at the history of the company. For an evaluation, I try to show the circumstances of the settlement. I conclude that the BB-group was in no bad position in the negociations - the family apparently had good connections to top Austrian officials; the Canadian ambassador intervened for Bentley at foreign minister Figl who on his part intervened, etc.; the status of Karl BB as a member of an occupation army; the best specialized lawyer available. The price for which the company was sold in 1957 - at least 118,6 Mio ATS - seems to have been a good market price in this time, taking into account that the amount in dispute (Streitwert) had been fixed at 50 Mio and that no one forced the representatives of the BB-group to sell the company.

I still cannot come to the conclusion that the settlement left the restitution-claimants bad off. I repeat that my purpose is not to assess what individuals, eg. Ferdinand BB, had 1938 and what he resp. his heirs personally received back. In this sense, it is actually more accurate to

express my evaluation rather in terms of: "Der Rückstellungsvergleich scheint nicht ungünstig für die Rückstellungswerber" than with "...bekamen sicher nicht weniger zurück, als ihnen 1938/39 entzogen worden war", as a comparative calculation of the 1938 and the 1956/57 assets seems impracticable.

I have no information if some shareholders got it better in the restitution than others. If this were true, than it would be a debatable issue more between the Rückstellungswerber, who had been discriminated in 1938 as "Jews" in the same way as the BBs, than between the BB-group and the state. In any case, the BB-group concluded the settlement and sold jointly with the Picks and the other shareholders. This is also family-history and difficult to assess from outside without archival evidence.

I hope that my explanations have made more comprehensible my approach and some key items of my interpretation. Although I have been working myself through heaps of archive-material and consider my interpretation as consistent, I do not claim exclusive possession of an ultimate truth. I may however assure you, that my research was not interest-driven in order to "justify" any past actions or present claims.

May I finish asking you a couple of questions in order to get even more clarification into the history? I would be interested to know the reasons and the time of the decision not to return to Austria but to sell the ÖZAG. Secondly, how you, Mrs. Altmann, and the others involved, judged on the settlement in 1956/57, and what were the reasons to accept it. I would be grateful for further information.

In this sense, let's continue with the discussion.

Sincerely yours,

Berthold Unfried

-----Ursprüngliche Nachricht-----
Von: E. Randol Schoenberg [mailto:randols@bslaw.net]
Gesendet: Dienstag, 11. März 2003 21:09
An: Eva Blimlinger
Cc: Berthold Unfried; Maria V. Altmann
Betreff: Bloch-Bauer

Eva,

Maria Altmann and I went through the section of Dr. Unfried's report on the Osterreichische Zuckerindustrie AG and had the following comments/corrections:

1. Dr. Unfried fails to mention Ferdinand Bloch-Bauer's second-to-last will, which sheds much-needed light on the transactions regarding the

sugar industry.

Mein Testament
Zürich
19 8 42
X

Mein letzter Wille!

Im Besitze meinen geistigen Kräfte, frei von jedem Zwange, bestimme ich im Falle meines Ablebens wie folgt:

Zu meiner Universalerbin bestimme ich miene Nichte Louise Baronin Gutmann geborene Bloch-Bauer und im Falle sie die Erbschaft nicht antreten könnte ihre beiden Kinder Nelly und Franz zu gleichen Theilen. Ich hinterlasse ihr meinen gesamten Besitz in Bankguthaben, ____ Gelde, Effecten, überhaupt Alles was ich bei meinem Ableben besessen habe. --

Bei meinem Ausreise aus Böhmen habe ich enen Treuhand im Vertrag, mein dortiges Vermögen betreffend, mit den böhmischen Eisamptebank und Credit Anstalt abgeschlossen. Alle Rechte aus diesem Vertrage übergehen in den Besitz meinen Universalerbin oder ihren Nachfolge.

In ungerechten Weise hat man mir in Wien eine Steuerstrafe von einem Milliionen Mark vorgeschrieben und mir meinen gesamten Besitz in Wien beschlagnahmt und veraüssert. Diese Steuer hatte ich nicht zu zahlen sondern die Akt. Gesellschaft für Zuckerindustrie in Bruck ad Lüthe. Meine Erbin soll die gesammte Gesellschaft resp. ihren Rechtsnachfolgen auf Rückvergütung diesem Million Mark und Zinsen klagen und diesen Betrag für sich verwenden. -- Alle Steuern hatte die Gesellschaft zu zahlen niemals ich. Auskunft resp. Zeugenschaft geben: Dr. Führer, Dr. Kammann, Direktor Pfeiffer etc. Etc.

Meine Nichte Maria Altmann geborene Bloch-Bauer vermache ich als Legat steuerfrei Zehntausend amerik. Dollars.

Diese Testament habe ich eigenhändig geschrieben und unterschrieben. Alle früheren Testamente erkläre ich für ungültig.

Ferdinand Bloch-Bauer

Zürich den 8. Oktober 1942

Ich wünsche im nächsten krematorium eingeäschert zu werden!

2. The statement in some American report (footnote 3010) that Leopold Bloch-Bauer was imprisoned because of the sugar company is apparently incorrect. Mrs. Altmann says, "Leopold hatte überhaupt nichts mit der Zuckerind. zu tun. Er wurde frei durch ein Interview bei Gericht (Rossauerlände). Mein Bruder Poldi hatte in einer Neujahrsnacht 1934 den Mann der ihm interviewed in einem Schneesturm gerettet. [NB, the

interviewer was a nephew of Hitler named Hiedler. See Maria Altmann's deposition, Vol. I, page 39, available at http://www.adele.at/Deposition_Altmann/deposition_altmann.html.]

3. Mrs. Altmann says Robert Bentley was not a British officer.

4. Robert Bentley was the nephew, not the son, of Ferdinand Bloch-Bauer.

5. Maria Altmann is the niece, not the daughter, of Ferdinand Bloch-Bauer.

6. The conclusion "Die Eigentümer von 1938, allen voran die Bloch-Bauers bekamen ziehmlich sicher nicht weniger zurück, als ihnen 1938/39 entzogen worden war. Mit dem Vergleich scheinen sie . . . zufrieden gewesen sein." is completely unsupportable given the facts. Mrs. Altmann writes: "This whole this is so disgusting, it's an effort to read it. . . . it turns my stomach how they justify the occupation of the Palais Elisabethstrasse." All of Ferdinand Bloch-Bauer's property was taken from him based on taxes that he was never supposed to be responsible for. In order to conclude a very, very delayed settlement concerning the sugar company shares (outside of a few artworks the only property ever recovered) in 1956, Ferdinand's heirs were forced to pay 1.5 million Schilling and give up (for no compensation whatsoever) his home at Elisabethstrasse 18 that to this day houses the Austrian Railroad. In effect, Ferdinand and his heirs were forced to pay twice, first during the Nazi era and then again in 1956. What they received back was far, far less than what Ferdinand had in 1938. Dr. Unfried's report is a white-wash of this terrible history. He completely fails to look at the transactions from the perspective of the victims, who, as usual in Austrian restitution cases, were left far worse off after the war than they were beforehand.

7. In my opinion, and perhaps this goes beyond what Dr. Unfried looked at, Dr. Rinesch, the attorney for Ferdinand's heirs (Robert, Maria and Luise), was conflicted because he also represented the other shareholders (including the Pick family, whose daughter had married Leopold Bentley, Maria's brother). The deal that was ultimately concluded (more than 11 years after the war ended!) unfairly required Ferdinand's heirs to pay taxes that should have been paid by the company or distributed evenly among all the shareholders. The former shareholders received no compensation for lost income after 1938, or for damage to the company. As the Nazis did in 1938, the post-war Austrian government used the pre-war personal guarantee of Ferdinand Bloch-Bauer (which he disavowed in his second-to-last will) as a lever to expropriate his assets a second time. Does anyone really believe that Ferdinand Bloch-Bauer would have had to sell all of his assets (twice!) to pay these taxes were it not for the Nazi invasion? But that is Dr. Unfried's conclusion. I am sorry if I have to grade this report as Un[zu]fried[en].

Randol Schoenberg

E. Randol Schoenberg
Burris & Schoenberg, LLP
12121 Wilshire Boulevard, Suite 800
Los Angeles, California 90025-1168
Tel: (310) 442-5559
Fax: (310) 442-0353
eFax: (425) 740-0483
E-mail: randols@bslaw.net
http://www.bslaw.net

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Hand original

This report was prepared by Albert E. Berry Jr. from information secured from personal interviews and the files of interested persons and firms.

I. FORMATION AND HISTORY OF ASSOCIATES.

A. The Bruenner Zucker Fabrik Thomas Auer A. G. (hereinafter called Bruenner), is the present title of the Oesterreichische Zucker Industrie A. G. founded on 6 August 1909. The firm was incorporated in Austria with its home office in Vienna and was authorized to refine sugar beets and produce sugar beet products. The capital was 4,000,000 Crowns divided into 10,000 bearer shares at par 400 Crowns each. The shares were entirely subscribed and were never offered on the market except in isolated cases of small blocks. (Exhibit 1)

B. The General Meeting of 1 September 1936 increased the share capital from S.8,000,000 consisting of 80,000 par S.100 bearer shares, to S.10,000,000, by capitalizing the free reserves and raising the par value of a share to S.125. No further capital changes occurred until after Anschluss. (Exhibit 1)

C. The processing of raw sugar and sugar products at the factory at Bruck a.d.Leitha (now Soviet Zone of Austria) totaled 18% of Austria's production. (Exhibit 1 & 2)

II. SHARE OWNERSHIP, MARCH 11, 1938

A. On 5 March 1938 a syndicate voting agreement was concluded at Zuerich, Switzerland, representing 71,244 of the 80,000 shares, (89% of the shares) (Exhibit 2). This agreement restricted the sale of the shares, the manner of voting and provided for the deposit of the shares in Switzerland. The underlying motive was to place the shares outside Austrian-German control. The shares held by the syndicate were owned as follows.

1. The Schweiz-Amerikan Handelsgesellschaft, Zuerich represented a block of shares owned by:

a) Saxafin A.G. Chur, Switzerland owned 100% by Otto Fick, a Czechoslovakian citizen living in Vienna.....	16,500 shares	20.62%
b) Creotzsche Familienstiftung Swiss, St. Gallen, Switzerland..	16,480 "	20.60%
c. Ferdinand Bloch-Bauer, A Czechoslovakian citizen living in Vienna.....	6,270 "	7.84%

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d) Dr. Gustav Bloch-Bauer, Vienna, Austria.....	440 shares	.55%
e) Dr. Robert Bloch-Bauer, Vienna, Austria.....	305 "	.38%
f) Maria Altmann (nee Bloch-Bauer) Yugoslavian, Vienna, Austria...	200 "	.25%
Subtotal	40,185 shares	50.24%
2. Credit Industrial, Glarus (owned by the Lowe family).....	5,100 "	6.37%
3. Dr.Ferdinand Bloch-Bauer.....	3,300 "	4.12%
4. Dr.Gustav Bloch-Bauer.....	2,335 "	2.92%
5. Dr. Adrienne Hamburger Lowe.....	8,329 "	10.41%
6. Mrs. Gertrude Lowe.....	8,300 "	10.37%
7. Mag. Otto Pick.....	1,687 "	2.11%
total	71,246 shares (exhibits 2 & 3)	89.06%

C. 8,754 shares, 10.94% of the share capital, were not held in the syndicate. Of these shares, the Ritzenhofer family, Hungarian Aryans, owned 4,448 shares, 5.56% of the share capital, and the remainder were held in blocks of less than 1,000 shares. (Exhibit 3 & 7)

D. 92% of the shares were held by persons who qualified as Jews under Nuernberg Racial Laws of whom several were non-Austrian residents or non-Austrian citizens.

III. TAX EVASION PENALTY SUIT

A. On March 28, 1938 President Ferdinand Bloch-Bauer and Director Pfeiffer appeared before the tax authorities through their attorney and made an oral self indictment against the firm for tax evasion. No fixed amounts were stated. Since it would take some time to go over the books for the years 1930 to 1938, it was agreed that 2 separate detailed statements should be filed at the earliest possible date, the first to cover the years 1934/35, to 1936/37 and a later declaration to cover the years 1929/31 to 1933/34. (Exhibit 4)

B. Subsequently four supplemented tax declarations were filed revealing additional taxes due on income amounting to:

1931/32	S	387,162.00
1932/33	"	359,233.94
1933/34	"	422,689.25
1934/35	"	521,113.70
1935/36	"	491,581.77
1936/37	"	496,232.76
Total		S2,487,840.42 (Exhibit 5,6,& 7)

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thereto,

C. The tax authorities ordered an investigation of the books of Brucker and its two subsidiaries, A.G. fuer Landwirtschaftliche Betriebe and Vereinsmolkerei A.G. The report of auditor Ing. Comm.Guido Falcher dated 20 May 1938 states that the books reveal discrepancies consisting of false entries, erasures, hidden accounts, double entries for the same items, expenses for which no vouchers existed, illegal payments and undervaluation of the inventory and realty. It concludes that these irregularities, which it terms as fraud and embezzlement, were carried out by the president Ferdinand Bloch-Bauer, the manager, Carl Bloch-Bauer and by Director Pfeiffer. (Exhibit 8)

D. Taxable sums which had not been declared in the annual tax returns nor in the self indictments were discovered. Such items were subject not only to the normal tax but also to a penalty of 3 to 9 times the tax. Rumors were rife that the maximum penalty would be assessed which would have consumed the free reserves and impaired the capital of the firm. The tax suit and the threat of a large penalty decreased the market value of the shares and in part accounts for the low selling price at which they were purchased during the time the tax suit was pending as described below. (See tax statutes Exhibit 29)

E. Responsibility for certain discrepancies in the books regarding which the firm did not want to disclose further details which apparently consisted of bribes, etc., to tax officials and others, was accepted by Ferdinand Bloch-Bauer personally. At the same time he and his brother Carl Bloch-Bauer wrote to their attorney stating that they had not received illegal payment of any kind. (Exhibit 9 & 10)

F. The tax investigation dragged on through 1938 and early 1939, during which time the shares of the firm were acquired by Clemens Auer. On 17 April 1939 a decision on the tax suit was concluded, by the terms of which the tax was set as follows:

1) The firm was to pay a tax of RM 1,350,000

50% to be paid by 1 May 1939
25% to be paid by 1 June 1939
25% to be paid by 1 July 1939

Payments already made were not to be deducted from this amount.

2) The personal taxes of Ferdinand Bloch-Bauer, et al, were assessed

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[illegible] shares of [illegible] already been seized by the tax authorities.

j) The tax and penalty due from the A.G. for Landwirtschaftliche Betriebe was RM 420,000 and from Vereinsmolkerei A. G. RM 66,700. (Exhibit 11)

C. The tax suit was reopened and an agreement was concluded on 8 November 1935 in Berlin with the Reichs Finance President. The settlement of 17 April 1939 was amended so that the tax liability of F. Bloch-Bauer, RM 806,000, was to be paid by him personally and not by the firm and the tax penalty of RM 180,000 against the A.G. for Landwirtschaftliche Betriebe (see F 3) above) was forgiven.

Thus the tax against Brucker amounting to		RM 1,350,000.00
plus tax and penalty against A.G. fuer Landwirtschaftliche.....		" 420,000.00
plus the tax against Vereinsmolkerei.....		" 66,700.00
	Total	RM 1,836,700.00
was reduced by the penalty against A.G. fuer Landwirtschaftliche.....RM 150,000.00		
and tax against F.Bloch-Bauer" 806,000.00		" 986,000.00
leaving a tax against Brucker of.....		RM 850,700.00

It was further provided that payments already made were to be deducted from this figure. (Exhibit 12

K. The attorneys for the shareholders contend that since a self-indictment was made prior to the institution of a tax investigation, the entire criminal tax penalty suit was illegal; (See Exhibit 29 for statutory provisions governing tax penalty proceedings), that their legal rights to protection from such a suit were denied them because they were Jews and that the suit was instituted and kept pending with the motive of pressing them to sell their shares at a low figure. The shareholders were in fact urged to sell their shares at a low figure because of the threat of an adverse decision in the tax penalty suit (Exhibit 13).

L. Dr. Wagner, attorney for Clemens Auer contends that only a portion of the unreported amounts was disclosed in the self-indictment and that therefore the tax penalty suit was legal as regards the undisclosed profits; that settlement of such a tax suit requires considerable time and the suit was not finally concluded until many months after Auer had secured control; that the value of the shares dropped considerably due to this tax penalty suit and thus the shares were worth only approximately par value at the time they were purchased by Auer.

IV. [illegible] ALLOCATED

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1. The Aryanization of Brucker was a part of the planned penetration of the Austrian economy by German interests. On 14 March 1938, the only known Nazi party employee the Chief Cashier, Maleck was appointed by Mr. Ferdinand Bloch-Bauer to act as manager and director of the firm, pursuant to orders of Nazi officials. The appointment was not recorded in the Commercial Register and thus Maleck acted in an unofficial capacity. (According to oral information given by Mr. Gustav Heinisch, attorney for former shareholders and Mario Mizzaro, Public Administrator, & Exhibit 1)

2. On 13 May 1938 Maleck was replaced by Rudolf Henninger, whose appointment was officially registered in the Commercial Register. (Exhibit 1)

3. Leopold Bloch-Bauer, the son-in-law of Otto Pick, a large shareholder was imprisoned from 14 March 1938 until 27 March 1938. As a condition to his release he agreed to negotiate the sale of large blocks of stock belonging to his father-in-law. In June 1938 through the Schweizerische Bankgesellschaft, a block of 20,000 shares belonging to Otto Pick were offered to the Leonderbank Wien at RM 160.- per per RM 80.- share. There were no purchasers at this figure and the offer lapsed. (Exhibit 3, 14 & 15)

4. By letter dated 7 December 1938 the Property Traffic Authority instructed Leonderbank Wien, to purchase all available shares of the company and indicated the possibility of using the pending tax penalty proceedings to exert pressure on the shareholders. The first paragraph of the letter stated:

> "In the course of the Aryanization of the above mentioned firm and assets exists a desirable possibility, in consequence of the pending tax evasion penalty proceedings, of acquiring foreign share holdings under favorable conditions."

The letter nominated Martin Brinkmann A.G. Hamburg and Siemens Amer, Cologne as ultimate purchasers of the shares through the Leonderbank Wien. Brinkmann withdrew and Amer instructed Leonderbank to acquire the shares for his account by letter dated 23 December 1938.

B. ACQUISITION OF CONTROL BY SIEMENS AMER

1. During the tax controversy Siemens Amer authorized the Leonderbank to offer RM 70 per share or in the event that more than 20,000 (25% of the shares, shares were sold, RM 75 per share, with a 29 December 1938 dead line. The Schweizer-

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ische Bankgesellschaft notified the members of the syndicate of this offer on 22 December 1938 and stated that Director Filgrin of the Leanderbank had informed the syndicate that there was considerable discussion favoring the nationalization of the factory and that it was doubtful if an offer of RM 70 - 75 would be made in such an event. (Exhibit 16)

2. Pursuant to the above offer, 36,667 shares (45.83%, consisting of 16,480 shares owned by the Graetz family and 20,187 shares owned by Otto Pick were transferred to the Leanderbank.

3. Subsequently Clemens Auer acquired at increasingly higher prices ranging to RM 93 per share, 78,968 of the 80,000 shares (98.71%) for a total cost of RM 6,490,237.50 or an average of RM 82.18 per share. (Exhibit 17)

C. DISPOSITION OF THE ACQUISITION ON THE VARIOUS BLOCKS OF SHARES:

1. Otto Pick - 21,187 shares - 26.48%

a) 16,500 were owned by Bapafin A.G. Chur, Switzerland, which was wholly owned by Otto Pick. (Exhibit 18). T.E. H. Davis, British, held 4,250 of these shares and 2,250 were held by J. E. Lloyd, British, both agents of Pick. The remaining 10,000 shares were held directly and were sold on 30 December 1938 at RM 75 per share to Clemens Auer through the Leanderbank. The proceeds of the sale of the 10,000 shares were paid to Aktien-Sperrkonto and were later released to the Guarantee Trust Company, London and converted to $ 28,000.

b) The 6,500 shares held by Davis and Loyd were sold on 30 December 1938 to Clemens Auer through the Leanderbank for RM 75 per share. The proceeds of the sale were credited by Leanderbank to Picks debt to it.

c) Pick's 3,687 remaining shares were sold on 30 December 1938 for RM 75 and the proceeds credited to Picks bank debt. (Exhibits 19, 20 & 21)

2. THE GRAETZ FAMILY - 16,480 shares - 20.60%

a) These shares were sold on 30 December 1938 to Clemens Auer through the Leanderbank for RM 75 a share. The proceeds of the sale were paid into the Aktien Sperr-Markkonto and later transferred to Lazard Freres, New York, New York in favour of Bruno Graetz at the official Sperrmarkkonto rate of exchange.

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[redacted] approximately the 6,375 shares deposited by Ferdinand Bloch-Bauer in the Swiss syndicate were sold on 28 June 1939 to Gloucks Bank through the Leonder-bank for RM 57.33 per share. The proceeds of the sale were paid to Landesfinanz-amt Wien, the tax office, Berlin, for purchase of 4 1/2% Reich Treasury Bonds 1935, and later transferred to Lowenart, Amsterdam, for free disposition of the seller. The exact amount received by Ferdinand Bloch-Bauer for this block is not known. (Exhibit 19 p 20)

b. The remaining 1,300 shares were deposited in the bank office of the firm at the time of foreclosure. During the tax penalty proceedings described above, these shares were seized pursuant to orders of the Finance office, Vienna, on 31 March 1939 (order dated 27 March 1939 I-1, 12-36) and sold to Gloucks Bank for RM 50 per share on 28 August 1939 by the Berlin Treasurer. The proceeds were credited to Ferdinand Bloch-Bauer's tax penalty obligations. (Exhibits 17,20 & 21)

4. Gustav Bloch-Bauer - 2,471 Shares - 1,224

a) Doctor Gustav Bloch-Bauer died on 7 July 1925 and left as possible heirs his wife, a resident of Vienna and five children living outside of Austria. Only one daughter Luise Serena Gabrielle Engelmann Altmann, by marriage, elected to declare herself as heiress being the only heir not liable to Reich's emigration tax. Her claim was denied however, and the emigration tax office refused to permit the widow of Gustav Bloch-Bauer to leave Austria until she claimed the estate and paid the Reich's emigration taxes on it. The amount of tax claimed was RM 172,230 which was later reduced to RM 91,077/

b) 2,135 of the 2,471 shares were deposited in Creditanstalt Bank-verein, Vienna and were seized pursuant to the Finance office, emigration tax order of 16 June 1939. The shares were sold to Deutsche Centralbank, Berlin without authorization. After the emigration tax had been reduced, the value of the shares exceeded the tax and a demand for the return of the balance of these shares was made by Dr. Gustav Bloch, attorney for the estate. As shares having been transferred, their return was impossible and certain late securities with a face value of RM 1,000,000, not available, were returned in lieu of the missing shares and other securities seized. (Exhibit 23, 2,100 of these 2,135 shares were sold to Vienna Bank for RM 50 per share on 13 October 1939. The [redacted] of the proceeds [redacted] blocked in Germany. (Exhibit [redacted]

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a) 440 shares [illegible] Landespolizeibehörde at RM 83.33 per share. The proceeds were paid to the Devisenstrafrechtskonto with the Preussener Bank, Berlin, for purchase of 4% Reichspost Treasury Bonds 1935 and later transferred to Lewenhaar, Amsterdam, for free disposal of the seller. (Exhibit 19,20 & 23).

5. Robert Bloch-Bauer - 192 shares - 1.6%

Maria Altmann (nee Bloch-Bauer) - 240 shares - 2.1%

a) These shares pertaining with the Chemitypieces Aktiengesellschaft were sold on 28 June 1939 for RM 83.33 per share and the proceeds were handled like Dr. Gustav Bloch-Bauer's block of 440 shares described above. (Exhibit 1, & 23).

6. The Loew Family, Aspern, Austria - 2[illegible] shares - 27.0%

a) The Loew family operated agricultural and industrial property in Aspern, Austria. On 15 March 1938 a self-declaration of tax evasion was made by the partners, Heatley and Mikesch, to the competent tax authority and the protection accorded by law Sec. 245 R. St. G. was claimed.

b. The details of the subsequent legal action have not been examined. A criminal tax penalty suit was instituted against the partners. On 30 June 1938 a total tax and penalty amounting to RM 1[illegible],00,863.74. was assessed. The entire property of the partners was confiscated including 21,603 Brucker shares and sold by the Vermögensverwertungsstelle, (Property Traffic Authority) of the Ministry for Economics and Labor, to Clemens Auer through the Berlin Preussenbank, viz., at RM 90 each. (Exhibits 1,23 & 24).

7. The Stermolfer Family - [illegible] shares - 3.5%

a, The Stermolfers were Hungarian Aryans and owned 4,448 shares. These were sold on 30 September 1939 to Clemens Auer. The proceeds, amounting to RM 90 per share the highest amount paid for any block of shares, were paid directly to the Stermolfers.

b. The remaining [illegible] shares (3.5%), were held in small blocks and were sold at figures varying from 75 to 83 per share. (Exhibits 1, and 2).

B. [illegible]

1. The par value RM 83.33 shares were purchased by Clemens Auer at prices ranging from RM 75 to RM 99, an average price of RM 81.92 per share. (Exhibit 1,19a),

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[illegible] the firm had [illegible]. The firm was also earning substantial profits (see Pr.VIIA below), the existing criminal tax evasion penalty suit had a depressing effect on the market value of the shares however. Had the tax amounting to roughly [illegible] millions and the maximum penalty amounting to roughly four million been entered, the free reserves and half the capital account would have been wiped out. The question whether per was adequate consideration must therefore be decided in terms of the legality of the tax penalty suit.

3. Subsequent to acquisition of 90% of the shares, Steiner had converted the firm into a private firm under the name Brucker Lederfabrik Steiner & Co. Steiner had financed the share purchases through four bank loans. One of these loans was paid off by liquidation of the two insolvent subsidiaries (i.e. Ost Landwirtschaftliche Betriebs und Verwaltungsges. m.b.H., which had a book value of RM 630,000. The remaining three bank loans, totaling RM 3,443,939 were charged as liabilities of the firm in the Reichsmark opening balance of 1 January 1940 (Exhibit 26). Obligating the firm to pay these loans was possible since the firm was now wholly owned by Steiner. (Exhibit 1, Pr.3c,2d and oral statement by Steiner Mayr) The balance sheet indicates the capital of the firm as RM 6,191,715.13 as against the share capital of RM 6,666,666.66. Unobligated reserves were sufficient to cover the capital account impairment however. Thus, without introducing any new capital, Mayr purchased the entire firm less its two subsidiaries. And, but for the uncertainty created by the tax penalty suit, the shares of the firm were worth considerably more than par value.

4. On 16 May 1947 the General Secretary of the Vienna Stock Exchange certified that he had investigated sales of shares of Steiner during 1939 - 1941, and had found the value of the shares in March 1938 was RM 320 to 330 for a par = RM 100 share. [illegible] published by Martin Dietz, Vienna VIII, copies of which are in the files of Dr. Wagner, 13 Feuerherring, attorney for Alexander Mayr, quote Brucker shares at 320 on 6 December 1938 and [illegible] on 31 October 1939.

5. [illegible]

6. By November 1, 1939 Mayr had obtained control of the firm, was appointed Director. The seat of the firm was transferred to Brucker a.d.Leitha (Soviet Zone

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1946. Clemens Auer accepted the obligations of the firm and liability to the amount of [illegible] not yet purchased by him (i.p.). (Exhibit 1)

e. On December 2, 1946 the seat of the firm was again moved back to Vienna. (Exhibit 1)

f. On 23 March 1948 the sole proprietorship was converted into a limited partnership by the introduction of the manager Karl Nigel, an Austrian, as general partner with a nominal capital of RM 12,000 and Clemens Auer as a limited partner with a nominal capital of RM 4,610,000. That this partnership agreement served as a cover for Clemens Auer is indicated by the fact that the agreement provided the general partner, Nigel was not responsible for business losses and received a salary and a restricted participation in the profits. (Exhibit 1 and information given by public administrator Hirsch).

VI. [illegible]

a. Pursuant to the law of [illegible] by [illegible] Dr. Friedrich Hirsch became public administrator of the Vienna office and Alfred Jahn became public administrator at Bruck a.d. Leitha, representing the firm naturally. (Exhibit 1).

b. On March 27, 1946 Friedrich Hirsch was replaced as administrator by Mario Binaro of Vienna (Exhibit 1) the Soviet Government disagreed with these appointments and appointed Ing. Anton Krisan on April 16, 1946. The matter was carried to the Oberlandesgericht, Vienna. On 5 October 1946 the Court ruled (A F 72/46) that the appointment of Ing. Anton Krisan was cancelled and Alfred Jahn of Bruck a.d. Leitha and Mario Binaro, Vienna, were the proper public administrators (Exhibit 1).

c. The Soviet Government ignored the court decision and has continued to operate the sugar refinery with Krisan as administrator under a Soviet Overseer, Lt.Col. [illegible]. Correspondence from Vienna remains unanswered and no funds are allocated for payment of salaries and expenses of the Vienna home office. The administrator and two secretaries are paid from funds loaned by the Creditanstalt Bank. (Per information given by public administrator Binaro).

d. Clemens Auer is in the Vienna jail awaiting trial for his participation in the liquidation of this firm, under Act 11 of the War Criminal Law. His file number is Vg.Vr. Nr. Vr 1139/45 at the Landesgericht. (Per interview with [illegible] and the attorney [illegible]).

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DECLASSIFIED

. . . t a meeting early in October 1947, Mr. Gustav Hinesch, was instructed by Victor Sedjeff, Soviet Agent, that the Soviet Government considered the sugar refinery at Druck a German external asset in Austria and in order that proof could be brought that direct physical force had been used to obtain it there, or that the Commissars had received no compensation therefor, the Soviet Government had no further interest in restitution claims.

. . . the early years sugar production resulted in an operating loss . . . . . The Austrians claim that the control price fixed by the . . . . . Government was such that production costs exceed proceeds. According to . . . Hinesch, the Austrian Government paid this loss and the entire stock of sugar is being released to the American Economy. The payment was made to the Soviet since it had financed the current season operations. (Per oral information given by Mr. Hinesch.

VII. FINANCIAL RESULTS

. Following is a tabulation of the profit and loss for the years 1935/36 through 43/44.

Year	Profit	Loss
1935/36	S 1,485,011.65	
1936/37	S 1,333,125.84	
1937/38	RM 89,460.21	
1938/39	RM 326,181.11	
1939/40		RM 461,038.86
1940/41		RM 913,546.52
1941/42	RM 650,944.09	
1942/43		RM 296,607.95
1943/44		RM 411,735.56
[illegible]	S 3,418,137.49	
	RM 1,126,585.81	RM 2,083,928.89

. The latest available balance sheet dated 30 September 1944 carries assets totaling RM 7,662,647.98 and liabilities totaling RM 2,451,119.79. The capital investment thus amounted to RM 5,211,828.19. Of the total assets, real estate and buildings comprised RM 1,025,831, Machinery, furniture and equipment RM 2,295,049, Securities RM 2,473,755, sugar RM 961,927.40, cash RM 44,773.44, Accounts Receivable RM 331,917.76 and the remainder consisted of advance payments and adjustment entries. The only large liability was the Accounts payable account, totaling RM 1,491,224. Exhibit 28 and schedules attached

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[redacted]

2. As of December [redacted] there was [redacted] capital invested in the firm.

3. Between December 1,[redacted] and November 1,[redacted] Herman Auer, a German, acquired [redacted] of the shares at about par value.

4. At the time Auer purchased the shares they were worth nearly double par value according to previous sales figures, the profit and loss statistics and [redacted] current [redacted] sheets.

5. During the time when Auer was purchasing the shares a tax evasion penal suit was pending against the firm. Had the maximum penalty been assessed the value of the shares would have been reduced to a figure somewhat under par and thus the pending suit depressed the market value of the shares.

6. Despite contentions by restitution claimants that par was inadequate compensation, shares which had been seized by the German authorities for various reasons were sold to Auer at par or slightly above. Also the shares owned by Hungarian Aryans, against whom no pressure was brought were sold at 10% above par. Such sales would not have been made had the price been excessively low.

7. Despite contentions of restitution claimants that [redacted] the tax penalty suit was illegal since they had made self-indictments and thus claimed immunity from a tax penalty, the various audits of the books of the firm reveal numerous irregularities which, coupled with the reluctance of the former directors and the attorneys for the restitution claimants, indicate that a tax investigation was in order and the penalty suit was not illegal.

8. While it appears that the tax penalty suit was legal, it appears that the investigation was unduly severe and that the pending suit was used as a means to induce the shareholders to sell at low figures. Although the tax suit was used as an inducement to sell, it was not being pursued for that purpose since it was not settled until many months after Auer had assumed control of the firm.

3. As regards the individual blocks of stock; it is concluded that adequate consideration was paid for the shares of:

1. Ferdinand Stout-Auer
2. [redacted]mmacher's

11,965
5,562
.6%

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b. Inadequate consideration was paid for the shares of

1. Mr. Gustav Bloch-Bauer - 3.22% aimed for emigration tax.

c. Unknown:

1. The Lowe family - 27.66% - this would depend on the nature of the tax penalty suit against them.

9. This firm should be considered as a German external asset in Austria valued at roughly RM 5 million as of the last balance sheet (September 1938). Compensation should be paid to shareholders listed in 8 b. and possibly 8 c. above.

10. The firm is considered as a Jew by the Nazis and is treated as such. There are no known assets in the U.S. Zone of Austria.

Neues von ganz rechts - September 2001

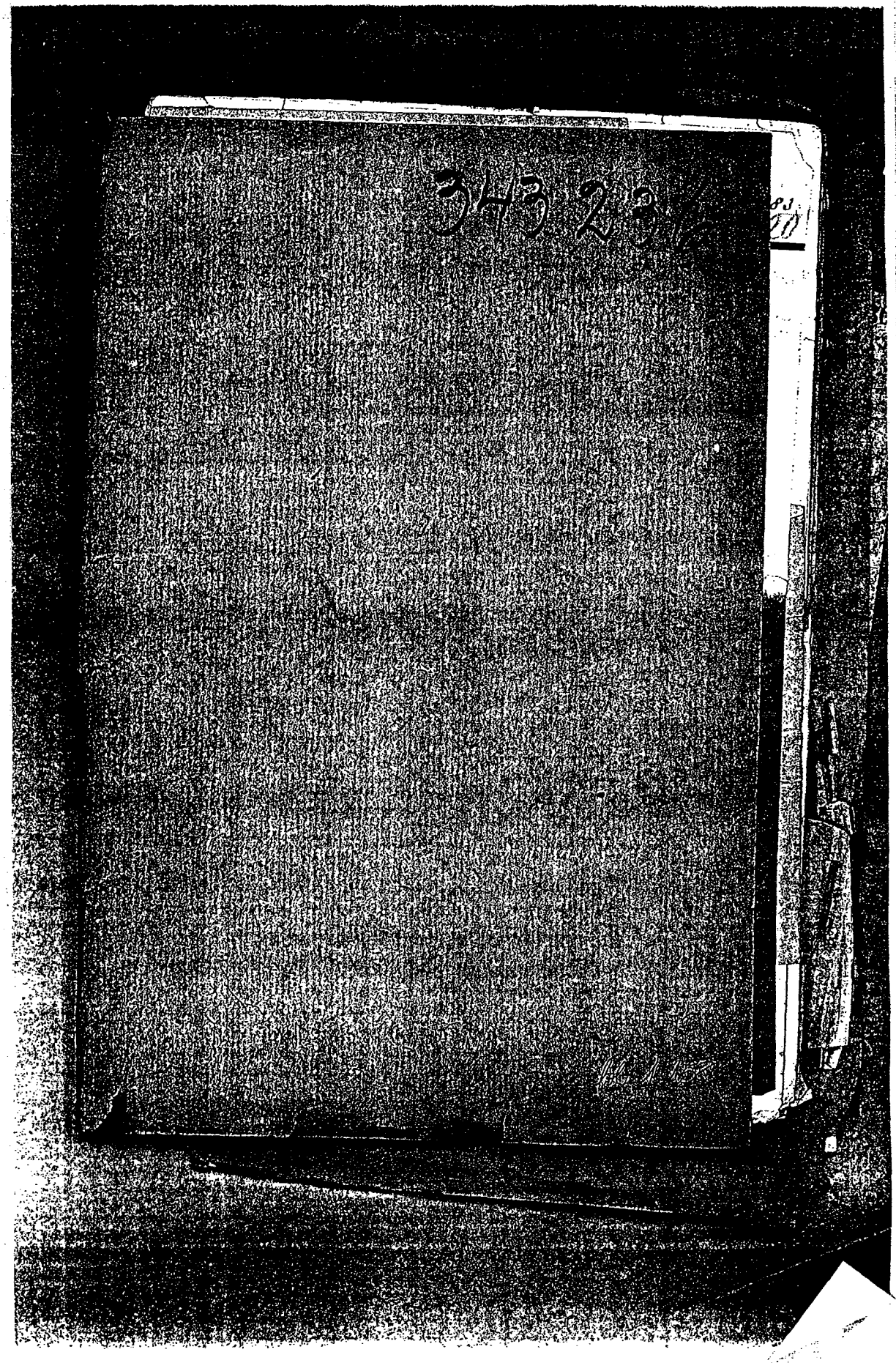
Zu Erich Führer

Dr. jur. Erich Führer, 1900-1987, *aB! Bruna Sudetia*, Wortführer des "streng antisemitischen Standpunktes" in der *Deutschen Studentenschaft* und der *Deutschen Burschenschaft*, am 15. 7. 1932 Eintritt in die NSDAP (Mitgliedsnummer: 1205383), 1933 Bundesführer der *Ostmärkischen Burschenschaft*, im Juni 1933 nach dem Verbot der NSDAP Verfasser eines offenen Briefes an sämtliche Hochschullehrer in Österreich wegen ihrer "mangelnden Bekenntnisfreudigkeit", Einleitung einer staatsanwaltschaftlichen Untersuchung, 1934 Verteidigung von Nationalsozialisten (u. a. der Juliputschisten Planetta und Holzweber) vor den Stand- und Schwurgerichten, im Frühjahr 1934 Eintritt in die SS (SS-Nr. 309063), 1. 12. 1934 Ernennung zum SS-Untersturmführer, 20. 4. 1935 Ernennung zum SS-Obersturmführer, 1935-1938 Leiter des illegalen Juristenbundes (dieser Gruppe oblag insbesondere die Organisation der Verteidigung von Nationalsozialisten), 15. 8. 1935 persönliche Berichterstattung über den Prozess gegen Planetta und Holzweber bei Hitler auf dem Obersalzberg, 1936-1938 Mitglied der Österreichischen Landesleitung der NSDAP, 1938 Ernennung zum SS-Hauptsturmführer, laut einem Abschlussbericht der Bundespolizeidirektion Wien vom 20. 12. 1946 soll Führer 1938 bei der "Arisierung" eines Sanatoriums beteiligt gewesen sein, 1938-1943 Vizepräsident der Anwaltskammer Wien, vom 19. 5. 1945-30. 8. 1946 und vom 11. 12. 1946-9. 9. 1947 in Verwahrungs- und Untersuchungshaft wegen § 10 VG, § 11 VG und § 6 KVG, am 9. 9. 1947 Verurteilung zu drei Jahren schweren Kerkers wegen des Verbrechens des Hochverrates nach § 58 StGB in der Fassung §§ 10 und 11 VG (Verbotsgesetz), Verfall des Vermögens zugunsten der Republik, noch 1947 Ansuchen um bedingte Entlassung aus der Strafhaft; am 9. 5. 1948 bedingte Entlassung aus der Haft unter Festsetzung einer Probezeit von drei Jahren

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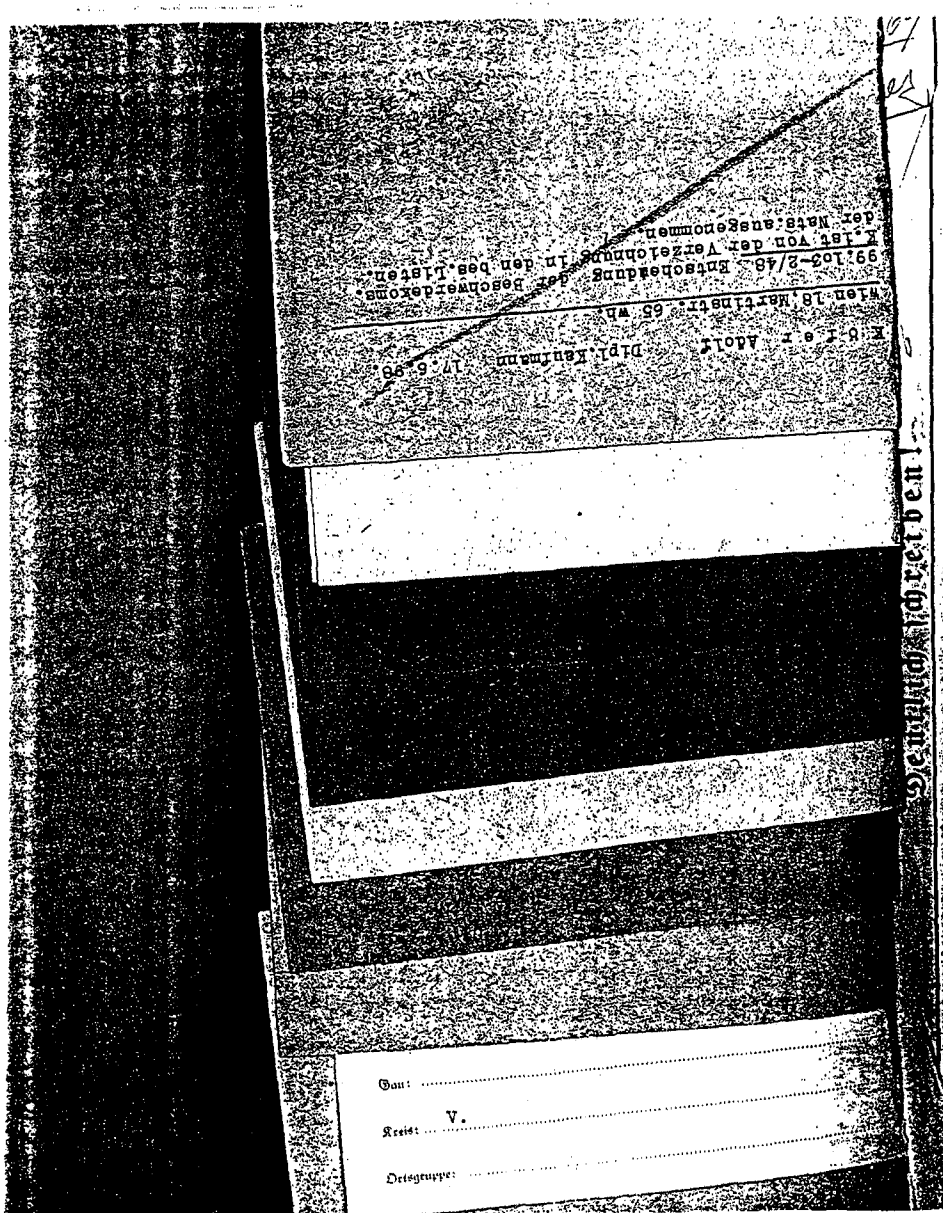
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Nationalsozialistische Deutsche Arbeiter-Partei. Nr. 1205383

Personal-Fragebogen

084

zum Antragschein auf Ausstellung einer vorläufigen Mitgliedskarte und zur Feststellung der Mitgliedschaft im Lande Österreich.

Familienname: Dr. F u h r e r

Vorname: Erich

Geburtstag: 5. April ~~1908~~ 1900 Geburtsort: W i e n

Verheiratet: ja

Vorname und Mädchenname der Frau: Ruda von Cuestl Deutsch.

Geburtstag, Geburtsort: 19.Feber 1906 Blansko Staatsangehörigkeit: ~~Österreich~~ Deutsch.

Liegt arischer Nachweis vor? ja

Anzahl der Kinder: eins

Wohnort: W i e n I. Straße: Riemergasse 8

Bundesland: W i e n Bezirk: I.

Beruf: Rechtsanwalt

Welche Stellung bisher bekleidet? Rechtsanwalt

Schulen, Lehrgang, Studium: Volksschule, Gymnasium, Hochschule

Militärische Dienstzeit (Frontsoldat, Orden und Ehrenzeichen?): keine

Gau:

Kreis: V.

Ortsgruppe:

14

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A1698

Angaben über die Zugehörigkeit zur NSDAP.

Wann erfolgte der erstmalige Eintritt in die NSDAP.: 15. Juli 1932

Bei welcher Ortsgruppe: W i e d e n

Gau (Bundesland): Wien Bezirk: IV.

Bisherige Mitgliedsnummer (nach dem 27. 2. 1925): 1.205.383

Ist die Mitgliedsnummer von der Reichsleitung bestätigt? n e i n

Aufnahmedatum: n e i n
(nur von der Reichsleitung bestätigt)

Beiträge zuletzt bezahlt an: zuletzt an die Ortsgruppe Wieden

für welche Zeit: bis August 1933

Unterbrechung der Parteibeitragsleistung vom ..... bis .....

Gründe: Uebersiedlung nach Wien I., Zedlitzgasse 7 (kein Blockwart)

Sind Sie aus der Partei ausgetreten? nein Wann: nein

Wo: nein Gründe: keine

Sind Sie aus der Partei ausgeschlossen worden? nein Wann: nein

Durch wen: nein Gründe: keine

Zeitpunkt des Wiedereintritts: nein

Bei welcher Ortsgruppe: ———

Gau (Bundesland): —— Bezirk: ——

Bei welcher Gliederung der NSDAP. (z. B. Pol. Leitung, SA, SS, NSKK, Frauenschaft, HJ, BdM) machten Sie Dienst:
Ortsgruppe Wieden, juridischer Auskunftsdienst, SS-Auskunft[illegible]
Rechtsbetreuung

Welche Funktionen haben Sie in der illegalen Zeit ausgeübt:
Leiter des NS-Rechtswahrerbundes vom Jänner 1935 - Feber 1938
Mitglied der Landesleitung Oesterreich während desselben Zeitra[illegible]

Sind Sie wegen illegaler nationalsozialistischer Betätigung bestraft worden? ja

Welche Strafen haben Sie erlitten: Aufenthalt in Wöllersdorf
vom 1.August 1934 bis 22.November 1934

Mußten Sie wegen Ihrer illegalen Tätigkeit ins Altreich flüchten? nein

Genaue Gründe: keine

Wann erfolgte die Flucht: —— Wo hatten Sie Ihren Aufenthaltsort: ——

Wo und als was waren Sie tätig? ——

Wurden Sie durch das Flüchtlings-Hilfswerk betreut? nein

Gehörten Sie oder gehören Sie noch einer Freimaurerloge oder einer logenähnlichen Vereinigung (Old Fellows, Druidenorden, Rotary Club) oder einem sonstigen Geheimbund an?
nein

Welchen anderen Parteien, Organisationen, Verbänden und Vereinen (z. B. VF., TV., KB.) gehörten Sie an?
nein

Waren Sie Funktionär einer dieser Organisationen? nein

Sind Sie aus anderen als pol. Gründen vorbestraft? nein

Art der Vorstrafen: keine

PB 1e81

Judenvertretungen siehe Briefordner. Nr. 7

Dr. Erich F ü h r e r
Rechtsanwalt
Kanzlei: Wien 1., Seilerstätte 16
Wohnung: Wien 3., Strohgasse 45

15

Berichtet.
Wien, den 17. Juni 1938.

16

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14608

Angaben über die Zugehörigkeit zur NSDAP.

Wann erfolgte der erstmalige Eintritt in die NSDAP.: 15. Juli 1932

Bei welcher Ortsgruppe: W i e d e n

Gau (Bundesland): Wien Bezirk: IV.

Bisherige Mitgliedsnummer (nach dem 27. 2. 1925): 1.205.383

Ist die Mitgliedsnummer von der Reichsleitung bestätigt? n e i n

Aufnahmedatum: n e i n
(nur von der Reichsleitung bestätigt)

Beiträge zuletzt bezahlt an: zuletzt an die Ortsgruppe Wieden

für welche Zeit: bis August 1933

Unterbrechung der Parteibeitragsleistung vom ..... bis .....

[illegible] Zadlitzgasse 7 (kein Blockwart)

Genaue Gründe: —

Wann erfolgte die Flucht: — Wo hatten Sie Ihren Aufenthaltsort: —

Wo und als was waren Sie tätig? —

Wurden Sie durch das Flüchtlings-Hilfswerk betreut? nein

In welcher Zeit gehörten Sie der Legion an? nein

Gehörten Sie oder gehören Sie noch einer Freimaurerloge oder einer logenähnlichen Vereinigung (Old Fellows, Druidenorden, Rotary Club) oder einem sonstigen Geheimbund an? nein

Welchen anderen Parteien, Organisationen, Verbänden und Vereinen (z. B. VF., CV., KV.) gehörten Sie an? nein

Waren Sie Funktionär einer dieser Organisationen? nein

Sind Sie aus anderen als pol. Gründen vorbestraft? nein

Art der Vorstrafen: keine

Angaben des Antragstellers über sonstige Tätigkeit für die NSDAP.: Seit Auflösung der Partei im Juli 1933 habe ich zuerst als SS-Anwalt und sodann als Anwalt der politischen Leitung bis zum 12.Feber 1938 hunderte von Nationalsozialisten vor Gerichten, Polizei-und Disziplinarbehörden und in sonstigen Angelegenheiten rechtsfreundlich ohne jedes Entgelt vertreten. Für meine Verteidigung Otto Planettas im Juli 1934 wurde ich ins Anhaltelager Wöllersdorf verschickt.

Seit den Jahre 1933 bin ich Bundesführer sämtlicher Burschenschaften der Ostmark und habe diese, 4.000.-Akademiker umfassende Organisation in nationalsozialistischem Sinne geleitet.

Als Mitglied der Landesleitung habe ich meine Kanzlei insbesondere in den Jahren 1936 und 1937 jeder Tätigkeit über die oben erwähnten Verteidigungen hinaus, zur Gänze zur Verfügung gestellt. Zahllose illegale Besprechungen von allen möglichen Parteigliederungen haben in diesen Zeiten in meiner Kanzlei stattgefunden. Kurierabfertigungen, Uebermittlung von Post etc. wurden in diesen Jahren durch meine Kanzlei durchgeführt.

Am 1.Dezember 1934 wurde ich zum SS-Untersturmführer, am 20. April 1935 zum SS-Obersturmführer ernannt. Als Führer des Rechtswahrer-Bundes habe ich auch zwei umfangreiche Denkschriften über die verübten Rechtsverletzungen an den Bundeskanzler gerichtet.

Vorstehende Angaben habe ich nach bestem Wissen und Gewissen gemacht.

Wien, den 17. Juni 1938.

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44607

Bestätigung
vorstehender Angaben und Beurteilung durch die Ortsgruppenleiter oder Formationsführer (SA, SS, NSKK, HJ):

Befürwortet

Der Ortsgruppenleiter:
Karl Hatzmann

Befürworfet
Der Kreisleiter

Kartei bzw. Mitgliederliste eingetragen:	
Ortsgruppe: Eingetragen	Gau: Karteikarte ausgeschrieben

Kenntnis genommen am: 4. Feb. 1939

Dienststelle Wien:

10

Rechtsanwalt
Dr. Erich Führer
Rechtsanwalt für Steuerrecht
Wien, I., Seilerstätte 16
Fernruf R 27-1-50, R 27-1-51
Postscheck-Konto Wien 125.806
Dr.H/Sch

NSDAP. Gauleitung
Gaurecht
Lfd. Nr.
Eingel.

Wien, 14.Feber 1944

An die
NSDAP Gauleitung Wien
Stabsamt (Gaurechtsberater)

W i e n , I/1,
Joseph-Bürckel-Ring 3

Mitglied der NSDAP
Mein Zeichen: Recht Dr.Fr/Str.
10815/44
Dr.Hans von M i n k u s

In Beantwortung Ihres Schreibens von 7.d.M. erlaube ich mir mitzuteilen, dass die Abstammungsdokumente, die Herr Dr.von Minkus besitzt, nicht vollständig sind. Nach den vorhandenen besteht kein Grund zur Annahme, dass er Mischling wäre. Ich habe nur vorsichtshalber, da mir der Name nicht ganz unbedenklich zu sein scheint und auch darum, weil ich sonst keinen Grund für die Einbringung der Klage sehe, um die Vertretungsgenehmigung eingereicht.

Heil Hitler !

17

Eing. 17. März 1944
Anl.

D	B	G.St.L.
		Hm.

(Dr. Frauenberger)

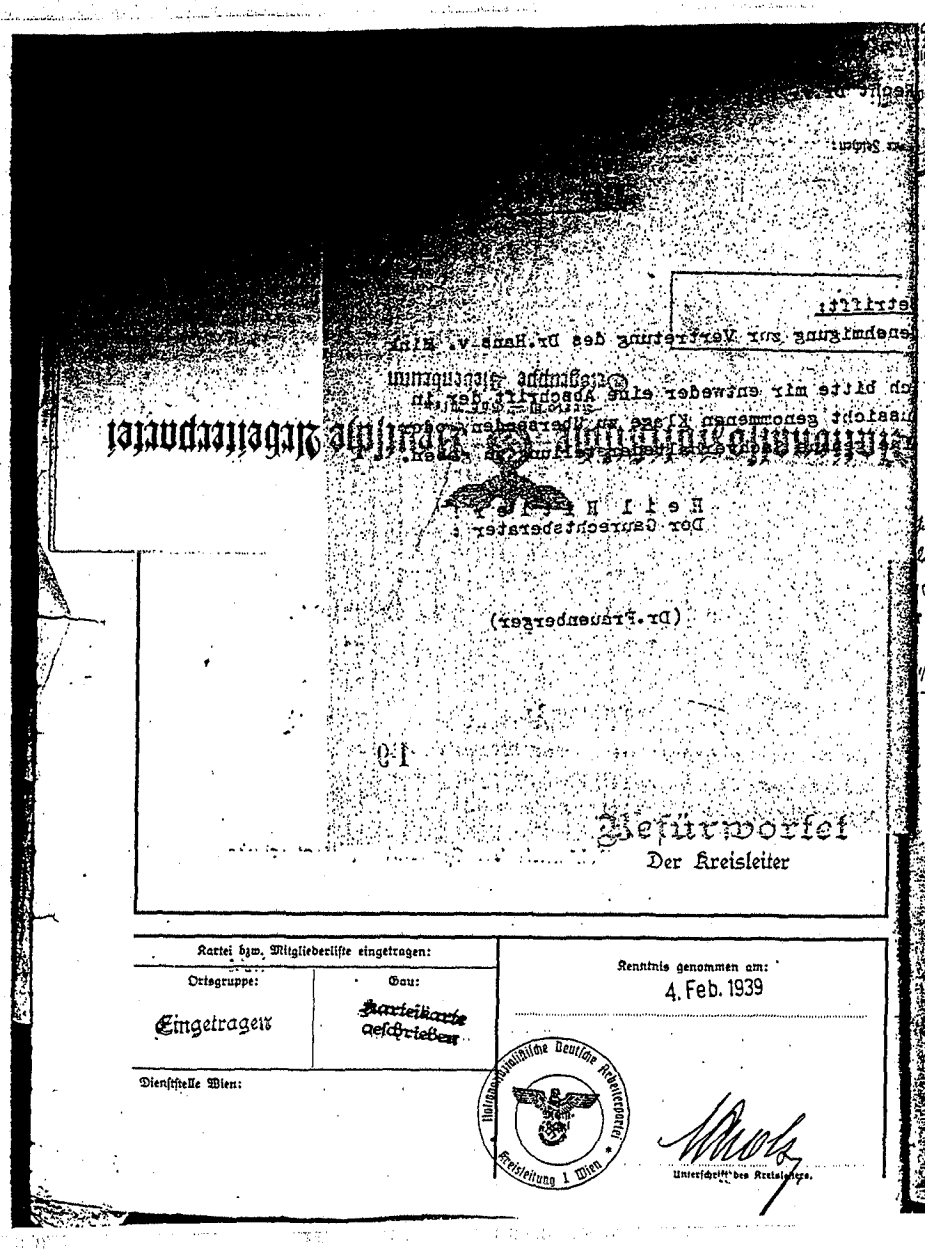
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...erhalten.

...den Ermittlungen des Gerichtes sind Personalakten, Akten des Oberfinanzpräsidenten, der Finanzämter, der Zollfahndungsstelle, der Rechtsanwaltskammer, der Zentralstelle für jüdische Auswanderung, der Gauleitung Wien der NSDAP und anderer Dienststellen, sowie die schriftliche und mündliche Einlassung des Angeschuldigten unterzogen worden.

Der Angeschuldigte hat in Wien eine Rechtsanwaltskanzlei, die nach dem Umbruch in steigendem Maße gewachsen ist und heute wohl zu den grössten Kanzleien Wiens zählt. Mit eine Ursache für die starke Inanspruchnahme des Angeschuldigten als Rechtsanwalt ist wohl der Umstand, daß er Verteidiger Otto Planettas war und ferner wohl auch seine Stellung als SS-Führer. Die

21



Kartei bzw. Mitgliederliste eingetragen:

Ortsgruppe:	Gau:
Eingetragen	Karteikarte geschrieben

Dienststelle Wien:

Kenntnis genommen am:
4. Feb. 1939

Nationalsozialistische Deutsche Arbeiterpartei
Kreisleitung 1 Wien

Unterschrift des Kreisleiters.

Der Kreisleiter

(Dr. Frauenberger)

Der Gaurechtsberater

Heil Hitler!

Wien I, Rotenturmstraße 13
Fernruf U 2 52 68
Postscheckkonto Wien 17.903

2475/43

Bei Rückantwort erbeten.

Ein. Nr. 4084/44
Eingel. 1. März 1944

Zur Anzeige des Herrn Gaurechtsberaters der NSDAP. Gau Wien vom 16.Dezember 1943, Recht Dr.Fr/Str. 10 815/43 gegen Herrn Dr.Erich F ü h r e r , Rechtsanwalt in Wien, erlasse ich die Verständigung,dass ich keinen Anlass zu einer Verfügung gegeben sehe.

Begründung:

Bei dem Umfange, den die Kanzlei des Rechtsanwalts Herrn Dr.Führer hat und mit Rücksicht darauf, dass sich erst im Zuge des Prozesses herausstellte, dass die Klientin des Herrn Dr.Führer Mischling 2.Grades ist, ist es als entschuldbar anzusehen, dass Herrn Dr.Führer dieser Umstand entgangen ist; es liegt kein Anhaltspunkt dafür vor, dass Dr.Führer absichtlich gegen die Anordnung im Rundschreiben Nr.46/42 des Präsidenten der Rechtsanwaltskammer Wien verstossen hat.

Wien,den 29.Feber 1944.

Der Präsident der Rechtsanwaltskammer Wien
i.V.Dr. Bachmann
Rechtsanwalt

Rechtsanwaltskammer Wien

Eingelangt
Zahl 235/41
Eing. 7 März 1944
Anl.

V	B	G.St.L.
		Km.

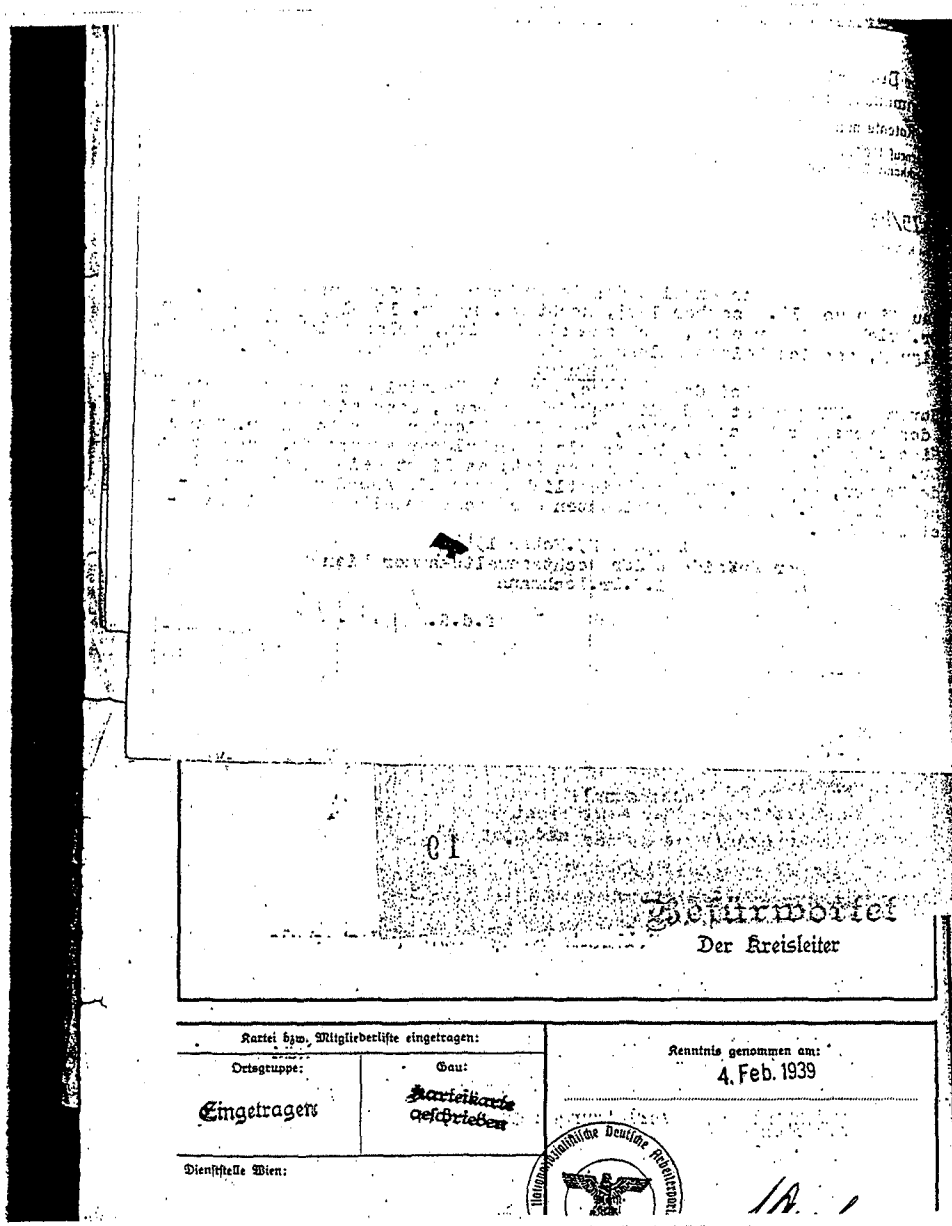
Stabsamt
Gaurechtsberater der NSDAP

Weise verhalten.

Den Ermittlungen des Gaugerichtes sind Personalakten, Akten des Oberfinanzpräsidenten, der Finanzämter, der Zollfahndungsstelle, der Rechtsanwaltskammer, der Zentralstelle für jüdische Auswanderung, der Gauleitung Wien der NSDAP und anderer Dienststellen, sowie die schriftliche und mündliche Einlassung des Angeschuldigten unterzogen worden.

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003067



01

Geheimwort!

Der Kreisleiter

Kartei bzw. Mitgliederliste eingetragen:	
Ortsgruppe: Eingetragen	Gau: Karteikarte geschrieben
Dienststelle Wien:	

Kenntnis genommen am: 4. Feb. 1939

B 10815

NATIONALSOZIALISTISCHE DEUTSCHE ARBEITERPARTEI

GAUGERICHT WIEN

Wien, den 27. März 1944.

2/41
Ku.

Verfügung

Die Voruntersuchung i.S. des Pg.Dr.Erich Führer, Rechts - walt in Wien 1.,Seilerstätte 16, SS-Hauptsturmführer, geb. 1.1.1900, Mitgliedsnummer 1,2o5.383 wird

e i n g e s t e l l t.

Begründung

Gegen den Angeschuldigten ist der Vorwurf erhoben worden, er habe seit der Machtergreifung im Jahre 1938 eine übergroße Zahl Judenvertretungen um sich zu bereichern übernommen, stünde mit ausländischen jüdischen Kreisen in Verbindung, vertrete Juden auch in solchen Abstammungsprozessen, die nur zur Ver - schleierung der jüdischen Herkunft unternommen würden und habe sich in der Frage der Einziehung zum Arbeitseinsatz, wie auch hinsichtlicheseiner Einziehung zur Wehrmacht in parteiwidriger Weise verhalten.

Den Ermittlungen des Gaugerichtes sind Personalakten, Akten des Oberfinanzpräsidenten, der Finanzämter, der Zollfahndungs - stelle, der Rechtsanwaltskammer, der Zentralstelle für jüdische Auswanderung, der Gauleitung Wien der NSDAP und anderer Dienst - stellen, sowie die schriftliche und mündliche Einlassung des Angeschuldigten unterzogen worden.

Der Angeschuldigte hat in Wien eine Rechtsanwaltskanzlei, die nach dem Umbruch in steigendem Maße gewachsen ist und heute wohl zu den größten Kanzleien Wiens zählt. Mit eine Ursache für die starke Inanspruchnahme des Angeschuldigten als Rechts - anwalt ist wohl der Umstand, daß er Verteidiger Otto Planettas war und ferner wohl auch seine Stellung als SS-Führer. Die

21

...erung der Praxis des Angeschuldigten hat wohl ...
...auf den Plan gerufen, auf die manche der über den ...
...liegen herumgehenden Gerüchte zurückzuführen sein ...

...wohl kann nicht verhehlt werden, daß die erwähnten ...
...e Verein mit der Art des Angeschuldigten eine ge - ...
...stimmung entstehen ließen, die gewissermaßen die Ent - ...
...der Kanzlei des Angeschuldigten als Zeichen der Zeit - ...
...diesem Grund hat sich eine Untersuchung des Gesamt - ...

...notwendig erwiesen.

...steht fest, daß die Kanzlei des Angeschuldigten ...
...vor von Juden oder in Judensachen in Anspruch genommen ...
...Sie trifft zu auf Reichsfluchtsteuersachen, Ari - ...
...Entjudungsprozesse und vermögensrechtliche Abwick - ...
...Entjudungsprozesse aus den Vertretungen gewiß auch ...
...der Angeschuldigte hat sich in der Regel um ver - ...
...genommen (gemußt, soweit es sich in der Regel um ver - ...
...Sachen gehandelt hat. Auch Vertretungen von, bezw. Be - ...
...Finanzbehörden finden sich in der Angeschuldigte zu, ...
...dieses aber mit dem Interesse einer von ihm vertretenen ...
...Partei.

...Angeschuldigte hat in jedem Fall seiner Judenvertretung ...
...Gesprächsebene Bewilligung nachgesucht und erhalten. Was ...
...Entjudungsprozesse betrifft, konnte nicht festgestellt ...
...Entjudungsprozesse selbst Handlungen unternommen ...
...sind, der Angeschuldigte selbst Handlungen dienlich gewesen wä - ...
...sind der Verschleierung der Abstammung dienlich im Sinne der ange - ...
...fast alle seine Prozesse stehen günstig im Sinne der - ...
...Die Urteile, sodaß auch der Vorwurf nicht berechtigt er - ...
...Entjudungsprozesse. Der Angeschuldigte übernehme auch mutwillig angestreb - ...
...Entjudungsprozesse. Schließlich konnte auch die Anschul - ...
...Entjudungsprozesse. Schließlich konnte auch die Anschul - ...
...einer versuchten oder vollendeten ungerechtfertigten ...
...Bereicherung durch Beanspruchung übersetzter und durch tatsäch - ...
...Bereicherung durch Beanspruchung übersetzter und durch tatsäch - ...
...Feststellungen nicht belegter Vertretungshonorare nicht er - ...
...Feststellungen nicht belegter Vertretungshonorare nicht er - ...
...worten, so sehr hier der Schein gegen den Angeschuldigten ...
...worten, so sehr hier der Schein gegen den Angeschuldigten ...
...Einziehung der Einziehung zur Wehrmacht und der Verwendung ...
...Einziehung der Einziehung zur Wehrmacht und der Verwendung ...
...Einziehung der Angeschuldigte auf Veranlassungen ...
...Einziehung der Angeschuldigte auf Veranlassungen ...
...Reichsjustizministeriums und auf seinen letzten Musterungs - ...
...Reichsjustizministeriums und auf seinen letzten Musterungs - ...
...Verweisen.

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Die Voruntersuchung war schon einzustellen, da sie für
Verfahren gegen den Angeschuldigten ausreichende Grundlagen
ont erbracht hat.

Der Leiter des Gaugerichtes Wien:
ges.Dr.Nosko

Verteiler: Pg.Dr.Erich F ü h r e r
Gauleiter
Reichsführer SS - Reichssicherheitshauptamt
SD - Leitabschnitt Wien
NSRB- Gauwaltung Wien
Akt.

Nationalsozialistische Deutsche Arbeiterpartei
Gaugericht
Wien

Für die Richtigkeit der Ausfertigung
der Leiter der Geschäftsstelle:
J.V.
Knoch

28.März 1944

Ursache Verkürzung der Praxis des Angeschuldigten hat wohl
auch Weiter auf den Plan gerufen, auf die manche der über den
Angeschuldigten herumgehenden Gerüchte zurückzuführen sein
mögen.

Gleichwohl kann nicht verhehlt werden, daß die erwähnten
Umstände im Verein mit der Art des Angeschuldigten eine ge-
wisse Mißstimmung entstehen ließen, die gewissermaßen die Ent-
wicklung der Kanzlei des Angeschuldigten als Zeichen der Zeit
ansah. Aus diesem Grund hat sich eine Untersuchung des Gesamt-
komplexes notwendig erwiesen.

Dennoch steht fest, daß die Kanzlei des Angeschuldigten
recht stark von Juden oder in Judensachen in Anspruch genommen
worden ist. Dies trifft zu auf Reichsfluchtsteuersachen, Ari-
sierungen, Abstammungsprozesse und vermögensrechtliche Abwick-
lungen. Der Angeschuldigte hat aus den Vertretungen gewiß auch
namhafte Einnahmen gehabt, soweit es sich in der Regel um ver-
mögende Juden gehandelt hat. Auch Vertretungen von, denen be-
reits Arisierungen an anständigen Juden gibt der Angeschuldigte zu,
erklärt dies aber mit dem Interesse einer von ihm vertretenen
Dienststelle.

Der Angeschuldigte hat in jedem Fall einer Judenvertretung
die vorgeschriebene Gewillfährung nachgesucht und erhalten. Was
die Abstammungsprozesse betrifft, konnte nicht festgestellt
worden, daß der Angeschuldigte selbst Handlungen unternommen
hat, die der Verschleierung der Abstammung ärztlich gewesen wä-
ren. Fast alle seine Prozesse stehen günstig im Sinne der ange-
strebten Urteile, sodaß auch der Vorwurf nicht bekräftigt er-
scheint, der Angeschuldigte übernehme auch mutwillig aussichts-
te Abstammungsprozesse. Schließlich konnte auch die Anklage-
führung einer verstorbenen oder vollendeten Angeschuldigten
herleitenden durch Beanspruchung Überfülltes und durch tatsäch-
liche Leistungen nicht belegter Vertretungshonorare nicht er-
wiesen werden, so sehr hier der Schein gegen den Angeschuldigten
sprichtt.

Hinsichtlich der Einstellung zur Rechtsordnung und der Verwendung
des Arbeitsgutes konnte der Angeschuldigte mit Vorhalten letzten Meinungs-
im Ausmaße nicht verhalten werden.

003069

003070

Gaupersonalamt

:Pb 10.815/Hei/Pri 12.5. 44
:3170 a I - 1.17

An den
Oberlandesgerichtspräsident
Deutsches Oberlandesgericht
(11b)P r e g III.
Kramarsch-Ufer 4

ifft:
RA.Dr.Erich F ü h r e r
geb.5.4.1900 zu Wien
Wien I.,Riemergasse 8

Zu Ihre beiden Schreiben vom 13.4. und 18.8.1943 teile ich Ihnen mit,daß das Gaugericht Wien mit Verfügung vom 27.3.44 die Voruntersuchung i.S.des Pg.Dr.Erich F ü h r e r eingestellt hat.

Der Obengenannte ist daher derzeit Parteimitglied seit 1933,Mitgliedsnummer 1,205.383.Es bestehen gegen ihn zur Zeit keine Bedenken.

H e i l H i t l e r !
Der Gaupersonalamtsleiter
i.A.

(Kraft)
Obergemeinschaftsleiter

er Gaurechtsberater
April 1944
ril 19444

rauenberger,

E N I.,

Bürckelring 3,

b i n s k i,geboren
schlesien, der Pole
unnten vor dem Volks-

in die Liste der
ingetragen bin,bitte
bemir ergänzend zu
i.Herr Martin Babinski,
ibt.

26

33

21

ng der Abstammung
r Anordnung des
rfahren abzu-
weisen, wenn die
Wege der Klage

klären. Das war hier der Fall.

Anderdes sehe ich, daß der Jude K i d l i t s als Emigrant ins Ausland gegangen ist und damit, wie das Reichsgericht zutreffend festgestellt hat, die deutsche Reichsangehörigkeit nach der Elften Verordnung zum Reichsbürgergesetz vom 25.11.1941 - RGBl.I S.722 - verloren hat. Über im Ausland befindliche Staatenlose Abstammungsbescheide zu erteilen, bin ich nicht berechtigt.

Aus alledem ergibt sich, daß es bei der gesetzlichen Abstammung des Auftraggebers, des beschnittenen Juden Karl K i d l i t s in Polen, zu verbleiben hat.

In Vertretung:

- 3 -

Die Voruntersuchung war schon einmal eingestellt, da ein Verfahren gegen den Angeschuldigten unzulässig erschien hat.

Der Leiter des Gaugerichtes Wien
gez.Dr.Noske

Verfasser: PG.Dr.Erich F ü h r e r
Gaugericht
Reichsleiter SS - Reichsgesundheitshauptamt
SD - Leitabschnitt Wien
NSDAP - Gauwaltung Wien
Akt.

Für die Richtigkeit der Ausfertigung
Der Leiter der Geschäftsstelle
i.V.

8.MÄRZ 1944

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Der Direktor
des Reichssippenamtes
R 1610/44 -Dr.B./Ty.

Bei Antworten dieses Aktenzeichen bitte wieder anzugeben.

Jetzt N 4, Oranienburger Str. 28

Berlin NW 7, den 24.April 1944
Schiffbauerdamm 26
Fernsprecher: 42 53 83

Herrn
Rechtsanwalt Dr.Erich F ü h r e r
(12a) W i e n I
Seilerstätte 16

Betrifft: Abstammung des Juden Karl E i d l i t z, geboren Wien 26.10.1894, z.Zt. in der Schweiz.

Sie haben über die Geh. Staatspolizei in Wien bei mir Antrag auf Einleitung eines Abstammungsprüfverfahrens über den obenbezeichneten Juden gestellt. E i d l i t z ist danach jetzt Regisseur in St.Gallen und verheiratet mit der Schauspielerin Alma E i d l i t z geb.S e i d l e r in Wien.

Abgesehen von der Frage Ihrer mir gegenüber nicht nachgewiesenen Vollmacht und dem auffälligen Umstand, daß Sie ohne Genehmigung des Generalstabsamtes der NSDAP. es unternommen haben, einen ausländischen Juden zu vertreten, kann ich Ihnen schon heute meine endgültige Stellungnahme zur Sache übermitteln.

Das Reichsgericht hat nach den Anlagen zu Ihrem Schriftsatz am 27.10.1943 die Klage, wonach Karl E i d l i t z nicht der eheliche Sohn des Moritz E i d l i t z sein soll, abgewiesen. Das Reichsgericht ist zu diesem Ergebnis gekommen, weil der vom Kläger zu erbringende Beweis, daß er unmöglich von seinem gesetzlichen Vater abstammen könne, völlig mißlungen ist.

Ich kann ein Verwaltungsverfahren zur Nachprüfung der Abstammung des Juden E i d l i t z nicht einleiten. Nach einer Anordnung des Reichsministers des Innern habe ich von Verwaltungsverfahren abzusehen und die Antragsteller auf den Klageweg zu verweisen, wenn die rechtliche Möglichkeit besteht, die Abstammung im Wege der Klage zu klären. Das war hier der Fall.

Außerdem sehe ich, daß der Jude E i d l i t z als Emigrant ins Ausland gegangen ist und damit, wie das Reichsgericht zutreffend festgestellt hat, die deutsche Reichsangehörigkeit nach der Elften Verordnung zum Reichsbürgergesetz vom 25.11.1941 - RGBl.I S.722.- verloren hat. Über im Ausland befindliche Staatenlose Abstammungsbescheide zu erteilen, bin ich nicht berechtigt.

Aus alledem ergibt sich, daß es bei der gesetzlichen Abstammung Ihres Auftraggebers, des beschnittenen Juden Karl E i d l i t z in St.Gallen, zu verbleiben hat.

An die
NSDAP. Gauleitung Wien
Gaustabsamt
(12a) W i e n

zur Kenntnis.

Heil Hitler!
3

An den Rechtsanwalt Kellner Wien
Prof. Dr. Rieger
Betrifft: Pg. Erich Führer

Ich übersende neu Abschrift des Urteils vom 29.4.1944 des Sondergerichtes Prag (C) Hauptakt. Nachdem mündlichen Abschreibgesuch am 18.10.1940 wurde dem Pg. Erich Führer vom Gerichtsurteil eine Genehmigung zur Übernahme der Verteidigung nicht erteilt. (C.P.V. 10/40)

Heil Hitler!

Kal

An die
NSDAP. Gauleitung Wien
Gaustabsamt - Der Gaurechtsberater
Joseph Kirchlgang 3

12. Dezember 44

Eingel. 11 Dez. 1944

Betr.: Kellner.

Herrn

Sonderger. Dr. Erich Führer

Rechtsanwalt

Prag

Seilerstätte 16

Betrifft: Vertretung des Alexander Kellner.

Ich habe in einer Strafsache vor dem Sondergericht Prag vom 7. Juni 1943 Zahl 3170 I Sa 1.17 als Verteidiger vor den deutschen Gerichten in Böhmen und Mähren allgemein — eine weitere Zulassung nur in den seltensten Fällen gewährt wird — die Verteidigung des Mischlings 1. Grades Alexander Kellner übernommen habe und bitte um die Genehmigung hiezu.

Heil Hitler!

einschreiben.

Genehmigung zur Vertretung des Obengenannten in seiner Strafsache vor dem Sondergericht Prag wird erteilt.

Heil Hitler!
Der Gaustabsamtsleiter:
(Rothe)
Bereichsleiter.

4 11 / 44

38

ehrmacht versagt.

41

gemeldet und wurde

genommen.

frage seiner Ab-

37

in der Wehrmacht

es für ihn von

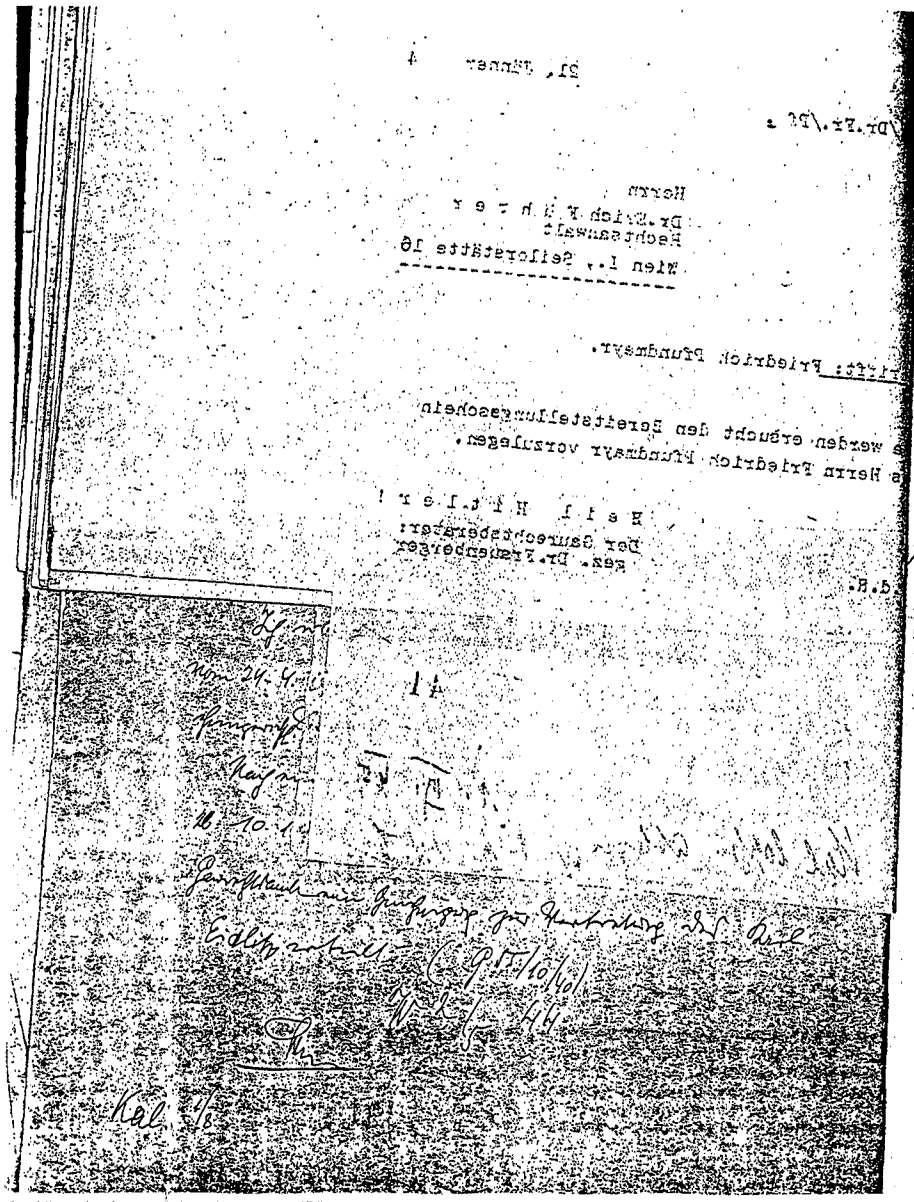
ehestens einzuleiten

und zu Ende zu führen.

Abschliessend möchte ich noch erwähnen, dass Herr Prunmayr eine am 19. September 1931 geborene Tochter namens Eleonore hat, bei der nach Abschluss ihres Schulbesuches oder einer allfälligen Berufswahl die Abstammungsfrage ebenfalls von ausschlaggebender Bedeutung ist.

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Rechtsanwalt
Dr. Erich Führer
Rechtsanwalt für Steuerrecht
Wien, I., Seilerstätte 16
Fernruf R 27-1-50, R 27-1-51
Scheck-Konto Wien 125.306

Mitglied des NSKB

Dr. H/D

NSDAP. Gauleitung Wien
Der Gaurechtsberater

Wien, 9. Januar
Mitgl. No.
Eingel. 12. Jan.

An das

Gaurechtsamt

Wien, I.,
Joseph Bürckelring 3.

Recht/Dr.Fr./Pf.

Betr.: Friedrich Pfundmayr.

Unter Hinweis auf mein Ansuchen um Vertretungsgenehmigung für Herrn Friedrich Pfundmayr in Wien, I., Goldschmiedgasse 8, welches mit Bescheid vom 22. November 1944 abgelehnt wurde, erlaube ich mir nochmals folgendes mitzuteilen:

Herr Pfundmayr erhielt anfangs Dezember 1944 einen Bereitstellungsschein für die Wehrmacht, welchem jedoch bis heute keine Einberufung gefolgt ist. Herr Pfundmayr war nämlich bei der letzten Musterung noch nicht im Besitz des Bescheides des Reichssippenamtes und wurde kv. befunden. Als Mischling jedoch ist ihm der Dienst in der Wehrmacht versagt. Herr Pfundmayr hat sich weiter zum Volkssturm gemeldet und wurde auf Grund seiner Militärpapiere ohneweiters angenommen.

So lange jedoch die Frage seiner Abstammung nicht geklärt ist, ist ihm der Dienst in der Wehrmacht verschlossen und aus diesem Grunde allein wäre es für ihn von grösster Bedeutung, seinen Abstammungsprozess ehestens einzuleiten und zu Ende zu führen.

Abschliessend möchte ich noch erwähnen, dass Herr Pfundmayr eine am 19. September 1931 geborene Tochter namens Eleonore hat, bei der nach Abschluss ihres Schulbesuches oder einer allfälligen Berufswahl die Abstammungsfrage ebenfalls von ausschlaggebender Bedeutung ist.

42

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Ich bitte daher nochmals, mir die Genehmig

zur Einbringung der Abstammungsklage für Herrn Friedrich Pfund

zu erteilen.

Heil Hitler !

einschreiben.

22. November 44

Dr.Fr./Pf.

Herrn
Dr. Erich F ü h r e r
Rechtsanwalt
W i e n I., Seilerstätte 16

Betrifft: Friedrich Pfundmayr.

Genehmigung zur Vertretung des Obengenannten in seiner Abstammungssache wird nicht erteilt.

Heil H i t l e r !

Der Gaustabsamtsleiter:
(Rothe)
Bereichsleiter.

Gaurechtsamt

Wien I., Schubertring 3.

Pfundmayr, Adolf Friedrich, Wien I., Schubertring 8, ist mit

Friedrich Pfundmayr ist am 19.9.1895

Ihrer schriftlichen Vernehmung vor dem Vormundschaftsgericht

Aus dem Vormundschaftsakte und dem darin erliegenden Notariats-

vor, dass Dr.Kolischer, um die Unannehmlich-

keiten eines Anerkennungsstreites auf Anerkennung der Vaterschaft

zu vermeiden, sich freiwillig zur Leistung eines Unterhalts-

beitrages für den Obenerwähnten verpflichtete. Seine Vaterschaft

jedoch hat er weder gerichtlich noch außergerichtlich anerkannt.

Die Mutter seines Mandanten hat nun die

eidesstattliche Versicherung abgegeben, dass Dr.Kolischer

nicht der Vater ihres Kindes sei, da sie diesen erst

anlässlich einer ärztlichen Konsultation im 3.Schwangerschafts-

monat kennen gelernt hat, was auch von ihrer Schwester bestätigt

wird. Der Vater ihres Kindes sei vielmehr ein deutschblütiger

Jockei gewesen, den sie jedoch deswegen nicht als Vater an-

gegeben habe, weil die Lebensumstände des Dr.Kolischer weitaus

besser waren und sie daher eine grössere Sicherheit für die

Leistung der Alimente für ihr Kind darin erblickte, wenn sie

44

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zur Einbringung

zu erteilen.

einschreiben.

Erich Hajtel
Gauberater
L. Seilerstätte 16
R 27-1-50, R 27-1-51
Konto Wien 125.306

Dr. H/D

NSDAP Wien, 21. November 1944
Der Gauschatzmeister
Wien

An das
Eingel. 22. NOV. 1944

Gaurechtsamt
Wien, I.,
Joseph Bürckelring 3.

Betr.: Friedrich Pfundmayr.

Herr Friedrich Pfundmayr, Antiquitätenhändler in Wien, I., Goldschmiedgasse 8, ist mit folgender Bitte an mich herangetreten:

Herr Friedrich Pfundmayr ist am 19.9.1895 als uneheliches Kind der Friederike Pfundmayr geboren. Bei ihrer seinerzeitigen Vernehmung vor dem Vormundschaftsgericht hat die Kindesmutter damals als ausserehelichen Vater ihres Kindes den jüdischen Arzt Dr. Gustav Kolischer bezeichnet. Aus dem Vormundschaftsakte und dem darin erliegenden Notariatsakt geht nun hervor, dass Dr. Kolischer, um die Unannehmlichkeiten eines Rechtsstreites auf Anerkennung der Vaterschaft zu vermeiden, sich freiwillig zur Leistung eines Unterhaltsbeitrages für den Minderjährigen verpflichtete. Seine Vaterschaft jedoch hat er weder gerichtlich noch aussergerichtlich anerkannt.

Die Mutter meines Mandanten hat nun die eidesstattliche Versicherung abgegeben, dass Dr. Kolischer nicht der Vater ihres Kindes gewesen sei, da sie diesen erst anlässlich einer ärztlichen Konsultation im 3. Schwangerschaftsmonat kennen gelernt hat, was auch von ihrer Schwester bestätigt wird. Der Vater ihres Kindes sei vielmehr ein deutschblütiger Jockei gewesen xxx, den sie jedoch deswegen nicht als Vater angegeben habe, weil die Lebensumstände des Dr. Kolischer weitaus besser waren und sie daher eine grössere Sicherheit für die Leistung der Alimente für ihr Kind darin erblickte, wenn sie

44

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ihn als Vater bezeichnete.

Trotz dieses Sachverhaltes hat nun das Re[ichs]
sippenamt ,ohne irgendwelche Beweise durchzuführen, meinem
Mandanten einen Abstammungsbescheid ausgestellt, wonach di[e]
jüdischer Mischling ersten Grades sei.

Herr Pfundmayr will jedoch diese Angelegenhei[t]
nicht auf sich beruhen lassen und hat mich nunmehr beauftr[agt]
die Klage auf Feststellung der Vaterschaft einzubringen.

Ich bitte nunmehr um die Genehmigung zur Ein-
bringung dieser Klage,wozu ich noch bemerke, dass Herr Pfund
mayr als Händler bei Versteigerungen zugelassen ist und
Versteigerungen vom Reichswirtschaftsministerium im Einver-
nehmen mit der Fachgruppe Versteigerer zur Abdämmung des
schwarzen Marktes für kriegswichtig erklärt worden sind.

Heil Hitler!

einschreiben

10.815

Rechtsanwalt
Dr. Erich Führer
Rechtsanwalt
Wien I., Seilerstätte 16
Fernruf R 21-0-30

Dr. F/D

Wien, 12. Dezember 1943

Rechtsvertretung des Heinrich LEZCNICKI
geb. 30.4.1904

An den
Gaurechtsberater der NSDAP
Herrn Senatspräsident Dr. Freudberger
Wien, I./I.
Joseph-Bürckel-Ring 3
Gauhaus.

An
Herrn Dr. Erich FÜHRER
Rechtsanwalt in
Wien 1., Seilerstätte 16

Die Genehmigung zur Vertretung des Obengenannten in einem Verfahren vor dem Volksgerichtshof wird erteilt.

H e i l H i t l e r !
Der Gauamtsleiter.

Ich wurde gebeten, als Vertretung des Heinrich Lezonicki, geboren 30.4.1904 in Cizhenau, jetzt Wartegau, in [illegible] Verfahren vor dem Volksgerichtshof zu übernehmen.

Bereichsleiter.

Unter Hinweis darauf, dass ich als ständiger Verteidiger vor dem Volksgerichtshof in die Liste eingetragen bin, bitte ich um die Genehmigung dieser Vertretung.

Heil Hitler!

einschreiben

genehmigt!
Wien, 21/12 43

0030077

Rechtsanwalt
Erich Führer
Steuerberater
I, Gellertplatz 16
R 27-1-50, R 27-1-51
Postscheck-Konto 2Wien 125.306

Mitgl. d. NSRB.

NSDAP. Gauleitung W
Stabsamt - Der Gaurechtsbe
Eing. Nr. _____

Dr. F/D

Wien, 18. Dezember 1943.

An den

Gaurechtsberater der NSDAP
Herrn Senatspräsident Dr.Frauenberger

Wien,I/1
Joseph-Bürckel-Ring 3.
Gauhaus.

Betr.: Lezonicki.

Hochverehrter Senatspräsident !

Ich wurde gebeten, die Vertretung des Heinrich Lezonicki,geboren 30.4.1904 in Ciezhensau , jetzt Warthegau, in einem Verfahren vor dem Volksgerichtshof zu übernehmen.

Unter Hinweis darauf, dass ich als ständiger Verteidiger vor dem Volksgerichtshof in die Liste eingetragen bin, bitte ich um die Genehmigung dieser Vertretung .

Heil Hitler !

einschreiben

einschreiben

V. genehmigt.
V 21/12 43.

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Nationalsozialistische Deutsche Arbeiterpartei

Gauleitung Wien

Wien, den 16.12 1943

4, Parlament / Fernsprecher A 50-5-60

Ihr Zeichen:

Mein Zeichen: M. I.

Betrifft:

Aus dem Nachlaß der Carla Gisela Goldschmidt, richtig Carola Maria Josefa Goldschmidt, verstorben [illegible] Erich Führer Wien I. Bräunerstraße Nr. 6, (26 Cg 242/42 des Landgerichtes Wien) gegen den Erben der zur Verhandlung der klagsweisen Abstammung (RAD-Protektorat) wird Folgendes:

Die Klage wurde am 8. 10. 1942 angebracht; es wird darin behauptet, daß die Carla Goldschmidt die Mutter sei, jedoch mit unrichtigem Vornamen August Sara. Tatsächlich wird, daß ihr Großmutter der Carl Goldschmidt jüdischer Abstammung sei.

Am 8.11.1943 hat der Erich Führer von der gerichtlichen Ermächtigung zur Prozeßführung Gebrauch gemacht. Am 6.11.1943 wurde das Urteil des Landgerichtes Wien zu 26 Cg 242/42 dahingehend gefällt, daß die Klägerin klagsweise nicht von Carl Goldschmidt abstammt.

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Stabsamt - Der Gaurechtsberater

Einl. Nr. [illegible] 5 Fr.

Wien, 4. Feber 1944

Rechtsanwalt
Erich Führer
Anwalt für Steuerrecht
Wien, I., Seilerstätte 16
Tel. R 27-1-50, R 27-1-51
Post-Konto Wien 126.808
Dr.H/Sch

Mitglied des NSKK

An das

Gaurechtsamt,

Wien, I.,
Josef Bürckelring 3

Dr.Hans von Minkus, Wien, VIII., Lenaug.10, hat mich beauftragt, gegen die Verlassenschaft nach Eugen von Minkus zuhanden eines zu bestellenden Kurators die Klage auf Ausserkraftsetzung des Vaterschaftsanerkenntnisses einzubringen.

Aus den Abstammungsformalitäten des Dr.von Minkus ist nicht mit Sicherheit zu entnehmen, ob er Arier oder Mischling II. Grades ist. Vorsichtshalber suche ich daher um die Genehmigung zu der Prozessführung an.

Heil Hitler !

Einschreiben !

49

1926/1927 Aeltester der gesamten grossdeutschen Studentenschaft des Deutschen Reiches und Oesterreich.

1927/1933 weitere Tätigkeit in der gesamten deutschen Burschenschaft.

15.Juli 1932 Eintritt in die Partei.

Feber 1933, selbständiger Rechtsanwalt

Pfingsten 1933 beim Uebergang zum Führergrundsatz, Bundesführer der ostmärkischen Burschenschaft, der ich bis zu ihrer Auflösung im Frühjahr 1938 geblieben bin. Bedingungsloser Einsatz dieser grössten Akademikergruppe für den nationalen Gedanken.

Vom Beginn der Verfolgung der nationalsozialistischen Bewegung in Oesterreich im Jahre 1933 fortgesetzte kostenlose Verteidigertätigkeit.

Frühjahr 1934 Eintritt in die SS, in der ich am 20.4.1935 zum Obersturmführer ernannt wurde.

48

1934 in zahlreichen Sprengstoffprozessen gegen Nationalsoziali-

003080

U.S. Angeschlossen dem GA am: 23. Sep. 1947

Erich F ü h r e r, geboren am 5.April 1900 zu Wien.

Hilfsschule, Gymnasium, Hochschule.

Betätigung als nationaler Schüler-

1918/1919 erste politische

Mitglied der Burschenschaft

1920/1925 auf der Universität - Mitglied der österreichischen und

Sudeta, Tätigkeit in der gesamten österreichischen und

Verfassung des in der öster-

reichischen Burschenschaft. Verfassung des in der öster-

reichsdeutschen Burschenschaft seit Jahrzehnten bereits eingenom-

reichischen Burschenschaft und grossdeutschen Grundsatzes.

men antisemitischen und grossdeutschen deutschen Studentenschaft

1923- 1924 Vorsitzer der gesamten deutschen Studentenschaft

an der Universität Wien.

1925/1926 Vorsitzer der gesamten deutschen Studien, Doktorat.

1925/1926 Vorsitzer der juristischen Studien, Doktorat.

Oesterreichs Abschluss der grossdeutschen Studentenschaft

des Deutschen Reiches und Oesterreich.

1926/1927 Aeltester der gesamten deutschen Burschen-

1927/1933 weitere Tätigkeit in der gesamten deutschen

schaft.

15.Juli 1932 Eintritt in die Partei.

Feber 1933, selbständiger Rechtsanwalt

Pfingsten 1933 beim Uebergang zum Führergrundsatz, Bundesführer

der ostmärkischen Burschenschaft, der ich bis zu ihrer Auflösung

im Frühjahr 1938 geblieben bin. Bedingungsloser Einsatz dieser

grössten Akademikergruppe für den nationalen Gedanken.

Vom Beginn der Verfolgung der nationalsozialisti-

schen Bewegung in Oesterreich im Jahre 1933 fortgesetzte kosten-

lose Verteidigertätigkeit.

Wien, am 20.4.1935

003081

Angeschlossen dem GA
am: 23. Sep. 1947
R.

Erich F ü h r e r, geboren am 5.April 1900 zu Wien.

Volksschule,Gymnasium,Hochschule.

1918/1919 erste politische Betätigung als nationaler Schülerrat meines Gymnasiums.

1920/1925 auf der Universität - Mitglied der Burschenschaft Bruna-Sudetia,Tätigkeit in der gesamten österreichischen und reichsdeutschen Burschenschaft. Verfechtung des in der österreichischen Burschenschaft seit Jahrzehnten bereits eingenommenen antisemitischen und grossdeutschen Grundsatzes.

1923- 1924 Vorsitzer der gesamten deutschen Studentenschaft der Universität Wien.

1925/1926 Vorsitzer der gesamten deutschen Studentenschaft Oesterreichs.Abschluss der juristischen Studien,Doktorat.

1926/1927 Aeltester der gesamten grossdeutschen Studentenschaft des Deutschen Reiches und Oesterreich.

1927/1933 weitere Tätigkeit in der gesamten deutschen Burschenschaft.

15.Juli 1932 Eintritt in die Partei.

Feber 1933, selbständiger Rechtsanwalt

Pfingsten 1933 beim Uebergang zum Führergrundsatz,Bundesführer der ostmärkischen Burschenschaft,der ich bis zu ihrer Auflösung im Frühjahr 1938 geblieben bin.Bedingungsloser Einsatz dieser grössten Akademikergruppe für den nationalen Gedanken.

Vom Beginn der Verfolgung der nationalsozialistischen Bewegung in Oesterreich im Jahre 1933 fortgesetzte kostenlose Verteidigertätigkeit.

Frühjahr 1934 Eintritt in die SS,in der ich am 20.4.1935 zum Obersturmführer ernannt wurde.

003082

sten vor Stand-und Schwurgerichten verteidigt.

Juli 1934 Verteidigung Planettas und Holzwebers vor dem Militär-gerichtshof. Wegen der Verteidigungsrede, die im Buch Winklers "Diktatur in Oesterreich" abgedruckt ist, verhaftet und zu 6 Monaten Wöllersdorf verurteilt. Dortselbst schwer erkrankt (Nierenentzündung) Spitalsaufenthalt, Ende November 1934 entlassen.

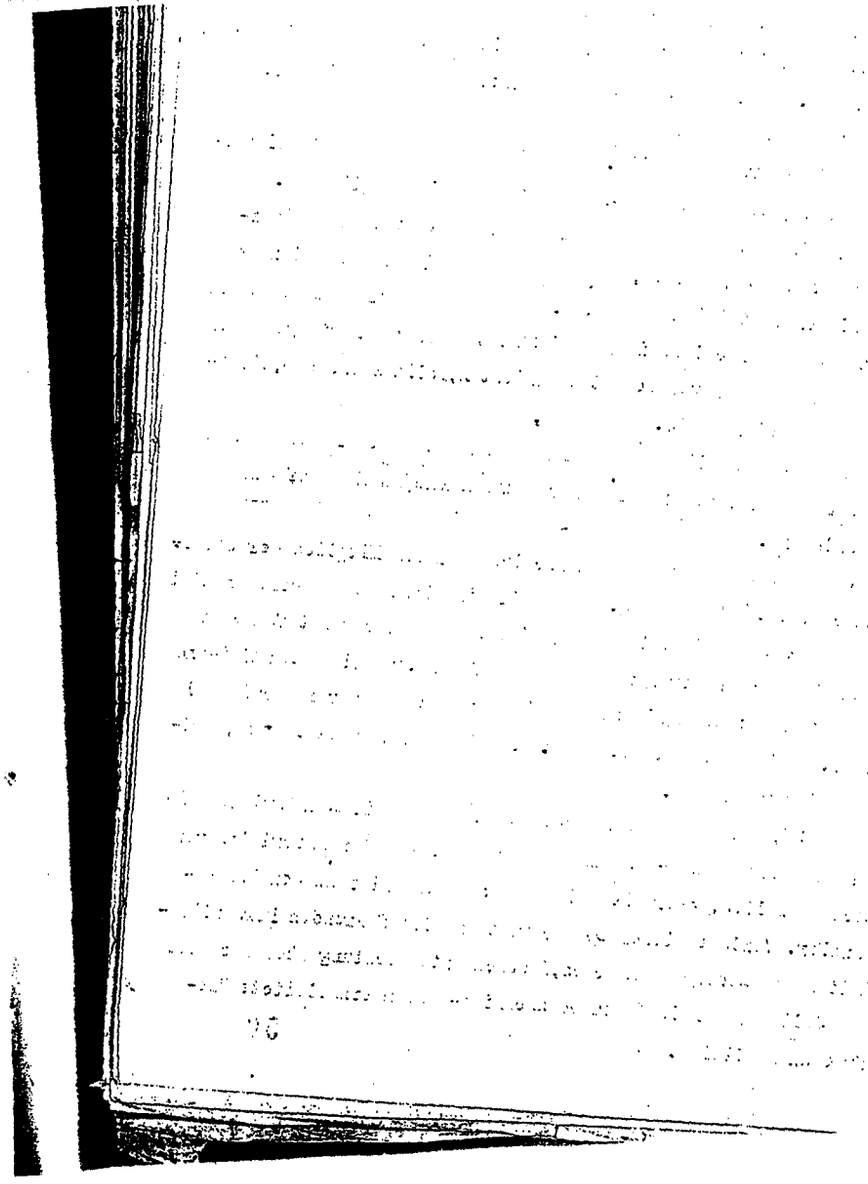
Vom Jahre 1935 an übernahm ich die Leitung des illegalen Juristenbundes in Oesterreich, dem insbesondere die Organisation der kostenlosen Verteidigungen oblag. Ich habe seit meiner Freilassung bis zum Zusammenschluss im März 1938 hunderte von Parteigenossen ohne jedes Honorar vor den Strafgerichten, Polizeibehörden, Disziplinarkommissionen etc. verteidigt,

August 1935 persönliche Berichterstattung über den Prozess gegen Planetta und Holzweber beim Führer und Reichskanzler auf dem Obersalzberg.

Vom Jahre 1936 bis zum Zusammenschluss war ich Mitglied der österreichischen Landesleitung. Ich stellte in dieser Zeit meine Kanzlei über meine Verteidigertätigkeit hinaus uneingeschränkt führenden Persönlichkeiten der Bewegung zur Verfügung. In meinen Kanzlei-und Wohnräumen fanden zahllose wichtige Besprechungen von der Partei statt. Daneben ausgedehnte sonstige Tätigkeit für die Partei, Post- und Geldverkehr etc.

Ende 1936, Herausgabe einer Denkschrift über die Rechtswidrigkeiten des Schuschnigg-Systems auf Grund gesammelten Materiales von Rechtsanwälten, Uebergabe mit einem offenen Brief an den Bundeskanzler. Vorlage dieser Denkschrift an alle führenden Persönlichkeiten des Deutschen Reiches, dadurch Unterrichtung über die seit dem Juliabkommen 1936 vom Schuschnigg-System eingeleitete "Befriedungspolitik".

003083



Juli 1937 neuerliche Denkschrift in erweitertem Umfang von mir unter vollem Namen herausgegeben und Dr.Schuschnigg zugestellt. Beide Denkschriften wurden in hunderten von Exemplaren in Oesterreich und dem Deutschen Reich verbreitet und boten der Reichsregierung wichtige Grundlagen zur Kennzeichnung der wahren österreichischen Politik.

September 1937 Ehrengast des Führers und Reichskanzlers am Reichsparteitag.

1936/1937 umfangreiche Tätigkeit für die parteiamtliche Prüfungskommission.Ständige Verbindung mit Pg.Hederich.

In den Tagen des Zusammenschlusses Dienst in der Staatspolizei.

Seit September 1938 erster Vizepräsident der Wiener Rechtsanwaltskammer.

003084

ERLANDESGERICHTSPRÄSIDENT

3170 a I - 1 . 17

Prag III., den 18. August 1943
Deutsches Oberlandesgericht
Kramarsch-Ufer 4
Fernruf 649-41, 778-41
Nebenanschluß: 3921-29

Gauleitung Wien, Gaupersonalamt

i e n I/4,

-Bürckel-Ring 3, Gauhaus.

Betrifft: RA.Dr.Erich Führer in Wien I.
Riemergasse 8.
Auf das Schreiben vom 19.4.43
PB.lo.815/Hei/M.

Den Rechtsanwalt Dr. Erich F ü h r e r in Wien, Riemergasse 8, habe ich durch Verfügung vom 7.6.1943 widerruflich als Verteidiger vor den Deutschen Gerichten im Protektorat Böhmen und Mähren zugelassen.

Wie mir nunmehr von anderer Seite vertraulich mitgeteilt worden ist, soll Dr. Führer bei seiner Berufsausübung mehrfach gegen seine Berufspflichten verstossen, u.a. in mehreren Fällen die Verteidigung von Juden ohne Genehmigung der Partei übernommen haben, sodass zur Zeit gegen ihn ein Parteigerichtsverfahren eingeleitet worden sei.

Ich

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notwendig die einzelnen Mitglieder dieses Klubs zu überprüfen.
Ich bitte daher bezüglich des Obengenannten um folgende Feststellung:

1.) Seit wann ist Genannter im nationalsozialistischen Sinne tätig ?
2.) Wo hat sich derselbe früher politisch betätigt ?
3.) Seit wann Mitglied der NSDAP. ?
4.) Welche Freiheitsstrafen hat Obengenannter erhalten ?

Da nun das Ergebnis der Überprüfung für die Kanzlei des Führers bestimmt ist, bitte ich, bei diesen Ermittlungen besondere Sorgfalt an den Tag zu legen, insbesonders lege ich Wert darauf, daß dieselben wirklich streng vertraulich durchgeführt werden. Das Schreiben ist mir urschriftlich mit Bericht zurückzusenden.

Heil H i t l e r !

(Kamba)
Gauhauptstellenleiter.

003085

Ich bitte mir mitzuteilen, ob diese Beschuldig
treffen, da ich zu prüfen habe, ob nicht die allge
lassung zu widerrufen ist.

Heil Hitler !

I.A.:

gez. Dr. R o n k e

Beglaubi

Krassi

Justizangest

Deutsches Oberlandesgericht Wien

33152

GAUPERSONALAMT WIEN

Nationalsozialistische Deutsche Arbeiterpartei

Gauleitung Wien

OL. Personalamt

Eingelangt: 15. März 1940

Erledigt:

Gaupersonalamt
Polit.Beurteilung.
sp.

An die
NSDAP
Kreisleitung I
z.H.d.Kreispersonalamtsleiters
W i e n , I.,
Dorotheerg. 9.

Betrifft:
F ü h r e r Dr. Erich,
geb. 5.4.1900 in Wien,
Rechtsanwalt,
I., Riemerg. 8 (I., Seilerstätte.).

Wien I, den 8.3. 19 40.
I., Am Hof 4 / Fernruf A-23-5-90

Ihr Zeichen:
Unser Zeichen: Z.b.V. 12120o
und 10815

Obengenannter war Mitglied des deutschen Klubs, welcher bekanntlich über Veranlassung des Gauleiters seine Tätigkeit einstellen mußte. Dagegen hat der deutsche Klub beim Führer Einspruch erhoben. Da nun die Mitglieder des deutschen Klubs behaupten sie hätten in der illegalen Zeit polizeiliche Schikanen, wie Verhaftungen, berufliche Schäden und dergleichen mehr erlitten, ist es notwendig die einzelnen Mitglieder dieses Klubs zu überprüfen. Ich bitte daher bezüglich des Obengenannten um folgende Feststellung:

1.) Seit wann ist Genannter im nationalsozialistischen Sinne tätig ?
2.) Wo hat sich derselbe früher politisch betätigt ?
3.) Seit wann Mitglied der NSDAP. ?
4.) Welche Freiheitsstrafen hat Obengenannter erhalten ?

Da nun das Ergebnis der Überprüfung für die Kanzlei des Führers bestimmt ist, bitte ich, bei diesen Ermittlungen besondere Sorgfalt an den Tag zu legen, insbesonders lege ich Wert darauf, daß dieselben wirklich streng vertraulich durchgeführt werden. Das Schreiben ist mir urschriftlich mit Bericht zurückzusenden.

Heil H i t l e r !

(Kamba)
Gauhauptstellenleiter.

GAUPERSONALAMT WIEN

eingelangt am: 7. [illegible]
Ihr Zeichen:
eingelangt von:

Ortsgruppe STUMPERGASSE
Stamm

Der Angefragte darf befragt werden über:

Dr. Führer Erich Anschrift: I.; Rieberg. 8
I., Zedlitzg. 7 neue Anschrift: III.; Strohg. 45
frühere Anschrift: 5.4.1900. Geburtsort: Wien
Mitgliedszeit: RA ausgeübter Beruf: Rä
Früherer Beruf: verh. Kinder: 1 Hj EDK:
Familienstand: röm. kath.
Religion: früher:
Wohnt er im Ortsgruppenbereich?
Wenn wohnt er im Ortsgruppenbereich, wie lange, Verwundungen, Auszeichnungen:
Frontkämpfer, wie lange, nein

Beruf: Bundesbeer, Zeit-Dauer, Charge:
Pg.A.seit:
Pg. seit: 1933 Verdienste in der NSDAP:
1,205,383
Mitgliedsnummer: 111 Gauen Landesleitung, Leiter der Illegalen ETB
Mitglied der 111 Gauen Landesleitung, SS Haupt Sturmf.
Mitglied der Illegalen Orts-, Planetten und Landerbez. Nat. Standarte 89
Verteidigen Otto
Verteidigen

Aktive Mitarbeit (von-bis)
Aktive Mitarbeit wie D.A.P., N.S.V., SA, SS, etc

Mitglied einer Gliederung wie D.A.P., N.S.V., SA, SS, etc
NSV seit 1938. SS seit 1934 Mg. Nr. 309063

seit wann:

Wenn nicht bei der NSV warum?

Wenn nicht bei der NSV warum

54

003086

Ist nur vom Blockleiter auszufüll

Der Angefragte darf nicht befragt werden über:

Eheliche Verhältnisse:

Persönliches Auftreten: sehr gut NS

Charakter und Einstellung: gut

Zugehörigkeit zu früheren Parteien (VF, Logen, Vereinen, Verbänden, Gewerkschaften): guter Leumund

bei keiner der früheren Parteien.

War er schon vor dem Umbruch für die NSDAP? Rechtsanwaltkammer

War er nach dem Umbruch gegen die NSDAP? ja

Beteiligung am öffentlichen Leben? nein

Gebefreudig bei NSV-Sammlungen (Pfundspenden)? ja

Welche Zeitungen liest er derzeit? ja

Welche Zeitungen las er vor dem Umbruch? VB

Kauft er bei Juden? VB

Ist er einer staatlichen Unterstützung würdig? Hat er Sympathie für Juden? nein

Wie sind die Familienangehörigen eingestellt? ja

Wie ist sein soziales Verhalten? national

Allgemeine Bemerkungen des Zellen-(Block) leiters:

Dr. Führer hatte durch seine Illegale Betätigung eine 6 monatige Kerkerstrafe zu verbüssen. Wurde aber nach 4 Monaten [illegible] entlassen.

Datum: 26. Juni 1940. Unterschrift: Der Personalamtsleiter

Nationalsozialistische Deutsche Arbeiterpartei
Gauleitung Wien

Personalamt/z

Ihr Zeichen: Ihr Zeichen:

An den
Pg. Dr. Erich F ü h r e r ,
W i e n I.,
Seilerstätte Nr.8.

Wien, den 9. Dezember 19 38.
I, Am Hof 4 / Fernsprecher A 23-5-90, U 21-5-30

Ich beauftrage Sie mit sofortiger Wirksamkeit mit der kommissarischen Leitung der Dienststelle: Rechtsamt der Kreisleitung V des Gaues Wien .

Heil Hitler!

Gauleiter.

003088

Gauleitung Wien
Personalamt
Hauptstelle Politische Beurteilung
Wien 1,
Gauhaus

An die
NSDAP. Gauleitung
Personalamt bzw.
An die Kreisleitung
Ortsgruppe

133152

Z./6957/42 Tr./Br. Pol. 1531 k

Vertraulich! Termin: 3.3.

GRA. Dr. H/G

Politische Beurteilung erbeten für:

Name: Dr. F u h r e r

Vorname: Erich

Geburtsdatum: 5.4.1900

Geburtsort: Wien

Beruf: Rechtsanwalt

Wo beschäftigt: selbst.Kzl.Wien I.Seilerstätte 16

Wohnort: W i e n I.,

Straße: Riemergasse 8 - neue Anschrift: III.Strohg.45

Wohnungen von 1932 bis jetzt: Wien I., Seilerstätte 16

Genauer Antrag(st): Gau Wien, Stubenviertel

Ortsgruppe

20. FEB. 1942

Personalamt I

OL Pers...

Heil Hitler!

Eing. 19. FEB. 1942

Gebucht

Stellvertreter

Religionsbekenntnis: gottgl. früher: r.k.

Staatsangehörigkeit: D.R. früher: Ö.B.B.

Ehe (verheiratet, ledig, verwittwet, geschieden): verh. Kinder: 1

Mitglied der NSDAP. seit: Ja, seit 1933 1.7.33

Mitgliedsnummer: 1,205.383

Politischer Leiter: nein

Seit wann?

In welcher Parteidienststelle? ehrenamtlich? (ja, nein)

Strafen wegen Betätigung für die NSDAP.: 6 monatl.Kerkerstrafe in Wöllersdorf, aus welcher er krankheitshalber nach 4 Monaten entlassen wurde.

Mitglied von Gliederungen, welcher? (seit?): SS seit 1934/Mgl.Nr.309063, (SS-Hauptsturmführer (Standarte 89.

Mitglied angeschlossener Verbände (seit?): NSV seit 1938, R.W.B.

Politische Verbände und nationale Vereinigungen:

Militärdienstverhältnis (Kriegsdienst, Kriegsbeschädigter %, Bundesheer, Auszeichnungen usw.) keines.

Welchen gegnerischen Verbänden und Vereinen angehört (V. F., C. V., Heimwehr, Sturmscharen, Wiener Heimatschutz, Starhemberggruppe, Front-Miliz, Sturmkorps, Republikanischer Schutzbund usw.)? keinen

Funktionen bei denselben: keine

Freimaurerlogen und dergleichen, Logengrad: nein

Wohnanschriften seit 1932:

Eingelangt 24. MRZ 1942

56

Dieses Formblatt wird in dreifacher Ausführung ausgesandt und verbleibt je ein Blatt ausgefertigt im

[redacted]

Verhalten in der Verbotszeit: Der Angefragte war Mitglied der illegalen Landesl
d.NSDAP. sowie Leiter des illegalen Rechtswahrerbundes, Verteidiger
Planetta's und hunderter Nationalsozialisten.

Gegenwärtiges Verhalten: Steht nach wie vor restlos zur Partei und Bewegung.

Spendenbeteiligung: gebefreudig.

Wirtschaftliche Lage: geordnet.

Charakter: aufrecht.

Leumund: gut.

Gutachten des Ortsgruppenleiters:

Dr.Führer ist heute ebenso überzeugter Nationalsozi
wie er das früher war.

Der Ortsgruppenleiter
V.i.A.

Heil Hitler !
F.d.R.
Der Pers.Amtsl.:
V.i.A. Trimbacher

Wien, den 17.Mrz. 1942

Stellungnahme der Kreisleitung:

Wien, den _____ 194_

NATIONALSOZIALISTISCHE DEUTSCHE ARBEITERPARTEI

Gauleitung Wien
Personalamt
Pers./02299/Tr./Br. Hauptstelle für politische Beurteilung

lo 815/Dr.Hi/Zch. Vertraulich! Termin: 24. September 1943

Wien, den 24. August 1943

die
ilsleitung
eisleitung I
tsgruppe

Eingegangen
4. NOV. 1943

Ich ersuche um Auskunft und Ausfertigung sowie Ergänzung des Fragebogens zur politischen Beurteilung über:

Name: [redacted] Vorname: Erich

Geburtsdatum: ? - 5.4.1900 Geburtsort: Wien

Beruf: Rechtsanwalt - selbständig Wo beschäftigt: Kanzlei Wien I/1, Seilerstätte 16.

Wohnort: ~~Wien I., Riemergasse 8,~~ Straße: hinsichtl.dzt.Wohnort siehe Gutachten !

Zweck der Anfrage: ~~Politische Überprüfung~~ (Parteigerichtsverfahren)

Heil Hitler!

25 AUG 1943

(Dr. Hirt)
Gauhauptstellenleiter

Es wird ersucht, Fehlendes unbedingt zu ergänzen!

Glaubensbekenntnis: gttgl. früher: r.k. Staatsangehörigkeit: DR. früher: ÖBB.

Stand (verheiratet, ledig, verwitwet, geschieden): verh. Kinder: 1

Mitglied der NSDAP. seit: 1933 Mitgliedsnummer: 1,205.383.

Politischer Leiter: nein Seit wann: ehrenamtlich? (ja, nein)

Bei welcher Parteidienststelle? Strafen wegen Betätigung für die NSDAP.: 6monatl.Kerkerstrafe in Wöllersdf., aus der nach 4 Monaten krankheitshalb.entlassen wurde.

Mitglied von Gliederungen, welcher? (seit?): SS seit 1934/Mtgl.Nr.309063 SS-Haupt-sturmführer/Standarte 89.

Mitglied angeschlossener Verbände (seit?): NSV. seit 1938, NSRWB.

Völkische Verbände und nationale Vereinigungen: nein

Militärdienstverhältnis (Kriegsdienst, Kriegsbeschädigte: %, Bundesheer, Auszeichnungen usw.) keines

Welchen gegnerischen Verbänden und Vereinen angehört (V. F., C. V., Heimwehr, Sturmscharen, Wiener Heimatschutz, Starhemberggruppe, Front-Miliz, Sturmkorps, Republikanischer Schutzbund usw.)? keinen

Funktionen bei denselben:

Freimaurerlogen und dergleichen, Logengrad: nein

Wohnanschriften seit 1932: Wohnung u.Kanzlei Wien I/1, Riemergasse 8, 1939 Übersiedlung, dzt.Kanzleianschrift Wien I., Seilerstätte 16, bezgl.jetziger Wohnanschrift siehe Gutachten.

Dieses Formblatt wird in dreifacher Ausführung ausgesandt und verbleibt je ein Blatt ausgefertigt im ... Gaupersonalamt, Kreispersonalamt und in der Ortsgruppe.

5.7

003090

Verhalten in der Verbotszeit: Angefragter war Mitglied der illegalen Land
d.NSDAP. sowie Leiter des illegalen Rechtswahrerbundes, Vertei
Otto Planetta's und hunderter Nationalsozialisten.
Gegenwärtiges Verhalten: Steht nach wie vor restlos zur Partei u.Bewe

Spendenbeteiligung: gebefreudig

NSV-Mitglied seit: 1938

Wirtschaftliche Lage: geordnet

Charakter: aufrecht.

Leumund: gut.

Gutachten des Ortsgruppenleiters:

Pg.Dr.Führer ist heute ebenso überzeugter Nationalsozialis
er es früher war.

Soweit die Angaben einer früheren, von der hiesigen Ogru.
17.3.42 erledigten Erhebung, welchen ich folgendes hinzufüge:
Meine Rücksprache mit dem zuständigen Zellen-u.Blockleiter
dem Ziele, die Ausführungen vorstehender Erhebung zu überprüfen und
heres über das dzt.Verhalten des Angefragten zu erfahren, ergab,
1.) dass Dr.Führer I., Riemergasse 8, seit 1939 nicht mehr wohnt
dern aus dem Ogru.-Bereich verzogen ist, und zum gleichen Zeitpunkt
Kanzlei von der genannten Adresse nach Wien I., Seilerstätte 16, ve
hat,
2.) dass das Inkasso der NSDAP.-Mitgliedsbeiträge des Dr.Führer
seinen, szt.geäusserten, ausdrücklichen Wunsch nach wie vor vom Block
unserer Ogru. besorgt wird, (u.zwar an der Kanzleiadresse.),
3.) dass weder unser Zellen- noch unser Blockleiter Dr.Führer pe
lich kennen, zuletzt
4.) dass daher die Erhebung vom 17.3.42 nicht das Ergebnis pers
nehmungen ist, sondern deren Angaben grösstenteils aus Vorakten stam

Wien, den Zu Punkt 1.) 194 ist zu sagen, dass es dem Blockleiter bisher n
möglich war, die dzt.Wohnadresse des Angefragten festzustellen; er k
lediglich durch Anderweitige Erkundigungen ermitteln, dass der Genann
Wien III., Strohgasse 24 oder 45 wohnen soll. Trotz des Inkassos der
gliedsbeiträge (siehe Punkt 2.) kam bisher keine pers.Fühlungnahme
zwischen dem Polit.Leiter und Dr.Führer zustande. Der Blockleiter be
kommt Dr.F. überhaupt nicht zu Gesicht, der Mitgliedsbeitrag wird ihm
jeweils von der Kanzleileiterin ausgefolgt, welche selbst über den Wo
sitz ihres Betriebsführers keine Auskunft erteilt. Von letzterem kann
sich mein Personalamtsleiter überzeugen, der in diesem Zusammenhang di
Kanzlei telefonisch aufrief. Er erbat sich nach ordnungsgemässer Vor
stellung Dr.Führer zum Apparat, worauf ihm von der Kanzleileiterin ku
erklärt wurde, dass dieser nicht zu sprechen sei. Seine nunmehr an di
Büroleiterin gerichtete Frage nach der Wohnanschrift des Betriebsführ
wurde im brüsken Tone dahin beantwortet, dass derartige Auskünfte nich
erteilt werden. Hierauf erfolgte der Abbruch der Telefonverbindung von
seiten der Kanzleileiterin.

Aus Wahrnehmung und Umfrage ergänzte der Blockleiter seinen
Bericht dahingehend, dass Dr.Führer seit der Übersiedlung im Jahre 19
sowohl die Kanzlei als auch die Wohnung ziemlich gross au
Wien, den 194
Während Wien I., Riemerg.8, wo beides an ei

Fortsetzung zum Gutachten des Ogru.-Leiters zur Erhebung über Dr.Erich Führer.

sehr bescheidenem Rahmen gehalten war.

Aufgrund des Vorgesagten wäre eine Erhebung sowohl von der für die jetzige Büroadresse, als auch von der für die dzt.Wohnanschrift zuständigen Ogru. über Dr.Führer einzuholen.

MeinesErachtens würde es sich auch empfehlen, eine politische Überprüfung der Kanzleileiterin des Dr.Führer durchzuführen, deren Art und Weise, Auskünfte an Politische Leiter der NSDAP. zu erteilen, zumindest einen groben Mangel an nat.soz. Ausrichtung verrät.

H e i l H i t l e r !

Der Ortsgruppenleiter
m.d.W.d.G.b. Letz

Der Personalamtsleiter
m.d.W.d.G.b. Tymbacher

Wien, den 15.Okt.1943.

Als Richtigstellung hierzu wird bemerkt, dass der Blockleiter den Angefragten einmal auf 2 Minuten zu Gesicht bekam, jedoch dann wegen Arbeitsüberhäufung hinauskomplimentiert wurde.

Wien, den 1.Nov. 1943.
oI/Pers/KN/HN/33152

Wie aus dem Zwecke der Anfrage hervorgeht, ist gegen den Genannten ein Parteigerichtsverfahren anhängig. Ich bitte bei dieser Gelegenheit die Meldung der Ortsgruppe mit einzubeziehen und klarzustellen.-

Der Kreispersonalamtsleiter:

(Karl Neuhuber)
Hauptabschnittsleiter der NSDAP.

...sowie Leiter des illegalen Rechtswahrerbundes, Verteil...
Otto Planetta's und hunderter Nationalsozialisten.

Gegenwärtiges Verhalten: Steht nach wie vor restlos zur Partei u.Bew...

Spendenbeteiligung: gebefreudig.

NSV.Mitglied seit: 1938

Wirtschaftliche Lage: geordnet.

Charakter: aufrecht.

Leumund: gut.

Gutachten des Ortsgruppenleiters:

Pg.Dr.Führer ist heute ebenso überzeugter Nationalsozialis... er es früher war.

Soweit die Angaben einer früheren, von der hiesigen Ogru. ... 17.3.42 erledigten Erhebung, welchen ich folgendes hinzufüge: ... Meine Rücksprache mit dem zuständigen Zellen-u.Blockleiter ... dem Ziele, die Ausführungen vorstehender Erhebung zu überprüfen und ... heres über das dzt.Verhalten des Angefragten zu erfahren, ergab, ...

1.) dass Dr.Führer I.,Riemergasse 8, seit 1939 nicht mehr wohn... dern aus dem Ogru.-Bereich verzogen ist, und zum gleichen Zeitpunkt ... Kanzlei von der genannten Adresse nach Wien I., Seilerstätte 16, ve... hat,

2.) dass das Inkasso der NSDAP.-Mitgliedsbeiträge des Dr.Führer ... seinen,szt.geäusserten, ausdrücklichen Wunsch nach wie vor vom Block... unserer Ogru. besorgt wird,(u.zwar an der Kanzleiadresse),

3.) dass weder unser Zellen- noch unser Blockleiter Dr.Führer p... lich kennen; ~~ausser~~ ... ,

4.) dass daher die Erhebung vom 17.3.42 nicht das Ergebnis pers... nehmungen ist, sondern deren Angaben grösstenteils aus Vorakten stam...

Wien, den ... 194...

Zu Punkt 1.) ist zu sagen, dass es dem Blockleiter bisher ni... möglich war, die dzt.Wohnadresse des Angefragten festzustellen; er k... Stellungnahme der Ortsgruppe ... lediglich durch anderweitige Erkundigungen ermitteln, dass der Genann... Wien III., Strohgasse 24 oder 45 wohnen soll. Trotz des Inkassos der ... gliedsbeiträge (siehe Punkt 2.) kam bisher keine pers.Fühlungnahme ... zwischen dem Polit.Leiter und Dr.Führer zustande. Der Blockleiter be... kommt Dr.F. überhaupt nicht zu Gesicht, der Mitgliedsbeitrag wird ihm ... jeweils von der Kanzleileiterin ausgefolgt, welche selbst über den Wo... sitz ihres Betriebsführers keine Auskunft erteilt. Von letzterem konn... sich mein Personalamtsleiter überzeugen, der in diesem Zusammenhang di... Kanzlei telefonisch aufrief. Er erbat sich nach ordnungsgemässer Vor... stellung Dr.Führer zum Apparat, worauf ihm von der Kanzleileiterin ku... erklärt wurde, dass dieser nicht zu sprechen sei. Seine nunmehrige ... Büroleiterin gerichtete Frage nach der Wohnanschrift des Betriebsführe... wurde im brüsken Tone dahin beantwortet, dass derartige Auskünfte nich... erteilt werden. Hierauf erfolgte der Abbruch der Telefonverbindung von ... seiten der Kanzleileiterin.

Aus Wahrnehmung und Umfrage ergänzte der Blockleiter seinen ... Bericht dahingehend, dass Dr.Führer seit der Übersiedlung im Jahre 193... sowohl die Kanzlei als auch die Wohnung ziemlich gross aufgezogen hat, ... während Wien I., Riemerg.8, wo beides an einer Adresse befand, alles in...

siehe Fortsetzgsbl...

Fortsetzung zum Gutachten des Ogru.-Leaters zur Erhebung über Dr.Erich Führer.

sehr bescheidenem Rahmen gehalten war.

Aufgrund des Vorgesagten wäre eine Erhebung sowohl von der für die jetzige Büroadresse, als auch von der für die dzt.Wohnanschrift zuständigen Ogru. über Dr.Führer einzuholen.

MeinesErachtens würde es sich auch empfehlen, eine politische Überprüfung der Kanzleileiterin des Dr.Führer durchzuführen, deren Art und Weise, Auskünfte an Politische Leiter der NSDAP. zu erteilen, zumindest einen groben Mangel an nat.soz. Ausrichtung verrät.

Heil Hitler !

Der Ortsgruppenleiter
m.d.W.d.G.b. Letz

Nationalsoz. Deutsche Arbeiterpartei Ortsgruppenleitung Stubenviertel

Der Personalamtsleiter
m.d.W.d.G.b. Trimbacher

Wien, den 15.Okt.1943.

Als Richtigstellung hierzu wird bemerkt, dass der Blockleiter den Angefragten einmal auf 2 Minuten zu Gesicht bekam, jedoch dann wegen Arbeitsüberhäufung hinauskomplimentiert wurde.

Wien, den 1.Nov..1943.
oI/Pers/KN/HN/33152

Wie aus dem Zwecke der Anfrage hervorgeht, ist gegen den Genannten ein Parteigerichtsverfahren anhängig. Ich bitte bei dieser Gelegenheit die Meldung der Ortsgruppe mit einzubeziehen und klarzustellen.-

Der Kreispersonalamtsleiter:

Nationalsozialistische Deutsche Arbeiterpartei Kreisleitung I Wien

(Karl Neuhuber)
Abschnittsleiter der NSDAP.

18. Okt 1945

58

003092

Nationalsozialistische Deutsche Arbeiterpartei
Gau Wien
Kreisleitung V

Wien, den 14. November 1938
Perchtoldsdorf, Adolf-Hitler-Platz 11
Fernruf Atzgersdorf 702 u. 809

Zeichen: Dr.F.C/Ze 3436 Ihr Zeichen:

Das Kreispersonalamt.

Ersuche im Sinne meines Schreibens vom 28.X.d.J. um Ausstellung des Ausweises und des Bestellungsschreibens für Pg. Dr.Erich F ü h r e r in Ansehung der beantragten kommissarischen Leitung des Kreisrechtsamtes. Er mit Schreiben vom 12.VII. d.J. des Gauleiters kommissarisch bestellte Kreisbeauftragte für Volksgesundheit, Pg. Dr. Adolf W i c k e, hat den vorläufigen Ausweis noch nicht erhalten. Ich bitte um Ausstellung dieses Ausweises an das Kreispersonalamt.

H e i l H i t l e r !
Der Kreisleiter m.d.L.b.
Stellv. Leopold Tavs.

21.7.38.

59

An das Rechtsamt der
Kreisleitung V des Gaues Wien.

Mit Dr.	7531
Beauftragg.	
Ausweis	
Ahnennachweis	
Stammbuch	
Lichtbild	
Stellenkartei	
Mappe/Akt	

003093

9.XII.1938.

Ro./Schw.

An das
Personalamt der Kreisleitung V,
Perchtoldsdorf.

Beiliegend übersenden wir Ihnen die Berufung und den Politischen Leiterausweis für Pg. Dr. Erich F ü h r e r .

~~Heil Hitler !~

Der Gaupersonalamtsleiter:

(Rothe.)

62

zum Kreisrechtsamtsleiter des Kreises V zu bestellen. In dem genannten Schreiben habe ich ausführlich zu dieser Frage Stellung genommen. Hierauf erhielt ich am 14.Oktober l.J. von Ihnen,Gauleiter, eine Weisung, dass Dr.Erich Führer den Posten eines Kreisrechtsamtsleiters des Kreises V nicht erhalte.

Nunmehr tritt Kreisleiter Dr.Tavs durch das Personalamt neuerlich an mich heran und ersucht Dr. Führer dennoch auf diesen Posten zu berufen. Mir persönlich hat Dr.Tavs mitgeteilt, dass durch eine Rücksprache zwischen Ihnen , Gauleiter, und ihm selbst, ihre Weisung vom 14.Oktober l.J. gegenstandslos geworden sei. Da nun aber eine gegenteilige Weisung von Ihnen persönlich vorliegt, die noch nicht offiziell ausser Kraft gesetzt wurde, bitte ich um Weisung , ob Dr.Führer als Kreisrechtsamtsleiter des Kreises V eingesetzt ist , wobei ich nochmals auf meinen im Schreiben vom 12.Oktober l.J. dargelegten Standpunkt verweise.

Heil Hitler !

Dr.Mann
(Gaurechtsamtsleiter)

003094

Gaurechtsamt

An den
Gauleiter Odilo Globocnik

im Hause

persönlich !

22.November 38

Dr Mann/Sch

Dr.Erich Führer,Kreisrechtsamtsleiter

Gauleiter !

Mit einem Schreiben vom 12.Oktober d.J. habe ich den Wunsch des Kreisleiters Dr.Tavs bekanntgegeben, anstelle des Kreisrechtsamtsleiters des Kreises V Pg. Dr.Ludwig Mattausch den Rechtsanwalt Pg.Dr.Erich Führer zum Kreisrechtsamtsleiter des Kreises V zu bestellen. In dem genannten Schreiben habe ich ausführlich zu dieser Frage Stellung genommen. Hierauf erhielt ich am 14.Oktober l.J. von Ihnen,Gauleiter, eine Weisung, dass Dr.Erich Führer den Posten eines Kreisrechtsamtsleiters des Kreises V nicht erhalte.

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Heil Hitler !

Dr.Mann
(Gaurechtsamtsleiter)

003095

Nationalsozialistische Deutsche Arbeiterpartei

Gau Wien

Kreisleitung V

Kreispersonalamt.

Gaupersonalamt Wien
10. JULI 1939

An das
Gaupersonalamt des Gaues Wien
Wien I., Am Hof 4.

Wien, den 3. Juli 1939.
Perchtoldsdorf, Adolf-Hitler-Platz 11
Fernruf Atzgersdorf 702 u. 509

Zeichen: Dr.F.C/Ze 43 Ihr Zeichen: 1531

Betrifft:

Am 9.12.1938 ging dem Personalamt des Kreises V die Berufung und der pol. Leiterausweis für Pg. Dr.Erich F ü h r e r als komm. Leiter des Rechtsamtes des Kreises V zu. Diese Ausweise wurden von meinem Amtsvorgänger, Kreisleiter Pg. Dr. Tavs, dem Erstgenannten aus mir unbekannten Gründen nicht ausgehändigt.

Wie mir bekannt ist, hat Pg. Dr.Erich Führer die ihm damit zugedachte Tätigkeit in der Kreisleitung V nie aufgenommen.

Seit der Abberufung des ersten Kreisrechtsamtsleiters, Pg.Dr. M a t t a u s c h im Oktober 1938, welcher als Hauptstellenleiter im Gaurechtsamt berufen wurde, führte die Geschäfte des Kreisrechtsamtes bis zum heutigen Tage Pg. Dr.Gustav P o l l a k, Rechtsanwalt in Mödling, dessen Berufung als Kreisbeauftragter für das Kreisrechtsamt ich gesondert beantrage.

H e i l H i t l e r !

Der Kreisleiter:

Nationalsozialistische Deutsche Arbeiterpartei Kreisleitung V Wien

Walther Rentmeister.

Beiliegend der Leiterausweis Nr. 1531 und die komm. Berufung vom 9.12.1938 betreffend Pg. Dr.Erich Führer.

003096

Dorg... Nr. 10215

Herrn

Rechtsanwalt Herrn D r .
Dr. Erich F ü h r e r
Rechtsanwalt in W.
W i e n , I.
Seilerstätte 16

22. September 41.

G 60/9/41
Sonja Sara Pischmann
Wien XIX. Iche Hartg. 21
Kennkarte Polizeipräs. Wien X 00142

20.9.1941.

Sonja P i s c h m a n n

Sehr geehrter Herr Doktor!

Fräulein Sonja Pischmann hat sich an mich mit dem Auftrag gewendet, die Legalisation ihrer Abstammung vorliegenden Urkunden und Beginne einer Ueberprüfung zu unterziehen. Aus Grund dieser Ueberprüfung bin ich zu der Ueberzeugung gekommen, dass die Unterlagen ausreichen, um eine Feststellungsklage auf dem Wege der Anerkennung der jüdischen Abstammung einzubringen.

Ich bitte auf Grund dieser Tatsachen um [illegible]

Genehmigung zur Einbringung.

Mit [illegible]

S e i l e r

Dr. Erich Führer

Rechtsanwalt

003097

Rechtsanwalt
Erich Führer
Rechtsanwalt für Steuerrecht
Wien, I., Seilerstätte 16
Telefon R 27-1-50, R 27-1-51
Postscheck-Konto Wien 125.806

Br

Wien, 2o. September 1941

Herrn

Hofrat Dr. S a u e r ,

W i e n I.,

Josef Bürckelring 3,
Gaurechtsamt

Mitglied des NSRB

Betrifft

Sonja Sara Fischmann,
Wien XIX., Hohe Warte 21,
Kennkarte Pol.Präs.Wien B oo4492

Sehr geehrter Herr Hofrat !

Fräulein Sonja [redacted]a Fischmann hat sich an mich mit dem Auftrag gewendet, die bezüglich ihrer Abstammung vorliegenden Urkunden und Beweise einer Ueberprüfung zu unterziehen. Auf Grund dieser Ueberprüfung bin ich zu der Ueberzeugung gekommen, dass die Unterlagen ausreichen, um eine Feststellungsklage mit dem Ziel der Bestreitung der jüdischen Abstammung einzubringen .

Ich bitte auf Grund dieser Tatsachen um die Genehmigung zur Klageführung .

H e i l H i t l e r !

Erich Führer

66

OC3008

10 8 15

An den
Gaurichter Dr. N o s k o
im Hause.

16. Oktober

~~3727/40~~/Sch/G.

Rechtsanwalt Dr. Führer.

Anliegend ein Schreiben und Fotokopie des Auswärtigen Amtes betreffend Rechtsanwalt Dr. Führer.

Ich ersuche Sie ein Parteigerichtsverfahren gegen Führer einzuleiten, vorher jedoch mit der Staatspolizei Verbindung aufzunehmen, damit etwa laufende oder sich anbahnende weitere Ermittlungen nicht gestört werden.

H e i l H i t l e r !

(Scharizer)

2 Anlagen.

003099

- Personalamt

PB lo 815/Hei/Sch

8. November 43

Dr. F ü h r e r Erich,
geb.: 8.4.19co zu Wien,
Wien I., Riemergasse 8.

An das
G a u g e r i c h t ,
I m H a u s e .

Ich bitte um Mitteilung, ob gegen Obgenannten ein Gaugerichtsverfahren läuft.

Für baldige Antwort wäre ich dankbar.

H e i l H i t l e r !
Der Gaupersonalamtsleiter
i.A.:

(Heide)

68

(Scharfer)

74

des Kameradschaftsabends, einer Prügelei, die im gegebenen Falle nicht vorzuliegen scheint.

Ich bitte um Rückschluß des Vorganges.

H e i l H i t l e r !
Der Gaurechtsberater der NSDAP.

(Dr. Frauenberger)

77

003100

Nationalsozialistische Deutsche Arbeiterp

Kreis III — Gau Wien

Ortsgruppe Schwalbengasse

Unser Zeichen: Ihr Zeichen: Wien, den

Betrifft:

3, Erdbergstraße 35, Fernruf

Nationalsozialistische Deutsche Arbeiterpartei

Gaugericht Wien I. Kammer

Unser Zeichen: AV/235/41 Pu./Ku. Ihr Zeichen: PB 1o 815/Hei/Sch Wien 1, den 1o. November 19 43

1, Am Hof 4/II / Fernruf 26-23-5-00 Klappe 070

Betrifft: Dr.Erich F ü h r e r, geb.5.4.19oo
Wien, 1., Riemergasse 8

An das
Gaupersonalamt
i m H a u s e

Zu Ihrem Schreiben vom 8.ds. gebe ich Ihnen bekannt, daß gegen Dr.Erich Führer Ermittlungen eingeleitet wurden; ob ein parteigerichtliches Verfahren anzuordnen ist, steht noch nicht fest.

H e i l H i t l e r !
Der Vorsitzende:
i.V.
(Puffer)

11. NOV. 1943

Nationalsoz. Deutsche Arbeiterpartei Gaugericht Wien

69

...Rechtsanwalt Dr. ... als ... Vertreter ... Scharfer) ... Richtung ... Frist ... Abstammung ... Protektorat ... Mutmassung, ... Rechtsanwaltes ... Rechtsanwaltes, ... 74 ... 77

Der Reichsschatzmeister der NSDAP.

Ich bitte um Rückschluß des Vorganges.

H e i l H i t l e r !

Der Gaurechtsberater der NSDAP:

(Dr.Frauenberger)

Gaupersonalamt, Politische Beurteilung.

PB.lo.815/Hoi/M. 317o a I-1.17 19.4.1943

u h r e r Dr. Erich,
geb.am 5.4.1900 Wien,
Wien I., Riemergasse 8

An den
Oberlandesgerichtspräsident,
P r a g III
Kramarsch-Ufer 4

Über Obgenannten ist in politischer Hinsicht Nachteiliges bisher nicht bekannt geworden. Er ist Parteigenosse seit 1.7.1932 und wird unter der Mitgliedsnummer 1,205.383 geführt.

H e i l H i t l e r !
Der Gaupersonalamtsleiter:

(Haide) (Volkmer)

70

71

74

77

in der Richtung
seine Abstammung
wie ja die
vor Frost die
gewiesen, dann
dem Protektorat
Mutmassung,
anwaltes ge-
inschreiten in
tsanwaltes, noch
richt, die im

gegebenen Falle nicht vorzuliegen scheint.

Ich bitte um Rückschluß des Vorganges.

H e i l H i t l e r !
Der Gaurechtsberater der NSDAP:

(Dr.Frauenberger)

003102

NATIONALSOZIALISTISCHE DEUTSCHE ARBEITERPARTEI

GAULEITUNG WIEN
GAUGERICHT

EINGANG
29 MAI 1943

AV/235/41 Ihr Zeichen: B.Nr.2470/40
Ihr Zeichen: Pu./Ku. g - II C/H

WIEN, den 29 MAI 1943
1/4 Joseph-Bürckel-Ring 3, Gaubaus
Fernsprecher R 50-5-60

Dr.Erich F ü h r e r, Rechtsanwalt
Wien, 1., Seilerstätte Nr. 16

An die
Geheime Staatspolizei - Staatspolizeileitstelle Wien
W i e n, 1., Morzinplatz 4

Dem Ersuchen des Gaugerichtes um Übersendung der Vorgänge gegen Dr.Erich Führer ist seitens der Geheimen Staatspolizei nicht entsprochen worden, da es sich um rein dienstliche Vorgänge handle. Auf Grund der dem Gaugericht vorliegenden Unterlagen allein besteht keine Möglichkeit, Ermittlungen gegen den Pg.Dr. Erich Führer durchzuführen und es muß daher auch von der Durchführung eines parteigerichtlichen Verfahrens Abstand genommen werden. Dr.Erich Führer bleibt somit Parteimitglied.

H e i l H i t l e r !

Der Vorsitzende des Gaugerichtes Wien:
i.V.
(Hopfer)

Abdruck an Gauleiter Wien.

72

Nationalsozialistische Deutsche Arbeiterpartei
Gauleitung Wien
Gaupersonalamt
Hauptst. Pol. Beauftragter

Mahnung

Unsere Anfrage vom:
Betrifft:

Wien, den
1., Parlamentsplatz, Burgring

An
Gaugericht!
im Hause.

Betrifft: Einleitung eines Parteigerichtsverfahrens gegen den Rechtsanwalt Dr.Erich F ü h r e r.

Grund der unterlassenen Meldung der Genannte ist uns auf unsere wiederholte Aufforderung, die Einleitung eines Parteigerichtsverfahrens gegen den Rechtsanwalt Dr.Erich F ü h r e r.

H e i l H i t l e r !

(Schnitzler)

71

Nationalsozialistische Deutsche Arbeiterpartei
Gauleitung Wien
Gaugericht

Vater teilnahmen. Als auf Rechtsanwalt Dr. Erich Führer die Sprache kam, haben alle Vertreter der Rechtswahrer insbesondere Dr.Mapp in scharfer Weise gegen die Art Stellung genommen in der Dr.Erich Führer seine Pflichten als deutscher Rechtswahrer auffasst. Es kamen Einzelfälle zur Sprache, über welche die einzelnen Parteigenossen am besten

74

in der Richtung
seine Abstammung
ie ja die
e Frost die
gewiesen, dann
dem Protektorat
r Mutmassung,
anwaltes ge-
tschreiten in
ntsanwaltes, noch
reicht, die in

des Kameradschaftsführers [illegible] des Pg.Dr. Führer gegebenen Falle nicht vorzuliegen scheint.

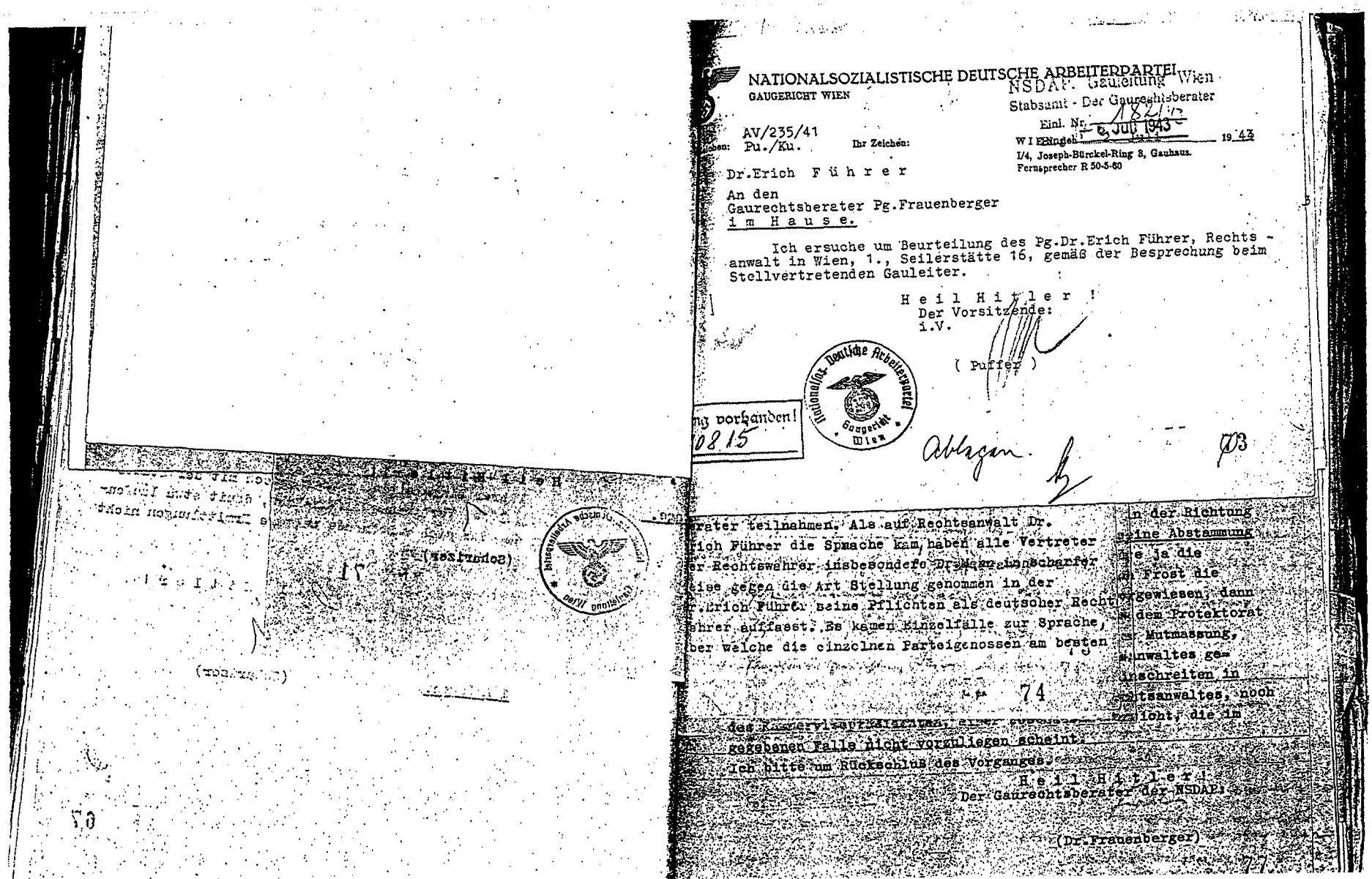
Ich bitte um Rückschluß des Vorganges.

H e i l H i t l e r !

Der Gaurechtsberater der NSDAP:

(Dr.Frauenberger)

73



NATIONALSOZIALISTISCHE DEUTSCHE ARBEITERPARTEI
GAUGERICHT WIEN

NSDAP. Gauleitung Wien
Stabsamt - Der Gaurechtsberater
Einl. Nr. 1821/43
WIEN, den 6. Juli 1943

AV/235/41
Ihr Zeichen: Pu./Ku.
Ihr Zeichen:

I/4, Joseph-Bürckel-Ring 8, Gauhaus.
Fernsprecher R 50-5-60

Dr.Erich Führer

An den
Gaurechtsberater Pg.Frauenberger
im Hause.

Ich ersuche um Beurteilung des Pg.Dr.Erich Führer, Rechts - anwalt in Wien, 1., Seilerstätte 16, gemäß der Besprechung beim Stellvertretenden Gauleiter.

Heil Hitler !
Der Vorsitzende:
i.V.

(Puffer)

Nationalsoz. Deutsche Arbeiterpartei Gaugericht Wien

ng vorhanden!
0815

Abtagen.

rater teilnahmen. Als auf Rechtsanwalt Dr. ich Führer die Sprache kam, haben alle Vertreter er Rechtswahrer insbesondere Dr.Mayr-Harting scharfe diese gegen die Art Stellung genommen in der r.Erich Führer seine Pflichten als deutscher Recht ührer auffasst. Es kamen Einzelfälle zur Sprache, ber welche die einzelnen Parteigenossen am besten

74

in der Richtung
seine Abstammung
e ja die
m Frost die
gewiesen; dann
dem Protektorat
Mutmassung,
nwaltes ge-
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tsanwaltes, noch
icht, die im

gegebenen Falle nicht vorzuliegen scheint.

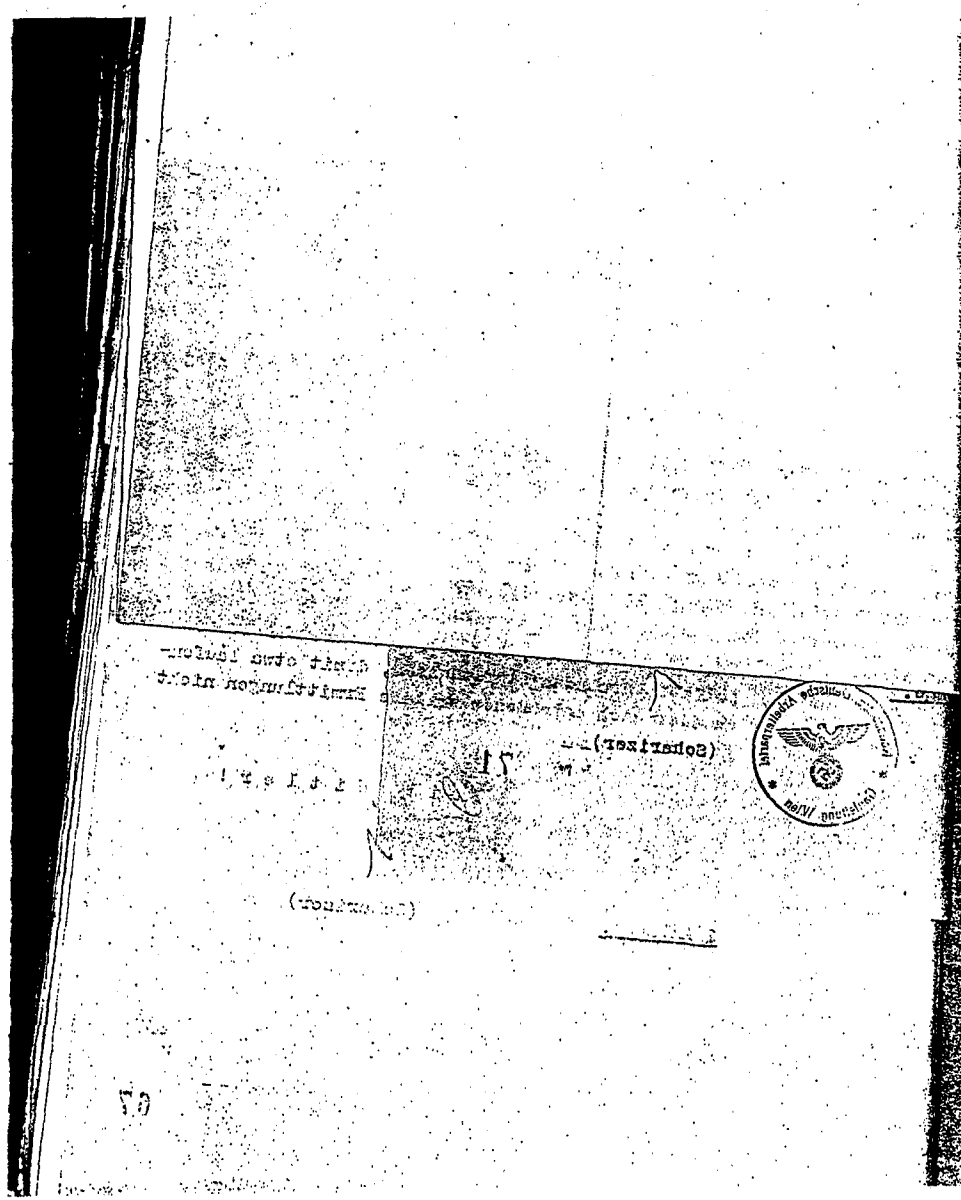
Ich bitte um Rückschluss des Vorganges.

Heil Hitler!
Der Gaurechtsberater der NSDAP.

(Dr.Frauenberger)

77

003104



...forschung

...3

...Mai 43.

...ü h e r mit
...e 14.Mai d.J
...ng durch das
...Dr. Josef
...in der Richtung
...seine Abstammung
...ge ja die
...ch Frost die
...gewiesen, dann
...dem Protektorat
...r Mutmassung,
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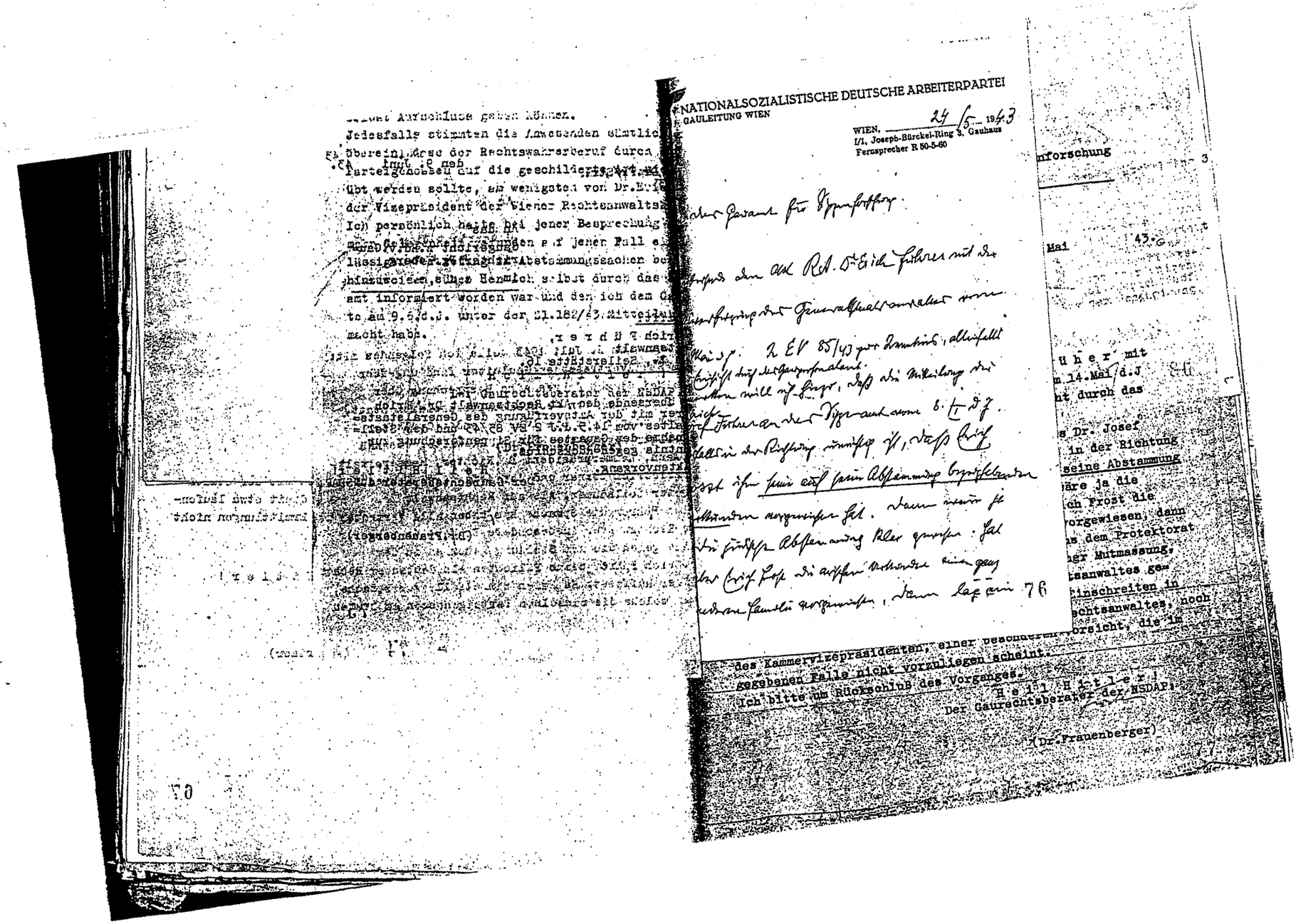
Ich bitte um Rückschluß des Vorganges.

H e i l H i t l e r !

Der Gaurechtsberater der NSDAP:

(Dr.Frauenberger)

003105



NATIONALSOZIALISTISCHE DEUTSCHE ARBEITERPARTEI
GAULEITUNG WIEN

WIEN, 24/5 1943
I/1, Joseph-Bürckel-Ring 3, Gauhaus
Fernsprecher R 50-5-60

Heil Hitler!

(Dr. Frauenberger)

003106

An das
Gauamt für Sippenforschung
im H a u s e.

24. Mai 43.

echt Dr.Fr/Str.
82/43

Dr. Erich F ü h e r,
Rechtsanwalt
Wien I., Seilerstätte 16

Ich übersende den Akt Rechtsanwalt Dr. Erich F ü h e r mit der Amtsverfügung des Generalstaatsanwaltes vom 14.Mai d.J. 2 GV 85/43 zur Kenntnis, allenfalls zur Einsicht durch das Gaupersonalamt.

Bemerken will ich hiezu, daß die Mitteilung des Dr. Josef Führer an das Sippenamt vom 8.1.d.J. jedenfalls in der Richtung unrichtig ist, daß Erich Frost ihm seine auf seine Abstammung bezughabenden Urkunden vorgewiesen hat. Dann wäre ja die jüdische Abstammung klar gewesen. Hat aber Erich Frost die arischen Urkunden einer ganz anderen Familie vorgewiesen, dann lag eine Zusammenhang dieser arischen Frost aus dem Protektorat mit Erich Frost aus Ungarn, wohl außer jeglicher Mutmassung, die erst ein Einschreiten eines arischen Rechtsanwaltes gerechtfertigt hätte. Jedenfalls erfordert es ein Einschreiten in Abstammungsverfahren seitens eines arischen Rechtsanwaltes, noch des Kammervizepräsidenten, einer besonderen Vorsicht, die im gegebenen Falle nicht vorzuliegen scheint.

Ich bitte um Rückschluß des Vorganges.

H e i l H i t l e r !

Der Gaurechtsberater der NSDAP:

(Dr.Frauenberger)

NATIONALSOZIALISTISCHE DEUTSCHE ARBEITERPARTEI
GAULEITUNG WIEN

WIEN, den 9.Nov. 1943.
I/1, Joseph-Bürckel-Ring 3, Gauhaus
Fernsprecher R 50-5-60

Stabsamt
chtsberater d.NSDAP
Dr.Fr/Str. 984/43

An das
Landgericht Wien
Wien 1., Justizpalast.

rift:
Gitdt Goldschmidt, Wien 1., Tiefer Graben 9
mmungsakt

ird um kurzfristige Übersendung des Akten-
anges über Obengenannten zur Einsichtnahme
icht.

.d.R.:

H e i l H i t l e r !
Der Gaurechtsberater d.NSDAP:
gez.Dr.Frauenberger

78

September 1943

e n b e r g e r ,
DAP,

I.,
Joseph Bürckelring 3

t gegen de n
rde ich mit Rücksicht
n, die Vertretung
des Volksgerichts-
Gruppe derjenigen
m Volksgerichtshof
ung der Genehmigung

er !

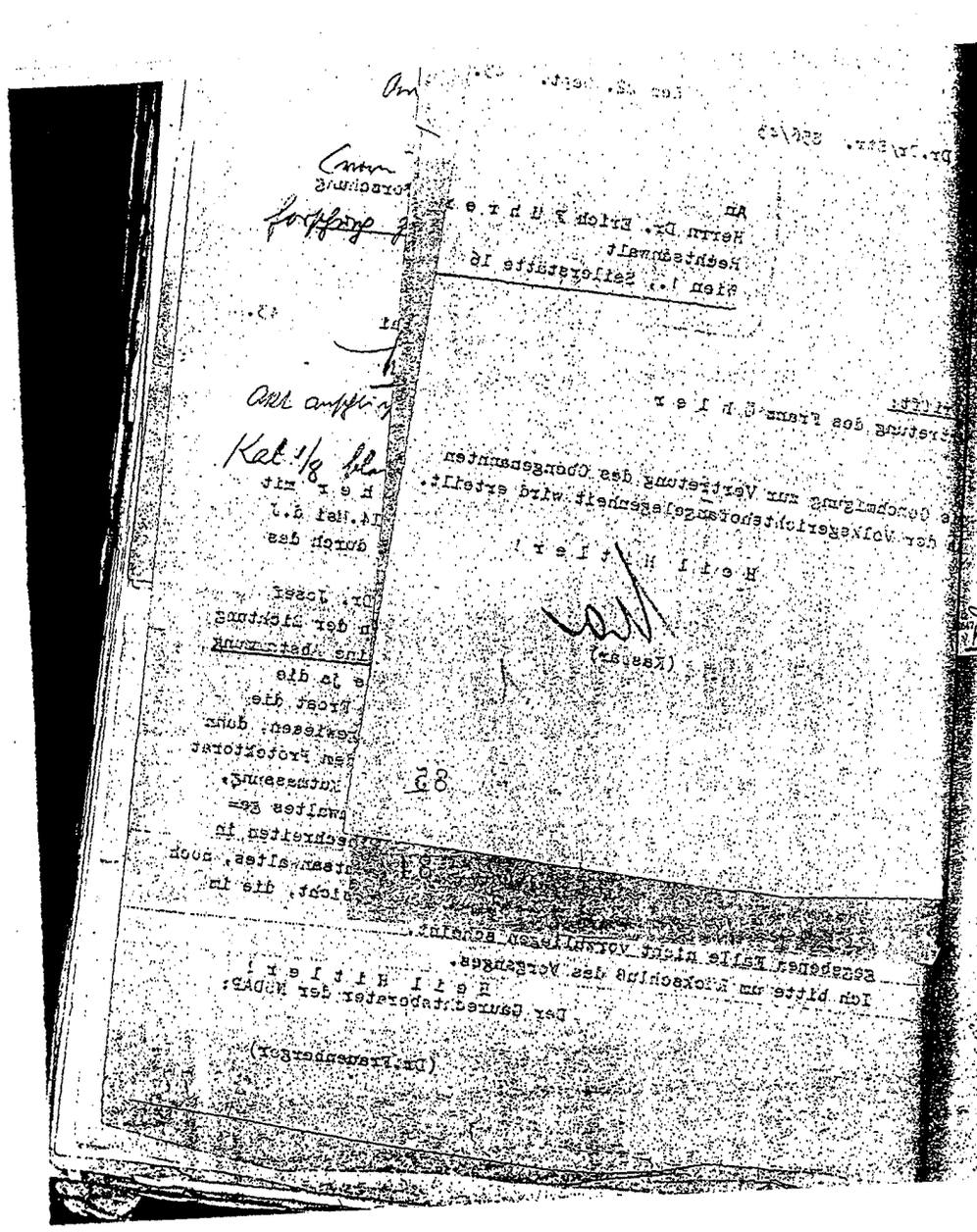
86

es hat nun meine
müssen, dass ihr
de, somit abstem-
chling zweiten
Genehmigung
e, dass die
ng des Ergebnis
wahrscheinlich
engeblichen Väter

abstamm

Heil Hitler !

einschreiben.



NSDAP, Gauleitung Wien
Sachbearbeiter: Der Gaurechtsberater

Dr. F/B Einl. Nr. 95643
Eingel. 21. Sep. 1943

Wien, 20. September 1943

Herrn

Senatspräsidenten Dr. F r a u e n b e r g e r,
Gaurechtsberater der NSDAP,

W i e n I.,

Gauhaus, Joseph Bürckelring 3

Betr. Öhler

Sehr verehrter Herr Senatspräsident !

In der Volksgerichtshofsangelegenheit gegen den Kaufmann Franz Ö h l e r , der Mischling ist, wurde ich mit Rücksicht auf den beschränkten Kreis der Verteidiger gebeten, die Vertretung zu übernehmen. Die Vertretungsgenehmigung seitens des Volksgerichtshofes wurde mir bereits erteilt, da ich ja zu der Gruppe derjenigen Anwälte gehöre, die ständig Verteidigungen vor dem Volksgerichtshof durchzuführen haben. Ich bitte nunmehr um Erteilung der Genehmigung zur Vertretung des Mischlings Franz Öhler.

Heil Hitler !

86

Im Laufe des Prozesses hat nun meine Beschaffung der Klientin durch entsprechende Urkunden feststellen müssen, dass ihr Grossvater erst im Alter von 3 Jahren getauft wurde, somit abstammungsmässig als Jude gilt, und sie daher als Mischling zweiten Grades. Ich ersuche daher nachträglich um die Genehmigung zur Durchführung dieses Prozesses, wobei ich betone, dass die bereits vorgenommene anthropologische Untersuchung das Ergebnis gebracht hat, dass meine Mandantin mit grösster Wahrscheinlichkeit nicht von ihrem gesetzlichen, sondern ihrem angeblichen Vater abstammt.

Heil Hitler !

einschreiben.

003109

Rechtsanwalt
Dr. Führer
Seilerstätte 16
Tel. 50 mb R 27-1-51
Postscheckkonto D 195.806

Dr. H/D

Wien, 8. November 1943.

An das

Gaurechtsamt

Wien, I.,
Joseph Bürckelring 3.

Betr.: Gidt Goldschmidt.

Ich habe vor ungefähr einem Jahr die Vertretung von Karla Gidt Goldschmidt in Wien, I., Tiefer Graben 9, übernommen, um einen Prozess auf Bestreitung ihrer ehelichen und blutmässigen Abstammung für sie durchzuführen.

Nach der damaligen Aktenlage war es so, dass meine Klientin wohl den kleinen Abstammungsnachweis als Arierin erbringen konnte, um jedoch Mitglied der Reichsfilmkammer werden zu können, den grossen Abstammungsnachweis benötigte und da ihre Urgrosseltern grossväterlicherseits Juden waren, hiezu nicht in der Lage gewesen wäre.

Im Laufe des Prozesses hat nun meine Klientin durch Beschaffung der entsprechenden Urkunden feststellen müssen, dass ihr Grossvater erst im Alter von 3 Jahren getauft wurde, somit abstammungsmässig als Jude gilt, und sie daher als Mischling zweiten Grades.

Ich ersuche daher nachträglich um die Genehmigung zur Durchführung dieses Prozesses, wobei ich betone, dass die bereits vorgenommene anthropologische Untersuchung des Ergebnis gebracht hat, dass meine Mandantin mit grösster Wahrscheinlichkeit nicht von ihrem gesetzlichen, sondern ihrem angeblichen Vater abstammt.

Heil Hitler!

einschreiben.

Akt betr. Karla Gidt Goldschmidt vom RSHA

Vorläufiger Ausweis
für Politische Leiter Nr.

F ü h r e r Dr. Erich
(Name) (Vorname)

(Dienstgrad)

Bestätigt durch

Unterschrift

Wien, den 15.Oktober

Nationalsozialistische Deutsche Arbeiterpartei
Gauleitung
Wien

Gaugeschäftsstelle:
Wien I., Am Hof 4

Fernsprecher: A 23-5-90
U 21-5-30

Gauleitung: V „Wienerwald"
Ortsstelle: Perchtoldsdorf, Adolf Hitlerplatz 11
Fernsprecher: Fernruf: Perchtdf. 89, 94
Apparat 702, 509

Zeichen: Dr.F.C/Za

Perchtoldsdorf, 28.Oktober 1938.
Wien, den

(Bei Antwort Zeichen und Datum bei Antwort stets angeben!)

Ihr Zeichen:

Gegenstand:

An das
Gaupersonalamt,
Wien 1., Am Hof 4.

Mit meinem an das Gaupersonalamt an das Gaurechtsamt und an den Gauleiter gerichteten Schreiben vom 10. d.M. habe ich die kommissarische Betrauung des Pg. Dr. Erich F ü h r e r, Wien 1., Rich~~tergasse~~ 8 mit der kommissarischen Leitung des Kreisrechtsamtes des Kreises V beantragt. Hierauf erhielt ich den anliegenden vorläufigen Ausweis und die Beauftragung zur kommissarischen Leitung für Pg. Dr. Erich Führer, jedoch nicht in Ansehung meines genannten Antrages, sondern als Dienststellenleiter im Kreisgericht des Kreises V.
Ich sende daher diesen Ausweis und das Bestellungsschreiben zurück und bitte um einen Ausweis und das Bestellungsschreiben für Pg. Dr. Erich Führer in Ansehung der beantragten kommissarischen Leitung des Kreisrechtsamtes.

H e i l H i t l e r !
Der Kreisleiter m.d.L.b.

Dr. Leopold Tavs

003111

R 20530

Nationalsozialistische Deutsche Arbeiterpartei

Gau Wien
Kreisleitung V

An das
Gaupersonalamt
des Gaues Wien der NSDAP.
W i e n 1.,
Am Hof 4

Kreisleiter.

Wien, den 10. Oktober 1938.
Hochstrasse, Adolf-Hitler-Platz 11
Fernruf Jägerndorf 702 u. 509

Zeichen: Ta/Se 2241 Ihr Zeichen:

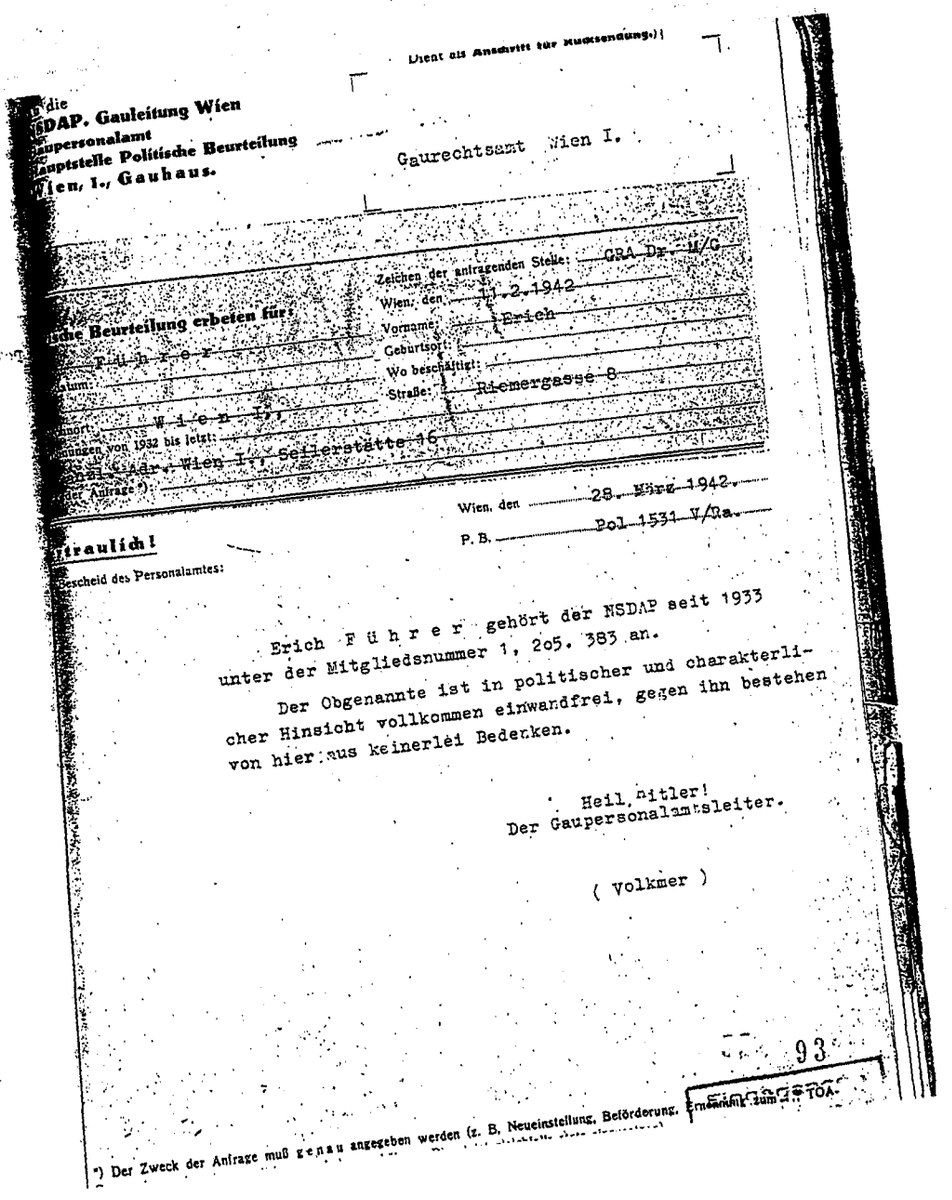
Betr.: Mit der Bitte um Kenntnisnahme.

Der Kreisrechtsamtsleiter Pg.Dr. Mattausch hat sein Amt niedergelegt, weil er im Gaurechtsamt als Hauptstellenleiter eingesetzt werden soll. Ich beantrage die kommissarische Betrauung des Pg. Dr. Erich Führer, Wien 1., Richtergasse 8, des Verteidiger Otto Planettas, mit der kommissarischen Versehung des Kreisrechtsamtes des Kreises Wienerwald (Kreis V). Die Zustimmung des Gaurechtsamtes leiters Pg.Dr. Mann wurde durch den Fernsprecher in kurzem Wege eingeholt.

Heil Hitler!
Kreisleiter:

Dr. Leopold Tavs.

003112



Dient als Anschrift für Rücksendung.)

An die
NSDAP. Gauleitung Wien
Gaupersonalamt
Hauptstelle Politische Beurteilung
Wien, I., Gauhaus.

Gaurechtsamt Wien I.

Politische Beurteilung erbeten für:

Zeichen der anfragenden Stelle: GRA Dr. M/G

Wien, den: 11.2.1942

Name: F ü h r e r

Vorname: Erich

Geburtsort:

Wohnort: W i e n I.,

Wo beschäftigt:

Straße: Rienergasse 8

Angaben von 1932 bis jetzt:

Heimatadr. Wien I., Seilerstätte 16

Zweck der Anfrage*):

Vertraulich!

Wien, den 28. März 1942.

Bescheid des Personalamtes:

P. B. Pol 1531 V/Ga.

Erich F ü h r e r gehört der NSDAP seit 1933 unter der Mitgliedsnummer 1, 2o5. 383 an.

Der Obgenannte ist in politischer und charakterlicher Hinsicht vollkommen einwandfrei, gegen ihn bestehen von hier aus keinerlei Bedenken.

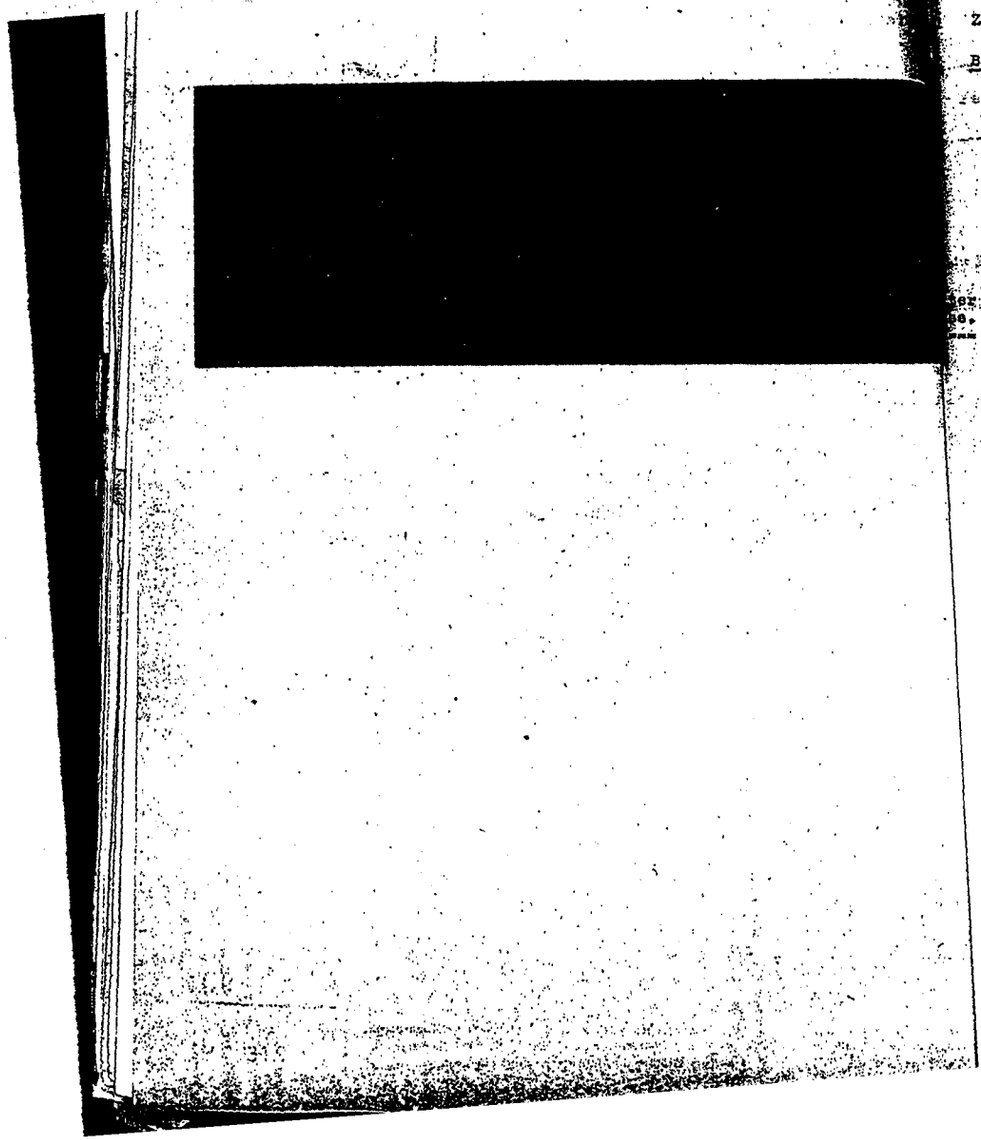
Heil Hitler!
Der Gaupersonalamtsleiter.

(Volkmer)

93

*) Der Zweck der Anfrage muß genau angegeben werden (z. B. Neueinstellung, Beförderung, Ernennung zum ...)

EINGANGSTOA



Gaupersonalamt
Politische Beurteilungen

Wien, den 15.Juni 1940.

Z.b.V. 10815 K/Hö

Betrifft: F ü h r e r Dr. Erich,
geb.5.April 1900
Wien 3., Strohgasse 35,
Mitglied d.Deutschen Klubs.

Dr.Erich F ü h r e r ist seit dem Jahre 1932 Mitglied der NSDAP mit der Nummer 1,205.383. Wegen seiner Betätigung wurde er wiederholt von der Staatspolizei gemaßregelt.

Heil Hitler !

Der Pg.Josef B ü r c k e l
Gauhauptstellenleiter.
(Kamba)

95

Verbotszeit ist h.o. nichts bekannt, da er erst seit 1940 an obiger Anschrift wohnt. Seine Kanzlei befindet sich Wien,I., Seilerstätte 16.

Seine derzeitige Einstellung zum NS-Staat ist bejahend.

Charakterlich gilt er als einwandfrei,sein Leumund ist gut.

Seine wirtschaftliche Lage ist sehr gut,für das WHW und die NSV spendet er gut.

Strafen der ordentlichen Gericht sind nicht bekannt.

Ihr Originalschreiben vom 8. III. l.J. folgt anbei zurück.

H e i l H i t l e r !

Der Kreispersonalamtsleiter
Vollmer

1 Beilage.

94

Nationalsozialistische Deutsche Arbeiterpartei

Gau Wien

Kreisleitung III

Personalamt

An die

NSDAP. Gauleitung W i e n ,
Gaupersonalamt,
zuhanden des Pg. K a m b a ,

I.,Am Hof 4.

Unser Zeichen: 62049/Ls. Ihr Zeichen: Z.b.V. 121200 und 10815

Wien 40, den 11. April 1940.

s., Schwarzenbergplatz 5 / Fernruf B-52-5-75 bis 79

Betrifft: politische Beurteilung.

Dr. Erich F ü h r e r , geboren 5. April 1900 , wohnhafr Wien, III.,Strohgasse 45, Rechtsanwalt , ist Parteimitglied seit 15. 7. 1932 , Mitgliedsnummer 1,205.383, und SS-Obersturmführer seit 1932.

Ueber sein politisches Verhalten während der Verbotszeit ist h.o. nichts bekannt, da er erst seit 1940 an obiger Anschrift wohnt. Seine Kanzlei befindet sich Wien,I., Seilerstätte 16.

Seine derzeitige Einstellung zum NS-Staat ist bejahend.

Charakterlich gilt er als einwandfrei,sein Leumund ist gut.

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Strafen der ordentlichen Gericht sind nicht bekannt.

Ihr Originalschreiben vom 8. III. l.J. folgt anbei zurück.

H e i l H i t l e r !

Volkmer

Der Kreispersonalamtsleiter

1 Beilage.

003115

62040
16.3.40

Nationalsozialistische Deutsche Arbeiterpartei
Gauleitung Wien

Gaupersonalamt
Polit.Beurteilung.
SD.

An die
NSDAP
Kreisleitung III
z.H.d.Kreispersonalamtsleiters
W i e n , III.,
Schwarzenbergplatz 5.

Wien 1, den 8.3. 1940
1., Am Hof 4 / Fernruf 26-23-5-90

Betrifft:
F ü h r e r Dr. Erich,
geb. 5.4.1900 in Wien,
Rechtsanwalt,
III., Strohg. 45/I/3

Ihr Zeichen:

Unser Zeichen:
Z.b.V. 121200
und 10815

Betrifft:

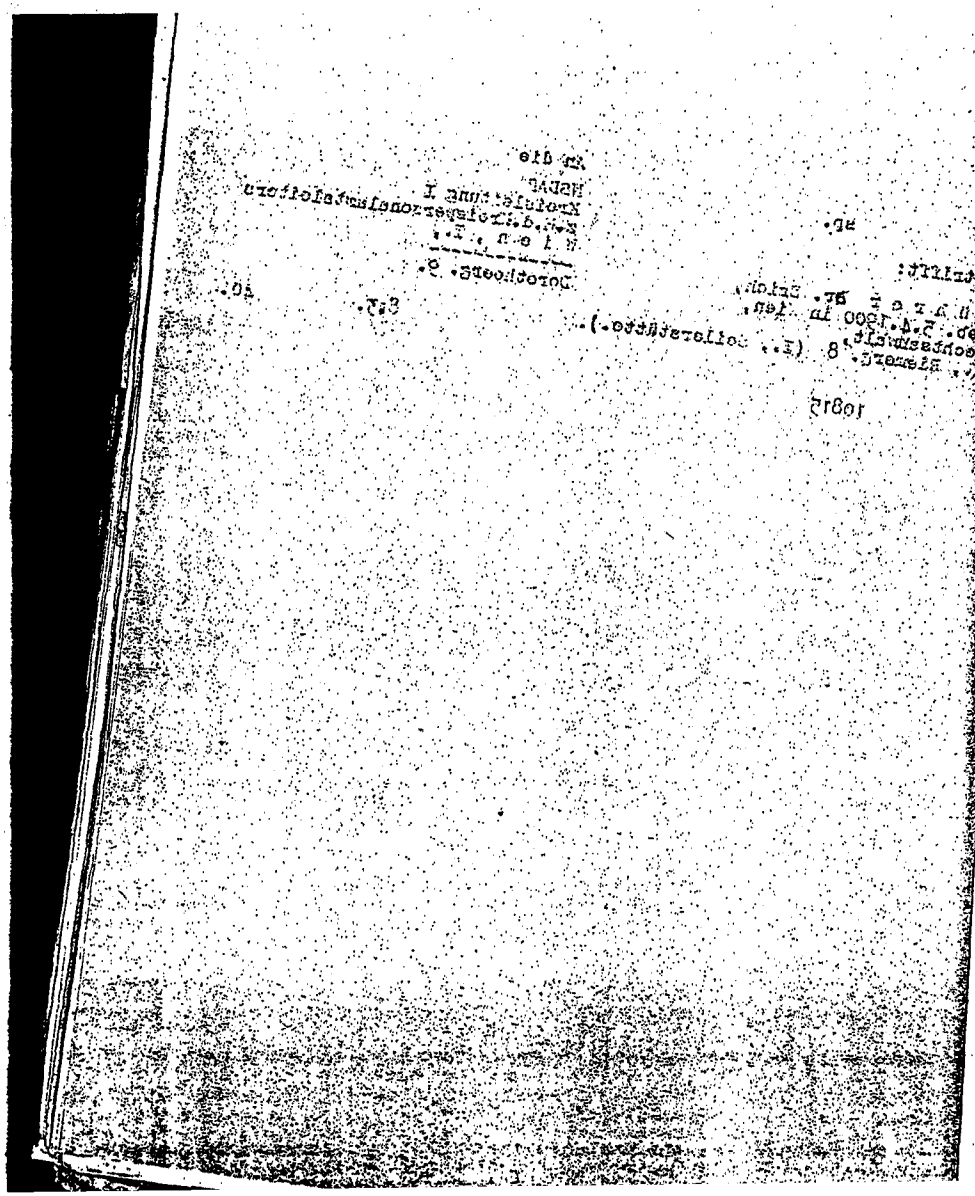
Obengenannter war Mitglied des deutschen Klubs, welcher bekanntlich über Veranlassung des Gauleiters seine Tätigkeit einstellen mußte. Dagegen hat der deutsche Klub beim Führer Einspruch erhoben. Da nun die Mitglieder des deutschen Klubs behaupten sie hätten in der illegalen Zeit polizeiliche Schikanen, wie Verhaftungen, berufliche Schäden und dergleichen mehr erlitten, ist es notwendig die einzelnen Mitglieder dieses Klubs zu überprüfen. Ich bitte daher bezüglich des Obengenannten um folgende Feststellung:

1.) Seit wenn ist Genannter im nationalsozialistischen Sinne tätig ?
2.) Wo hat sich derselbe früher politisch betätigt ?
3.) Seit wann Mitglied der NSDAP. ?
4.) Welche Freiheitsstrafen hat Obengenannter erhalten ?

Da nun das Ergebnis der Überprüfung für die Kanzlei des Führers bestimmt ist, bitte ich, bei diesen Ermittlungen besondere Sorgfalt an den Tag zu legen, insbesonders lege ich Wert darauf, daß dieselben wirklich streng vertraulich durchgeführt werden. Das Schreiben ist mir urschriftlich mit Bericht zurückzusenden.

Heil H i t l e r !

(Kamba)
Gauhauptstellenleiter.



Industrie- und Handelskammer in Wien

Wien, 1., Stubenring 8–10

Ihre Nachricht	Unser Zeichen	Wien,
	1446/40/Tu.	20.I.1940

Politische Zuverlässigkeit.

An den

Kreis I der N.S.D.A.P.,

W i e n.

Die Kammer ersucht um umgehende Mitteilung, ob Herr Dr. Erich F ü h r e r , Rechtsanwalt, I., Seilerstätte 16, als politisch zuverlässig zu bezeichnen ist.

Die Kammer beabsichtigt, den Genannten als Abwesenheitspfleger namhaft zu machen. PB11/K 20.2.40

Vorgang vorhanden! 10815

Der Hauptgeschäftsführer i.V.

L-Eng

Postsparkassen-Konto der Kammer 3896-Wien | Postsparkassen-Konto der Kammer (Stiftungen) 3892 | Drahtanschrift und Fernschreiber: Industka | Fernsprecher K 23-500 99

Um dringende Erledigung wird gebeten.

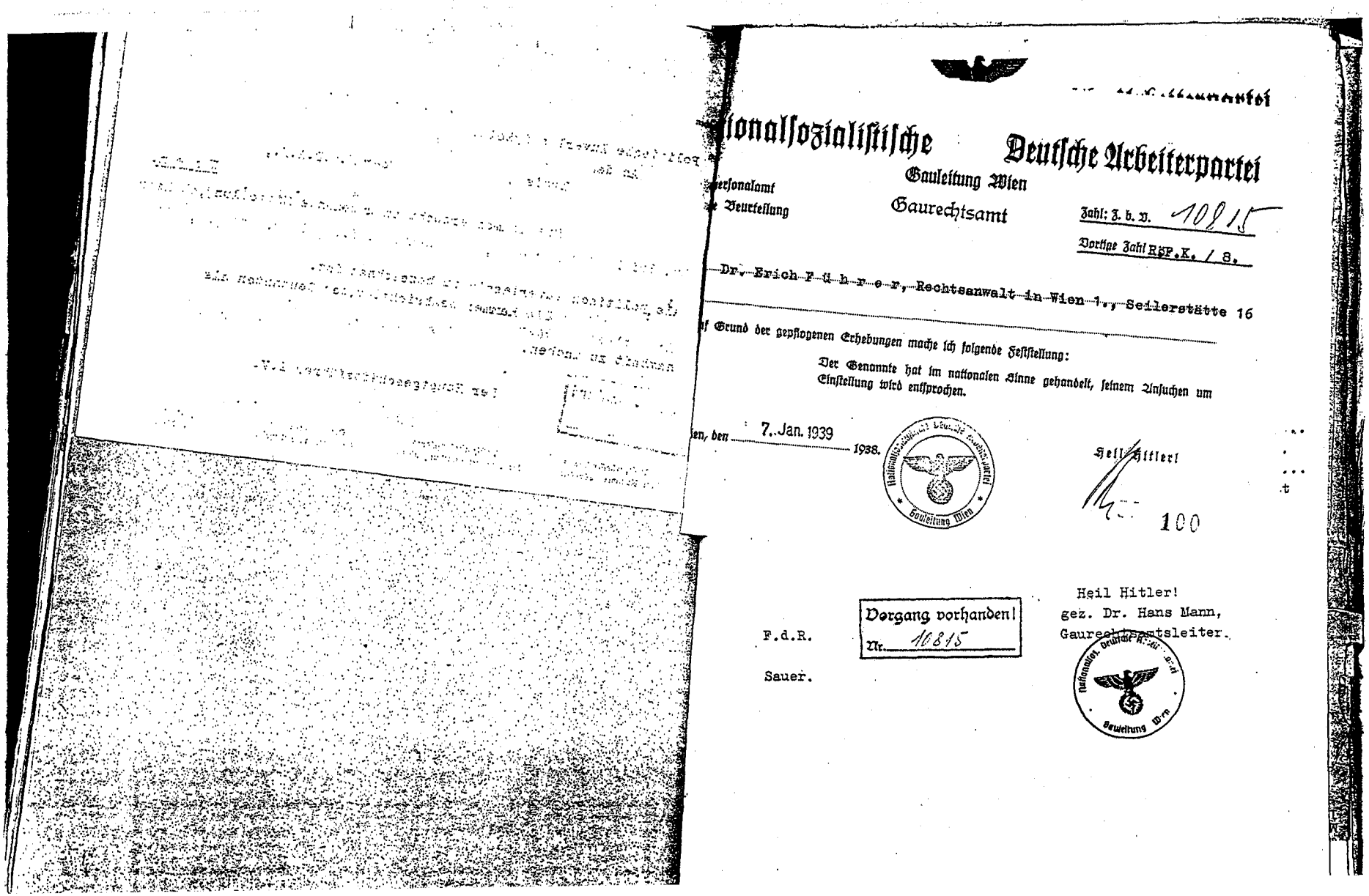
Heil Hitler!

F.d.R. Sauer.

Vorgang vorhanden! Nr. 10815

gez. Dr. Hans Mann, Gaureferatsleiter.

Nationalsoz. Deutsche R.-zu ... Bewährung ...



...ionalsozialistische Deutsche Arbeiterpartei

...ersonalamt
...Verfügung

Gauleitung Wien
Gaurechtsamt

Zahl: Z. b. v. 10815

Vorige Zahl: RSP.K. / 8.

Dr. Erich F ü h r e r, Rechtsanwalt in Wien 1., Seilerstätte 16

...f Grund der gepflogenen Erhebungen mache ich folgende Feststellung:

Der Genannte hat im nationalen Sinne gehandelt, seinem Ansuchen um Einstellung wird entsprochen.

...en, den 7. Jan. 1939 1938.

Heil Hitler!

100

F.d.R.

Sauer.

Vorgang vorhanden!
Nr. 10815

Heil Hitler!
gez. Dr. Hans Mann,
Gaurechtsamtsleiter.

...tionalsozialistische Deutsche Arbeiterpartei

Gauleitung Wien

Gaurechtsamt

17. Okt. 1938

An die
Kreisleitung der NSDAP.
Kreis ...
W i e n
Dorotheergasse 9
...

Wien, den ... Oktober ... 19 38.
1, Am Hof 4 / Fernsprecher R 23-5-90, II 21-5-30

Ihr Zeichen: Dr.Mann/H Ihr Zeichen:

Betrifft: politische Beschreibung.

Wir ersuchen um möglichst rasche politische Beschreibung des Rechtsanwaltes Dr. Erich F ü h r e r
Wohnung: Wien, 1.,m Riemergasse 8
Kanzlei: Wien, 1., Seilerstätte 16
Wir bitten ferner um Angabe, ob der Genannte Parteigenosse ist bezw. seit wann.
Um dringende Erledigung wird gebeten.

Heil Hitler!
gez. Dr. Hans Mann,
Gaurechtsamtsleiter.

F.d.R.
Sauer.

Vorgang vorhanden!
Nr. 11615

Nationalsoz. Deutsche A.-P. ... Gau
Gauleitung Wien

003119

Führer Erich Dr. Rechtsanwalt, Wien, I. Seilerstätte 16.

gehört wohl mit zu den prominentesten und verdientesten Nationalsozialisten der Ostmark. Jede Erhebung über seine Person bestätigt nur diese Tatsache.

Heil Hitler !

OG Stadtpark.

17.10.1938.

102

Auskunftgebende Stelle:

Stempel und Unterschrift

Ort: Wien, Datum: 25. August 1938.

003120

O I. Personalamt
Eingelangt: 24. Aug. 1938
Erledigt: 25. Aug. 1938

für RGSt.
7267

Betr. Aufnahme-Antrag des
Vor- und Zuname: Dr. Erich F ü h r e r
Beruf: Rechtsanwalt ,
Wohnort: Wien, I.,
Straße: Riemerg.Nr.8.

Über Obengenannten wird folgende vertrauliche Auskunft erteilt:

1909 ✓

Ist Pg, gehört wohl mit zu den prominenten und verdientesten Nationalsozialisten der Ostmark. Jede Erhebung über seine Person bestätigt nur diese Tatsache.

Heil Hitler !

Auskunftgebende Stelle:

10813

Stempel und Unterschrift

003121

Wien, 26. Februar 1938.

Kl.

An die

Landesführung Wien der V.F.

Z. 220. 18/I/38

W i e n I,

VII

litischer Tagesbericht vom 28.2.1938.

Bericht

Stimmung unter den Mitgliedern, Amtswaltern und
rieben dauern gut.

In einigen Kreisen der Bevölkerung wird die An-
legenheit der Nazi in Steiermark und besonders in Graz mit der angeb-
ch fruchtlosen Bemühung der Regierung besprochen.

In der Beilage übermitteln wir ein Flugblatt des
ichingers Zeitungsdienst", welches von einem Amtswalter gefunden wurde,
wäre gleichzeitig angebracht die Rechtsanwaltskanzlei des Herrn Dr.
ührer in Augenschein zu nehmen.

"O e s t e r r e i c h !"

Beilage.

Wien, I. Riemergasse 8.

Der Bundesführer:

Landesführung Wien
E.Nr. 220 | G.Z.
Eingel. am 1. MÄRZ 1938 | Bg. 1
Bearbeitet: | Erledigt:
A.W.L./Pia

105

leich starken Rufe
e auf: "Sieg Heil!" und "Heil Hitler!", und
ein endloser Wall emporgereckter Hände. Und dazwischen die Weisen
usik und der Lieder der Nation. Zahlreiche Spruchbänder wurden getragen,
wie "Heil Hitler!", "Österreich erwache!", "Wenn andere welken, werden wir
ein Volk!" usw. So zog der Zug ...auf den Residenzplatz, der, als nach
endlos langer Zeit die Schlußgruppen eintrafen, dicht mit Menschen gefüllt
politischer Referent der VF.

An die Rechtsanwaltskanzlei
Dr. Führer z. H. Herrn Dr. E. Führer
W. h. b. I. Riemergasse 8.

104

107

Herausgeber Pressestelle der Stadt Salzburg
Fernruf 41202
Schriftleitung: Dr. Anton Wintersteller, Salzburg, Schulgasse 2, Fernruf 20,400 - Verantwortlich für Anzeigen: Leopoldine Kaufmann, Wien I, Wipplingerstraße 35, Fernruf U 18,503. Verantwortlich für Anzeigen: Leopoldine Kaufmann, Wien I, Wipplingerstraße 35, Fernruf U 18,503. Verantwortlich für Schriftleitung: Dr. Anton Wintersteller, Salzburg, Schulgasse 2, Fernruf 41202
Verlagsort Salzburg. Herstellung: Leopoldine Kaufmann, Wien I, Wipplingerstraße 35, Fernruf U 18,503. Verantwortlich für Anzeigen: Leopoldine Kaufmann, Wien I, Wipplingerstraße 35, Fernruf U 18,503. Verantwortlich für Schriftleitung: Dr. Anton Wintersteller, Salzburg, Schulgasse 2, Fernruf 41202
Postsparkassekonto Nr. 104.763.

SNlzburger Chronik 22.2. Weisungen der VF. Erklärungen beim gest...
Amtswalter-Appell! Beim gestrigen Amtswalterappell im Kurhaus (Über...
erhebenden Verlauf wir an anderer Stelle berichten) wurden auch die...
ergebenden praktischen Auswirkungen der Kanzler-Besprechung am Ober...
berg, soweit sie vorerst die österreichische Seite betreffen, bekannt...
geben. Das Amt des Frontführers gibt in einem Rundschreiben bekannt,...
nunmehr der Wortgruß "Heil Hitler" gestattet ist, wenn er nicht in...
demonstrativer Absicht geleistet wird. Das Tragen von Hakenkreuzabzei...
in jeder Form ist, nach wie vor verboten, auch das Uniformverbot ble...
im vollen Umfange aufrecht. Reichsdeutsche Staatsangehörige unterlie...
in den beiden letztgenannten Verboten, nach wie vor den bereits seit...
gem geltenden Sonderbestimmungen. Die Flagge des Deutschen Reiches da...
auch weiterhin nur auf Häusern gezeigt werden, in denen reichsdeutsc...
Staatsbürger wohnen. Die Übertragung ausgesprochener Parteiveranstal...
gen durch den Rundfunk in öffentlichen Lokalen ist, falls solche Send...
gen vom österreichischen Rundfunk nicht übernommen werden, unzulässig...
Ebenso verboten ist jede vereinsmäßig oder vereinsähnliche, sowie mili...
tante Betätigung im Sinne der NSDAP. Ungesetzlich und daher strafbar...
bleibt weiterhin jede Schmier- und Streuaktion, das Herstellen und die...
breitung illegaler Schriften, das Abbrennen von Hakenkreuzfeuern, der...
An- und Verkauf nationalsozialistischer Spendenmarken, Münzen usw., wie...
überhaupt jede Unterstützung parteimäßiger oder parteiähnlicher Verbin...
dungen. In Fragen, die bestehende nationale Vereine betreffen, nimmt de...
Politische Dienst der VF. mit seinen volkspolitischen Referenten jeweil...
Führung. Versammlungen mit politischem Einschlag werden auch weiterhin...
nur von den Gebietsorganisationen der VF. genehmiget, die Heranziehun...
von Rednern aus dem nationalen Lager ist hiebei in Aussicht genommen...
de feindselige oder herabwürdigende Haltung gegenüber der Regierung und...
ihren Mitgliedern oder der Vaterländischen Front und deren Amtswaltern...
wird selbstverständlich nach den bestehenden Bestimmungen verfolgt. Wenn...
die Sicherheitsbehörden ihre besondere Einwilligung geben, dürfen die...
deutschen Nationalhymnen gesungen werden.

Die Zeit 25.2. Englandfeindliche Radio-Sendungen eingestellt. In sei...
nem Kampfe um neue Methoden in der Außenpolitik hat der englische Mini...
sterpräsident gestern unerwartet eine Stärkung aus Italien erfahren. Ein...
Londoner Nachmittagsblatt brachte gestern die sensationelle Nachricht,...
daß der italienische Sender von Bari seine englandfeindlichen Nachricht...
gen in arabischer Sprache eingestellt habe. Dieser Sender war bisher eines...
der Hindernisse bei einer Verständigung zwischen Italien und England, und...
auch Eden stützte zum Großteil seine ablehnende Haltung auf die Sendungen...
Die Meldung des Nachmittagsblattes wird von Reuter dahingehend korrigiert,...
daß die arabischen Sendungen zwar noch nicht eingestellt worden seien, daß...
aber eine Veränderung im Programm wahrscheinlich sei. Von den übrigen ita...
lienischen Sendern sei in den letzten vier Tagen keine englandfeindliche...
Propaganda mehr ausgesandt worden... "Daily Expreß" stellt ganz sachlich...
fest, daß sich England seit vielen Monaten im Mittelmeer zwischen Krieg...
und Frieden befinde. Solle man nun einen freien und friedlichen Ausgleich...
mit Italien versuchen oder soll man die Dinge treiben lassen, und zwar...
zu einem unbekannten Ende? Über Englands Weg kann kein Zweifel bestehen...
Es werde deswegen keinen Bruch in der Regierung geben. Lediglich in der...
Linkspresse werden die Angriffe gegen Chamberlain fortgesetzt. So schreibt...
der "Manchester Guardian", Italien nur vorgetäuscht, um Zeit zu gewinnen, für die Erreichung der wei...
teren Ziele. Der Hegemonie Deutschlands in Mitteleuropa und Italiens im...
Mittelmeer. Ebenso setzen sich der marxistische "Daily Herald" und die...
liberalen "News Chronicle" für die Konzeption Edens ein.

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NATIONALSOZIALISTISCHE DEUTSCHE ARBEITERPARTEI
GAULEITUNG WIEN

WIEN, 27. 11. 19 43
VI., Joseph-Bürckel-Ring 3, Gauhaus
Fernsprecher R 50-5-60

LANDGERICHT WIEN

Eingel. am -6. DEZ. 1943

1 fach, mit

Stabsamt
Gaurechtsberater d.NSDAP
Dr.Fr./Pf.
lo815

An das
Landgericht Wien
Wien I., Justizpalast.

Betrifft: Klara Gidt Goldschmidt
26 Cg 242/42

Es wird um kurzfristige Übersendung des Aktenvorganges über Obengenannten zur Einsichtnahme ersucht.

Heil Hitler!
Der Gaurechtsberater d.NSDAP:
gez.Dr.Frauenberger

F.d.R.:

815
149
33
106
107

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Rechtsanwalt
Dr. Erich Führer
Wien, I., Seilerstätte 16
Fernruf R 27-1-50, R 27-1-51
Sparkassen-Konto D 125.806

Mitglied des NSRB

Wien, am 28. Dezember 1938

Konsulat

An das
Gaurechtsamt,
z.H.des Herrn Hofrates Bauer,
W i e n I.

Sehr geehrter Herr Hofrat !

In einer Vermögensverwaltungsangelegenheit vertrete ich die ungarische Staatsbürgerin Frau Serena L e d e r e r. Mit Rücksicht auf das Schreiben vom 21.ds.M. des königlich ungarischen Generalkonsulates ersuche ich um Vertretungsbewilligung.

Heil Hitler !

Dr. Führer

ungar. — kön.-ung. Generalkonsulat

1 Beilage

003126

Rechtsanwalt
Erich Führer
Wien, I., Seilerstätte 18
Ruf R 27-1-50, R 27-1-51
Postscheckkonto D 125.806

Mitglied des NSRB

Wien, am 28.Dezember 1938

An das Konsulat

Generalkonsulates,
z.H.des Herrn Hofrates Bauer,
W i e n I.

Sehr Geehrter Herr Hofrat !

In einer Firmenliquidationsangelegenheit vertrete ich den ungarischen Staatsbürger Ernst M a n d u l a seit April 1938. Mit Rücksicht auf das Schreiben vom 22.ds.M. des königlich ungarischen Generalkonsulates ersuche ich um Vertretungsbewilligung.

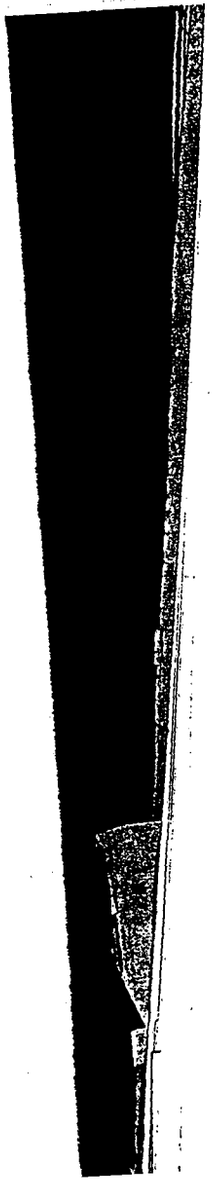
Heil Hitler !

1 Beilage

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[redacted]



Rechtsanwalt
Erich Führer
Wien, I., Seilerstätte 16
Ruf R 27-1-50, R 27-1-51
Postscheck-Konto D 125.806

Mitglied des NSRB

Wien, am 28.Dezember 1938

Konsulat

An das
Gaurechtsamt Wien,
z.H.des Herrn Hofrates Bauer,
W i e n ,I.,

Sehr geehrter Herr Hofrat !

In einer Firmenliquidationsangelegenheit vertrete ich den ungarischen Staatsbürger Eugen M e i s s n e r seit April 1938. Mit Rücksicht auf das Schreiben vom 20.ds.M. des königlich ungarischen Generalkonsulates ersuche ich um Vertretungsbewilligung.

Heil Hitler !

1 Beilage

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Für d. Akt Dr. Löwel Führer

Wien, am 30. Oktober 1937

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Herrn

Dr. Wächter

Berlin

Lieber Pfeund !

In der Anlage übermittle ich Dir eine heute dem Landesleiter übergebene Denkschrift über Leistung und Lage der nationalsozialistischen Rechtsanwälte. Ich habe hierin alles den wahren Verhältnissen entsprechend geschildert und kann Dir nur noch das Eine versichern, dass ich sowohk physisch als auch insbesondere in meinen Nerven am Ende meiner Kräfte angelangt bin. Es ist einfach auf die Dauer nicht auszuhalten, buchstäblich täglich von den Anwälten angegangen zu werden, ganz abgesehen von der neuerlichen Gefährdung meiner Person und natürlich auch ihrer eigenen und sie in Tönen, die einem das Herz abpressen, ständig nach den wiederholt zugesagten Geldern fragen hören. Der 1. November ist ein einigen Tagen hier und von den Verhältnissen in der Provinz ganz abgesehen, wird er sich bei den Wiener Herren so abspielen, dass die meisten weder ihren Zins noch auch die Gehälter ihrer Angestellten bezahlen können. Du und andere zuständige Organe wirst einsehen, dass dieser Zustand auf die Dauer unerträglich und unserer vierjährigen Arbeit und auch jedem Einzelnen von uns nicht weiter zuzumuten ist. Vor drei Wochen hast Du mir versichert, dass 2 Monatsbeträge bereits abgegangen sind. Bis heute habe ich keinen Heller zur Verteilung empfangen. Die ständigen Aufregungen, die alle

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Wien, am 30.Oktober 1937

Herrn

Staatssekretär Dr.L a m m e r s ,

B e r l i n

Hochverehrter Herr Staatssekretär !

Ich habe es bisher vermieden,Sie in früheren Jahren von den Leistungen unserer nationalsozialistischen Anwälte und ihrer materiellen Notlage in Kenntnis zu setzen,weil ich bisher immer der Hoffnung war,dass die mit diesen Angelegenheiten direkt Betrauten schon selbst Abhilfe schaffen werden.

In dieser Erwartung bin ich bisher oft getäuscht worden,weshalb ich am heutigen Tage dem Landesleiter Oesterreichs Herrn Hauptmann a.D.Josef Leopold eine Denkschrift überreicht habe,von der ich Sie bitte,aus beiliegender Abschrift Kenntnis zu nehmen.

Ich bitte Sie um Ihre freundliche Einflussnehme auf die Stellen,die mit österreichischen Dingen befasst sind,insbesondere aber in diesem Falle,wo es sich um die Zurverfügungstellung eines grösseren einmaligen Betrages für die notleidende österreichische Kollegenschaft handelt,auf das Finanzministerium,das bisher nach den mir zugegangenen Mitteilungen stets irgend eine Hilfeleistung an Rechtsanwälte strikte abgelehnt hat.

Diejenigen unserer Rechtsanwälte,für die ich hier spreche,haben seit 4 Jahren vom frühen Morgen bis zum spä-

Ich wende mich an Dich der Du weisst, w
Betrieb einer Kanzlei,die fast zur Gänze den Parteigen
kostenlos zur Verfügung steht,allein an Spesen kostet.
von uns hat seit den Barauslagen-Zuschüssen nicht einen
von diesen Zuschüssen im anwaltschaftlichen Sinne verdi
dern diese und weit mehr als Kanzleispesen,Fahrtspesen,
u.s.w.verausgabt.Deswegen ist auch eine Erhöhung des Pa
unbedingt erforderlich.

Ich darf Dich im Namen aller dieser An
bitten,Dir die Gedankengänge dieser Denkschrift zu eigen
machen,um alles zu versuchen,dass ehestens Abhilfe gesch
wird. Ich kann Dir nur versichern,dass eine Aufrechterha
der Verteidigungen aber insbesondere der in die Hunderte
schwillenden Interventionen um Wiedergutmachung,Wiederei
stellung,Tilgung etc. nicht mehr durchgeführt werden kön
wenn eine solche Hilfe ausbleibt.

Mit vielem Dank im Voraus und in der E
tung,möglichst bald von Dir zu hören,verbleibe ich mit he
lichen Grüssen

Dein

1 Beilage.

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Ich darf Sie bitten, die zuständigen Stellen auf diesen Umstand aufmerksam zu machen und darf Sie hiefür meines und meiner Kollegen Dankes versichern.

Ich verbleibe mit besten Grüssen

Ihr ergebener

Wien, am 4.Feber 1938

Lieber Freund !

Nachstehend erlaube ich mir Abrechnung pro Jänner zu legen:

Ich erhielt		öS 10000.-
Hievon bezahlte ich:		
an Dr.Jerabek	öS 450.-	
" " Kellner	" 450.-	
" " Mann	" 450.-	
" " Führer	" 450.-	
" " Bleyer	" 450.-	
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" " Braunegg,Wien	" 200.-	
" " Sengstbratl i/S.Woitsche.	" 100.-	" 9900.-
verbleiben zu Deiner Gunsten		öS 100.-

Bei dieser Gelegenheit darf ich Dir nochmals herzlichst für die freundliche Unterstützung in den Angelegenheiten der öst.Anwälteda~~n~~ken. Nach obiger Aufteilung, die entsprechend unseren Abmachungen stattgefunden hat, wirst Du nun ersehen, dass die Provinzanwälte nunmehr so berücksichtigt worden sind, wie es dem Wunsche verschiedener Stellen im Reiche entspricht. Freilich ist in der von mir getroffenen Abmachung ein bitterer Tropfen, da Dr.Mann für die Wiener Kollegen begreiflicherweise mit dem Ergebnis nicht zufrieden ist, zumal sich das Verhältnis nunmehr derart zugunsten der Wiener Anwälte verschoben hat. Da selbst und auch Lauter meinte, dass ein Teil der n.ö.Quote auch für die Wiener verwendet wird, was jedoch, wie Du ersiehst, nicht richtig ist. Dr.Gawanda für ~~xxx~~Niederösterreich hat mir szt. erklärt, mit einem niedrigeren Betrag zufrieden zu sein, doch will ich über neuerlichen Bericht an ihn über meine Verhandlungen in Berlin eine Aenderung nicht vornehmen. Diesbezüglich bitte ich um Dein Einverständnis, falls Gawanda mit Rücksicht auf die zahllosen Fälle, die wir Wiener im Sitz der N.Oe.Sicherheitsdirektion verrichten müssen, dass Du für eine Abtretung an die Wiener nichts einzuwenden haben wirst.

Hierüber wird Dir noch schriftlich ein Bericht zugehen.

Die mir in den letzten Tagen übermittelten Fälle wegen Leoben und Graz habe ich weitergeleitet und hoffe in Bälde Dir die Erledigung mitteilen zu können.

Ich verbleibe mit herzlichen Grüssen

18 Beilagen anbei

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Rechtsanwalt
Dr. Erich Führer
Wien, I., Biennergasse 8
Fernruf R 27-1-50
Postsparkassen-Konto D 126.800

Wien, am 30.Oktober 1937

Sehr geehrter Herr Landesleiter !

Unter Bezugnahme auf den im Oktober 1936 unterbreiteten Bericht über Leistung und Lage der nationalsozialistischen Rechtswahrer erlaube ich mir heute über das vergangene Jahr (November 1936 - Oktober 1937) Bericht zu erstatten. Er kann sich in seinem ersten Teil mit Rücksicht auf die in beispielgebender Gemeinschaftsarbeit erarbeiteten und von mir herausgegebenen Denkschriften auf das Wesentlichste beschränken.

I) Wenn man im Oktober 1936 noch der Hoffnung sein konnte, dass die gegebenen Zusagen bezüglich einer Amnestie und einer wesentlichen Lockerung der gesetzlichen Ausnahmsbestimmungen wenigstens Schritt für Schritt eingehalten werden, so sind wir heute in der Lage auf einem der wichtigsten Teilgebiete der sogenannten "Befriedung", dem des Rechtslebens in Oesterreich, eine nüchterne Bilanz zu ziehen. Seit dem Sommer 1936 befinden sich noch immer mehr als hundert Nationalsozialisten in den Strafanstalten von Stein, Garsten und in der Karlau, ohne dass es bisher möglich gewesen wäre, diese unter Hinweis auf die im Abkommen vom 11.Juli 1936 vorgesehene Amnestie frei zu bekommen. Wiederholte und von verschiedenen Persönlichkeiten unternommene Versuche während des letzten Jahres wenigstens dies

unerlässliche Voraussetzung einer friedlichen Entwicklung zu schaffen,sind gescheitert.Im Juli und August 1937 wurden zwar wieder einige Häftlinge freigelassen.Bereits im September ist diese Aktion völlig ins Stocken geraten.

Die Freilassungen erfolgten im Allgemeinen durchaus willkürlich.Die anlässlich des Juliabkommens gegebenen Richtlinien wurden nicht eingehalten und befinden sich heute Parteigenossen,über die eine Mindeststrafe von 5 Jahren Kerker verhängt wurde,noch immer in den Strafanstalten.Der gegenwärtige Zustand und die geübte Praxis der Behörden ist unerträglich.Alle Versuche durch politische oder rechtliche Einflussnahme eine Aenderung dieses Zustandes herbeizuführen,sind bis zum heutigen Tage im Wesentlichen ohne Ergebnis geblieben. Auch die Gründung des volkspolitischen Referates und die mehrmaligen Versuche des Staatsrates Dr.Seyss-Inquart auf diesem Gebiete einen Erfolg zu erzielen,hatten den gleichen Misserfolg.

Inwieweit das Deutsche Reich die Möglichkeit gehabt hätte und noch heute besitzt,dieser krassen Verletzung des Abkommens vom 11.Juli zu begegnen und einen Zustand,der für den nationalsozialistischen Bevölkerungsteil unerträglich ist, ein Ende zu bereiten,entzieht sich meiner näheren Kenntnis. Wir nationalsozialistischen Rechtsanwälte haben bei jeder Gelegenheit auf diese,dem Juliabkommen des Jahres 1936 widersprechenden Zustände hingewiesen und alles unternommen,um den Aermsten der Armen,unseren nationalsozialistischen Gefangenen zu helfen.

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II) Auch der uns immer wieder versprochene und in Aussicht gestellte Abbau der Ausnahmsgesetze wurde von Monat zu Monat hinausgezögert, um endlich im August 1937 im neuen Ordnungsschutzgesetz seinen Niederschlag zu finden. Wir nationalsozialistischen Rechtsanwälte haben auf Grund unserer umfassenden und eindeutigen Erfahrungen kein Mittel unversucht gelassen, um die Regierung und insbesondere den Minister des Innern Dr. Gleise-Horstenau auf die Unhaltbarkeit der Ausnahmsbestimmungen gegen den Nationalsozialismus und insbesondere die vielfach missbräuchliche Anwendung dieser Bestimmungen aufmerksam zu machen. Auf Grund aktenmässigen Materiales hatte ich in Zusammenarbeit mit vielen nationalsozialistischen Kollegen schon im Dezember 1936 mich in einer umfangreichen Denkschrift an den Bundeskanzler gewendet, um an Hand zahlloser Beispiele die Handhabung der Gesetze durch Gerichte und Verwaltungsbehörden vor Augen zu führen. Wenngleich der Widerhall dieser Denkschrift über "Oesterreichs Befriedung" in allen Bevölkerungskreisen, auch nicht nationalsozialistischen, ein sehr grosser gewesen war, so bildeten lediglich die amtlichen Stellen hierin eine Ausnahme. Ende Juni 1937 hatte ich neuerlich neues und einwandfreies Material, das mir meine Kollegen in mühevoller Arbeit zur Verfügung gestellt hatten, zu einer Denkschrift" Justitia fundamentum regnorum" vereinigt und dem Herrn Bundeskanzler überreichen lassen, der das gleiche Schicksal beschieden war. Insbesondere hatte ich jegliche Missachtung dergesetzlichen Bestimmungen insbesondere der verfahrensrechtlichen Bestimmungen gerügt und die Forderung erhoben, die

Unterbehörden zu einer den Gesetzen entsprechenden Praxis zu veranlassen.

In gewissem Sinn ist wohl festzustellen, dass das jüngst erschienene Ordnungsschutzgesetz eine Verbesserung des geltenden Rechtszustandes darstellt. Auf keinen Fall aber kann gesagt werden, dass die Neufassung der Ausnahmsbestimmungen unseren Wünschen und Beschwerden vollinhaltlich Rechnung trägt. D r Kampf um eine einem Rechtsstaat würdige und entsprechende Gesetzgebung muss auch weiterhin fortgesetzt werden. Insbesondere muss das im Ordnungsschutzgesetz gesetzlich festgelegte Recht der Behörden wegen einer Straftat eine gerichtliche und eine Verwaltungsstrafe, also zwei Strafen, zu verhängen als den primitivsten Grundsätzen eines Rechtsstaates widersprechend, sogar als ein Rückschritt bezeichnet werden. Der Charakter des Ordnungsschutzgesetzes als eines Kompromisses zwischen unseren berechtigten Wünschen, die Grundlagen eines Rechtsstaates wiederherzustellen mit der Absicht der Verwaltungsbehörde möglichst viel von dem bisherigen ganz und gar unerträglichen Zustand auch in ein neues Gesetz hinüberzuretten, zieht sich wie ein roter Faden durch das ganze Gesetz. Das sogenannte beschleunigte Verfahren in Pressesachen, das erfahrungsgemäss Monate und Monate dauert, die Bindung des Richters an einen Strafsatz wegen oftmals nichtiger Strafhandlungen ein Jahr Arrest verhängen zu müssen, bleiben auch weiterhin in Geltung.

Sicherlich ist die Wiedereinführung der Bundesgerichtshofbeschwerde in politischen Verwaltungsstrafsachen

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Spruchpraxis dieses Gerichtshofes von unabhängigen und sich ihrer Verantwortung für das Volksganze bewussten Richtern ausgeübt wird. Auch hier sind wir von einem befriedigenden Zustand noch sehr weit entfernt.

III) Wer im Sommer 1936 gehofft hatte, dass in der Folgezeit die Verfolgungen unseres nationalsozialistischen Bevölkerungsteiles ein Ende nehmen werden, der sah sich bereits im Herbst in dieser Hoffnung bitter enttäuscht. Die Verfolgungen fanden und finden bezüglich der sogenannten illegalen Parteitätigkeit nach wie vor in voller Schärfe statt. Hiedurch ist die von uns Rechtsanwälten erwartete Erleichterung unserer Berufsausübung in allen diesen Angelegenheiten nicht eingetreten. Da das gerade Gegenteil ist festzustellen. Die Erlassung des Ordnungsschutzgesetzes mit den diesbezüglichen Bestimmungen über die Berufung gegen die Straferkenntnisse der Verwaltungsbehörden und die Anrufung des Bundesgerichtshofes hat eine neue Fülle von Arbeit in die Kanzleien der ständig mit diesen Dingen betrauten Anwälte gebracht. Das was wir im Interesse der Bewegung, im Interesse der Rechtssicherheit jedes Einzelnen durch Monate und Jahre hindurch gefordert, was wir in allen Prozessen, in allen Rechtsmitteln und in Denkschriften verfochten haben, das hatte für jeden einzelnen von uns die unausbleibliche Folge einer bedeutenden Arbeitsmehrbelastung. Hiezu kommen noch die im letzten Jahre einen besonderen Umfang angenommenen Interventionen, da jeder Parteigenosse infolge der in der Oeffentlichkeit aufgezeigten Möglichkeiten mit Recht der Meinung sein kann, dass wenigstens einige der zum Zwecke der Befriedung eingesetzten Persönlichkeiten ihm helfen können. Die Zahl der Inter-

ventionen beim Innenminister Dr.Glaise-Horstenau geht in die Zehntausende,die beim volkspolitischen Referenten bereits in die Hunderte.Insbesondere ist hiedurch die Mühewaltung der in Wien mit diesen Dingen befassten Rechtsanwälte zu einer Arbeitsbelastung gestiegen,die bei unseren acht Herren 4/5 bis 5/6 ihrer täglichen Arbeitszeit in Anspruch nimmt.Bis in den späten Nachmittag hinein dauernde Strafverhandlungen,dazwischen stundenlange Interventionen bei den Verwaltungsbehörden, des Nachmittags eine Fülle von Parteigenossen,die mit dem oder jenem Ansuchen um Abhilfe in die Kanzlei kommen,das ist das tägliche Bild.

Demgegenüber darf ich Sie,sehr geehrter Herr Landesleiter,neuerdings auf die Notlage aller dieser Herren im Bewusstsein meiner Verantwortung hinweisen,da alle meine bereits im Vorjahr als dringlich bezeichneten Wünsche keine Erfüllung gefunden haben.Die materiellen Grundlagen unserer nationalsozialistischen Kollegenschaft sind heute derartige,dass ein weiteres Zuwarten den Zusammenbruch der meisten von ihnen herbeiführen muss.

a) Die jeweiligen monatlichen Zuschüsse zu den Barauslagen dieser Rechtsanwaltskanzleien sind seit Ende Juni 1937 nicht mehr eingetroffen.Waren diese in Verhältnis zu den tatsächlichen Ausgaben solcher Kanzleien überhaupt nicht nennenswert,von einer auch nur spärlichen Bezahlung für die Dienstleistungen an sich überhaupt nicht zu sprechen,so bedeutet das Ausbleiben dieser auch geringfügigen Beträge für jeden Einzelnen nahezu eine Katastrophe.

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b) Ich habe vorigen Jahr auf die schwierige Lage der meisten der mit diesen Dingen befassten Herren hingewiesen und nur in der Zurverfügungstellung eines grösseren Betrages für einzelne dieser Herren die Voraussetzung einer Weiterarbeit gesehen. Seither ist wieder ein Jahr verflossen. Seit dem Jahre 1933 stehen wir nationalsozialistische Anwälte in vorderster Kampffront, ohne dass uns jene Hilfe zuteil wird, auf die wir auf Grund unserer Leistungen gerade aus dem nationalsozialistischen Zusammengehörigkeitsgefühl glauben Anspruch erheben zu können. Die Verschuldung jedes Einzelnen von uns hat bereits eine Grenze erreicht, die schon in allerkürzester Zeit das Aergste befürchten lässt. Ich muss schon heute jegliche Verantwortung für die Schädigung des nationalsozialistischen Gedankens ablehnen, wenn stadt- und landbekannte Rechtsanwälte nationalsozialistischer Gesinnung, die ja aus und ja ein seit dem Jahre 1933 durch Verteidigungen und Interventionen für Nationalsozialisten allgemein bekannt sind, in Konkursverfahren verwickelt werden oder auch sonst ihren geldlichen Verpflichtungen nicht nachkommen werden können. Kein Stand kann aus eigenen Mitteln ohne materielle Gegenleistung durch 4 Jahre hindurch eine Tätigkeit ausüben, die grundsätzlich es jedem unserer Parteigenossen ermöglicht, unentgeltlich rechtsfreundliche Vertretung in Anspruch zu nehmen. Herr Landesleiter, die nationalsozialistischen Anwälte Oesterreichs sind am Ende ihrer Kräfte angelangt, sie sind nicht mehr imstande, tausende und abertausende Schilling für die Aufrechterhaltung ihrer Kanzleibetriebe dadurch zuzusetzen, dass sie bisher Freunde und

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Bekannte gefunden hatten,die ihnen diese Beträge gelichen haben.

c) Die fortschreitende Verarmung des nationalsozialistischen Bevölkerungsteiles,insbesondere aber seine Einschüchterung haben im letzten Jahre Formen angenommen,die auch die letzten Verdienstmöglichkeiten für unsere Anwälte von Monat zu Monat geringer werden lassen.Die Klagen in Wien und insbesondere auch in der Provinz,dass nationalsozialistische Kaufleute und Industrielle,aber auch angeblich gutgesinnte Privatleute, es vorziehen,rechtsfreundliche Hilfe bei schwarzen oder sogar jüdischen Anwälten in Anspruch zu nehmen,mehren sich täglich. Jeder Einzelne von uns kann an Hand zahlreicher Beispiele jederzeit nachweisen,dass sein persönlicher Einsatz für unsere Parteigenossen ihm auch die Verdienstmöglichkeit auf anderen Gebieten so sehr schmälert,dass man wohl nicht mehr von leben, sondern nur mehr von vegetieren sprechen kann.Alle meine Versuche,insbesondere die uns nahestehenden Industriellen zu veranlassen,nicht etwa ihre gesamten Agenden unseren nationalsozialistischen Kollegen zu übertragen,sondern wenigstens teilweise unserer Kollegenschaft Lebensmöglichkeiten zu gewähren,sind fruchtlos geblieben.

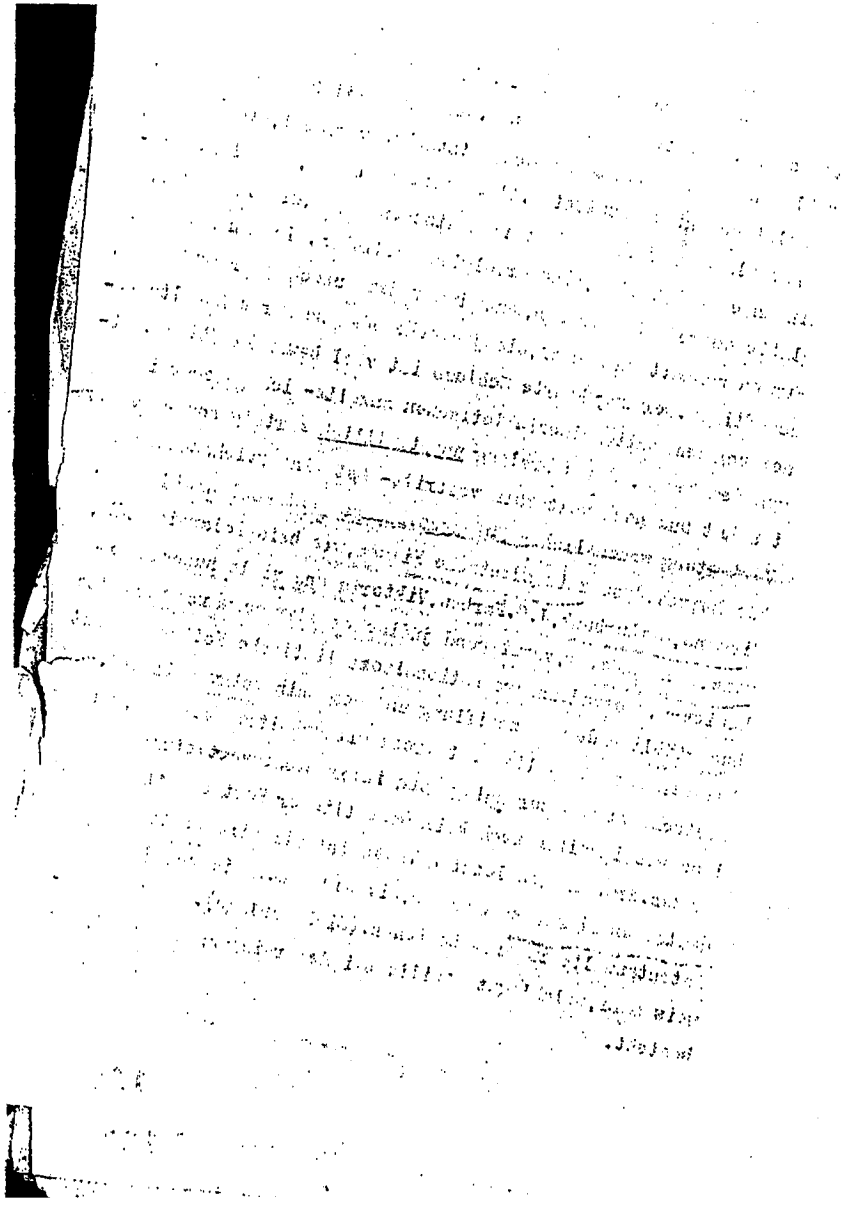
Der Zeitraum der Befriedung,der Unsicherheit was kommen wird,veranlasst nun manche nationale Persönlichkeiten oder Unternehmen sich Anwälte anzulegen,die zwar Arier und sogenannter nationaler Gesinnung sind,um dadurch nach aussen und insbesondere der Bewegung gegenüber sich ein Alibi zu verschaffen.Auch hier wieder fällt es uns nicht ein,die Forderung zu er

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heben,dass grosse Unternehmungen anstelle eines bisher jüdischen oder prononciert schwarzen Anwaltes etwa mit ihren gesamten Agenden nun allein einen nationalsozialistischen Anwalt beschäftigen mögen.Aber nicht einmal diese durchaus in den heutigen Verhältnissen mögliche Verlagerung wird durchgeführt. Im Gegenteil,es kommen nur Anwälte zum Zuge,die bisher aus welchen Gründen immer,keinerlei nennenswerte Tätigkeit für unsere Parteigenossen verrichtet haben.Mir ist mit Ausnahme von einigen nicht nennenswerten Fällen abgesehen,kein Fall bekannt, in dem einer von unseren verdienstvollen Kollegen,die in den letzten vier Jahren ständig in selbstloser Weise für unsere Parteigenossen eingetreten sind,die Verfolgungen über Verfolgungen über sich ergehen lassen mussten,vom Einsperren und Kostenersätzen ganz zu schweigen,auch seit dem 11.Juli 1936 irgend eine Vertretung eines österreichischen Unternehmens erhalten hätten,die ihm die Führung seiner Kanzlei erleichtert.Die Uebergangszeit der sogenannten Befriedung drückt wie auf manchen anderen Gebieten gerade uns nationalsozialistische Anwälte,deren Namen allen Bevölkerungskreisen geläufig ist,an die Wand und verurteilt uns zum sicheren materiellen Untergang,wenn nicht unverzüglich Hilfe gebracht wird.Ihnen muss geholfen werden,im Interesse dieser Braven,aber auch im richtig verstandenen Interesse der Bewegung.

d) Hat der oder jene österreichische Unternehmer,Kaufmann oder Private aus Aengstlichkeit oder anderen Gründen auch noch einen Schein des Rechtes sich lieber schwarzer oder auch jüdischer Anwälte zu bedienen,so haben reichsdeutsche Unternehmen überhaupt keine Entschuldigung,wenn sie nach wie vor,

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Abgesehen davon,dass das Unterlassen jeglicher Unterstützung durch reichsdeutsche Vertretungen nach unseren nationalsozialistischen Grundsätzen,die doch wohl nicht nur für das Gebiet des Deutschen Reiches,sondern auch darüber hinaus und insbesondere in den Gebieten gelten sollen,wo Deutsche wohnen und wo der Angehorige des Deutschen Reiches entsprechend aufzutreten hat,jedem Einzelnen von uns nationalsozialistischen Anwälten das Gefühl völligen Verlassenseins aufzwingt,ist damit noch eine andere Folge verbunden.Richter und Gerichtsbeamte nationalsozialistischer Gesinnung können und werden es niemals verstehen,dass bei ihnen als Vertreter reichsdeutscher Firmen Juden oder ausgesprochen schwarze Anwälte auftreten.Zu wiederholten Malen können wir die Erfahrung machen,dass auch in diesen Kreisen der Glaube an das nationalsozialistische Deutsche Reich gerade aus diesem Umstand heraus im Schwinden begriffen ist,ganz abgesehen davon,dass keiner von diesen Beamten sich für den Nationalsozialismus einsetzen wird,dem viele Unternehmungen im Reich dadurch gerecht zu werden glauben,wenn sie von Nationalsozialismus sprechen,sich äusserlich seinen Forderungen anbequemen und in Oesterreich und im sonstigen Ausland das Gegenteil tun.Wir Oesterreicher,die wir durch das Schicksal so oft gezwungen sind,zu bitten,wir haben gerade auf dem Gebiete des Rechtslebens auf Grund unserer Opfer das Recht und auch die Pflicht zu fordern.Konnte man bis zum 11.Juli 1936 noch gewisse Gründe einer Zurückhaltung anführen,so sind diese mit diesem Tag wohl weggefallen.16 Monate nachher ist dieser unbefriedigende und dem Nationalsozialismus im Allgemeinen,uns nationalsozialistische Rechtsanwälte im Besonderen schwer schädigende Zustand eher schlimmer als besser geworden.Verdrossenheit [illegible]

fühl des Aufgeopfertwerdens ohne Sinn und Zweck greifen allenthalben erschreckend um sich. Mit Worten allein ist diesen Dingen wohl nicht mehr beizukommen, da vier Jahre härtesten Kampfes angesichts solcher Tatsachen auch den Gläubigsten zur Verzweiflung kommen lassen, wenn er von Monat zu Monat mehr in Schulden gerät und nicht weiss, wovon er am Monatsersten Gehälter, Miete Licht etc. bezahlen soll.

Ich erhebe nochmals und wohl zum letzten Male in meiner Eigenschaft als Fürsprecher meiner nationalsozialistischen Kollegen die Stimme, um insbesondere Sie, Herr Landesleiter, zu ersuchen, alles zu versuchen, um dieser unhaltbaren Lage ein Ende zu bereiten.

Soll nicht noch in diesem Jahr der Zusammenbruch der meisten Kanzleien erfolgen, müssen unverzüglich folgende Massnahmen getroffen werden:

1) Sofortige Nachzahlung des seit Ende Juni ausgebliebenen Barauslagenzuschusses, Erhöhung desselben, insbesondere für die Wiener Kollegen mit Rücksicht auf die gestiegene Arbeitsbelastung.
2) Ueberweisung eines einmaligen Unterstützungsbetrages an solche Kollegen, die in den vergangenen Jahren am schwersten von den hiesigen Verhältnissen getroffen worden sind und nur durch einen solchen Zuschuss ihre Kanzleien weiterzuführen in der Lage sind. Wenn für eine kostenlose Arbeit von vier Jahren, die im Wesentlichen von 25 Anwälten in Oesterreich geleistet wurde, nicht ein einmaliger Betrag zur Unterstützung dieser Anwälte in der Höhe von mindestens 30.000 Rmk, nicht etwa als Entgelt, sondern als eine durch die Verhältnisse nö-

tig gewordene Unterstützung aus Reichsmitteln zur Verfügung gestellt werden kann,dann ist wohl die von unseren Gegnern so viel bewunderte nationalsozialistische Solidarität nicht vorhanden.Anderen Berufsgruppen in Oesterreich wurde ohne besonderen Einsatz und ohne zusätzliche unentgeltliche Arbeitsleistung eine Hilfe zuteil,die bisher das 30 bis 40 fache des obigen Betrages ausmacht.

3) Eindringliche Einflussnahme der zuständigen Parteiinstanzen auf die Parteigenossen insbesondere auf Industrielle und Kaufleute,zwecks Hinweis auf die nationalsozialistischen Anwälte,

4) Appell an die zuständigen Behörden des Deutschen Reiches,an die Interessentenverbände etc.um unserer nationalsozialistischen Kollegenschaft Beschäftigungsmöglichkeit zu gewähren.

Wir nationalsozialistischen Rechtsanwälte,gewohnt die Interessen der unseren Rechtsschutz suchenden Parteigenossen über alles zu stellen,wollen auch weiterhin dieser unserer inneren Verpflichtung gerecht werden.Unser gutes Recht ist es aber,dass unserer beispiellosen Einsatzbereitschaft dann Rechnung getragen wird,wenn die Not und nichts anderes als die Not jeden Einzelnen von uns in seiner Existenz bedroht.

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Durch nichtarische Patentanwälte in Oesterreich vertretene reichsdeutsche Firmen.

Bergwerksgesellschaft Georg von Giesches Erben,Breslau
letzte Anm. 24.9.37; 1937: 6 Anmeldungen. Vertr: Mittler

Deutsche Gold-und Silberscheideanstalt vorm.Roessler,Frankfurt a/M.
letzte Anm. 3.9.37 Vertr: Reik,Kassler

Ankerwerke Aktiengesellschaft,Bielefeld
letzte Anm. A 2404-37 Vertr: Hugo Reik

Süddeutsche Apparatefabrik G.m.b.H.Nürnberg
letzte Anm. A 4287-37 Vertr: Ziv.Ing.Grann

Deutsche Eisenwerke Aktiengesellschaft,Mühlheim(Ruhr)
letzte Anm. A 2388-37 Vertr: Goldmann

Deutsche Hydrierwerke Aktiengesellschaft,Rodleben bei Breslau
letzte Anm. A 3290- 37 Vertr: Sztransky

Klein,Schanzlin & Becker A.G.Frankenthal (Pfalz)
letzte Anm. 10.6.37 Vertr: Baumann,Bing

Gewerkschaft Matthias Stinnes,Essen a.d.Ruhr
letzte Anm. 7.6.37 Vertr:Baumann,Bing

Radioaktiengesellschaft D.S.Loewe,Berlin-Steglitz
letzte Anm.Sept.1937 Vertr: Neutra

C.Schaub Apparatebaugesellschaft m.b.H.Charlottenburg 5 und
Georg von Schaub,Berlin W 15,Düsseldorferstrasse 35 A
letzte Anm. A 1890-37 Vertr: Baumann,Bing

Roscher & Hanning,Hamburg
letzte Anm. A 223-37 Vertr:Baumann,Bing

Schubert & Salzer,Maschinenfabrik Akt.Ges.Chemnitz
letzte Anm. 20.3.37 Vertr:Baumann,Bing

Metallgesellschaft A.G.Frankfurt a/Main
letzte Anm.Sept.37, 1937 6 Anm. Vertr:Baumann,Bing

I.G.Farbenindustrie A.G. b
bis einschl.Sept.37 insbesondere hinsichtlich physikalischer Angelegenheiten (Agfa) noch immer vertreten durch Hess (früher Hess und Baasewski, Popper

Aktiengesellschaft Chem.Fabriken Fahlberg-List,Magdeburg
letzte Anm. A 1614-37 Vertr:Reik,Kassler

J.M.Voith,St.Pölten (Niederösterreich)
1937 eine grosse Zahl von Anm. Vertr:Neutra
J.M.Voith,Heidenheim a.d.Brenz hat seit 1936 nichts angemeldet, dagegen wird oft bei den Anm.von St.Pölten ein Dieter Theodorf München als Erfinder genannt und dieser auch bei Anm.auf diesen Namen ebenfalls von Neutra vertreten.

(Bei Baumann- Bing sitzt Dipl.Ing.Paul Böhm, (Jude) früher Frankfurt am Main.)

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1. Exh.

Abrechnung

über die am 18.Dezember 1937 eingegangenen . . . . . öS 13950.-

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zu Ihren Gunsten		öS

Wien, am 7.Jänner 1938

20 Beilagen

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Wien, am 30.Oktober 1937

Herrn

Dr.Paul R a u s c h e r ,

B e r l i n

Lieber Paul !

In der Anlage übersende ich Dir eine heute dem Landesleiter übermittelte Denkschrift,aus der Du ersehen mögest, dass unsere Lage eine solche ist,die ein weiteres Zuwarten unweigerlich bei den meisten der Kollegen xx einer sicheren Katastrophe herbeiführen würde.Ich bin nicht mehr in der Lage die Verantwortung für diese Dinge zu übernehmen,wenn nicht unverzüglich Hilfe geleistet wird,denn schliesslich kann man wohl nur von solchen Parteigenossen Geld und Geldeswert für Parteizwecke verlangen,wenn sie solches besitzen.Ich und meine Kollegen gehören nun einmal nicht zu den begüterten Kreisen, so dass ihnen ein Aufrechterhalten ihrer Kanzleibetriebe und ein Zurverfügungstellen derselben nicht auf die Dauer zugemutet werden kann. Ich bitte Dich alles,was in Deiner Macht steht,zu veranlassen,um raschest in der Richtung der angegebenen Wünsche auf Abhilfe zu dringen.

Zu Deiner Unterrichtung ist diese Denkschrift bereits an folgende Stellen gegangen:

Dr.Wächter, Rodenbücher, Bauter,Dr.Megerle, Reichsminister Dr.Frank, Dr.Kaspar, Graf v.d.Goltz, Staatssekretär Lammers, Landrat Hüter,Botschaftsrat von Stein, Geheimrat Clodius, Gesandtschaftsrat von Altenburg, Dr.Koderle.

Ich übermittle Dir noch zwei Exemplare ausserdem,die Du nach Deinem Gutdünken verwenden mögest.

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Schliesslich hat alles einmal sein Ende und werden wir dieses mit Würde ertragen,wenn wir die Ueberzeu gewinnen sollten,dass alle unsere Hilferufe vergebens sind. Welcher Eindruck in Oesterreich hinterlassen wird,wenn die genannten "prominenten" nat.soz.Anwälte in den Konkurs oder in noch ganz andere Schwierigkeiten kommen,das brauche ich als guten Kenner unserer Verhältnisse nicht ausmalen. Wir a die wir 4 Jahre täglich von früh bis abends uns für unsere armen Teufel einsetzen,sind nicht mehr imstande,Zweckdienli ches zu leisten,wenn einem der Boden unter den Füssen gezog wird. Versuche daher wenn möglich,um sofort und ausgiebige Abhilfe zu schaffen.

Handkuss an Deine verehrte Frau Gemahlin und herzlichste Grüsse an Dich

Dein

Lieber Dr.Rauscher ! Ich darf Ihnen den Inhalt der Denkschrift besonders warm ans Herz legen und bitte Sie alles zu versuchen,um ehestens den bedrängten Anwälten Hilfe zukommen zu lassen.

3 Beilagen

Wien, am 30.Oktober 1937

Wohlgeb.

Frau Dr.Edith K r a t t e r ,

B e r l i n

Sehr verehrte Frau Doktor !

Heute komme ich wieder einmal mit etwas Unangenehmem. In der Anlage übermittle ich Ihnen zu Ihrer persönlichen Kenntnisnahme und Verwendung eine Durchschrift meiner heute an den österr.Landesleiter überreichten Denkschrift über die Notlage der österr.Anwälte. Aus ihr werden Sie ersehen,dass es so nicht weitergehen kann.Der Einfachheit halber habe ich die Briefe zusammen getan und darf Sie bitten,diese auf schnellstem Wege an die Adressaten befördern zu wollen und sowohl die Passivseite meines Kontos rein materiell als auch in Ihrer besonderen Fürsorge ideell entsprechend zu belasten. Wir sind am Ende unserer Kräfte angelangt und können einfach nicht weiter. Nur Leistungen und Leistungen von uns zu verlangen,ohne uns die Möglichkeit zu heben,diese zu setzen,ist auf die Dauer unmöglich.

Haben Sie vielen Dank für Ihre Mühewaltung.

Ich darf Sie auch unter Einem anfragen,ob die Ueberweisung des Geldbetrages an mich durch Dr.Eberharter bereits vollzogen w rde,da ich zwar das Geld dringend benötige,es aber noch nicht erhalten habe.Ich wäre Ihnen für eine kurze Mitteilung hierüber dankbar.

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Wien, am 30.Oktober 1937.

Herrn

Gesandtschaftsrat von A l t e n b u r g ,

B e r l i n

Auswärtiges Amt !

Sehr geehrter Herr Gesandtschaftsrat !

Heute darf ich in einer meine nationalsozialistischen Kollegen und meine eigene Person betreffenden Angelegenheit mich an Sie wenden. Ich habe über die Leistungen und die Notlage der nationalsozialistischen Rechtsanwälte heute an den Landesleiter Österreichs eine Denkschrift überreicht,deren Abschrift ich Ihnen anbei übermittle mit dem Ersuchen,hievon gefl.Kenntnis nehmen zu wollen.

Wir alle diese Anwälte,die wir seit 4 Jahren bedingungslos und vorbildlich unsere besten Kräfte für die Bewegung eingesetzt haben,Freiheit und berufliche Ausübung, insbesondere aber natürlich Geld für die Erhaltung unserer Kanzleien zugesetzt haben,sind am Ende unserer Kräfte angelangt.Wir können nicht mehr weiter.Geschehen ist trotz mancher Versprechungen nichts.

Ich bitte insbesondere in der Richtung Ihren Einfluss geltend zu machen,dass die uns seit 1½ Jahren in Aussicht gestellte Kreditausweitung auch für Rechtsanwälte durchgeführt wird und dass man den Rechtsanwälten,die einzig und allein durch ihr vorbildliches Hervortreten in Not

Ich bitte Sie Ihren Herrn Gemahl herzlichst v
mir grüssen zu lassen,und hoffe ich doch im November w
der einmal nach Berlin kommen zu können.Ansonsten verb
bei ich in steter Ergebenheit und Dankbarkeit

Ihr

P.S. Ich bitte event.mangelhafte Adressen entsprechend zu ergänzen bezw.richtigstellen zu wollen.

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Wien, am 30.Oktober 1937

Herrn

Dr.Viktor Gerold K a s p a r ,

B e r l i n

Sehr geehrter Herr Doktor !

In der Anlage übersende ich Ihnen Abschrift einer heute dem Landesleiter Österreichs überreichten Denkschrift,aus der Sie die Notlage unserer nat.soz.Anwälte ersehen mögen. Ich weiss,dass Sie seit Jahr und Tag über meinen Wunsch alles versucht haben,um Geldmittel für diesen Zweck bereitzustellen.Es ist Ihnen dies bisher nicht gelungen. Ich habe diese Denkschrift unter Einem an folgende Personen versendet:

Dr.Wächter,Rodenbücher,Rauter,Dr.Meggerle, Reichsminister Dr.Frank,Dr.Rauscher,Graf v.d.Goltz Staatssekretär Dr.Lammers, Landrat Hüter,Botschaftsrat von Stein,Geheimrat Clodius,Gesandtschaftsrat von Altenburg,Dr.Koderle.

Ich übertreibe nicht wenn ich sage,dass wir am Ende unserer Kräfte angelangt sind und dass der Ruin der meisten Kanzleien unmittelbar bevorsteht.Mehr brauche ich Ihnen,mit dem ich schon so oft über diese Verhältnisse eingehend gesprochen habe,wohl nicht zu sagen.So aber wie es bisher war,kann es nicht weitergehen. Ich wäre Ihnen für eine eheste Mitteilung,welche Mittel in Angriff genommen werden,dankbar und zeichne,mit besten Grüssen

Ihr ergebener

1 Beilage

übersteh[en].So aber wie es bisher gegangen ist,geht es n[icht]
weiter.

Ich danke Ihnen vielmals für das bisher unserer[n]
Angelegenheiten erwiesene Interesse,hoffe dass Sie und [wir]
helfen werden und verbleibe

Ihr stets ergebener

003151



Wien, am 30.Oktober 1937.

Herrn Landrat H ü t e r
Im Büro des Generalobersten Goering,
B e r l i n
Leipzigerstrasse, Ministerratspräsidium.

Sehr geehrter Herr Landrat !

Im Sommer dieses Jahres habe ich mir erlaubt, Ihnen aus Ihrem Interesse der österreichischen Zustände heraus, eine Denkschrift über die hiesigen Rechtsverhältnisse zu übermitteln. Ich darf Ihnen heute die Abschrift einer weiteren Denkschrift, die ich heute dem österreichischen Landesleiter überreicht habe, einsenden.

Ich bitte Sie auf Grund dieser Angaben Ihren Einfluss dahin geltend zu machen, dass die in dieser Denkschrift niedergelegten Wünsche ehestens und umfassend erfüllt werden.

Ich kann Sie versichern, dass ich nicht leichten Herzens diesen Weg beschritten habe, aber es bleibt mir wohl nichts anderes übrig, als noch in letzter Minute alle zuständigen Organe auf die Folgen aufmerksam zu machen, die mit einem Ruin der meisten dieser Kanzleien verbunden sind. Ich will kein Mittel unversucht lassen, um insbesondere die zuständigen Stellen des Deutschen Reiches auf diese hoffnungslose Lage unserer braven nationalsozialistischen Rechtsanwälte hinzuweisen. Meine durch mehr als

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Wien, am 30.Oktober 1937

Herrn

Dr.M e g e r l e ,

Berlin-Lankwitz

Sehr geehrter Herr Doktor !

Ich habe noch eine Bitte. Da noch eine ganze Reihe von Gefangenen sich in den Strafanstalten befindet und ausserdem viele verdiente Parteigenossen gerade aus den Kerkern entlassen worden sind,ganz abgesehen davon,dass auch viele verdienstvolle Parteigenossen,die sich niemals ein Buch kaufen können,in Unmenge vorhanden sind,darf ich Sie bitten, auch dieses Jahr wieder mir eine Anzahl von Büchern zur Verteilung an diese Parteigenossen zur Verfügung zu stellen.Ich weiss,welche Freude ich den einzelnen Leuten,die unermüdlich für uns tätig sind,damit bereitet habe.Die Uebermittlung an die

Beck'sche Universitäts-Buchhandlung,Alfred Hölder

Wien,I.,Rotenturmstrasse 25

ist ohne irgend ein Hindernis vor sich gegangen und bitte ich die Bücher wieder an Herrn Fischer an obige Anschrift zu senden.

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Mit Rücksicht auf den Weihnachtshandel der Buchhändler darf ich Sie bitten,die Sendung wenn möglich spätestens Ende November abgehen zu lassen,damit die Verteilung zeitgerecht erfolgen kann.

unternommenen Versuche,Abhilfe zu schaffen,sind fast zu Gänze gescheitert.

Ich danke Ihnen im Voraus für Ihre Mühewaltung dieser Angelegenheit und verbleibe mit besten Grüssen Herrn Ing.Heinz Rüdegger und ergebensten Grüssen von m

Ihr

1 Beilage

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Wien, am 30.Oktober 1937

Herrn

Oberführer R a u t e r ,

B e r l i n

Sehr geehrter Herr Oberführer !

In der Anlage übermittle ich Ihnen zur persönlichen Kenntnis eine Abschrift einer heute dem Landesleiter übermittelten Denkschrift. Ich darf Sie auf Grund dieser erschütternden Tatsache ersuchen, alles veranlassen zu wollen, was in Ihrer Macht steht, um diesem unhaltbaren Zustand ein Ende zu bereiten. Es ist mir nicht möglich, die Verantwortung für diese Dinge länger zu tragen. Das Wichtigste ist, dass rascheste Abhilfe geschaffen wird, da bereits der 1. November, ein Zeitpunkt wo Zins, Gehälter etc. zur Auszahlung gelangt, in keiner dieser Kanzleien die Mittel zur Verfügung stehen, um diese zur Aufrechterhaltung ihrer Kanzleien bereitzustellen.

Ich danke im Voraus für Ihre Bemühungen und verbleibe

Ihr ergebener

1 Beilage

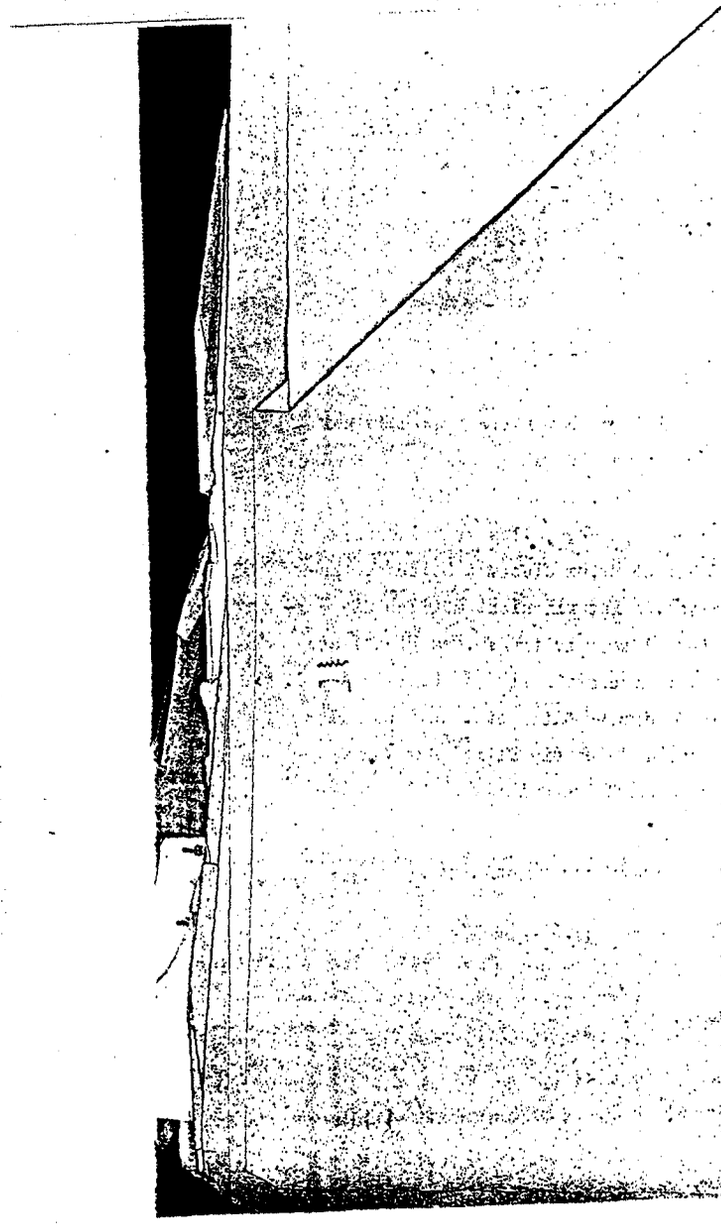
140

tueller Schichten im letzten Jahre erschreckende Fortschri
gemacht hat, so dass auch diesen durch eine kleine Freude
ein wesentlicher Auftrieb im nat.soz. Sinn gegeben werden k

Ich danke Ihnen vielmals für alle Ihre Bemühu
und verbleibe mit besten Grüssen

Ihr ergebener

003154



Wien, am 30.Oktober 1937

Herrn Botschaftsrat von S t e i n ,
W i e n ,III.,
Deutsche Gesandtschaft.

Hochverehrter Herr Botschaftsrat !

In der Anlage darf ich Ihnen die Abschrift meiner heute dem österreichischen Landesleiter übermittelten Denkschrift über die Leistungen und Notlage der nationalsozialistischen Rechtsanwälte zur geneigten Kenntnisnahme übermitteln. Ich darf Sie auch bitten,von Seiten der Deutschen Gesandtschaft die zuständigen Stellen im Reich,insbesondere auch hier wieder das Finanzministerium,das bisher dieser Notlage überhaupt kein Verständnis entgegengebracht hat und alle unsere Wünsche auf Ausweitung der Kreditaktion abweislich beschieden hat,auf diese entsetzlichen Zustände aufmerksam zu machen.

Wir sind am Ende unserer Kräfte angekommen.Wir können nicht mehr,wie bisher in den vergangenen vier Jahren,unsere Freiheit,unsere Nervenkraft und nicht zuletzt unsere bezw. uns von anderen Freunden geliehenen Gelder opfern,ohne dass uns Hilfeleistung aus dem Deutschen Reich zuteil wird.Ich bitte Sie,hochverehrter Herr Botschaftsrat,Ihren Einfluss und den der Deutschen Gesandtschaft in Wien möglichst rasch und eindringlich geltend zu machen,da nur eine sofortige und

003155

Wien, am 30.Oktober 1937

Herrn Geheimrat G l o d i u s ,

B e r l i n

Auswärtiges Amt .

Sehr geehrter Herr Geheimrat !

Nach längerer Pause darf ich Sie wieder einmal mit österreichischen Dingen und zwar mit der Notlage unserer Anwälte beschäftigen. Hierüber habe ich eine Denkschrift an den österreichischen Landesleiter verfasst,die ich Ihnen in Abschrift zur freundlichen Kenntnisnahme übermittle.Aus ihr wollen Sie ersehen,dass die Verhältnisse sich bereits so zugespitzt haben,dass ohne sofortige und durchgreifende Hilfeleistung ein Ruin der meisten dieser Kanzleien bevorsteht.Wir haben seit 4 Jahren in uneigennütziger und selbstloser Weise nur im Interesse unserer Parteigenossen und der Bewegung gedient;wir verlangen hiefür keinen Dank.Wir verlangen bloss die Möglichkeit,unsere Kanzleien im Dienste der Bewegung weiterführen zu können.

Ich bitte Sie,sehr geehrter Herr Geheimrat,als besonderen Kenner der österreichischen Verhältnisse,insbesondere durch eheste Intervention beim Finanzministerium darauf zu drängen,dass endlich die von uns seit mehr als 1½ Jahren als unumgänglich notwendig bezeichnete Ausweitung der Kredite auch für Rechtsanwälte sofort ins Leben

durchgreifende Hilfeleistung uns davor bewahren kann,das nicht die meisten dieser Kanzleien schon in der allernächsten Zeit elend zugrunde gehen. Dass nicht nur das Einzelschicksal sondern besonders die Bewegung hiedurch auf das schwerste geschädigt wird,das brauche ich Ihnen,als einem ausgezeichneten Kenner der österreichischen Verhältnisse nicht näher darzulegen.

Ich verbleibe mit dem Ausdruck meiner besonderen Wertschätzung

1 Beilage

003156

Wien, am 30.Oktober 1937

Herrn
Grafen v. d.Goltz,
Rechtsanwalt,
B e r l i n W
Unter den Linden 4

Hochverehrter Herr Graf!

Entschuldigen Sie,dass ich Sie wieder mit den ent
setzlichen Verhältnissen unserer nat.soz.Kollegenschaft be-
fasse. Ich habe hierüber eine Denkschrift an den Landes-
leiter Oesterreichs heute abgesendet,die ich Ihnen in Durc
schrift zur gefl.Kenntnisnahme übermittle. Alle meine Hilf
und Notrufe während der letzten zwei Jahre sind im Wesent-
lichen ungehört verhallt. Die Verhältnisse haben sich bei
den meisten Kollegen schon so zugespitzt,dass ein Ende mit
Schrecken in kürzester Zeit zu erwarten ist. Wir haben sei
4 Jahren unter Hintansetzung unserer Freiheit,unserer Ge-
sundheit,unserer Nervenkraft und selbstverständlich unsere
materiellen Grundlagen ständig vom frühen Morgen bis in de
späten Abend uns für unsere Parteigenossen eingesetzt.Die
Bitte um Unterstützung ist daher kein Betteln um Hilfe son
dern der einzig mögliche Ausweg,um auch weiterhin unsere
Dienste den ärmsten der Armen kostenlos zur Verfügung zu
stellen. Ich glaube,dass kein Angehöriger irgend eines Sta
des hier in Oesterreich noch auch in der früheren Zeit im
Deutschen Reich in dem Mass aus Eigenem ohne jegliche Unt

des nationalsozialistischen Ansehens in Oesterreich zu g
wärtigen ist.

Ich danke Ihnen auch heute wieder für Ihr be-
sonderes Interesse an unseren österreichischen Verhältni
sen und hoffe mit der Bitte um Ihre Unterstützung keine
bitte getan zu haben.

Ich verbleibe mit dem Ausdruck meiner besonder
Wertschätzung

1 Beilage

003157



Kollegen aus ihrer Gesinnung heraus getan haben.Nun s
wir am Ende angekommen.

Ich darf daher auch an Sie,der Sie schon früh
regem Interesse unseren Kampf um unser gutes Recht in
Oesterreich verfolgt und der Sie an meinen beiden Den
schriften grossen Anteil genommen haben,das Ersuchen
ten, massgebenden Ortes auf diese Verhältnisse hinzuw
sen und auf rascheste Abhilfe zu dringen. Sollte nich
eine Katastrophe,die nicht nur für den Einzelnen von
sondern infolge unseres Bekanntseins in der Oeffentli
keit auch für die Bewegung von grösstem Schaden sein,e
treten,so muss uns Hilfe zuteil werden.

Mit vielem Dank im Voraus,verbleibe ich mit d
Ausdruck meiner besonderen Wertschätzung

Wien, am 30.Oktober 1937

Herrn

Dr. K o d e r l e ,

B e r l i n

Tiergartenstrasse 4

Auslandsorganisation

Sehr geehrter Herr Doktor!

In der Anlage darf ich Ihnen Abschrift einer heute dem
österreichischen Landesleiter übermittelten Denkschrift mit
der Bitte um freundliche Kenntnisnahme überreichen. Die
hier geschilderten Tatsachen zeigen wohl eindeutig,dass so-
ferne man auch weiterhin auf eine kostenlose Betreuung unse-
rer Parteigenossen in Oesterreich Wert legt,rasche Hilfe
unseren nationalsozialistischen Anwälten zuteil werden muss.
ich glaube dass es keine Angehörige eines Standes gibt,die
in gleicher Weise alles eingesetzt haben,um ihren Partei-
genossen beizustehen. Nun sind wir am Ende unserer Kräfte a
gelangt,wir können aus Eigenem nicht weiter. Die Katastroph
ist bereits in allernächster Zeit für die meisten dieser
Kanzleien zu erwarten und nur durch rasche und ausnahmslose
Erfüllung der hier niedergelegten Wünsche kann uns davor be-
wahren,nicht nur jeden Einzelnen von uns sondern insbesond
die Bewegung vor schwerstem Schaden zu behüten.Seit 11 Jah-
ren versuche ich Abhilfe zu schaffen,alles vergebens.Ich
darf nun auch Sie,sehr geehrter Herr Doktor,bitten,Ihren Ei
fluss in der Richtung unserer Wünsche geltend zu machen.

Wien, am 30. Oktober 1939

Herrn

Gruppenführer R o d e n b u c h e r

Berlin

Sehr geehrter Herr Gruppenführer!

In der Anlage darf ich Ihnen den Durchschlag einer heute an den Landesleiter übermittelten Darstellung über die Verhältnisse, unter denen die nationalsozialistischen Rechtsanwälte zu leben gezwungen sind, mit der Bitte um gefl. Kenntnisnahme übersenden. Ich darf daran erinnern, dass [illegible] seinerzeit, als zum ersten Mal solche Barkostenersatze [illegible] soheidenem Ausmass den Anwalten zur Verfügung gestellt wurden, einer der Ersten waren, der die Berechtigung dieses Wunsches anerkannt und auch durchgeführt hat. Wenn nicht nochmals Hilfe kommt, steht für die meisten dieser Kanzleien eine Katastrophe bevor.

Ich darf Sie bitten, alles zu veranlassen, um wenigstens uns wenigstens diese monatlichen Betrage zukommen zu lassen.

Ich verbleibe mit bestem Dank

Ihr ergebener

[illegible]

Sehr geehrter Herr Gruppenführer!
Vorgelegten Wunsche Sie dringend den in der Denkschrift nie-
dergelegten Wunschen insbesondere nach der sofortigen Uberweisung
Genehmigung monatlichen Barkostenzuschusse zu tragen, da die Situation

003158

003159

An die
Bundespolizeidirektion Wien
Zentralmeldeamt
Roßauer Lände 5
1090 Wien

Bundespolizeidirektion Wien
Zentralmeldeamt
Eing. 1. FEB. 1991
Zahl ____ Big. ____

852832

Bitte in Blockschrift oder mit Schreibmaschine ausfüllen!

3

Meldeanfrage

43/6

Daten der gesuchten Person:

Familienname	FÜHRER
Familienname vor der ersten Eheschließung	"
sämtliche frühere Familiennamen	
Vorname(n)	ERICH
Geburtsdatum (eventuell ungefähres Alter) -ort	Wien, 5.4.1900
frühere Anschrift (falls bekannt von — bis)	
Sonstige Angaben (z. B. Angehörige)	

Wien, am 7.2.91

M. Nr. 12. (Meldeanfrage.)
Amtsdruckerei der Bundespolizeidirektion Wien.

Juli 1988

Betrifft: Dr. Erich Führer
Zl.: PA-1213/51 Feol

An Bundespolizeidirektion Wien
Paßamt
in Wien 1., Postg. 9

Bundesministerium für Inneres - Abt. 2

Mit Entschließung des [illegible] vom 4.2.1950 wurde dem Dr. Erich F ü h r e r, Rechtsanwalt, mit Geburtsdatum 5.4.1900 in Wien geb., vorh. in Wien I., Marc Aurelstr. 9/8 wft., gemäss § 27 VG.1947 die Ausnahme von der Behandlung nach den Bestimmungen des Art. IV VG.1947 und von den in besonderen Gesetzen enthaltenen Sühnefolgen bewilligt.
Diese Ausnahme erstreckt sich jedoch nicht auf die Verpflichtung zur Entrichtung der einmaligen und der laufenden Sühneabgabe gem. dem IX. Hauptstück des NS-Gesetzes vom 6.2.1947, BGBl. 25, und die vermögensrechtlichen Verfügungsbeschränkungen gem. § 2o VG. Ferner wurden hiedurch die im Abschnitt II und III des XIV. Hauptstückes des NS-Gesetzes festgelegten Sühnefolgen nicht berührt. Die Ausnahme erstreckt sich auch nicht auf die Erstattungspflicht gem. § 23 VG, ferner nicht auf die Sühnefolgen, die auf Grund einer Verurteilung nach dem KVG. 1947, BGBl. 198, gem. §17 (2), lit. f, des VG. 1947 eintreten.

8. Februar 1951.

150

München, den 6. Mai 1936.

Vertraulich!

An das SS Bahnhof-Kommando
P a s s a u.

In der Anlage überreiche ich Ihnen einen vorläufigen SS Ausweis, einen Antrag auf Fahrpreisermässigung und einen Brief für
SS Obersturmführer Dr.Erich F ü h r e r.
Dr.Erich Führer wird in allernächster Zeit in Passau eintreffen und bei Ihnen die anliegenden Schriftstücke beheben.

Heil Hitler!

Beilagen.

PA 10.815

Ast 1 c Dr.R/A.

14.Januar 1936.

An die HB-Ortsgruppe Garmisch-Partenkirchen
z.H.OGrl.Ing.Alfred Erich K i l i a n
P a r t e n k i r c h e n
Wettersteinstrasse 9.

Sehr geehrter Parteigenosse!

Wir bestätigen dankend den Eingang Ihres Briefes vom 11.ds.Mts. Als Redner für die Versammlung in Garmisch am 25.ds.Mts. und in Mittenwald am 26.ds.Mts.benennen wir Ihnen unseren Schulungsredner Pg.Dr.Paul R a u s c h e r, München, Böcklinstrasse 2. Pg.Rauscher wird Ihnen den Zeitpunkt seiner Ankunft in Garmisch noch selbst mitteilen.

Weiterhin hätten wir noch eine Bitte an Sie. Wollen Sie bitte so freundlich sein und an Herrn Dr.Erich F ü h r e r, Wien IV. Wiedener Gürtel Nr.42 einen Brief schreiben, in dem sie ihn im herzlichsten Tone einladen an der Winterolympiade in Garmisch teilzunehmen und bei Ihnen Wohnung zu nehmen.

Dr.Erich Führer ist bekanntlich der Verteidiger von Planetta und Holzweber, der in Österreich ungeheuer scharf bewacht wird. Er möchte die Einladung nach Garmisch, die selbstverständlich nur formellen Charakter hat und Sie zu nichts verpflichtet, dazu benützen, um einige Tage in Deutschland verschiedene Besprechungen zu pflegen.

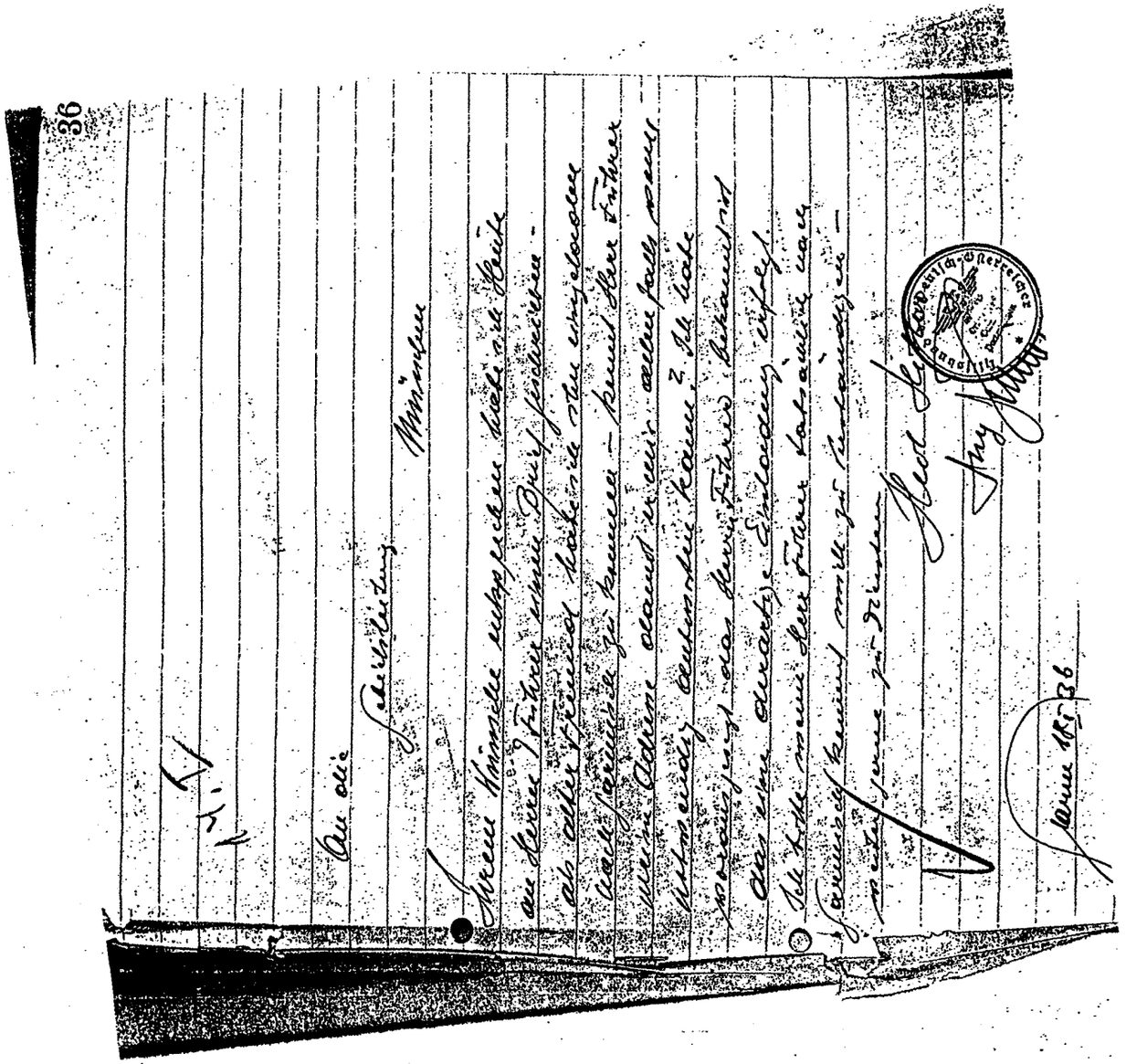
Der Brief soll so abgefasst sein, als ob sie mit Herrn Dr.Führer schon lange befreundet wären.

Für Ihre Bemühung danken wir Ihnen im Voraus herzlichst und zeichnen mit

Heil Hitler!

Wien 18.1.36

003161



Betrifft: Dr.Erich Führer

Zl.: PA-1213/51 Redl

Bundesministerium für Inneres - Abt. 2

An Bundespolizeidirektion Wien

Paßamt

in Wien 1., Postg. 9

Mit Entschliessung des Herrn Bundespräsidenten vom 4.9.1950 wurde dem Dr.Erich F ü h r e r,Rechtsanwalt, mit Geburtsdatum:5.4.1900 in Wien geb.,verh.,in Wien I., Marc Aurelstr.9/8 wft.,gemäss § 27 VG.1947 die Ausnahme von der Behandlung nach den Bestimmungen des Art.IV VG.1947 und von den in besonderen Gesetzen enthaltenen Sühnefolgen bewilligt.

Diese Ausnahme erstreckt sich jedoch nicht auf die Verpflichtung zur Entrichtung der einmaligen und der laufenden Sühneabgabe gem.dem IX.Hauptstück des NS-Gesetzes vom 6.2.1947,BGBl.25, und die vermögensrechtlichen Verfügungsbeschränkungen gem.§ 2o VG.Ferner wurden hiedurch die im Abschnitt II und III des XIV.Hauptstückes des NS-Gesetzes festgelegten Sühnefolgen nicht berührt.Die Ausnahme erstreckt sich auch nicht auf die Erstattungspflicht gem.§ 23 VG,ferner nicht auf die Sühnefolgen, die auf Grund einer Verurteilung nach dem KVG.1947,BGBl.198,gem.§17 (2),lit.f, des VG. 1947 eintreten.

8.Februar 1951.

f.d.R.d.A.

Betrifft: Mayr-Ritter & Co. Bundesministerium für Inneres Abtg. 2

Zl. [illegible] Registrierungsbehörde (Meldestelle)

zur Registrierung d. Nationalsozialisten

(Wien, IM., [illegible] Bezirk

Vernehmungsprotokoll aufgenommen zu [illegible] am 3. Dez. 1945

Verständigung wurden zu [illegible] später Nachricht vorgenommen Vergehens nach §§

K: 2515-2/46 lt. Anfrage d. Bez. Gr. Linz Verfügt nach §§

Lt. ao. Erlaß des OLG Linz [illegible] 45 wurde [illegible] gegen Zugeh. z. SS

vor dem Denazifizierungs-Senat [illegible] Verdächtigen [illegible]

K: 1398-2/46 Verdacht der Verbrechens nach §§ [illegible] u. Verd. d. KV

K: 59 031-2/47/2 lt. G.A. Io 815 Auskunft aus Zentralev. Denz Berlin PG. [illegible]

W.Z. Fl 249/47/E wurde von Volksgerichts f. [illegible] Hauptsturmführer SS Einheit SD

ein Folge b. M. [illegible] Abt. 68, unter Aktenz. V 748 Mitglied d. NSDAP [illegible]

Mitglied d. NSDAP [illegible] VII 22. Mitglied Nr. 1 205 383. SS [illegible] 1934 Nr. 30

Gauleiter Dr. [illegible] in Voralberg verhaftet. N. Q. Reg. Nr. 383/45 Nazi-Sonderlager

Zeit Nr. 17 (SS 3890) PS. Nr. 1 205 383. b. SS Stab 05 Abschn. Donau

SS Nr. 389 063 SS. D. St. Nr. 1 205 383. b. SS. St. 05 Abschn. Donau

Aus der [illegible] entnehmen wir, daß [illegible] Mitglied d. NSDAP [illegible]

GD: Viele Mitglieder d. i. 12.34 & SS: 0. St. 20.4.35.

[illegible] aber [illegible] gegen den Genannten [illegible]

[illegible] Polizeiliche Abteilung [illegible]

Wien, am 14. Feber 1948.

i.A.

Klar

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Kopie!

Bundesministerium für Inneres
Abtlg. (D) 2
Durchschriftlich!

Dr. Führer Erich
Auskunftei
Landesgericht für Strafsachen Wien VIII
Lenaugasse 11

Ganakt 10.815

Mit dem beiliegenden Rückschreiben wird mitgeteilt, dass aus einem hier zur Verfügung stehenden Parteiakt hervorgeht, dass Dr. Führer Erich, Rechtsanwalt, am 5.IV.1900 in Wien geboren, gottgläubig, den Parteiakten nach verheiratet ist.

Dr. Führer, Rechtsanwalt, am 5.4.1900 geb., Mitglied der NSDAP seit 15.7.32, Mitgliedsnummer 309.063, Mitglied der SS seit 1934, Mitglied der NSV seit 1938, Mitglied des NS-Rechtswahrerbundes. Dr. Führer ist bekannt als Verteidiger vieler illegaler Nationalsozialisten in der Verbotszeit. Wegen illegaler Betätigung erhielt er eine 6 monatige Kerkerstrafe. Nach dem Umbruch wurde er Leiter des Planetta u. vieler Nationalsozialisten in der Verbotszeit. Wegen illegaler Betätigung erhielt er eine 6 monatige Kerkerstrafe. Nach dem Umbruch wurde er Leiter des Kanzleramtes des Bundeskanzlers Schuschnigg. Nach einer politischen Beurteilung der Kreisleitung I der NSDAP (Wien) vom 17.X.1938 heisst es: "Führer Erich, Rechtsanwalt, Wien I. Seilerstätte 16, gehört wohl mit zu den prominentesten und verdientesten Nationalsozialisten der Ostmark. Jedenfalls ist Dr. Führer, Rechtsanwalt, Wien I. Seilerstätte 16, der Ostmark. Jedenfalls ist "Dr. Erich Führer, Rechtsanwalt" nur diese Tatsache". Im übrigen wird auf die, am 25.4.1946 an die Staatsanwaltschaft beim Volksgericht übermittelte Abschrift einer Anzeige gegen den Genannten an die Polizeidirektion Wien, staatspolizeiliche Abteilung, verwiesen.

Wien, am 12. März 1947.

Dr. Kothny eh.

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GA. 10815.

Dem Landesgericht für Strafsachen Wien VIII., Landesgerichtsstr. 11 wurde mit 12.3.1947 wie folgt über Dr. Führer berichtet:

"Dr. Erich Führer, Rechsanwalt, am 5.4.1900 in Wien geboren, gottgl big, früher rk., vh., III., Strohg. 45 wht., Mitglied der NSDAP seit 15 1932, Mitgld.Nr. 1,205.383, Mtgld.d.SS seit 1934, Mtgld.Nr.309.063, let Dienstgrad Hauptsturmführer, Mitglied der NSV seit 1938, Mitglied d. NS- Rechtswahrerbundes. Der Genannte gehörte der SS-Standarte 89 (Putschsta dante) an, war Mitglied der illegalen Landesleitung der NSDAP sowie Lei ter des illegalen Rechtswahrerbundes. Dr. Führer ist bekannt als Vertei diger des Kanzlermörders Planetta u. vieler Nationalsozialisten in der Verbotszeit. Wegen illegaler Betätigung erhielt er eine 6 monatige Ker kerstrafe, doch wurde der Genannte nach 4 Monaten krankheitshalber ent lassen. Nach dem Umbruch war Dr. Führer Vizepräsident der Rechtsanwalts kammer in Wien. In einer politischen Beurteilung der Kreisleitung I de NSDAP (Wien) vom 17.10.1938 heisst es: "Dr. Führer Erich, Rechtsanwalt, Wien I., Seilerstätte 16, gehört wohl mit zu den prominentesten und ver dientesten Nationalsozialisten der Ostmark. Jede Erhebung über seine Per son bestätigt nur diese Tatsache". Im übrigen wird auf die am 26.11.46 an die Staatsanwaltschaft beim Volksgericht übermittelte

Aktenvermerk

In den Gauakt (GSA) Nr.: 10.815 Führer wurde durch Dr. Schebesta

der Dienststelle Bild d. V., W

Einsicht genommen.

Weitere Veranlassung, insbesonders Verständigung der Registrierungsbehörde, besorgt die vorbezeichnete Dienststelle.

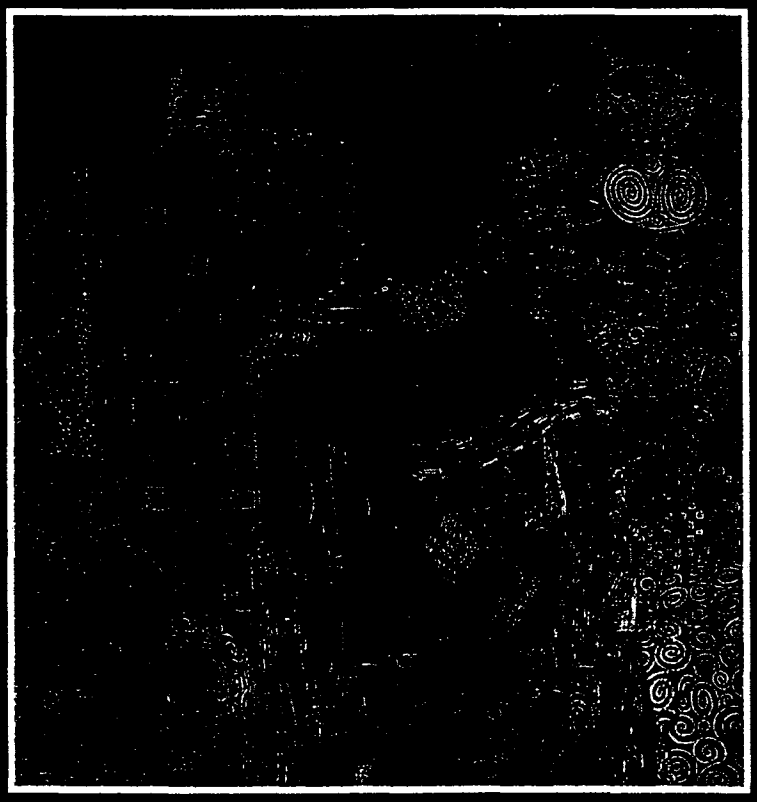
Wien, am 22.8.46

(Unterschrift des Einsichtnehmers)

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EXHIBIT A

Österreichische Galerie Belvedere Vienna



003165

A-10

Edited by:
Österreichische Galerie · Belvedere

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and Prestel-Verlag, Munich · New York 1996

Front cover: Gustav Klimt, *Adele Bloch-Bauer I*, 1907
Frontispiece: Richard Gerstl, *Laughing Self-Portrait*, 1908
(see also page 146)

© for the illustrated works, when not held by the following artists or their estates: Lovis Corinth, James Ensor, Albert Paris Gütersloh, Alexei Jawlensky, Oskar Kokoschka, Aristide Maillol, Max Slevogt is with VG Bild-Kunst, Bonn, 1995; Edvard Munch bei The Munch Ellingsen Group/ The Munch Museum/VG Bild-Kunst 1995; Ernst Ludwig Kirchner with Ingeborg und Dr. Wolfgang Henze, Wichtrach, Bern; Emil Nolde with Nolde Stiftung, Seebüll.

Photographs: Fotostudio Otto, Vienna
Fritz Simak, Vienna, pp. 10, 11, 12, 13, 14, 16, 17, 18, 19, 65, 172

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A-10

EXHIBIT B

GERBERT FRODL

GUSTAV KLIMT

in the

AUSTRIAN GALLERY BELVEDERE

in Vienna

VERLAG GALERIE WELZ · SALZBURG

003167
B-11

ADELE BLOCH-BAUER I. 1907
Oil, silvering and gilding on canvas, 140 x 140 cm
Signed and dated bottom right: GUSTAV KLIMT 1907
Inventory Nr. 3830
Acquired through a bequest (1936) of the Bloch-Bauer family, Vienna

Novotny/Dobai, Nr. 150
Cf. Strobl I, Nrs. 1054–1151 and IV, Nrs. 3526–3526 p, 3527–3536
First exhibition: unofficially in the Wiener Werkstätte, 1907, and subsequently in the same year at the International Art Exhibition, Mannheim, Nr. 497 a

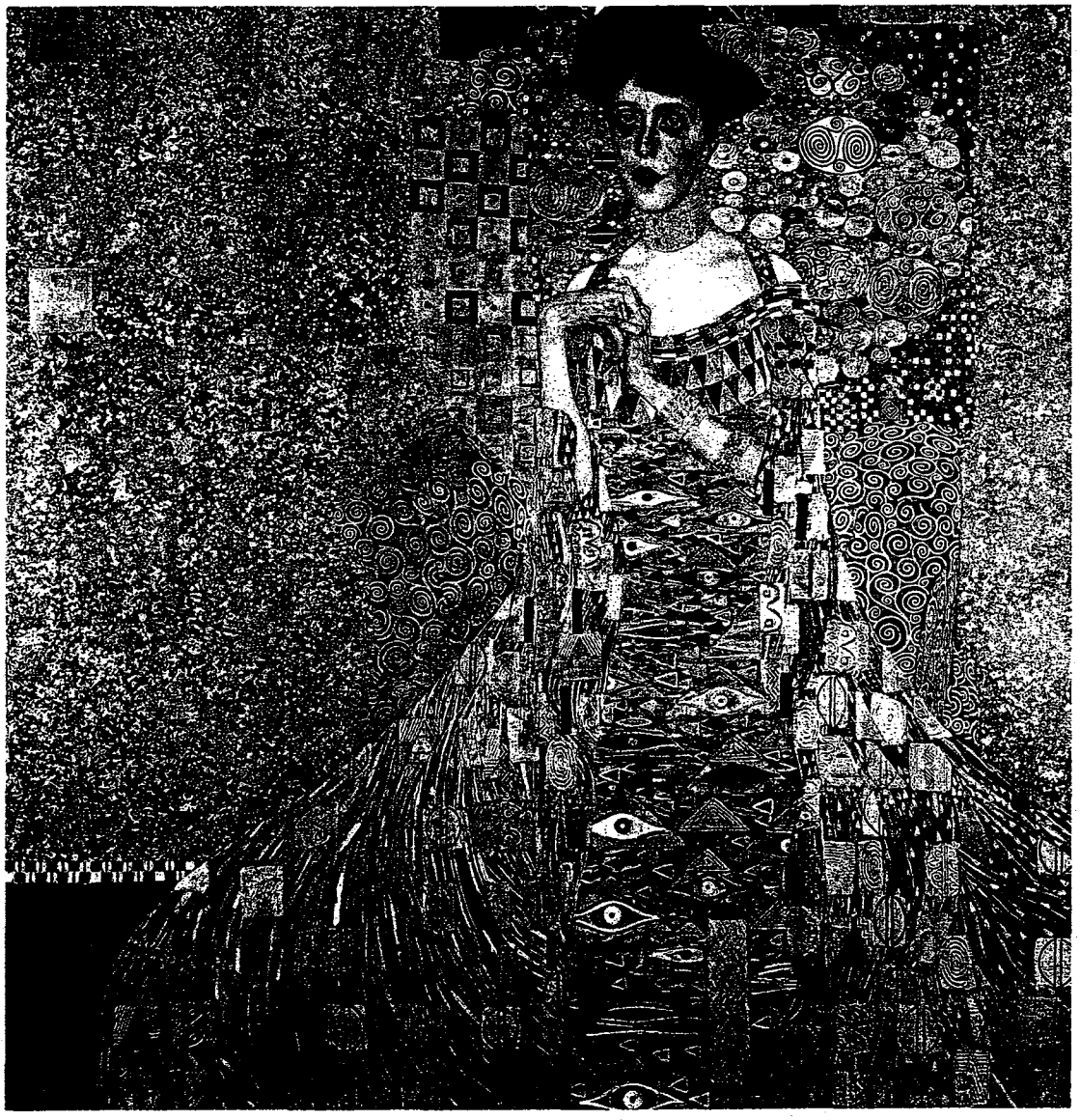
This portrait of Adele Bloch-Bauer (1881–1925), the wife of the Viennese industrialist Ferdinand Bloch, is the most important work of the so-called "golden style" apart from *"The Kiss"*; indeed it is often somewhat misleadingly taken as quintessentially Klimtian and as the expression of the Viennese Secession style *par excellence.* Ludwig Hevesi, friend and promoter of the Secession, called the picture an "idol in a golden reliquary holder", correctly drawing attention to its affinity with the Byzantine mosaics in Ravenna, and in particular the 6th century figure of the Empress Theodora in San Vitale. This representative portrait evidently held a special significance for Klimt himself, since he did more than 100 preparatory studies for it over a period of several years. He would seem to have conceived it as a universally valid celebration of a beautiful woman, and thus of the female sex in general, which was to be depicted with all the sumptuousness befitting an empress. Form and content, almost to the exclusion of colour, and notwithstanding the inclusion of historical discourse, are here perfectly harmonised in a way that distinguishes Viennese Jugendstil from the related art and decorative fashions of other European cities. Of course there is a danger that the preponderance of multifarious and enormously refined ornamentation may overwhelm the subject matter: however a glance at the exquisite features of the woman, powerfully contrasted with the gold surroundings, immediately renders this danger insignificant.



Adele Bloch-Bauer in her drawing-room.

B-12

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B-13

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ADELE BLOCH-BAUER II. 1912
Oil on canvas, 190 x 120 cm
Signed bottom right: GUSTAV KLIMT
Inventory Nr. 4210
Acquired through a bequest (1928) of Ferdinand Bloch-Bauer.
Formerly in the Bloch-Bauer Collection, Vienna

Novotny/Dobai, Nr. 177
Cf. Strobl II, Nrs. 2074–2112
First exhibition: XI International Art Exhibition, Munich 1913, Nr. 1599

After the high point of his golden style had been reached with the portrait of *"Adele Bloch-Bauer I"* and *"The Kiss"* (see p. 35), Klimt abandoned the use of gold in his work. In its place came a stronger use of colour, which was henceforth to characterise all his painting. The decisive factor behind this change cannot be discovered from any statements by Klimt himself (who very seldom commented on his art), but can be inferred from contemporary tendencies in painting, where colour came to prevail over form (Fauvism in France, Expressionism in Germany). The contrast between the first, golden portrait of Adele Bloch-Bauer and this work, painted five years later, is very great. A marked change in approach is apparent in the composition (from now on Klimt favoured standing models over the somewhat stiff sitting pose), and in the quite different sort of colouring; also in the content, specifically the impression created by the manner and pose of the subject. The latter's "nervous clairvoyance and soul-penetrating urgency" (Novotny) suggest the influence of two painters of the younger generation, Egon Schiele and Oskar Kokoschka; the uncompromising revelation of human nature in their art had so impressed Klimt that he provided both of them with their first opportunity to exhibit before a wider public.

B-14

003170



PORTRAIT OF AMALIE ZUCKERKANDL. 1917/1918
Unfinished
Oil on canvas, 128 x 128 cm
Unsigned
Inventory Nr. 7700
Acquired in 1988 from Viennese private ownership
Formerly in the Zuckerkandl collection, Vienna, the Bloch-Bauer collection, Vienna, and the Müller-Hofmann collection, Vienna

Novotny/Dobai, Nr. 213
Cf. Strobl III, Nrs. 2468–2493
First exhibition: Gustav Klimt Memorial Exhibition, Secession, Vienna, June–July 1928, Nr. 58

Amalie Zuckerkandl (1869–1944) was the wife of the Viennese medical professor, Otto Zuckerkandl, who in turn was the brother-in-law of the journalist, writer and admirer of Klimt's work, Berta Zuckerkandl. In 1914 Klimt had already done a series of pencil studies for Amalie's portrait. Her long absence from Vienna caused the work to be interrupted and it could only be continued in 1917. The portrait shows her sitting; the pose is uncompromisingly head-on, all illusion of space being absent, (this latter feature remaining even in the finished painting). In Klimt's late work the choice of a square format for a portrait is unusual.

B-16

003172

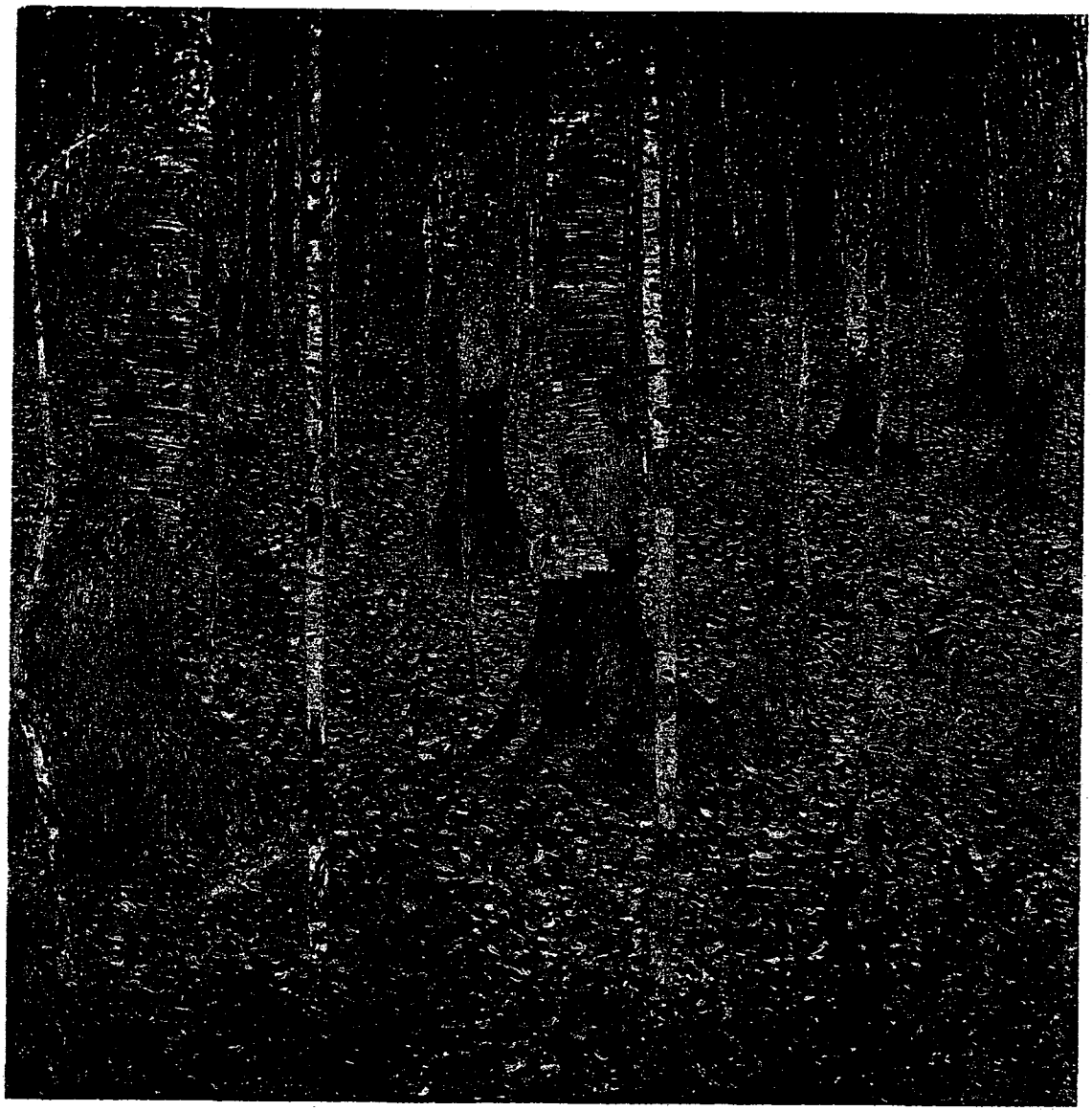


BEECHWOOD (Birchwood). 1903
Oil on canvas, 110 x 110 cm
Signed bottom left: GUSTAV KLIMT
Inventory Nr. 4283
Acquired through a bequest (1948) of the Bloch-Bauer family

Novotny/Dobai, Nr. 136
First exhibition: Secession XVIII, 1903 (Nr. 3 or Nr. 4 – both were entitled *"Beechwood"*)

It is hard to decide whether this picture should be called *"Birchwood"* (Novotny/Dobai) or *"Beechwood"* (the latter because manifestly more beeches than birches are depicted); but in any case the decision has little importance beyond epistemological convenience. Klimt painted the interior of a wood several times, on each occasion slightly changing the angle of vision. In the other version of the present picture, painted also in 1903, a patch of bright sky is discernible beyond the tree-trunks. As early as 1901 he had painted a *"Fir forest"*. In all these pictures the predominant colouring is not so much green as the brown and grey tones of the dried leaves on the forest floor and of the bark. Although such works are scarcely comparable to Claude Monet's famous series of nuanced depictions (for example of haystacks), Klimt's few woodland pictures nevertheless exhibit more of the ideas and impact of Impressionism than do his later paintings of gardens and meadows.

B-18



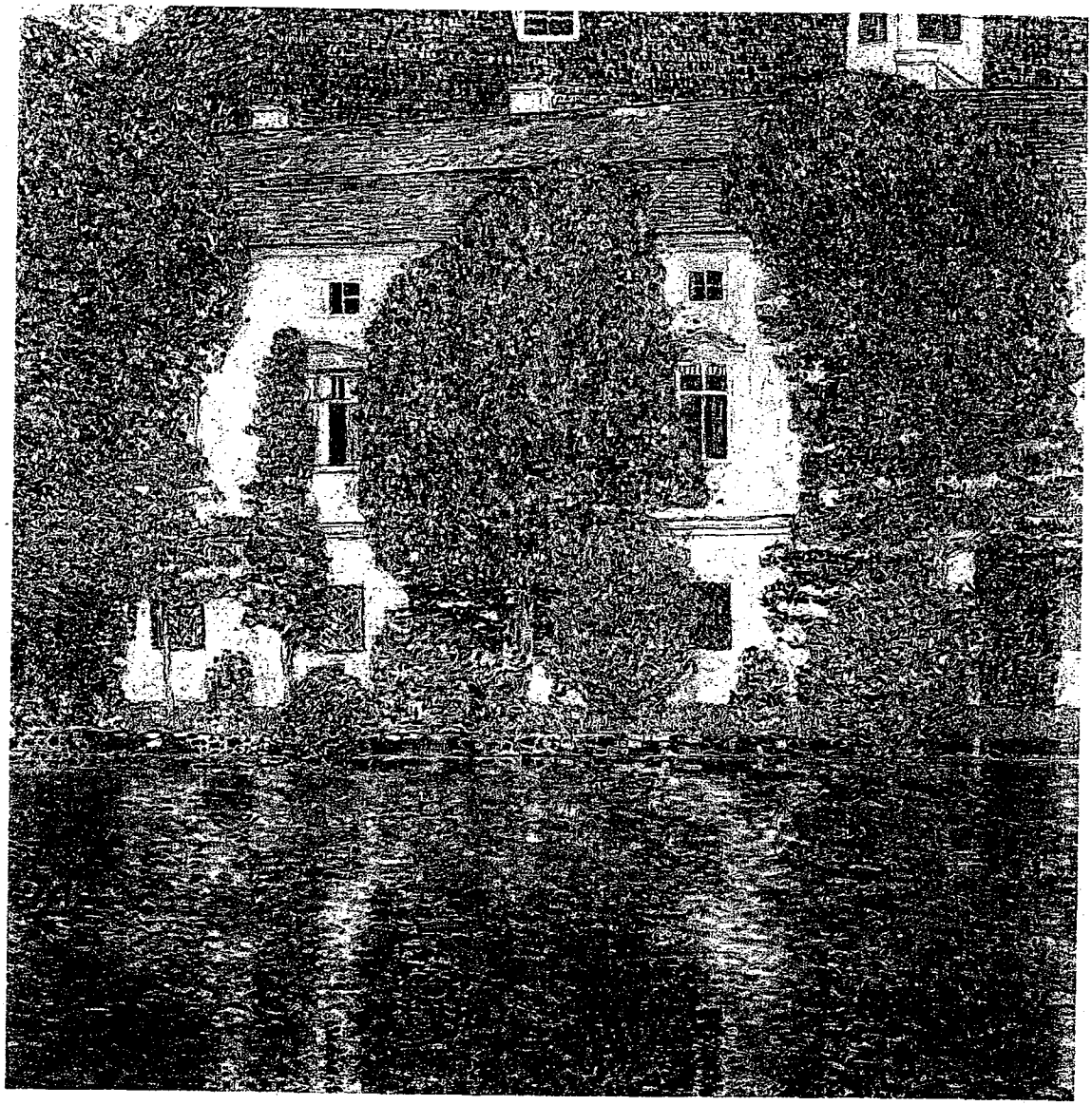
B-19

SCHLOSS KAMMER AM ATTERSEE (Waterside Mansion) III. 1910
Oil on canvas, 110 x 110 cm
Signed on the rear, right-hand side: GUSTAV KLIMT
Inventory Nr. 4318
Acquired through a bequest (1961) of the Bloch-Bauer family

Novotny/Dobai, Nr. 171
First exhibition: Gallery H. O. Miethke, Vienna, October/November, 1910

The picture shows the lakeside facade of Schloss Kammer am Attersee near Seewalchen, a 17th century mansion altered and enlarged in the 18th century. In the summer months of the years 1908 to 1912 Klimt lived with the Flöge family in the Villa Oleander in Kammerl near Kammer. It has hitherto been assumed that the picture was painted from a boat, but that cannot be stated with certainty. Between 1908 and 1910 Klimt did three other views of Schloss Kammer (which still exists in unaltered form) – *Schloss Kammer am Attersee I* (Prague, National Gallery), *II* and *IV* (Private ownership, USA and Vienna). The main facade of the Schloss was eternised by the painter in his remarkable *"Allee"* (see p. 87).

B-20

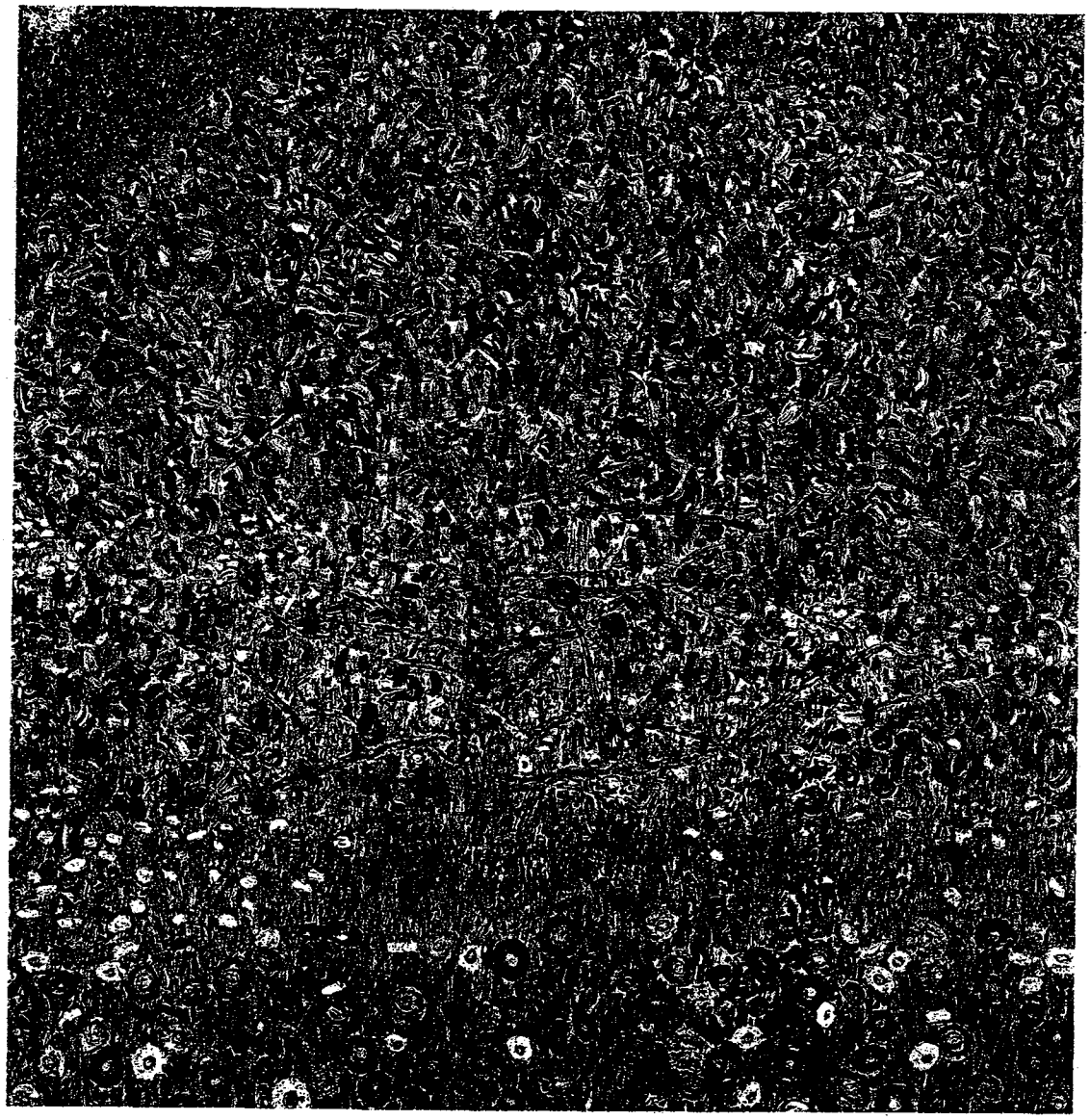


APPLE-TREE I. 1911 or 1912
Oil on canvas, 109 x 110 cm
Signed bottom right: GUSTAV KLIMT
Inventory Nr. 3342
Acquired through a bequest (1936) of Adele Bloch-Baue
Formerly in the Bloch-Bauer collection, Vienna

Novotny/Dobai, Nr. 180
First exhibition: Great Art Exhibition, Dresden 1912, Nr. 1832

Trees, and frequently just a lone tree, are a favourite subject of Klimt, their richly suggestive form evidently holding an enduring fascination for him. When the painting is of a single tree, the latter is not so much a particular, attention-drawing feature, but rather the picture's compositional point of reference, the cynosure of nuanced colour. These nuances are achieved by the juxtaposition of differently tinted brush-strokes, the latter supplying individual illumination of green, blue or similar colour. The leaves thus symbolised seem to glow with a light that is more turbulent and agitated than that of the blooming flowers in the foreground. The present picture symbolically recreates the mutuality of nature and light, recalling Klimt's earlier (albeit very different) use of the tree as a symbol, that of the "tree of life". *"Apple-tree I"* is regarded to be one of the artist's most profoundly private and meditative works.

B-22



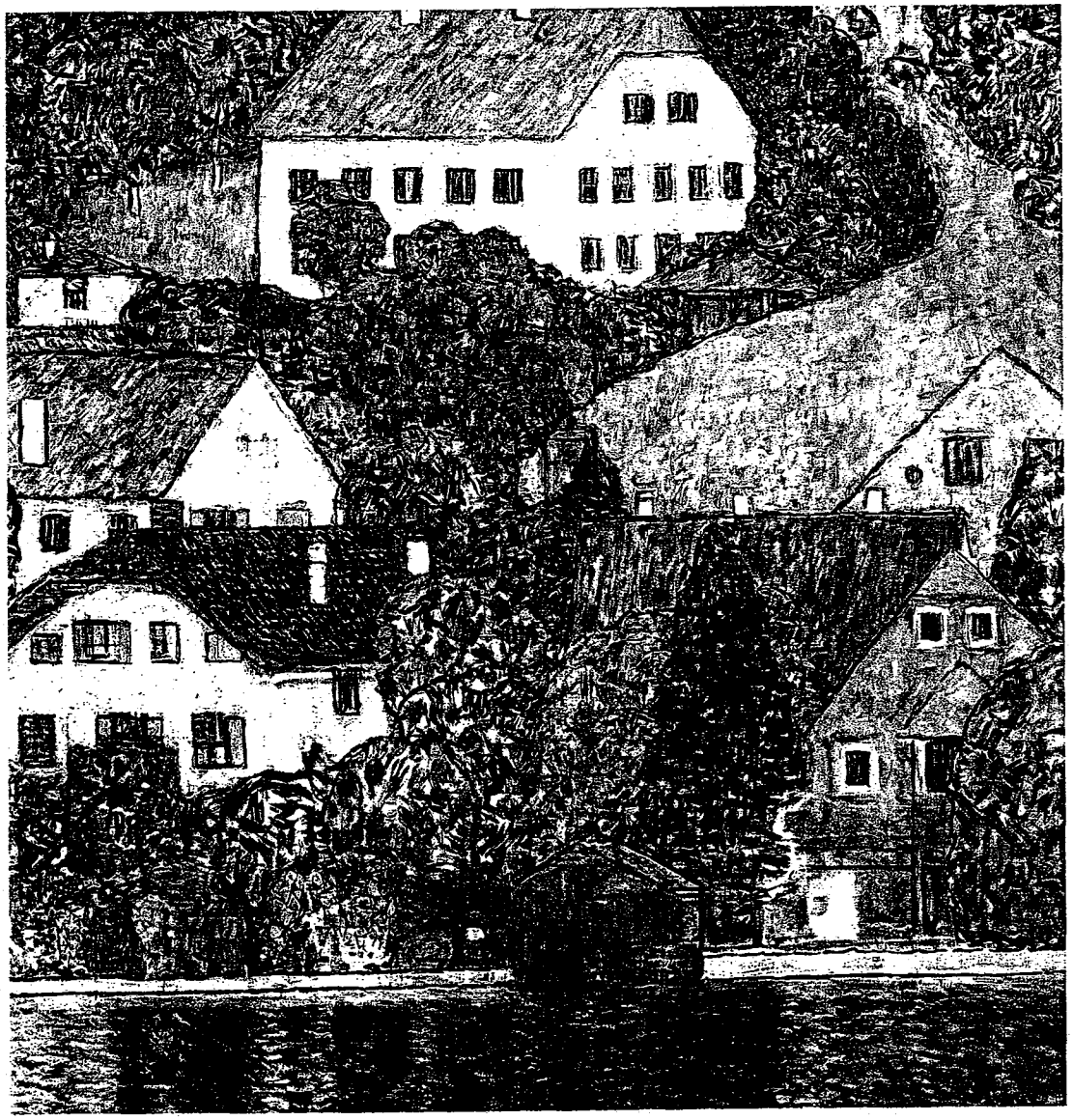
B-23

HOUSES IN UNTERACH AM ATTERSEE. Around 1916
Oil on canvas, 110 x 110 cm
Unsigned
Inventory Nr. 4209
Acquired in 1948 through the Bloch-Bauer bequest, Vienna

Novotny/Dobai, Nr. 199
First exhibition: Gustav Klimt Memorial Exhibition, Secession, Vienna, June–July 1928, Nr. 26

Klimt's late landscapes may be differentiated in several ways from the earlier ones: in particular there is more emphasis on colour as a compositional element, a development that is directly related to the greater freedom in painting generally at that time. This freedom is, of course, reflected in all of Klimt's work. In contrast to his earlier representations of pure nature (gardens, meadows and water), he now devoted himself to architectonic motifs, principally the villages along the banks of the Attersee. The impetus for this change may have been provided by a stay on Lake Garda in the summer of 1913, when he painted two views of small, waterside towns. In the present work he integrates the blocks of houses into the surface of the picture, scarcely bothering about foreshortening and perspective. The smooth, colourful walls are contrasted with the rather loosely painted trees. On the bank can be seen flowers painted with detailed precision. The picture dates to a period when the artist was spending the summer months at Weißenbach am Attersee with the Flöges, for whom he was practically one of the family. It was at Weißenbach also that Klimt painted the two views of the forester's house that he himself occupied each summer between 1914 and 1916.

B-34



B-25

EXHIBIT C

Klimt's Women

Edited by
Tobias G. Natter and Gerbert Frodl

Texts by

Neda Bei
Hans Bisanz
Marian Bisanz-Prakken
Alessandra Comini
Franz Eder
Lisa Fischer
Gerbert Frodl
Daniela Hammer-Tugendhat
Jeroen van Heerde
Hansjörg Krug
Tobias G. Natter
Monika Pessler
Regine Schmidt
Thomas Trummer
Heidemarie Uhl
Angela Völker



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Concept
Tobias G. Natter

Curators
Tobias G. Natter, Regine Schmidt

Exhibition assistant
Christiane Böker

Exhibition architecture
Dimitris Manikas
Doris Kristandl (Assistant)

Exhibition construction
Wolfgang Mahr and Gerhard Davit, Christian Kochmann, Georg Lucina, Helmut Messaros, Mario Nitsch, Herbert Pitzer, Norbert Stocker, Franz Zwickelsdorfer and Artex, Vienna

Art restoration
Elisabeth Foissner, Erhard Stöbe, Bettina Urban

Public Relations
Klaus Pokorny,
Sandra Maria Ziegerhofer (Assistant)

Art mediation
Petra Schröck, Tamara Loitfellner, Christian Huemer

Sponsoring
Hannelore Talburg

Catalogue

Catalogue editors
Tobias G. Natter, Christiane Böker

Copy editing
Carmen Söntgerath

Translations
Nikolas Bertheau, Pauline Cumbers, Michael Eldred, Ishbel Flett, Eileen Martin

Design
Birgit Haermeyer

Production
Peter Dreesen, Marcus Muraro

Colour separations
Litho Köcher, Cologne
Eichhorn, Frankfurt

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Portrait of Adele Bloch-Bauer I

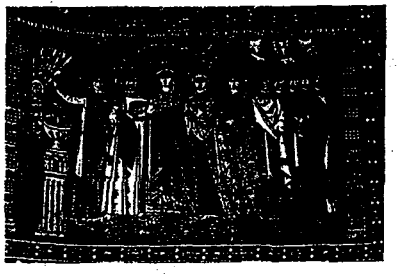
GUSTAV KLIMT

1907
Oil, silver and gold plating on canvas, *138 x 138 cm*
Marked on the lower right: "Gustav–/Klimt.–/1907"
Vienna, Österreichische Galerie Belvedere, Inv. No. 3830 (Novotny-Dobai No. 150)

The portrait of Adele Bloch-Bauer is arguably the most famous Klimt portrait and a chief work of his so-called "golden style". Adele Bloch-Bauer was twenty-six years old when Klimt painted her, yet nothing juvenile can be detected in the portrait. The history of the picture goes back a long way. Like no other portrait, Klimt prepared it with numerous drawings and studies, which Strobl dates to 1903/04, assuming that a realisation of the picture in gold was planned even then.[1] The early date is confirmed by a letter from Adele Bloch to Julius Bauer dated 22 August 1903, in which she discusses the plans for the wedding anniversary of her parents on 15 October 1903. "Originally, we children wanted to make them a joint present, but now we have totally abandoned the idea. My husband decided to have me painted by Klimt who, however, cannot start work before winter. So my parents will just have to be patient."[2]

The picture was first exhibited as part of a presentation of objects of the Wiener Werkstätte in Mannheim in spring 1907.[3] The first encounter with the Viennese public took place on the occasion of the Kunstschau in 1908.[4] In the *Wiener Allgemeine Zeitung*, one could read about an "idol in a golden shrine",[5] while disapproving voices stated mockingly: "More *Blech* than Bloch".[6]

The subject is sitting or rather floating in front of a golden chair whose back reveals itself only to the most attentive eye. All details of the picture—especially the subject's body—seem to dissolve in the splendour of the golden shimmer. As with Byzantine idols, only the face and the hands remain visible under the gold. Still under the "revelation's" spell, Klimt reported from Ravenna in 1903: "(...) the mosaics of unprecedented splendour."[7]



Mosaic from Ravenna: Empress Theodora

For Hevesi, it was "mosaic painting", with the woman's portrait a cross between painting and handicraft, executed with the meticulousness of a goldsmith. Johannes Dobai ascribed a structural role to the gold colour: "In this case, gold symbolises body as well as space, denseness as well as lightness in a world detached from itself."[8]

Klimt used this gold in different ways: in the spirit of Japanese lacquer painting in the background, producing a diffuse lustre, or making the pattern stand out in full relief and enriching it with real gold plating. The strongest inner contradiction arises between the naturalistically conceived motifs and their ornamental stylisation. The subject's coat, opening wide at the side, is treated as a sweeping zone of texture. The garment visible underneath is strewn with Egyptian god's-eye motifs, and hangs on thin straps from the narrow shoulders. The magic of the geometry, the orches-

1 *Strobl*, Vol. 1, *pp. 301f. and* Nos. 1054–1151; and Vol. 4, Nos. 3520–3531c.
2 Österreichische Nationalbibliothek, autograph collection, Sign. *577/52–1*.
3 *International* art exhibition, Mannheim, 1907, Cat. No. 497a.
4 See catalogue of the Kunstschau Wien, room 22, No. 4 ("Porträt der Frau A. B.").
5 *Wiener Allgemeine Zeitung*, *6 June 1908*.
6 *Blech*, German for "sheet metal", "rubbish" (translator's note). Fritz Novotny attributes this dictum to the journalist Julius Bauer, see letter from Fritz Novotny to Johannes Dobai of 13 February 1960, in the artists' archives of the Österreichische Galerie Belvedere, Klimt folder No. XII. Nebehay, 1969, p. 425, note 15, suspects the Klimt opponent Eduard Pötzl of being the author of the judgement.
7 Card to Emilie Flöge of 2 December 1903, as quoted in Fischer 1987, p. 171.
8 Johannes Dobai, "Die Landschaft in der Sicht von Gustav Klimt—Ein Essay", in *Mitteilungen der Österreichischen Galerie*, years 22/23, 1978/79, Nos. 66/67, Salzburg 1978, p. 256.

1-28 003184

tration of squares and circles and the alternation of spiral and triangular ornaments are further enhanced by the compositional ambivalence that allows us to see Adele Bloch-Bauer in a sitting as well as in a standing position, thus transforming the easy chair into something completely irrational and decorative.

The picture suggests not only Adele Bloch-Bauer's restlessness and her denial of society's expectations, but also the element of conflict within the gender role. The full lips and the red cheeks contribute little to the vividness. The ornamental stiffness conflicts with the conception of the human being; an unresolved dialogue that already characterised the majesty of the Empress Theodora in Ravenna. Gold as the colour of merciless ceremonial is reminiscent of Egyptian pretensions to eternity, the profanity of the medieval gold-ground panel painting, but also the exoticism of Japanese lacquer painting.[9]



Adele Bloch-Bauer, photograph c. 1910. Österreichische Galerie Belvedere, archives

Whether there was a liaison amoureuse between Klimt and Adele Bloch-Bauer, as has often been speculated, remains questionable. Such a relationship was suggested by the American psychiatrist Salomon Grimberg whom many others followed.[10] Hubertus Czernin, however, who has recently concerned himself with Adele Bloch-Bauer in great detail, rather doubts the possibility of a love relationship.[11]

Adele Bauer was born as the daughter of the banker Moriz Bauer and Jeannette Bauer, née Honig, in Vienna on 9 August 1881.[12] As a member of the country's economic elite, her father, in his capacity as Generaldirektor, controlled the fortunes of the seventh biggest bank in Austria-Hungary, the Wiener Bankverein, and was the Präsident of the Orientbahn.[13]

On 19 December 1899, Adele married the industrialist Ferdinand Bloch who was seventeen years her senior.[14] It was a marriage "based on mutual respect rather than love. They respected each other tremendously."[15] In the summer of 1899, the young Alma Mahler, later one of Adele's best friends, noted: "Adele Bauer, next to her hideous fiancé."[16] This marriage of convenience was matched by the marriage of Adele's sister Thedy, correctly Marie-Therese, to Ferdinand Bloch's brother, the lawyer Dr. Gustav Bloch. Since all male descendants of the Bloch family later died out, the families changed their name officially in 1917, henceforth calling themselves Bloch-Bauer.

Ferdinand Bloch, who came from Bohemia, where he attended the commercial college in Prague, was born on 16 July 1864 and developed his father's company into one of the biggest sugar factories in Central Europe. The marriage remained without issue, Adele lost two children during pregnancy, a third one died a few days after its birth. After the collapse of the monarchy in 1918, the Bloch-Bauer couple that had lived before in Wien IV., at 10 Schwindgasse,[17] opted for Czechoslovakian citizenship with a residence in Schloss Jungfer-Brezan near Prague.[18]

9 For the Viennese perception of Japonisme see *Japonisme in Vienna*, exhib. cat., Tobu Museum of Art, The Austrian Museum of Applied Arts, Vienna, et al., 1994, esp. Akiko Mabuchi, "Klimt and the Decorative—Japonisme in Viennese Painting", pp. 209–212.

10 Salomon Grimberg, "Adele—Private Love and Public Betrayal", in *Art & Antiques*, New York, summer edition 1986, pp. 70ff.

11 Hubertus Czernin, *Die Fälschung—Der Fall Bloch-Bauer*, Vienna 1999, esp. the chapter "Ménage à trois", p. 57ff.

12 See IKG Wien, register of births, entry 24/56/VI/1881. However, according to the IKG Wien's register of marriages, entry 1106/1/1899, the date of birth is 9 April 1881.

13 Brandstätter 1992, pp. 328–330; *Der Standard*, Vienna, 8 March 1999; For Adele Bloch-Bauer and her family's general history, see Hubertus Czernin, cf. above, pp. 50ff.

14 IKG Wien, register of marriages, entry 1106/1/1899. Later, Adele Bloch-Bauer withdrew from the Israelitic religious community. No exact date can be established. In the post-mortem protocol, WStLA, her profession of faith is given as "unchurched".

15 Communication from Frau Maria Altmann, 7 March 1999.

16 25 August 1899; Mahler 1997, p. 351.

17 *Lehmann 1910.*

18 See also Nebehay 1992, note 17, p. 225.

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C-30

Maria Altmann, the only niece still alive, remembers her aunt whose principle of life demanded an exclusive orientation toward the intellectual. She describes Adele with the following attributes: "Sick, suffering, always with headache, smoking like a chimney, terribly frail, dark. A spiritual face, slim, elegant. 'Complacent, arrogant', that was the impression she made on me when I was a child. Always seeking intellectual stimulation." The niece also mentions a crippled finger that the aunt always tried to conceal. This is reportedly why Klimt chose this particular hand position in the portrait.



Adele Bloch-Bauer, photograph c. 1920. Archives Christian Brandstätter, Vienna

In December 1919, Ferdinand Bloch-Bauer bought the house at 18 Elisabethstraße, nearly opposite the Akademie in Schillerplatz. Here, Adele Bloch-Bauer practised the hospitality that had turned her house into one of the centres of the Viennese Fin de Siècle. In the 1920s, she continued to gather intellectuals, artists and Social Democratic politicians round her: Alma Mahler-Werfel and her husband, Richard Strauss, Stefan Zweig, Jakob Wassermann, Karl Renner, and Julius Tandler frequented her house. As her niece Maria Altmann remembers, "Adele was not happy at home. She wanted to study, which was not customary for a young girl at that time, so she married instead."[19] She was a disciplined woman who had intensively studied German, French and English literature.

Adele Bloch-Bauer died on 24 January 1925.[20] When two days later her corpse was cremated, which was forbidden by the Catholic church, Adele once again demonstrated her sympathy for social democracy.[21] Out of a characteristic sense of social responsibility, she left her Klimt pictures to the then "Moderne Galerie", now Österreichische Galerie Belvedere, with the charge, however, that the pictures remained at her husband's disposal while he was alive. After Adele's death, her room with a view of Schillerplatz was turned into a "commemorative room" always decorated with fresh flowers.[22] On the walls hung the two Klimt portraits flanked by four Klimt landscapes, with the master's photograph on a side table next to the chaise longue.

A little more than a decade after Adele's death, the Nazis took over. After the *Anschluß*, Ferdinand Bloch-Bauer's fortune including his valuable art and porcelain collection was Aryanised. At that time, the Klimt pictures were also confiscated. This is the basis of Ferdinand Bloch-Bauer's heirs' restitution claims, which they plan to put forward in an action against the Republic of Austria for return of the pictures. Apart from the legal argument, the way Austria is dealing with the dark sides of its past thus becomes the subject of politico-social and politico-cultural debates.[23]

Ferdinand Bloch-Bauer who successfully emigrated first to Czechoslovakia and, after its occupation, to Switzerland, died in Zurich on 13 November 1945. The fact that he was laid to rest next to his wife in the urn grove of the Wiener Zentralfriedhof, is strangely touching.

19 *Der Standard*, Vienna, 8 March 1999.
20 WStLA, post-mortem protocol. See also the necrologue in the *Neue Freie Presse*, Vienna, 25 January 1925.
21 WStLA, post-mortem protocol.
22 Statement by Maria Altmann, see note 15. See also *Der Standard*, Vienna, 11 November 1998.
23 For details, see Hubertus Czernin who in March 1999 in the Viennese daily paper *Der Standard* published a comprehensive series available also in book form. See note 11.

C-3/003187

C-32

GUSTAV KLIMT

Portrait of Adele Bloch-Bauer II

1912
Oil on canvas, 190 x 120 cm
Marked on the lower right: "Gustav–/Klimt"
Vienna, Österreichische Galerie Belvedere, Inv. No. 4210 (Novotny-Dobai No. 177)

Adele Bloch-Bauer was the only woman who had enough wealth and enthusiasm for the arts to be painted twice by Klimt. Unlike the first picture (ill. p. 116) where the subject is sitting, this time Klimt shows the lady standing, a compositional decision that apparently had been clear to the painter from the outset.[1] Klimt divides the background into asymmetrically staggered areas of violet, red, pink and green. Galloping riders—motifs taken from Asian examples—enliven the topmost zone.

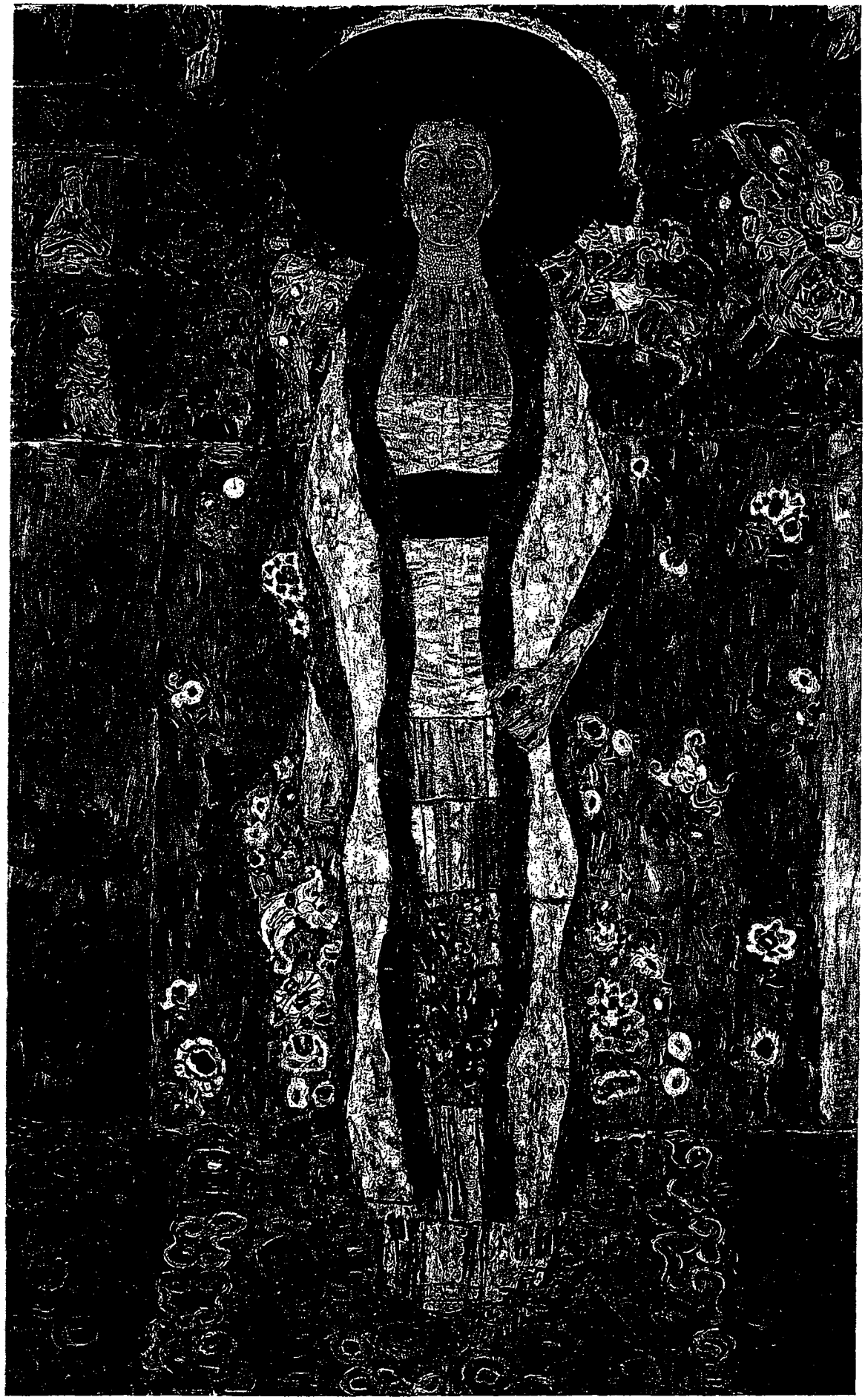
There is a huge difference between the two Bloch-Bauer portraits. With the standing portrait of Adele Bloch-Bauer, Klimt's development took a completely new course. In a lecture about the painter in 1912, the art historian Hugo Haberfeld talks about an "auspicious" new beginning: "(...) now the artist is going to paint a naturalistic portrait, so to speak, of the lady he has previously formed hieratically in gold and silver like an idol."[2]

Yet "naturalistic, so to speak" is only an allusion to what is new. The novelty lies primarily in the use of colour. This vividness of colour, as well as the new freedom in its application, can already be found in Klimt's landscapes, but now for the first time these factors play a role in the portraiture. It is generally believed that these tendencies were influenced by the young Henri Matisse.[3] Obviously, the Fauves' presentation at the Wiener Internationale Kunstschau in 1909 had made a vivid impression on Klimt, as had also the experience of his travels to Paris in 1909 and Brussels in 1911 where he attended the mounting of his frieze in the Palais Stoclet.

In comparison with the portrait Adele Bloch-Bauer I (ill. p. 116), a new relationship to corporeality as well as ornamentation becomes apparent. Both notions are redefined rather than abandoned. The carpet's splendid patterns run into each other. The body silhouette becomes a richly undulating, almost arabesque-like outline reminiscent of the one of Elisabeth Bachofen-Echt where it was described by Hatje as "vase-like strict form".[4]

1 Again, Alice Strobl, Vol. 2, p. 265, and Vol. 4, Nos. 3637–3638a, notes that no studies in other positions are known.
2 Hugo Haberfeld, "Gustav Klimt", in *Die Kunst—Monatsheft für freie und angewandte Kunst*, year 13, No. 4, January 1912, Munich, p. 183.
3 Novotny-Dobai, p. 391.
4 Ingomar Hatje, *Gustav Klimt. Ein Maler des Wiener Jugendstils*, Graz 1955, p. 98.

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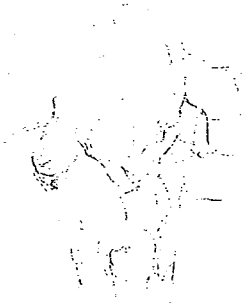
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003190

Portrait of Amalie Zuckerkandl

GUSTAV KLIMT

1917/18 (unfinished)
Oil on canvas, 128 x 128 cm
Unmarked
Vienna, Österreichische Galerie Belvedere, Inv. No. 7700 (Novotny-Dobai No. 213)



Gustav Klimt,
Study for the portrait of Amalie Zuckerkandl, 1917/18
Pencil, 568 x 371 mm
Vienna, Historisches Museum der Stadt Wien, Inv. No. 114.949 (Strobl No. 2482)

Amalie, correctly Miriam Amalie, Zuckerkandl was born to the playwright Sigmund Schlesinger on 1 August 1869. On 2 July 1895, she converted to Judaism, and a week later she married the surgeon and urologist Dr. Otto Zuckerkandl who later became university professor and head of the surgical department of the hospital of the Jewish communtiy.[1]

Amalie and Otto Zuckerkandl's close relationship with Gustav Klimt had been arranged by Amalie's sister-in-law Berta Zuckerkandl (1864–1945), the anatomist Emil Zuckerkandl's wife. Known as the "revolutionary privy councillor",[2] Berta Zuckerkandl also fought within the wealthy Zuckerkandl clan for active support for modern trends and the avant-garde.

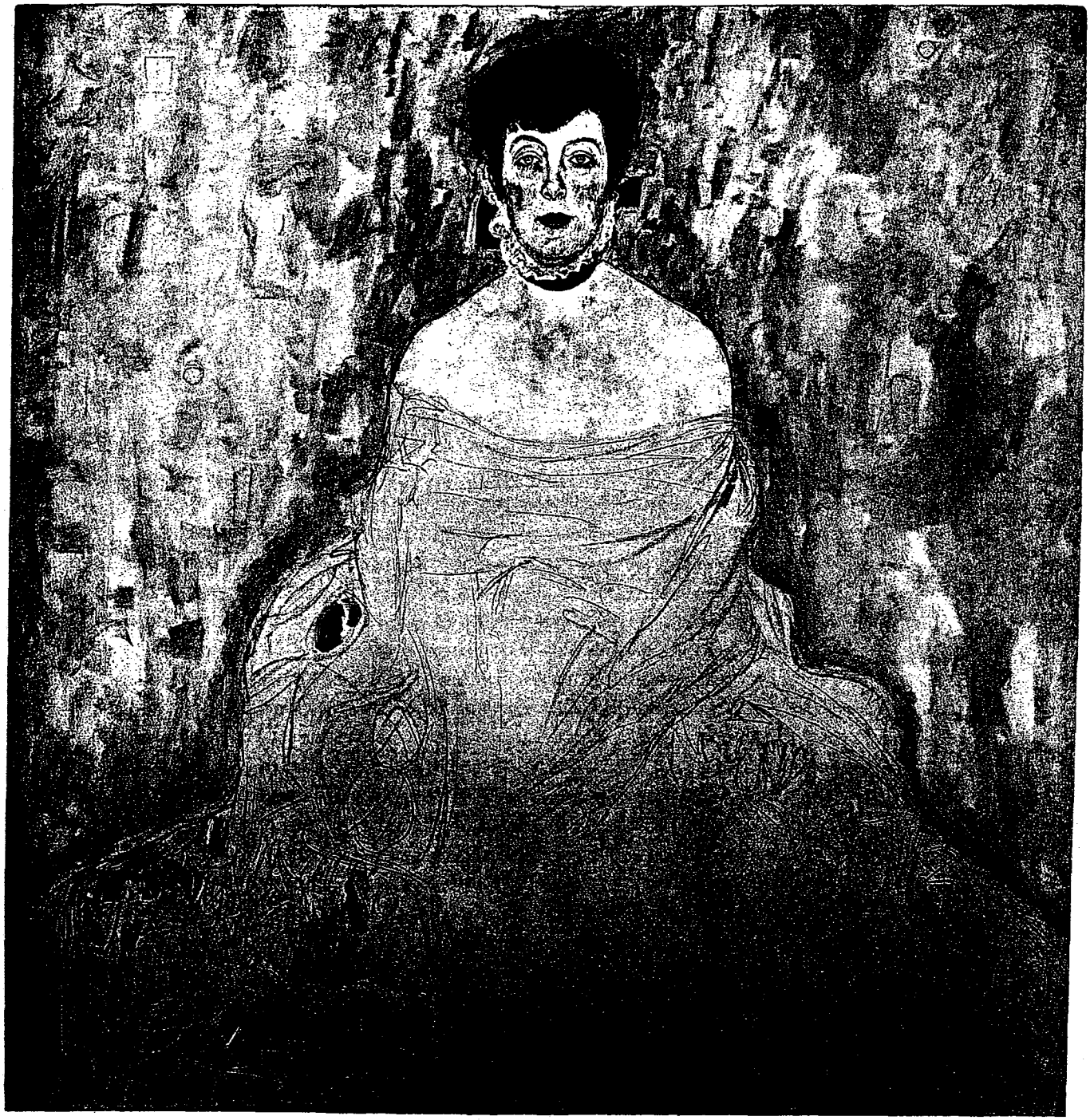
The portrait of Amalie Zuckerkandl remained unfinished. The face and the décolletage are worked through while the arms and the garment are only sketched and the background just indicated. The subject is sitting upright facing the viewer, the easy chair disappears behind the wide-sweeping flower-trimmed garment and her scarf. The scarf constitutes a moment of casualness in the strong en-face structure, seemingly slipping from her shoulders.

Concerning the picture's history, Alice Strobl observed that there are two stylistically quite different groups of preliminary sketches. In the first group are those dating from 1914 when Klimt started work on the picture, having perhaps already received the order in 1913. During the First World War, however, Amalie Zuckerkandl followed her husband to Lvov where she served as a nurse in his hospital in 1915/16. Klimt seems to have continued on the project only after the Austrian loss of Lvov and the couple's return to Vienna.[3] On 5 November and 12 December 1917, the painter received payments of 2,000 crowns each.[4]

The fact that the picture remained unfinished symbolises the decline of Klimtian aesthetics and the world they arose in, which in its belief in an elite art ceased to exist after 1918. But it may also stand for the radical failure of Jewish assimilation. In 1942, the Nazis deported Amalie Zuckerkandl together with her younger daughter to Theresienstadt and presumably murdered them in the Belzec extermination camp.

1 See IKG Wien, proselyte protocol Ottakring 7/1895, and register of marriages, entry 618/16/1895. For Otto Zuckerkandl, see WStLA, biographical collection. Born in Györ (Hungary) on 28 December 1861, died in Vienna on 1 July 1921. The marriage was divorced in 1919.
2 Nebehay 1992, p. 211.
3 Communication from Hermine Müller-Hoffmann, Amalie's daughter, as quoted in Strobl, Vol. 3, p. 85. See also Brandstätter 1992, p. 334.
4 See list of income 1917 in Klimt's sketchbook, as quoted in Strobl, Vol. 3, p. 242.

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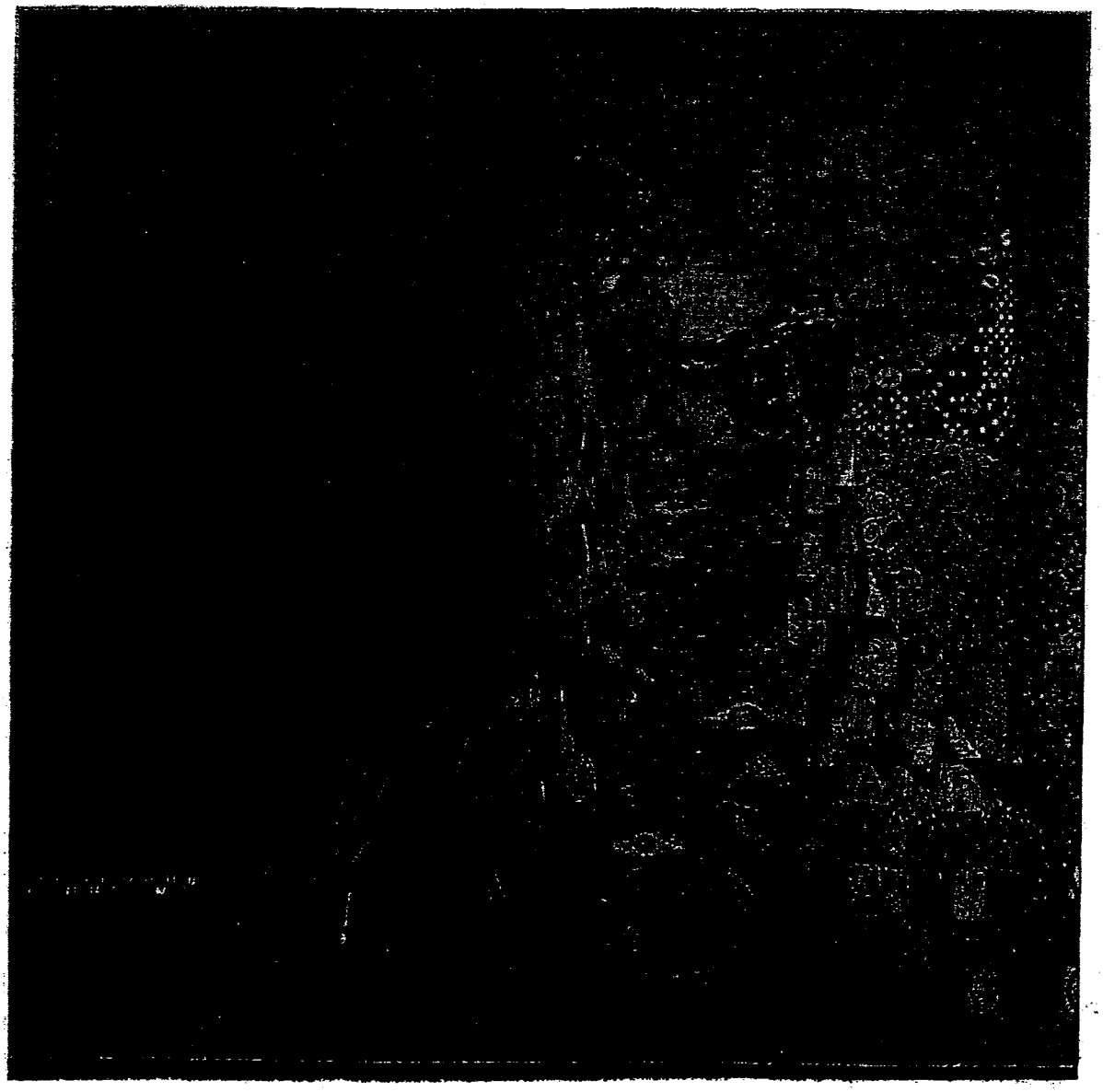
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C-360

AUSTRIAN INFORMATION

WASHINGTON, D.C. Volume 53, No. 7/8, July/August 2000

VIENNA MODERNISM
1890 - 1910



AUSTRIAN INFORMATION, in a series of issues, will present its readers with Austrian Modernism. Picture above: "Lady in Gold" (Portrait Adele Bloch-Bauer) by Gustav Klimt, oil, 1907, Austrian Gallery

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E-44

1926/J-BR BR

Eingelangt am: 05.04.2002

ANFRAGE

der Bundesräte Prof. Konecny, Dr. Liechtenstein
und Kollegen
an die Bundesministerin für Bildung, Wissenschaft und Kultur
betreffend Restitution von Kunstgegenständen

Aufgrund des Restitutionsgesetzes vom 04. Dezember 1998 wurden bereits Kunstgegenstände an die ursprünglichen Eigentümer oder deren Erben zurückgegeben.

Sämtliche Fälle des seinerzeit zwar rechtmäßig aber unter besonderen Umständen erlangten Eigentums durch die Republik sollen durch dieses Gesetz bereinigt werden.

Die Rückgabe von Klimt-Gemälden aus der "Österreichischen Galerie" jedoch wurde vom Restitutionsbeirat nicht empfohlen, da fälschlich aufgrund eines Gutachtens von Dr. Kremser, Vizepräsident der Finanzprokuratur, angenommen wurde, dass die Klimt-Gemälde der Republik Österreich vererbt wurden.

In einem Gutachten stellt Univ. Prof. Dr. Rudolf Welser nun fest, dass die Republik Österreich in der Zeit zwischen 1923 und 1948 weder einen Anspruch auf die Klimt-Gemälde noch das Eigentum daran erworben hat und die Voraussetzung für eine Ermächtigung zur unentgeltlichen Rückgabe nach dem Bundesgesetz vom 04.12.1998 gegeben sind.

Da nun die Basis ihrer Entscheidung, die Gemälde nicht zurückzugeben weggefallen ist, stellen die unterzeichneten Bundesräte daher an die Bundesministerin für Bildung, Wissenschaft und Kultur nachstehende

Anfrage:

1. In welchen Fällen haben Sie den Beiratsempfehlungen gegen die Restitution zugestimmt? Was waren die Grundlagen für diese Empfehlungen?

2. Warum beschweren sich Personen, dass sie im Prozess betreffend der Restitution von Kunstwerken nicht teilnehmen konnten? Warum durften diese Personen nicht vor dem Beirat erscheinen und ihre Argumente mitteilen, bevor eine endgültige Empfehlung vom Beirat verabschiedet wurde?

3. Sollte es Ihrer Ansicht nach ein Verfahren geben, ähnlich wie das Verfahren im

Bundesgesetz über die Einrichtung eines Allgemeinen Entschädigungsfond für Opfer

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des Nationalsozialismus und über Restitutionsmaßnahmen, mit welchem die Korrektheit von früheren Maßnahmen auf extreme Ungerechtigkeit überprüft werden können, wenn diese als Grundlage für eine Entscheidung dienen, mit der Restitutionen von Kunstwerken abgelehnt werden?

4. Wodurch ist die Republik Österreich weiterhin berechtigt, das Eigentum an den fünf Klimt-Gemälden zu beanspruchen und diese weiterhin nicht zurückzugeben?

5. Sollte nicht die Republik Österreich der Meinung von Univ. Prof. Dr. Rudolf Welser folgen und die Kumt-Gemälde an die Erben nach Ferdinand Bloch-Bauer zurückgeben?

6. Welche Schritte haben Sie aufgrund der falschen Empfehlung des Beirates, der sich
auf ein unrichtiges Gutachten gestützt hat, gesetzt?

7. Auf welche Gründe stützt sich die Republik Österreich, in dem sie die Gemälde "Amalie Zuckerkandl" von Gustav Klimt den Erben nach Ferdinand Bloch-Bauer vorenthält?

8. Welcher Teil des Restitutionsgesetzes 1998 ermächtigt den Beirat zu bestimmen, welche Gemälde zurückgegeben werden und nicht lediglich zu festzustellen, wer die rechtmäßigen Erben sind, denen diese zurückgegeben werden sollen?

9. Auch wenn man die Schlussfolgerungen von Univ. Prof. Dr. Rudolf Welser in Frage stellen würde, wie könnte die Republik Österreich durch Zurückbehaltung von zweifelhaftem Eigentum jemals das Ziel eines reinen Tisches erreichen?

10. Ist es für die Erben nach Ferdinand Bloch-Bauer möglich, eine Klage auf Herausgabe
der Klimt-Gemälde bei einem österreichischen Gericht einzubringen oder würde eine solche Klage aus prozessualen Gründen scheitern?

11. Wie ist die Position der Republik Österreich betreffend die Gerichtsgebühren im Falle einer Klage vor einem ordentlichen Gericht in Österreich, welche die Erben nach Ferdinand Bloch-Bauer zu erwarten haben?

12. Würde die Republik Österreich im Falle einer Klage der Erben nach Ferdinand Bloch-Bauer Verjährung einwenden, obwohl diese gemäß Restitutionsgesetz 1998 nicht anzuwenden ist?

13. Wieso hat die Republik Österreich nicht versucht, den Streit mit den erben Bloch-Bauer beizulegen?

14. Sind Sie, Frau Bundesminister, der Ansicht, dass es korrekt ist, die überwiegend nicht juristischen Mitglieder im Beirat unter Ausschluss des Anhörungsrechtes der Berechtigten über Rechtsfragen entscheiden zu lassen?

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15. Wie hoch sind die Kosten, welche aufgrund der eingebrachten Klage von Maria Altmann in Kalifornien entstanden sind? Wie hoch sind die Chancen, dass die Republik Österreich in diesem Verfahren obsiegen wird?

16. Wenn ein Gericht der Vereinten Staaten feststellt, dass die Klimt-Gemälde an die Bloch-Bauer Erben zurückgegeben werden müssen, wird die Republik Österreich sich diesem Urteil unterwerfen?

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1769/AB-BR BR

Eingelangt am: 04.06.2002
BM für Bildung, Wissenschaft und Kultur

Die schriftliche parlamentarische Anfrage Nr. 1926/J-BR/2002 betreffend Restitution von Kunstgegenständen, die die Bundesräte Prof. Konecny, Dr. Liechtenstein, Kolleginnen und Kollegen am 5. April 2002 an mich richteten, wird wie folgt beantwortet:

Ad 1.:

Die Frage, welche negativen Empfehlungen der Rückgabebeirat abgegeben hat, wurde schon mehrfach beantwortet, zuletzt im Rahmen der parlamentarischen Anfrage Nr. 3096/J-NR/2001. Auch der sowohl dem Nationalrat als auch dem Bundesrat zugemittelte und auch bereits im Kulturausschuss enderledigte Restitutionsbericht 2000/2001 enthält auf den Seiten 10 und 11 eine
vollständige Aufstellung derjenigen Rückgabecausen, in denen keine Übereignung empfohlen werden konnte, mit den wesentlichen Entscheidungsgründen.

Seither hat der Beirat in seiner Sitzung vom 10. April 2002 in zwei Fällen keine Rückgabe empfohlen:

Die Rückstellung von vier Porzellanflakons aus dem Österreichischen Museum für angewandte Kunst, die aus der Sammlung Dris. Paul Cahn-Speyer stammen, konnte nicht empfohlen werden, da
diese Objekte erst im Jahre 1953, sohin lange nach Beendigung der nationalsozialistischen Gewaltherrschaft, vom rechtmäßigen Eigentümer Dr. Cahn-Speyer zu einem zwischen ihm und dem Österreichischen Museum für angewandte Kunst ausgehandelten Preis gekauft worden sind.

Ebenso wenig konnte die Rückgabe eines Aquarells von Friedrich Schilcher, darstellend einen Vorhangentwurf für das Theater an der Wien, an die Erben nach Luise Simon empfohlen werden. Auch dieses Objekt wurde von den rechtmäßigen Eigentümerinnen im Jahre 1950 an die Albertina
verkauft. In beiden Fällen war die Anwendung des Rückgabegesetzes nicht möglich.

Grundlage für alle positiven und die wenigen negativen Rückgabeempfehlungen waren Ergebnisse
der Recherchen der Provenienzforschungs-Kommission im Bundesdenkmalamt, Eingaben und Stellungnahmen der Antragsteller bzw. deren Rechtsvertreter sowie das Bundesgesetz vom 4.12.1998, BGBl. I 181/98.

Ad 2.:
§ 3 Rückgabegesetz sieht kein kontradiktorisches, sondern ein Verfahren mit amtswegigem

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Untersuchungsgrundsatz vor; die persönliche Anhörung der antragstellenden Parteien bzw. von Parteienvertretern ist gesetzlich nicht vorgesehen. Unabhängig davon hat der Beirat alle Eingaben
und Stellungnahmen der Parteien und ihrer Vertreter bei seiner Entscheidungsfindung berücksichtigt.

Ad 3.:

Ich halte die gesetzlichen Regelungen für ausreichend.

Ad 4.:

Festzuhalten ist, dass Gegenstand des Prozesses von Frau Maria Altmann gegen die Republik Österreich und die Österreichische Galerie nicht fünf, sondern sechs Gemälde sind. Die Berechtigung der Republik Österreich, ihr Eigentum zu beanspruchen, leitet sich aus dem bürgerlichen Recht ab; dies wird auch durch das Gutachten von Univ. Prof. Dr. Welser bestätigt. Eine Rückgabe der Bilder erfolgte nicht, da die gesetzlichen Voraussetzungen des Rückgabegesetzes 1998 nicht vorliegen.

Ad 5.:

Bei dem Gutachten von Univ. Prof. Dr. Rudolf Welser handelt es sich um ein in Auftrag gegebenes
Privatgutachten der klagenden Partei; Entscheidungen über allenfalls strittige Eigentumsansprüche
sind jedoch nicht durch Privatgutachten, sondern durch die hiezu berufenen ordentlichen Gerichte zu fällen.

Ad 6.:

Dass es sich um eine "falsche Empfehlung des Beirates" handelt, ist eine lediglich durch die Fragestellung nicht weiter begründete Behauptung; das Gleiche gilt auch für die Behauptung, dass
die Empfehlung "sich auf ein unrichtiges Gutachten gestützt hat".

Meiner Meinung nach war die Empfehlung des Beirates sachlich begründet und richtig.

Ad 7.:

Festzuhalten ist, dass es sich nicht um "die Gemälde Amalie Zuckerkandl", sondern lediglich um ein Gemälde darstellend Amalie Zuckerkandl handelt; dieses Gemälde wird auch noch von einer anderen Familie beansprucht; der Beirat hat diesbezüglich noch keine Empfehlung abgegeben.

Ad 8.:

Der Beirat bestimmt gemäß seiner Aufgabe nicht, welche Gegenstände zurückgegeben werden, bei
der ihm obliegenden Beratung, an welche Personen übereignet werden soll, ist es aber

unabdingbar,
dass Überlegungen angestellt werden, ob einer der gesetzlichen Tatbestände überhaupt erfüllt ist. Gemäß § 3 Rückgabegesetz hat der Beirat die Aufgabe, die in § 2 leg.cit. aufgezählten Bundesminister bei der Feststellung jener Personen, denen Kunstgegenstände zu übereignen sind, zu beraten und sohin eine Empfehlung abzugeben.

Ad 9.:

Ziel des Rückgabegesetzes ist die Rückgabe der nach Abschluss der Provenienzforschung in den
österreichischen Bundesmuseen im Sinne der Problemstellung identifizierten Kunstgegenstände an
die ursprünglichen Eigentümer oder deren Rechtsnachfolger von Todes wegen. Bei negativer Entscheidung steht auch der ordentliche Rechtsweg offen.

Ad 10.:
Selbstverständlich ist den Erben die Klagsführung bei einem österreichischen Gericht möglich, ob
eine solche Klage aus prozessualen Gründen "scheitern" würde, hängt vom Inhalt der Klage ab.
Ad 11.:
Die Position der Republik Österreich ist durch die Zivilprozessordnung und das Gerichts- und Justizverwaltungsgebührengesetz vorgegeben und wird durch den Inhalt der Klage bestimmt.
Ad 12.:
Da keine konkrete Klage zugestellt worden ist, ist eine Beantwortung nicht möglich
Ad 13.:

Die Republik Österreich hat ein gesetzlich vorgesehenes Verfahren nach dem bereits mehrfach zitierten Bundesgesetz über die Rückgabe von Kunstgegenständen aus den Österreichischen Bundesmuseen und Sammlungen durchgeführt, für "Sonderregelungen" besteht allein schon aus der
grundsätzlichen Überlegung der Gleichbehandlung sämtlicher Anspruchswerber kein Raum.

Ad 14.:
Der Beirat ist zur Abdeckung aller im Zusammenhang mit der Rückgabe von Kunstwerken relevanten Fragen interdisziplinär zusammengesetzt. Einige Mitglieder des Beirates haben eine juristische Ausbildung, der Vertreter des Bundesministeriums für Justiz verfügt zusätzlich über die abgelegte Richteramtsprüfung, der Vertreter der Finanzprokuratur zusätzlich über die abgelegte Rechtsanwaltsprüfung.

Das Anhörungsrecht der Antragsteller und der Parteienvertreter wird jedenfalls dadurch gewahrt, dass diese berechtigt sind, schriftliche Eingaben und Stellungnahmen dem Beirat vor dessen Beschlussfassung zuzumitteln; alle Eingaben werden vom Beirat bei der Abgabe seiner Empfehlung
berücksichtigt. Dies gilt auch für die zahlreichen Schriftsätze des Vertreters von Frau Altmann.

Ad 15.:

Die Kosten von Frau Maria Altmann auf Grund der von ihr eingebrachten Klage in Kalifornien sind mir nicht bekannt. Prozessprognosen gebe ich grundsätzlich keine ab. Zum gegenwärtigen Zeitpunkt ist noch nicht einmal geklärt, ob das von Frau Maria Altmann angerufene US-Gericht überhaupt zuständig ist.

Ad 16.:
Die Frage ist rein spekulativ, im Übrigen verweise ich auf die Beantwortung zu Punkt 15.

Geschichte des Dokuments Zurück zur Home Page

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Appendix A

156. Federal Law of July 26, 1946 concerning the restitution of seized property at present administered by the Federal Government or the Provincial Governments (First Restitution Act)

The National Council passes the following resolution*:

§1. (1) All property, seized by the German Reich according to the abolished Reichsprovision (§1, sec.(1), Reich Transitional Provision) or to any provincial provision for any of the reasons mentioned in §1 of the Law of May 10th, 1945, State Law Gazette no.10, at present administered by authorities of the Federal or Provincial Governments according to an Authority Transitional Law, is to be restituted to the owners whom it was seized from (in the following called "claimants") or to their heirs (legatees) under consideration of the following provisions on the grounds of annulment.
The property shall be restituted in its present condition, including all revenues that accumulated since the seizure and which are still available in the country.
All real rights gained by third persons after the seizure are declared ineffective, unless acknowledged by the claimant in the course of a procedure. Lease contracts concluded for an indefinite period of time remain valid. Lease contracts concluded for a definite period of time turn into those for an indefinite time.
In case of personal need the claimant is entitled to terminate lease contracts of private and business premises before time.
All real rights registered in the land register on all property mentioned in sec.(1) as security for tax arrears for Reichsflight and Jewish property shall be deleted ex officio or on application.

§2 (1) The restitution claim shall be raised and substantiated within one year after this law has come into effect by the claimant at the regional head office of the tax authorities (Finanzlandesdirektion) in whose territory the property is located or at the competent authority administering the property. This period can be extended by resolution of the Federal Ministry for the Estate Protection and Economic Planning. After the expiry of this period all property that has not been claimed for restitution shall be taken in separate administration by the Ministries the Federal Ministry for Estate Protection and Economic Planning.

Among the legal heirs, spouses, ancestors and descendants of the deceased, his/her siblings and their children and other legal heirs are only entitled to raise a claim if they lived in a common household with the deceased.
Authorized representatives are only entitled to raise a claim if duly authorized with a power of attorney granted after April 27, 1945. The authenticity of the signature must be certified.
In case the claimant is a legal person that lost and never regained its legal personality by a resolution mentioned in §1 sec.(1) of the First Restoration Act, a special law will specify who shall be authorized to raise a restoration claim.

§3. (1) The raised claims shall be decided by resolution passed by the competent regional head office of the tax authorities [§2 sec (1)]. In case the property is under the administration of other authorities, these shall transfer their documents to the regional head office of the tax authorities for decision.
If the property is in the competence of more than one regional head office of the tax authorities the Federal Ministry for Estate Protection and Economic Planning shall decide, which authority shall pass the resolution [sec.(1)].
In case of registered rights the decision shall point out, which rights shall be invalid [§1, sec.(3)] and thus deleted.
The provisions of the General Civil Code concerning the "agency of necessity" apply to all claims for investments. The claims shall be decided if possible. When raising such claims, the revenues of the property [§1,sec.(2)] up to the amount that equals the investment may be retained. Furthermore the Republic of Austria is entitled to have a mortgage right registered up to the highest security amount, deriving from the calculation of claims.
The Restitution Resolution is an official document with which any registrations and priority notices in the land register can be performed.

§4 (1) The procedure under this Federal Law are ruled by the resolutions of the AVG.

(2) The resolution of the regional head office of the tax authorities (§3) can be appealed against at the Federal Ministry for Estate Protection and Economic Planning or at the Tax Administration Office that gains the status of a party in the procedure.

§5 Claims beyond restitution [§1 sec.(1) and (4)] are subject to special legal regulations.

§6 All legal procedures, official acts, official issues, applications, protocols, documents and certificates in connection with this Federal Law are free of charge.

§7 In accordance with the involved Ministries, the Federal Ministry for Estate Protection and Economic Planning is entrusted with the execution of this Federal Law.

Renner

Figl Krauland

Appendix B

53rd Federal Law of February 6th, 1947 concerning the restitution of seized property at present held by the Republic of Austria (Second Restitution Act).

The National Council passes the following resolution:

§1.(1) All property that has been seized for the reasons and in the way mentioned in §1 of the law of May 10,1945, State Law Gazette No.10 and which has been fallen upon the possession of the Republic of Austria is to be restituted to the due owners or their heirs (legatees) (in the following "Claimant") according to the following regulation and on the grounds of the annulment of the property seizure during that time.
The restitution of the property seized from the owners during 1933 and 1938 is specially regulated by Federal Law.
In case of multiple seizure of property in the way mentioned in sec.(1) and (2) the restitution claim of the claimant has to be dealt with first, who suffered the first seizure.
The property shall be restituted in its present condition, including all revenues that accumulated since the seizure and which are still available in the country.
In case of personal need the claimant is entitled to terminate lease contracts of private and business premises before time
All real rights registered in the land register on all property mentioned in sec.(1) as security for tax arrears for Reichsflight and Jewish property shall be deleted ex officio or on application.

§2.(1) The restitution claim shall be raised and substantiated within one year after this law has come into effect by the claimant at the regional head office of the tax authorities (Finanzlandesdirektion) in whose territory the property is located or at the competent authority administering the property. This period can be extended by resolution of the Federal Ministry for the Estate Protection and Economic Planning (Bundesministerium für Vermögenssicherung und Wirtschaftsplanung).
Among the legal heirs, spouses, ancestors and descendants of the deceased, his/her siblings and their children and other legal heirs are only entitled to raise a claim if they lived in a common household with the deceased.
Authorized representatives are only entitled to raise a claim if duly authorized with a power of attorney granted after April 27, 1945. The authenticity of the signature must be certified.

In case the claimant is a legal person that lost and never regained its legal personality by a resolution mentioned in §1 sec.(1) of the First Restoration Act, a special law will specify who shall be authorized to raise a restoration claim.

§3.(1) The raised claims shall be decided by resolution passed by the competent regional head office of the tax authorities [§2 sec (1)]. In case the property is under the administration of other authorities, these shall transfer their documents to the regional head office of the tax authorities for decision.
If the property is in the competence of more than one regional head office of the tax authorities the Federal Ministry for Estate Protection and Economic Planning shall decide, which authority shall pass the resolution [sec.(1)].
The Restitution Resolution is an official document with which any registrations and priority notices in the land register can be performed.

§4 (1) The procedure under this Federal Law are ruled by the resolutions of the AVG.

(2) The resolution of the regional head office of the tax authorities (§3) can be appealed against at the Federal Ministry for Estate Protection and Economic Planning or at the Tax Administration Office that gains the status of a party in the procedure.

§5 Claims beyond restitution [§1 sec.(1) and (4)] are subject to special legal regulations.

§6 All legal procedures, official acts, official issues, applications, protocols, documents and certificates in connection with this Federal Law are free of charge.

§7 In accordance with the involved Ministries, the Federal Ministry for Estate Protection and Economic Planning is entrusted with the execution of this Federal Law.

Renner

Figl Krauland

Appendix C

Federal Law, dated 6th February 1947, concerning the Nullity of Acts of Dispossession of Property.

Article 1.

Section 1: The subject matter of the present Federal Law is the property of which, during the German occupation of Austria, the owner (beneficiary) -- hereinafter referred to as the "owner" -- has been dispossessed in connection with the accession to power of National-Socialism, either arbitrarily or in virtue of laws or of other measures, especially by law-business or by any other legal transaction.

Article 2.

Section 1: Dispossession of property within the meaning of #1, subpara (I) shall, in particular, be deemed to have taken place where the owner was liable to persecution by National-Socialism on political grounds, and the transferee fails to show that the transfer would have taken place anyhow, independently of the accession to power of National-Socialism.

Article 3.

Section 1: Acts of dispossession of property (#1, subpara (1) are null and void. Except as otherwise provided in the present Federal Law the rules of the civil law, especially those regarding the nullity of contracts because of unjust and substantial intimidation shall apply.

Article 6.

Section 3: Without prejudice to the provisions of #5, subpara (2), the dispossessed property shall be restored at least to the extent and in the condition in which it was on the 31st July 1946.

Article 15.

Section 1: Restitution Board shall have exclusive jurisdiction to decide on any claims arising from a nullity of acts of dispossession of property under

the present Federal Law, including indemnity claims between several transferees.

Section 2: A Restitution Board shall be established at each of the provincial Courts in charge of the administration of justice in civil matters. The territorial jurisdiction of such Board shall cover the Federal Province in which the Provincial Court is situated. For Vienna, Lower Austria and the Burgenland the Board shall be established in Vienna Provincial Civil Court. The jurisdiction of the Board established at the North Provincial Court shall coincide with the territorial jurisdiction of the said Court.

Section 3: Appellate jurisdiction shall be exercised by Superior Restitution Boards which shall be established at each of the Superior Provincial Courts of Justice. The territorial jurisdiction of the said Board shall coincide with that of the Provincial Superior Court of Justice at which they are established.

Section 4: On a second appeal the Supreme Restitution Board of the Supreme Court of Justice shall decide.



Stenographisches Protokoll

146. Sitzung des Nationalrates der Republik Österreich

XX. Gesetzgebungsperiode

Donnerstag, 5. November 1998

Gedruckt auf 70g chlorfrei gebleichtem Papier

Stenographisches Protokoll

146. Sitzung des Nationalrates der Republik Österreich

XX. Gesetzgebungsperiode Donnerstag, 5. November 1998

Dauer der Sitzung

Donnerstag, 5. November 1998: 9.01 – 23.15 Uhr

*****

Tagesordnung

1. Punkt: Bericht über ein Bundesgesetz über die Rückgabe von Kunstgegenständen aus den österreichischen Bundesmuseen und Sammlungen und

über den Antrag 877/A der Abgeordneten Mag. Dr. Heide Schmidt und Genossen betreffend ein Bundesgesetz über die unentgeltliche Übereignung von beweglichem Bundesvermögen

2. Punkt: Bundesgesetz betreffend Zuwendungen an den Internationalen Fonds für Opfer des Nationalsozialismus

3. Punkt: Bericht und Antrag über den Entwurf eines Bundesgesetzes, mit dem das Bundesgesetz über den Nationalfonds der Republik Österreich für Opfer des Nationalsozialismus geändert wird

4. Punkt: Bericht über das Stenographische Protokoll der Parlamentarischen Enquete zum Thema "Einführung des Minderheitsvotums am Verfassungsgerichtshof"

5. Punkt: Bundesgesetz, mit dem das Sparkassengesetz und das Körperschaftsteuergesetz 1988 geändert werden

6. Punkt: Bericht über den Antrag 448/A (E) der Abgeordneten Mag. Dr. Heide Schmidt und Genossen betreffend Änderung des Sparkassengesetzes

7. Punkt: Bericht über den Antrag 447/A (E) der Abgeordneten Mag. Dr. Heide Schmidt und Genossen betreffend Schaffung eines Privatisierungsgesetzes im Bankenbereich

8. Punkt: Bundesgesetz über die Zeichnung von zusätzlichen Kapitalanteilen bei der Multilateralen Investitions-Garantie Agentur (MIGA)

9. Punkt: Bericht über den Antrag 907/A der Abgeordneten Dr. Ewald Nowotny, Dkfm. Dr. Günter Stummvoll und Genossen betreffend ein Bundesgesetz, mit dem das Tabakmonopolgesetz 1996 und das Tabaksteuergesetz 1995 geändert werden

10. Punkt: Bundesgesetz über die Veräußerung von unbeweglichem Bundesvermögen

11. Punkt: Bericht über den Antrag 784/A (E) der Abgeordneten Peter Schieder, Werner Amon, Dr. Martin Graf, Dr. Martina Gredler, Mag. Terezija Stoisits und Genossen betreffend Menschenrechtsjahr 1998

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Dr. Brigitte Povysil und Genossen an den Bundesminister für Wissenschaft und Verkehr betreffend Musikhochschule "Mozarteum" – ein furchtbar "krankes" Haus (5164/J)

Dr. Brigitte Povysil und Genossen an die Bundesministerin für Arbeit, Gesundheit und Soziales betreffend Musikhochschule "Mozarteum" – ein furchtbar "krankes" Haus (5165/J)

Dipl.-Ing. Leopold Schöggl und Genossen an den Bundesminister für Wissenschaft und Verkehr betreffend Auflösung von Studienangeboten (5166/J)

Hermann Böhacker und Genossen an den Bundesminister für Wissenschaft und Verkehr betreffend Kunstuniversität "Mozarteum" in Salzburg (5167/J)

Hermann Böhacker und Genossen an den Bundesminister für wirtschaftliche Angelegenheiten betreffend Kunstuniversität "Mozarteum" in Salzburg (5168/J)

Mag. Herbert Haupt und Genossen an die Bundesministerin für Arbeit, Gesundheit und Soziales betreffend behindertenfeindliche Tendenzen in der Pensionsversicherungsanstalt der Arbeiter im Zusammenhang mit den Anträgen auf Invaliditätspension (5169/J)

Mag. Gilbert Trattner und Genossen an den Bundesminister für wirtschaftliche Angelegenheiten betreffend Autobahnabfahrt Innsbruck-Mitte (5170/J)

Mag. Gilbert Trattner und Genossen an den Bundeskanzler betreffend Nichtgewährung der Presseförderung an die Wochenzeitung "Wörgler und Kufsteiner Rundschau" (5171/J)

Mag. Herbert Haupt und Genossen an die Bundesministerin für Arbeit, Gesundheit und Soziales betreffend Mitfinanzierung der Sondernotstandshilfe durch die Gemeinden (5172/J)

Mag. Karl Schweitzer und Genossen an den Bundesminister für Finanzen betreffend Mietkosten für Zollämter (5173/J)

Wolfgang Jung und Genossen an den Bundesminister für Landesverteidigung betreffend Grenzsicherung (5174/J)

Mag. Karl Schweitzer und Genossen an den Bundesminister für Umwelt, Jugend und Familie betreffend Alteisen und Metallschrott im Abfallwirtschaftsgesetz (5175/J)

Wolfgang Jung und Genossen an den Bundesminister für Landesverteidigung betreffend Hilfseinsatz von Hubschraubern in Kroatien (5176/J)

Dr. Gerhard Kurzmann und Genossen an den Bundesminister für Wissenschaft und Verkehr betreffend politische Propaganda in Zügen der ÖBB (5177/J)

Dr. Alexander Van der Bellen und Genossen an den Bundesminister für wirtschaftliche Angelegenheiten betreffend Spanplattenverordnung (5178/J)

Mag. Herbert Haupt und Genossen an die Frau Bundesministerin für Arbeit, Gesundheit und Soziales betreffend Organspendeaufkommen und Transplantation (5179/J)

Kurt Eder und Genossen an den Bundesminister für wirtschaftliche Angelegenheiten betreffend Zinssätze bei Wohnbaudarlehen (5180/J)

Anna Elisabeth Aumayr und Genossen an die Bundesministerin für Frauenangelegenheiten und Verbraucherschutz betreffend Gen-Kennzeichnungpflicht (5181/J)

Karlheinz Kopf und Genossen an den Bundeskanzler betreffend den Förderungsbericht 1996 der Bundesregierung (5182/J)

Jakob Auer und Genossen an den Bundesminister für Finanzen betreffend die steuerliche Begünstigung von Bioenergie (5183/J)

Dr. Erwin Rasinger und Genossen an den Bundesminister für Inneres betreffend Polizeiamtsärzte (5184/J)

Dipl.-Ing. Maximilian Hofmann und Genossen an den Bundeskanzler betreffend dessen Deklamation, wonach die SPÖ auf dem Boden der geltenden Verfassung stehe (5185/J)

Anfragebeantwortungen

der Bundesministerin für Arbeit, Gesundheit und Soziales auf die Anfrage der Abgeordneten ***Dr. Brigitte Povysil*** und Genossen (4542/AB zu 4872/J)

des Bundesministers für Inneres auf die Anfrage der Abgeordneten ***Dipl.-Ing. Maximilian Hofmann*** und Genossen (4543/AB zu 4902/J)

des Bundesministers für Inneres auf die Anfrage der Abgeordneten ***Dipl.-Ing. Maximilian Hofmann*** und Genossen (4544/AB zu 4901/J)

Beginn der Sitzung: 9.01 Uhr

Vorsitzende: *Präsident Dr. Heinz* ***Fischer,*** *Zweiter Präsident Dr. Heinrich* ***Neisser,*** *Dritter Präsident MMag. Dr. Willi* ***Brauneder.***

*****

Präsident Dr. Heinz Fischer: Sehr geehrte Damen und Herren! Ich darf Sie herzlich begrüßen und ***eröffne*** die 146. Sitzung des Nationalrates.

Ich bitte Sie, die Plätze einzunehmen. Da wir eine Angelobung vorzunehmen haben, bitte ich ***alle,*** die Plätze einzunehmen, Frau Kollegin Moser. *(Abg. Dr. Gabriela* ***Moser*** *verteilt aus Anlaß der 20. Wiederkehr des Tages der Volksabstimmung über die Inbetriebnahme des Kernkraftwerkes Zwentendorf als symbolische Geste frische Sonnenblumen an alle Abgeordneten. – Unruhe im Saal. – Abg. Dr. Gabriela* ***Moser*** *setzt mit der Verteilung der Sonnenblumen fort.)* – Frau Abgeordnete Moser! Wir wollen in Kürze eine Angelobung vornehmen.

Ich gebe bekannt, daß für den heutigen Sitzungstag die Abgeordneten Haidlmayr, Tichy-Schreder, Dr. Schwimmer und Parnigoni als ***verhindert*** gemeldet sind.

Mandatsverzicht und Angelobung

Präsident Dr. Heinz Fischer: Von der Bundeswahlbehörde ist die Mitteilung eingelangt, daß Herr Abgeordneter Dipl.-Ing. Thomas Prinzhorn auf sein Mandat verzichtet hat und an seine Stelle Herr Harald Fischl in den Nationalrat berufen wurde.

Da der Wahlschein bereits vorliegt und der Genannte im Hause anwesend ist, werde ich sogleich seine Angelobung vornehmen.

Nach Verlesung der Gelöbnisformel durch die Schriftführerin wird der neue Mandatar seine Angelobung mit den

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Worten "Ich gelobe" zu leisten haben.

Ich ersuche nunmehr die Schriftführerin, Frau Kollegin Rosemarie Bauer, um die Verlesung der Gelöbnisformel.

Schriftführerin Rosemarie Bauer: "Sie werden geloben unverbrüchliche Treue der Republik Österreich, stete und volle Beobachtung der Verfassungsgesetze und aller anderen Gesetze und gewissenhafte Erfüllung Ihrer Pflichten."

Abgeordneter Harald Fischl (Freiheitliche): Ich gelobe.

Präsident Dr. Heinz Fischer: Ich begrüße den neuen Kollegen sehr herzlich in unserer Mitte. *(Allgemeiner Beifall.)*

Fragestunde

Präsident Dr. Heinz Fischer: Wir kommen nun – um 9.03 Uhr – zur Fragestunde

Bundesministerium für Wissenschaft und Verkehr

Präsident Dr. Heinz Fischer: Wir beginnen mit den Anfragen an den Herrn Bundesminister für Wissenschaft und Verkehr.

Die 1. Anfrage kommt von Herrn Abgeordneten Meischberger. Ich bitte um Formulierung der Frage. *(Die Abgeordneten Dr. Gabriela **Moser** und Dr. **Petrovic** nehmen die Verteilung der Sonnenblumen wieder auf. – Unruhe im Saal.)* – Der Anfragesteller ist nicht anwesend, daher entfällt diese Frage.

Die 2. Anfrage stellt Herr Abgeordneter Dr. Lukesch, sie ist ebenfalls an den Herrn Verkehrsminister gerichtet. – Bitte, Herr Abgeordneter.

Abgeordneter Dipl.-Vw. Dr. Dieter Lukesch (ÖVP): Sehr geehrter Herr Bundesminister! Meine Frage lautet:

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Wie beurteilen Sie den Fortschritt der Studienplanreform, die durch das seit mehr als einem Jahr in Geltung befindliche Universitäts-Studiengesetz unter anderem und insbesondere zur Kürzung der überlangen Studienzeiten eingeleitet wurde?

Präsident Dr. Heinz Fischer: Herr Bundesminister, bitte.

Bundesminister für Wissenschaft und Verkehr Dr. Caspar Einem: Herr Präsident! Hohes Haus! Herr Abgeordneter! Das neue Universitäts-Studiengesetz, das mit 1. August des vorigen Jahres in Kraft getreten ist, sieht vor, daß bis zum 1. Oktober 2002 alle Studienordnungen und alle Studienpläne neu zu überarbeiten sind. *(Die Verteilung der Sonnenblumen erzeugt weiterhin Unruhe im Saal. – Präsident Dr. **Fischer** gibt das Glockenzeichen.)*

Die Universitäten haben meinem Eindruck nach dieses Gesetz sehr gut angenommen, und die Arbeiten der Studienkommissionen machen ausgezeichnete Fortschritte. Mit 1. Oktober des heurigen Jahres ist es schon möglich gewesen, 19 neue Studienpläne nicht zu untersagen, das heißt, ihnen die formelle Zustimmung durch Nichtuntersagung zukommen zu lassen. Sie sind bereits in Kraft getreten und bestimmen daher das studentische Leben und die Lehre ab sofort.

Überwiegend, so muß man sagen, sind die Universitäten dabei einen durchaus phantasievollen und auch sehr kompetenten Weg gegangen. Die bisher vorgelegten Studienpläne zeigen, daß die Universitäten erkannt haben, daß erstens die Studien kürzer werden müssen, daß sie zweitens universeller werden müssen und drittens letztlich auch eine bessere Vorbereitung für die nachfolgende berufliche Praxis bieten müssen. Das Universelle geht eher in Richtung Verbreiterung des Bildungsangebotes. Das Praxisorientierte geht eher in Richtung Aufnahme von Anregungen, die aus dem gesellschaftlichen Umfeld an die Universitäten gekommen sind.

Präsident Dr. Heinz Fischer: Danke, Herr Bundesminister.

Ich hoffe, daß sich angesichts des derzeitigen Geräuschpegels Herr Abgeordneter Dr. Lukesch mit seiner Zusatzfrage verständlich machen kann. Ich bezweifle allerdings, ob wir der Fragestunde einen guten Dienst tun, wenn hier Aktionen gesetzt werden, die von der Aufmerksamkeit während der Fragestunde ablenken. *(Abg. Dr. **Marizzi:** Das wollen die ja! – Abg. Dr. **Petrovic** setzt mit der Verteilung der Sonnenblumen fort.)*

Ich bitte Sie, Frau Dr. Petrovic und Kolleginnen, während der Fragestunde das Verteilen von Blumen, so lieb das sicherlich gemeint ist, einzustellen. Wir müssen uns doch auf unsere parlamentarische Arbeit konzentrieren. *(Beifall bei SPÖ und ÖVP.)*

Zum Wort gelangt nun Herr Abgeordneter Dr. Lukesch mit einer Zusatzfrage.

Abgeordneter Dipl.-Vw. Dr. Dieter Lukesch (ÖVP): Danke, Herr Präsident. Es geht mir hier nämlich um das Wohl der Studierenden und der Universitäten und nicht um irgendwelche Reminiszenzen.

Herr Bundesminister! Welche grundsätzlichen Strategien und Vorgaben verfolgen Sie in der derzeit durch die Sorbonne-Erklärung relevierten Diskussion um die Einführung eines Bakkalaureats in Österreich, und wie können Sie verhindern, daß diese Diskussion zu einer Verzögerung der Studienplanreform in den noch ausstehenden Studienrichtungen führt?

Präsident Dr. Heinz Fischer: Bitte, Herr Bundesminister.

Bundesminister für Wissenschaft und Verkehr Dr. Caspar Einem: Herr Abgeordneter! Lassen Sie mich die Beantwortung Ihrer Frage mit einer Vorbemerkung einleiten. Die Erklärung, die vier europäische Wissenschaftsminister anläßlich des 800. Geburtstages der Pariser Universität Sorbonne am 25. Mai des heurigen Jahres unterzeichnet haben, hat sozusagen zwei Aspekte.

Der eine Aspekt ist ein europapolitischer, und dieser ist nicht besonders erfreulich. Wenn nämlich die Wissenschaftsminister der vier größten Staaten einen guten Gedanken haben, diesen sogleich in die Tat umsetzen und erst dann die übrigen Wissenschaftsminister einladen und sagen, daß sie in dieses Boot ja auch einsteigen könnten, dann ist eine solche Haltung nicht gerade von einem besonders kooperativen Geist im Sinne der Europäischen Union und ihrer Bürger und Bürgerinnen gekennzeichnet. Wir haben daher in dieser Hinsicht auch unser Befremden – gemeinsam mit anderen Staaten, die nicht eingeladen waren, von Haus aus daran teilzunehmen – zum Ausdruck gebracht.

Zweiter Aspekt: Wissenschafts- und universitätspolitisch gesehen gehen wir andererseits davon aus, daß die in der Sorbonne-Erklärung eingeschlagene Richtung sinnvoll und nützlich ist. Sinnvoll und nützlich ist sie deshalb, weil es darum geht, nunmehr auch etwas zu schaffen, was man eine ***europäische*** Universität nennen könnte: mit vergleichbaren oder gleichen Abschlüssen und mit geradezu geplanten Schnittstellen, die es den Studierenden erlauben, während des Studiums nicht nur die Universität, sondern auch das Land zu wechseln, ohne dabei Zeit zu verlieren. Das liegt insoweit auch voll in unseren Intentionen.

Es ist außerdem so, daß standardisierte Abschlüsse, gemeinsame, vereinheitlichte Formen von Abschlüssen, selbstverständlich auch einen Beitrag dazu leisten, daß die Absolventen eines Universitätsstudiums an einer der europäischen Universitäten – aber auch etwa an den amerikanischen Universitäten – vergleichbare Voraussetzungen vorfinden, um dann Arbeit in Europa zu finden, und zwar in ***allen*** Mitgliedsländern. Auch das ist voll in unserer Absicht mit eingeschlossen.

Was werden wir daher tun? – Auch ich sehe das Risiko, das entsteht, wenn man auf eine gerade laufende und mit großem Engagement von den Universitäten vorangetriebene Reform, nämlich die Umsetzung des Universitäts-Studiengesetzes, eine zweite Reform aufsetzt. Da besteht das Risiko, daß sich alle zurücklehnen und sagen: Jetzt schauen wir einmal, was wirklich kommt.

Ich habe daher schon frühzeitig, schon vor Beginn des Wintersemesters, mit dem Präsidium der Rektorenkonferenz ein erstes ausführliches Gespräch darüber geführt und vereinbart, daß wir umgehend eine Arbeitsgruppe einsetzen, deren Ziel im wesentlichen ein zweifaches ist. Das erste Ziel ist es, festzustellen – und zwar so rasch wie möglich indikativ festzustellen –, in welchen Bereichen aus der Sicht der Universitäten die Umsetzung eines dreistufigen Studienmodells mit dem Bakkalaureat als erster Stufe sinnvoll, zweckmäßig und rasch möglich erscheint.

Das zweite Ziel ist es, auch zu klären, welche gesetzlichen Rahmenbedingungen dafür geschaffen werden müssen.

Es wird darüber hinaus – drittens – notwendig sein, auch eine sehr solide Abschätzung der Arbeitsmarktchancen für einen Bakkalaureat-Abschluß vorzunehmen, weil unser Interesse zweifellos nicht dahin geht, einen Zwischenabschluß zu schaffen, der letztlich zu einer Verlängerung des Studiums führt. Wenn, dann sollte schon ein Abschluß geschaffen werden, der auch zur Berufstätigkeit qualifiziert und von der Wirtschaft oder sonstigen Arbeitgebern angenommen wird, weil wir sonst den Studierenden einen Bärendienst erweisen würden.

Wir haben diese Frage zuletzt in der Rektorenkonferenz ausführlich diskutiert und ersucht, die Studienplanumsetzung in der vom Gesetz vorgesehenen Weise voranzutreiben. Wir haben auch ersucht, in den Bereichen, in denen jetzt schon ein dringendes Bedürfnis nach Dreigliedrigkeit besteht, diesem Bedürfnis zu folgen und das mit folgenden Maßnahmen parallel zu begleiten: mit einer entsprechenden Vorbereitungsarbeit, einer Evaluierung der Arbeitsmarktchancen und der Schaffung der Voraussetzungen für einen Gesetzesvorschlag, der dem Hohen Haus sobald wie möglich zugeleitet werden sollte.

Präsident Dr. Heinz Fischer: Danke vielmals, Herr Bundesminister. – Eine Zusatzfrage formuliert Frau Abgeordnete Dr. Brinek.

Abgeordnete Dr. Gertrude Brinek (ÖVP): Herr Bundesminister! Sie haben in den letzten Tagen davon gesprochen, daß aus dem Verkauf der vierten GSM-Lizenz Forschungsmittel resultieren würden. Wann rechnen Sie mit diesem Verkauf beziehungsweise mit der Übertragung des Erlöses an die jeweiligen Forschungseinrichtungen, die diese Mittel dringend benötigen würden, vor allem nach der vorgeschriebenen Bindung von 5 Prozent?

Präsident Dr. Heinz Fischer: Herr Bundesminister, bitte.

Bundesminister für Wissenschaft und Verkehr Dr. Caspar Einem: Frau Abgeordnete! Ich habe nicht erst in den letzten Tagen davon gesprochen, sondern ich erinnere mich auch daran, hier im Hohen Haus auf eine diesbezügliche Kritik des Liberalen Forums, wonach ich "schon wieder eine Lizenz versteigere, statt sie herzuschenken", geantwortet zu haben, daß ich sehr an diesen Einnahmen interessiert bin, weil ich die Absicht habe, diese erzielbaren Einnahmen im wesentlichen für Wissenschaft und Forschung einzusetzen. – Diese Absicht besteht nach wie vor.

Sie fragen nach dem Zeitpunkt. Der Zeitpunkt wird im wesentlichen durch den Ablauf der Ausschreibung bestimmt. Die Telekom Control GesmbH hat angekündigt, im Laufe des Dezember die Ausschreibung vorzunehmen. Es wird dann eine gewisse Periode für das Einlangen von Interessentenangeboten zu verstreichen haben. Ich rechne damit, daß die Entscheidung etwa im Februar, März fallen kann. Das ist durchaus rechtzeitig, um für das Budgetjahr 1999 eine Verstärkung der Forschungsmittel zu erlauben. Und das ist auch ins Auge gefaßt.

Präsident Dr. Heinz Fischer: Danke. – Zusatzfrage: Frau Abgeordnete Dr. Gabriela Moser, bitte.

Abgeordnete Dr. Gabriela Moser (Grüne): Herr Bundesminister! Vor 20 Jahren hat sich die Bevölkerung in Österreich gegen die Atomkraft entschieden. Derzeit überweist die österreichische Bundesregierung nach wie vor Millionenbeträge für Forschungsprogramme auf europäischer Ebene, die zum Ziel haben, die Erzeugung von Atomstrom zu verlängern, zu verstärken und aufrechtzuerhalten.

Meine Frage lautet: Wie groß ist die Summe an überwiesenen Milliarden, die Österreich zum Beispiel für die dritten und vierten Rahmenprogramme für die Atomforschung nach wie vor spendet?

Präsident Dr. Heinz Fischer: Frau Abgeordnete! Es tut mir leid, aber ich kann wirklich den in der Geschäftsordnung zwingend verlangten Zusammenhang mit dem Fortschritt der Studienplanreform nicht erkennen. Das müssen Sie einsehen! Auch wenn das Thema aktuell ist, kann ich diese Zusatzfrage nicht zulassen.

Zum Wort gelangt nun Frau Abgeordnete Dr. Gredler mit einer Zusatzfrage.

Abgeordnete Dr. Martina Gredler (Liberales Forum): Herr Präsident! Ich muß sagen, diesen Zusammenhang konnte ich auch nicht bei der Frage von Frau Kollegin Brinek erkennen.

Aber ich möchte mich wirklich auf die Studienplanreform konzentrieren. Sie haben gesagt, Herr Bundesminister, daß Studienkommissionen diese Abschlüsse nicht definieren können. Vertreter der Studienkommissionen haben aber selbst gemeint, daß sie sehr wohl in der Lage wären, diese Kurzstudien zu definieren und den Inhalt dieser Kurzstudien sozusagen zu präsentieren. Wie stellen Sie sich dieser Diskrepanz?

Präsident Dr. Heinz Fischer: Bitte, Herr Bundesminister.

Bundesminister für Wissenschaft und Verkehr Dr. Caspar Einem: Frau Abgeordnete! Ich bin ein wenig überrascht, daß Sie da eine Diskrepanz sehen und mich in einer Weise zitieren, daß ich annehmen muß, es gibt noch einen anderen Einem.

Ich habe zu dieser Frage, die Sie eingangs als Hypothese formuliert haben, gar nichts gesagt. Gesagt habe ich allerdings, daß es notwendig sein wird, gesetzliche Rahmenbedingungen zu schaffen, um das Bakkalaureat an Österreichs Universitäten einführen zu können. Ziel ist, daß die Studienkommissionen von sich aus sagen, wo sie das für sinnvoll und zweckmäßig halten, und daß sie auch entsprechende Studienpläne entwickeln. – Das habe ich gesagt, wenn auch mit anderen Worten.

Ziel ist weiters, daß wir die gesetzlichen Voraussetzungen für diesen Studienabschluß schaffen. Diese sind heute nicht gegeben.

Präsident Dr. Heinz Fischer: Danke. – Nächste Zusatzfrage: Herr Abgeordneter Hums, bitte. *(Abg. **Hums:** Meine Frage kommt erst beim Kompetenzbereich!)* – Gut.

Herr Abgeordneter Dr. Stippel, bitte.

Abgeordneter Dr. Johann Stippel (SPÖ): Herr Bundesminister! Unabhängig davon, wie die Diskussion über die Einführung des dreistufigen Modells weitergeführt wird und was dann am Ende als Ergebnis herauskommen wird, möchte ich Sie fragen: Wie schätzen Sie das bisherige Zusammenwirken von kollegialen Organen, monokratischen Organen und Ihrem Ministerium nach dem UOG 1993 ein?

Präsident Dr. Heinz Fischer: Herr Bundesminister, bitte.

Bundesminister für Wissenschaft und Verkehr Dr. Caspar Einem: Herr Abgeordneter! Im großen und ganzen schätze ich die Entwicklung, die mit dem UOG 1993 eingeschlagen wurde – auch was die institutionelle Reform und die veränderte Form der Kooperation zwischen den Universitäten, ihren Organen und dem Ministerium anlangt –, als sehr positiv ein.

Es ist allerdings so, daß das neue Modell da und dort kommunikative Anforderungen an die Beteiligten – insbesondere innerhalb der Universität – stellt, die mitunter tatsächlich Mühe machen. Aber ich denke, daß nach anfänglichen Mißerfolgen in manchen Universitäten hinsichtlich der Kommunikation zwischen dem sogenannten operativen Leitungsorgan und dem sogenannten strategischen Leitungsorgan nunmehr eine durchaus gute Basis geschaffen worden ist, um die Universitäten modern und im Interesse sowohl der Studierenden als auch der Gesellschaft weiterzuentwickeln.

Präsident Dr. Heinz Fischer: Danke, Herr Bundesminister. – Meine Damen und Herren! Ich sehe gerade, ich habe einen Fehler gemacht. *(Abg. Dr. **Khol:** Das gibt es nicht, Herr Präsident!)* Ich habe Frau Dr. Petrovic nicht aufgerufen, sondern Frau Dr. Brinek aufgerufen, die zu diesem Gegenstand gar nicht gemeldet war. *(Abg. Mag. **Peter:** Sie hat gut improvisiert!)* – Jetzt muß ich entscheiden, ob ich ausnahmsweise noch eine Zusatzfrage von Frau Dr. Petrovic zulasse. *(Abg. Dr. **Khol:** Ja, natürlich! – Ja-Rufe von Abgeordneten aller Fraktionen.)*

Bitte, Frau Abgeordnete Dr. Petrovic.

Abgeordnete MMag. Dr. Madeleine Petrovic (Grüne): Herr Bundesminister! Jenseits der notwendigen Bestrebungen zur Verkürzung der Studiendauer durch Studienplanreformen ergeben sich derzeit für einige Studierende außerplanmäßige Studienzeitverlängerungen, etwa weil die Gebäudebedingungen ähnlich im argen liegen wie beim Salzburger Mozarteum. – Was werden Sie tun, damit aus dieser außerplanmäßigen Verlängerung von Studien, zum Beispiel weil ein Gebäude geschlossen ist, für die Studierenden keinesfalls ein Nachteil

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erwächst?

Präsident Dr. Heinz Fischer: Bitte, Herr Bundesminister.

Bundesminister für Wissenschaft und Verkehr Dr. Caspar Einem: Frau Abgeordnete! Eine Verlängerung der Studiendauer auch für die Studierenden am Mozarteum ist derzeit keineswegs ins Auge gefaßt oder eine notwendige Folge der problematischen Bauzustände des nicht mehr ganz neuen Baus aus den siebziger Jahren.

Es ist vielmehr mit vereinten Kräften des Wissenschaftsministeriums, des Amtes der Salzburger Landesregierung und anderer – nicht zuletzt auch etwa der Festspiele in Salzburg und des Mozarteums selbst – gelungen, den Studienbetrieb so aus jenem Gebäude auszulagern, in dem derzeit ein Studienbetrieb nicht stattfinden kann, daß er in diesen Tagen wieder in vollem Umfang aufgenommen werden kann, allerdings unter erschwerten Bedingungen.

Es besteht nunmehr die Absicht, die erforderlichen Arbeiten zur abschließenden Untersuchung der Gesundheitsgefährdung, ihres Grades und ihrer Ursachen so rasch wie möglich und trotzdem so profund wie möglich fortzuführen, um möglichst rasch zu einer definitiven Entscheidung zu kommen. Aber wir werden alle Möglichkeiten der Flexibilität nützen und ausschöpfen, die notwendig sind, um für die Studierenden und Lehrenden am Mozarteum Bedingungen zu schaffen, die nicht zu einer Studienverlängerung und vor allem zu keiner weiteren allfälligen Gesundheitsbeeinträchtigung führen.

Präsident Dr. Heinz Fischer: Danke, Herr Minister. – Zusatzfrage: Herr Abgeordneter Schöggl, bitte.

Abgeordneter Dipl.-Ing. Leopold Schöggl (Freiheitliche): Sehr geehrter Herr Minister! "Evaluation" war eines der meistgebrauchten Schlagworte im Zusammenhang mit der Studienreform, und diese Studienreform ist sicher eines der wichtigsten Vorhaben im wissenschaftlichen Bereich, die derzeit laufen.

Meine Frage ist: Welche Evaluierungsergebnisse liegen nach Ihrem Kenntnisstand vor, und wie ist gewährleistet, daß die Evaluierungsergebnisse, insbesondere die aus dem studentischen Bereich, in die Studienpläne eingebaut und entsprechend berücksichtigt werden?

Präsident Dr. Heinz Fischer: Bitte, Herr Bundesminister.

Bundesminister für Wissenschaft und Verkehr Dr. Caspar Einem: Herr Abgeordneter! Sie wissen zweifellos, daß die Evaluierung, die wir mit einer entsprechenden Verordnung vom 8. August vorigen Jahres eingeführt haben, im wesentlichen eine Evaluierung innerhalb der Universitäten und mit universitärer Verantwortung für die Umsetzung der dort allenfalls erkennbaren Ergebnisse ist.

Sie ist daher keine Evaluierung, die primär an das Ministerium oder überhaupt an das Ministerium zu liefern ist.

Ich habe gleichwohl von manchen Universitäten Evaluierungsergebnisse erhalten, die deutlich erkennen lassen, daß – soweit diese Universitäten nicht erst voriges Jahr damit begonnen haben, sondern auch schon in früheren Jahren entsprechende Evaluierungsschritte gesetzt haben – Verbesserungen in manchen Dimensionen schon vorhanden sind.

Das heißt, jene Universitäten, denen bewußt ist, daß Qualität für sie zunehmend zu einem Etikett werden wird, das sowohl den Wert der Abschlüsse ihrer Studierenden als auch das Interesse zusätzlicher Studierender am Studienbeginn oder an der Fortsetzung des Studiums an der jeweiligen Universität bestimmt, jene Universitäten, die das bereits erkannt haben, machen überhaupt kein Geheimnis sowohl aus ihren Schwächen als auch aus ihren Stärken.

Ich habe gerade in den letzten Tagen mit großem Vergnügen zum Beispiel die Evaluierung einer Fakultät der Universität Innsbruck gelesen. Dort haben sie in die Evaluierung auch Absolventen mit einbezogen, und ich muß sagen, das halte ich für außerordentlich gescheit.

Im großen und ganzen sind die Universitäten also dabei, sich ihrer Verantwortung dafür bewußt zu werden und zu sehen, welchen Wert es für die qualitative Weiterentwicklung der jeweiligen Universitäten und ihre Standorte hat, die Evaluierung durchzuführen.

Präsident Dr. Heinz Fischer: Danke vielmals, Herr Bundesminister.

Herr Abgeordneter Parnigoni ist heute entschuldigt, daher entfällt seine Frage.

Ohne Präjudiz rufe ich jetzt Herrn Abgeordneten Meischberger zur Formulierung der 1. Anfrage auf, weil er mir nachgewiesen hat, daß in der ursprünglichen Liste vom letzten Mal seine Anfrage nach der des Abgeordneten Parnigoni gereiht war. – Bitte, Herr Abgeordneter Meischberger.

Abgeordneter Ing. Walter Meischberger (Freiheitliche): Herr Bundesminister! Meine Frage lautet:

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Wie beurteilen Sie die Zweckmäßigkeit der Kombinationen Ihrer Zuständigkeiten im Hinblick auf die Aussage Ihres Parteifreundes und Koalitionsverhandlers Nationalratspräsident Heinz Fischer, die Zusammenlegung des Wissenschafts- mit dem Verkehrsressort sei "ein Fehler" gewesen?

Präsident Dr. Heinz Fischer: Bitte, Herr Bundesminister.

Bundesminister für Wissenschaft und Verkehr Dr. Caspar Einem: Herr Abgeordneter! Herr Präsident! Hohes Haus! Nichts zwingt mich, in allen Punkten mit dem sonst von mir außerordentlich geschätzten Präsidenten des österreichischen Nationalrates übereinzustimmen.

Ich halte die gewählte Zusammensetzung des Ressorts durchaus für zweckmäßig und begründbar. Dies wird umso deutlicher, wenn man nicht nur die Titel "Wissenschaft" und "Verkehr" aneinanderreiht, sondern sich darüber bewußt wird, daß dieses Ressort für Wissenschaft, Forschung, Technologie, Telekommunikation und, wenn Sie so wollen, sonstige technische Infrastruktur zuständig ist.

Ab diesem Moment wird deutlich, daß es sich um ein Ministerium handelt, das die geistige und technische Infrastruktur für Österreichs Entwicklung zu betreiben hat, und das halte ich im Prinzip für eine durchaus sinnvolle Kombination.

Das zeigt sich nicht zuletzt auch jetzt, wo wir gerade mitten in den Verhandlungen mit dem Europäischen Parlament über die Umsetzung des fünften Rahmenprogramms für Forschung und Entwicklung in Europa stehen. Dabei zeigt sich, daß in einigen der dort vorgesehenen Forschungsvorhaben sehr unmittelbare Zusammenhänge gerade zwischen Wissenschaft und Forschung einerseits und der Bewältigung moderner Herausforderungen der Zeit andererseits bestehen. Für diese Kommunikationsherausforderungen sowohl technisch-körperlicher Art – sprich Flugverkehr, Eisenbahn, Auto und ähnliches – als auch der technischeren Art wie Telekommunikation sind von den ins Auge gefaßten etwas mehr als 14 Milliarden ECU grob gesprochen knapp 6 Milliarden ECU vorgesehen.

Die Kombination erweist sich also in der Sache als durchaus fruchtbringend. Der Titel "Wissenschaft und Verkehr" löst allerdings bei dem unbefangenen Betrachter auf den ersten Blick Überraschung aus.

Präsident Dr. Heinz Fischer: Zusatzfrage? – Bitte.

Abgeordneter Ing. Walter Meischberger (Freiheitliche): Herr Bundesminister! Sie selbst haben aber gestern oder vorgestern in einer Aussage im Zusammenhang mit der Betrachtung über das Zusammenwachsen des Telekombereichs mit der Medienpolitik gesagt, daß es ein Auseinanderdriften vor allem im Bereich der Regulierungen gibt und daß sich andererseits die traditionelle Trennung dieser beiden Bereiche Telekom und Medienpolitik irgendwie überlebt hat.

Dazu meine klare Frage: Sind Sie dafür, daß es für den Bereich Telekom, Telekommunikation und Medien ein eigenes Ministerium geben sollte?

Präsident Dr. Heinz Fischer: Bitte, Herr Bundesminister.

Bundesminister für Wissenschaft und Verkehr Dr. Caspar Einem: Herr Abgeordneter! Ich habe nicht von einem

zunehmenden Auseinanderdriften gesprochen, aber wir sind uns europaweit und darüber hinaus in der Welt relativ einig, daß durch den technischen Vorgang der Konvergenz von Telekommunikation und Medien, dadurch, daß dieselben technischen Grundvoraussetzungen genutzt werden, ein engeres Zusammenführen der Regulierung für elektronische Medien und für andere Kommunikationsdienste, einschließlich des Internet, zweifellos sinnvoll ist.

Das heißt nicht notwendigerweise, daß die Ministerien zusammengeführt werden müssen. Das heißt auch nicht notwendigerweise, daß es sofort ***eine*** Regulierungseinheit geben muß. Aber sicher ist, daß wir ab sofort – in Wahrheit schon seit geraumer Zeit – darauf Bedacht zu nehmen haben, daß die Marktzutrittschancen, die Inhaltskontrolle und ähnliche Fragen nach gleichen Gesichtspunkten beurteilt werden sollen.

Ich persönlich glaube, daß etwa ein Modell, wie es in den USA mit der integrierten Telekommunikations- und Medienregulierungsbehörde gewählt worden ist, durchaus sinnvoll erscheint.

Präsident Dr. Heinz Fischer: Danke. – Ich habe jetzt vier Zusatzfragen vorliegen, und zwar von den Abgeordneten Brinek, Moser, Gredler und Hums. Ich glaube, diesmal stimmt es. Ich bitte um kurze Fragen und kurze Antworten.

Frau Abgeordnete Dr. Brinek, bitte.

Abgeordnete Dr. Gertrude Brinek (ÖVP): Herr Bundesminister! Aus Anlaß des Tausches der Zusatzfragen gestatte ich mir, noch eine weitere Zusatzfrage zu stellen, die durchaus ursächlich im Zusammenhang mit der ersten steht, nämlich im Zusammenhang mit Wissenschaft und Forschung.

Im Bereich der Wissenschaft haben Sie als einen Punkt des Arbeitsprogramms die Einsetzung einer Schwerpunktfindungs- und Schwerpunktsetzungskommission vorgesehen. Diese hat auch schon getagt und im Bereich der naturwissenschaftlichen Fakultäten Empfehlungen ausgesprochen.

Meine Frage: Erstens: Wann werden sie umgesetzt? Zweitens: Wo ist der nächste Bereich der Fakultäten, also welche Schwerpunktsuchfelder werden die nächsten sein?

Präsident Dr. Heinz Fischer: Herr Bundesminister, bitte.

Bundesminister für Wissenschaft und Verkehr Dr. Caspar Einem: Frau Abgeordnete! Die Vorschläge, die jetzt von seiten der Kommission zur Schwerpunktsetzung vorliegen, sind primär zunächst innerhalb der Universitäten und zwischen den Universitäten zu diskutieren und gegebenenfalls zu einem Abschluß zu führen.

Das heißt, wenn sich die Universitäten in einem Aushandlungsprozeß miteinander zu einem gemeinsamen Ergebnis finden – die Weichenstellungen und die Rahmenbedingungen sind so gewählt –, dann ist das Problem bereits gelöst. Die Universitäten können es autonom entscheiden.

Nur für den Fall, daß die Universitäten in Fragen der Schwerpunktbildung ***nicht*** zu einer gemeinsamen Lösung kommen, haben wir voriges Jahr im Mai anläßlich des Beginns dieser Arbeiten vereinbart, daß dann ein Entscheidungsträger angerufen werden kann, der die Rolle des Schwarzen Peters zu übernehmen hat. Das wäre in diesem Fall ich. Ich habe mich ohne Umstände zu dieser Rolle bereit erklärt und werde sie tragen können.

Was sind die weiteren Schritte? – Es ist von Haus aus ins Auge gefaßt gewesen, daß als nächster Schritt die Sozial- und Wirtschaftswissenschaften durchleuchtet werden. Es ist weiters von den Universitäten angeregt worden, daß bei gleicher Gelegenheit auch schon mit Vorarbeiten in Richtung Durchleuchtung der geisteswissenschaftlichen Studien begonnen wird.

Wir haben wohlweislich nicht schon voriges Jahr mit den Geisteswissenschaften begonnen, weil wir einen ganz bestimmten Eindruck vermeiden wollten. In der sehr lebhaften vorangegangenen Diskussion wurde mitunter der Eindruck vermittelt, es ginge nur mehr um Technologie. Ich betone: Uns ist an den Geisteswissenschaften, an den Sozialwissenschaften ebensosehr gelegen wie an den Naturwissenschaften. Aber es werden alle Bereiche erfaßt und durchleuchtet werden.

Präsident Dr. Heinz Fischer: Danke, Herr Bundesminister. – Zusatzfrage: Frau Abgeordnete Dr. Moser. Bitte.

Abgeordnete Dr. Gabriela Moser (Grüne): Herr Bundesminister! Diese Kombination von Verkehr und Wissenschaft ermöglicht eine besondere Flexibilität und Durchschlagskraft Ihrerseits. Gerade im Bereich der Wissenschaftsforschung auf EU-Ebene wäre es jetzt im Zusammenhang mit dem fünften Rahmenprogramm sehr wichtig, die Atomforschung zu minimieren. In welcher Richtung agieren Sie da?

Präsident Dr. Heinz Fischer: Bitte, Herr Bundesminister.

Bundesminister für Wissenschaft und Verkehr Dr. Caspar Einem: Entschuldigen Sie, Frau Abgeordnete, daß ich kurz lachen mußte, weil ich mich an den Witz mit den Regenwürmern und den Elefanten erinnert habe. Ich bin natürlich gerne bereit, diese Frage in vollem Umfang zu beantworten.

Die österreichische Bundesregierung vertritt einheitlich eine Grundlinie, die darauf abzielt, den Umfang der Mittel, die in die traditionelle Atomforschung investiert werden, zurückzunehmen und zu reduzieren. Wir haben auf europäischer Ebene sehr klar das Ziel verfolgt – und zwar auch in Übereinstimmung mit den entsprechenden Entscheidungen des Hauptausschusses des Nationalrates –, den Anteil jener Mittel im fünften Rahmenprogramm, die für die Zwecke der klassischen Atomforschung aufgewendet werden, zurückzunehmen. Das wird aller Voraussicht nach auch gelingen. Wie Sie wissen, befinden wir uns in einem Kodezisionsverfahren mit dem Europäischen Parlament. Aber in diesem Punkt bin ich zuversichtlich, daß es gelingen wird, den bisherigen Anteil, der 9,9 Prozent für Atomforschung beträgt, zurückzunehmen. Er wird künftig um 10 Prozent weniger, nämlich 9 Prozent, betragen.

Jenen, die das kritisch betrachten, mag dieser Wert immer noch zu hoch sein, aber es ist nicht nur das Volumen beziehungsweise der Anteil reduziert worden, sondern es ist auch der Schwerpunkt insgesamt verändert worden. Künftig soll der Schwerpunkt der europäischen Atomforschung auf Sicherheitsaspekten liegen und auch auf der Frage der sicheren Möglichkeiten der Abtragung und Abwrackung von Atomkraftwerken, und ich denke, in diesem Punkt wird es vielleicht auch Übereinstimmung zwischen Ihrer Fraktion und den Intentionen der Bundesregierung geben.

Präsident Dr. Heinz Fischer: Frau Abgeordnete, Sie haben das Guthaben von vorhin mit dieser Zusatzfrage gleich wieder konsumiert.

Als nächste gelangt Frau Abgeordnete Dr. Gredler zu Wort.

Abgeordnete Dr. Martina Gredler (Liberales Forum): Herr Bundesminister! Ich möchte mich auf die Erstantwort beziehen, die Sie gegeben haben. Offensichtlich ist es Ihr Wunsch, die gesamte Technologiekompetenz zu erhalten, um diese Pattstellung, in der wir uns befinden, zu beenden.

Meine Frage lautet daher: Ist das ein Vorhaben, das in der Regierung schon akkordiert ist, oder ist das Ihr persönlicher Wunsch?

Präsident Dr. Heinz Fischer: Herr Bundesminister, bitte.

Bundesminister für Wissenschaft und Verkehr Dr. Caspar Einem: Frau Abgeordnete! Sie überraschen mich immer wieder aufs neue, aber das ist das Schöne am politischen Leben. *(Abg. Dr. **Gredler:** Gerne!)* Ich habe, wie mir scheint, weder einen solchen Wunsch gehegt noch einen solchen gar ausgedrückt. Im übrigen ist es so, daß während der engagierten Wahrnehmung einer Regierungsfunktion Überlegungen darüber, was man gern hätte, wenn die Situation anders wäre, weitgehend in den Hintergrund treten müssen. *(Abg. Dr. **Khol:** Philosophie auf der Ministerbank!)* Das ist auch sinnvoll, weil derartige Überlegungen nur ablenken und nicht wirklich zu einem besseren Ergebnis führen. *(Beifall des Abg. Dr. **Khol.**)*

Präsident Dr. Heinz Fischer: Danke, Herr Minister. – Herr Abgeordneter Hums, bitte.

Abgeordneter Franz Hums (SPÖ): Meine Zusatzfrage muß sich strikt auf den Kompetenzbereich beziehen. Daher frage ich Sie, Herr Bundesminister, ob Sie Ihre Kompetenzen für ausreichend halten *(Abg. Dr. **Khol:** Nein!)*, um die Unternehmensleitung der ÖBB zu veranlassen, das meiner Meinung nach äußerst frauenverachtende Plakat der ÖBB, das Frauen mit der Überschrift "Heiße Fracht" darstellt, sofort wieder abnehmen zu lassen und analoge Werbeeinschaltungen zu unterlassen. *(Beifall bei SPÖ und ÖVP, beim Liberalem Forum sowie bei den Grünen.)*

Präsident Dr. Heinz Fischer: Herr Bundesminister, bitte um Beantwortung.

Bundesminister für Wissenschaft und Verkehr Dr. Caspar Einem: Herr Abgeordneter! Hohes Haus! Erstens möchte ich mit aller Deutlichkeit sagen, daß ich Ihre Einschätzung teile. Auch ich halte dieses Plakat für ausgesprochen peinlich und verfehlt und bin daher etwas davon betroffen, daß die ÖBB diese Werbelinie akzeptiert und finanziert haben. Andererseits besteht kein formeller Anknüpfungspunkt dafür, daß der Eigentümervertreter der ÖBB der Geschäftsführung der ÖBB diesbezüglich eine Weisung geben könnte, aber ich gehe davon aus, daß es genügend tatsächliche Möglichkeiten gibt, die Geschäftsführung dahin gehend zu bestimmen, diese Werbelinie zumindest mit diesem Plakat und mit diesem Sujet zurückzuziehen, weil ich es in jedem Fall für unangebracht halte, für menschliche Akzeptanz der Bahn zu werben und dabei die Mehrheitsbevölkerung zu diskreditieren. *(Beifall bei SPÖ und ÖVP, beim Liberalem Forum sowie bei den Grünen.)*

Präsident Dr. Heinz Fischer: Danke vielmals, Herr Minister. Damit sind die an Sie gerichteten Anfragen beantwortet. *(Die Abgeordneten Dr. Gabriela **Moser** und Dr. **Petrovic** überreichen dem auf der Regierungsbank sitzenden Bundesminister Dr. Einem je eine Sonnenblume.)*

Für die weiteren Anfragen steht die Frau Bundesminister für Arbeit, Gesundheit und Soziales zur Verfügung.

Frau Abgeordnete Haller formuliert nun ihre Anfrage.

Bundesministerium für Arbeit, Gesundheit und Soziales

Abgeordnete Edith Haller (Freiheitliche): Guten Morgen, Frau Bundesministerin! Meine Frage lautet:

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In welcher Form werden Sie den vom Bundesminister für Umwelt, Jugend und Familie gemachten Vorschlag eines Karenzgeldes für alle unterstützen?

Präsident Dr. Heinz Fischer: Bitte, Frau Ministerin.

Bundesministerin für Arbeit, Gesundheit und Soziales Eleonora Hostasch: Sehr geschätzte Frau Abgeordnete! Meiner Überzeugung nach hat das Karenzurlaubsgeld insofern eine ganz besondere Bedeutung, als bereits an der Bezeichnung erkennbar ist, daß der Zustand einer Erwerbstätigkeit oder eine besondere Situation vorangegangen sein muß, um in Karenz gehen zu können, und daß nach dieser Karenzzeit der vorige Zustand wieder fortgesetzt wird.

Daher wäre es meiner Meinung nach verfehlt, Karenzgeld nach dem Gießkannenprinzip an alle – auch an jene, die unter diesen Bedingungen derzeit keinen Anspruch darauf haben – zu verteilen. Außerdem wäre es meiner Ansicht nach wichtig zu hinterfragen, wie die Mittel aufgebracht werden, und auch die Frage nach der Verteilungswirkung zu stellen, wenn undifferenziert Ausgaben getätigt werden.

Erlauben Sie mir aber doch, festzuhalten, wo meiner Meinung nach besonderer Handlungsbedarf besteht, um karenzierten Frauen die Beschäftigung beziehungsweise den Wiedereintritt in ein Beschäftigungsverhältnis zu ermöglichen: Das ist der Rechtsanspruch auf Teilzeitarbeit, das ist die bessere Transparenz zwischen Vollzeit- und Teilzeitarbeit, und das ist auch der weitere Ausbau einseitiger Rechtsansprüche für Eltern zur Inanspruchnahme von Karenzierungen. Daher denke ich, daß in diesem Bereich der Schwerpunkt gelegt werden soll. *(Beifall des Abg. **Verzetnitsch.**)*

Präsident Dr. Heinz Fischer: Danke. – Zusatzfrage, bitte.

Abgeordnete Edith Haller (Freiheitliche): Das Karenzgeld für alle stellt eine langjährige Forderung der Freiheitlichen als erste Stufe der Umsetzung des Kinderbetreuungsschecks dar. *(Ironische Heiterkeit bei SPÖ und ÖVP.)* Natürlich! Natürlich, das ist nachweisbar. *(Abg. Dr. **Khol:** Sie lacht ja selber! – Weitere Zwischenrufe bei SPÖ und ÖVP.)*

Laut der nun vorliegenden Studie des ÖIF zum Kinderbetreuungsscheck würde dieser einerseits eine Entlastung bei der Situation arbeitsloser Frauen und andererseits neue Arbeitsplätze im Bereich der Kinderbetreuung bringen. Wie stehen Sie als Arbeitsministerin dazu?

Präsident Dr. Heinz Fischer: Frau Bundesministerin, bitte.

Bundesministerin für Arbeit, Gesundheit und Soziales Eleonora Hostasch: Sehr geschätzte Frau Abgeordnete! Ich glaube, daß es zulässig ist, die Auswirkungen eines Kinderbetreuungsschecks auch in anderer Form zu interpretieren. Jene Vorteile, die Sie hier formuliert haben, sehe ich nicht. Meiner Meinung nach sind die Auswirkungen eines Kinderbetreuungsschecks zu untersuchen, ***bevor*** eine derartige politische Forderung umgesetzt wird. Man muß nämlich wissen, daß mit diesem Kinderbetreuungsscheck alle anderen Transferleistungen subsumiert werden, und ich sehe hier keinen Vorteil im Hinblick auf die Reintegration von Frauen – im Gegenteil –, ich sehe hier sogar die Gefahr, daß Frauen aus dem Arbeits- und Erwerbsleben hinausgedrängt werden. *(Beifall bei der SPÖ.)*

Präsident Dr. Heinz Fischer: Zusatzfrage: Frau Abgeordnete Rosemarie Bauer. – Bitte.

Abgeordnete Rosemarie Bauer (ÖVP): Frau Bundesminister! Zurückkommend auf den Vorschlag "Karenzgeld für alle" des Bundesministers Bartenstein verweise ich auf die Tatsache, daß 7 Prozent mehr anspruchsberechtigte Frauen die Möglichkeit erhielten, Karenzgeld zu bekommen.

In Ihrer Beantwortung sehe ich in jedem Fall auch eine Diskriminierung verschiedener Gruppen von Frauen. Ich glaube, man müßte auch Zugang zu der Problematik finden, daß heute Gruppen von Frauen ausgeschlossen sind, die sehr wohl in einem Dienstverhältnis stehen – ich denke hier nur an die geringfügig Beschäftigten –, und ich bin der Ansicht, daß diese Personengruppe gerade in der Kinderphase auch tatsächlich Einzahler in dieses System wird.

Meine Frage, Frau Bundesminister: Ist Ihnen bekannt, daß auch heute schon Frauen, die aufgrund einer Versicherungsleistung für ihr erstes Kind in Karenz gehen, aber bei weiteren Kindern keinen Anspruch darauf haben, aus dem System herausfallen, wenn sie nicht in irgendeiner Form – und das ist manchmal sehr strapaziös – ein Beschäftigungsverhältnis suchen, nur um einen weiteren Anspruch zu erwerben?

Ich halte das frauenpolitisch für nicht unbedingt erfreulich, und ich glaube, daß dies auch nicht sozial gerecht ist. Wie sehen Sie diese Situation?

Präsident Dr. Heinz Fischer: Frau Bundesministerin, bitte.

Bundesministerin für Arbeit, Gesundheit und Soziales Eleonora Hostasch: Sehr geschätzte Frau Abgeordnete! Ich denke, daß die derzeitigen Karenzurlaubsregelungen für verschiedene Betroffenheiten eine finanzielle Absicherung, eine Überbrückungslösung darstellen, ich halte es aber für sehr wichtig, bei jeder Erweiterung von Ansprüchen genau zu sehen, wie die Verteilungswirkungen sind, von wem die Mittel aufgebracht werden und wohin die Leistungen gehen.

Wenn ein erweiterter Personenkreis in Geldleistungen einbezogen werden soll, ist auch zu beachten, wie die zusätzlichen Geldmittel aufgebracht werden. Meiner Ansicht nach ist es doch sehr wichtig, die Treffsicherheit von Zahlungen im Sozialsystem immer wieder zu hinterfragen. Ich stimme mit Ihnen überein, wenn es sich darum handelt, die bedarfsorientierte Sicherung für Betroffene immer wieder auszuweiten, aber es ist auch dafür Sorge zu tragen, daß die entsprechende Bedeckung verteilungspolitisch richtig ist.

Präsident Dr. Heinz Fischer: Danke, Frau Ministerin. – Herr Abgeordneter Öllinger stellt die nächste Zusatzfrage.

Abgeordneter Karl Öllinger (Grüne): Frau Bundesministerin! Alleinerziehende Frauen, die den Namen des Kindesvaters nicht nennen können oder wollen, erhalten nach wie vor kein erhöhtes Karenzgeld, obwohl alle Fraktionen dieses Hauses – mit Ausnahme einiger weniger ÖVP-Männer – dafür sind. Familienminister Bartenstein ist auch für diesen Vorschlag.

Ich frage Sie als zuständige Ministerin: Wann kommt endlich dieses erhöhte Karenzgeld für Alleinerziehende?

Präsident Dr. Heinz Fischer: Frau Bundesministerin, bitte.

Bundesministerin für Arbeit, Gesundheit und Soziales Eleonora Hostasch: Sehr geschätzter Herr Abgeordneter! Ich teile Ihre Ansicht, daß die Situation für Alleinerziehende derzeit nicht befriedigend ist, und werde daher Bemühungen in diese Richtung, die sowohl von der Frauenministerin als auch von den ÖGB-Frauen und anderen Frauengruppen immer wieder formuliert werden, unterstützen. Ich hoffe, daß wir in diesen Beratungen auch in nächster Zeit zu Ergebnissen kommen werden.

Präsident Dr. Heinz Fischer: Danke vielmals. – Zusatzfrage: Frau Abgeordnete Klara Motter, bitte.

Abgeordnete Klara Motter (Liberales Forum): Sehr geehrte Frau Bundesministerin! Ich bin Ihnen dankbar dafür, daß Sie die Treffsicherheit bereits angesprochen haben, aber ich habe trotzdem folgende Frage:

Habe ich Ihre erste Fragebeantwortung richtig verstanden, daß Sie dem Modell Bartenstein "Karenzgeld für alle" eigentlich sehr wenig abgewinnen können? Ganz konkret: Wie wollen Sie diesen Konflikt baldmöglichst bereinigen?

Präsident Dr. Heinz Fischer: Bitte, Frau Bundesministerin.

Bundesministerin für Arbeit, Gesundheit und Soziales Eleonora Hostasch: Sehr geehrte Frau Abgeordnete! Ich glaube, daß es in einem demokratischen politischen System absolut legitim ist, verschiedene Ansätze zu haben, verschiedene politische Überlegungen, aber auch verschiedene gesellschaftspolitische Überlegungen anzustellen. Ich sage, daß ich mich für ein Gießkannensystem mit der aus meiner Sicht nicht verteilungsgerechten Wirkung nicht einsetzen werde, sondern die Grundsätze der Verteilungsgerechtigkeit immer wieder zu beachten versuche. Aber ich hoffe, daß wir doch in Zukunft immer dort, wo wir Lücken im Sozialsystem erkennen, sodaß Betroffene nicht ausreichend versorgt sind, entsprechende verteilungsgerechte Lösungen finden werden.

Präsident Dr. Heinz Fischer: Danke. – Frau Abgeordnete Silhavy stellt die nächste Frage.

Abgeordnete Heidrun Silhavy (SPÖ): Frau Bundesministerin! Da der Familienlastenausgleichsfonds Überschüsse aufweist, frage ich Sie: Wie könnten Ihrer Ansicht nach diese Mittel vor allem unter dem Aspekt einer besseren Förderung der Beschäftigung von Frauen verwendet und eingesetzt werden?

Präsident Dr. Heinz Fischer: Bitte um Beantwortung.

Bundesministerin für Arbeit, Gesundheit und Soziales Eleonora Hostasch: Sehr geschätzte Frau Abgeordnete! Ich konnte zuerst schon darauf verweisen, daß die Situation für Alleinerziehende meiner Meinung nach nicht befriedigend ist. Daher glaube ich, daß diese Gruppe spezifisch zu unterstützen ist, falls wir Spielräume im Rahmen des Familienlastenausgleiches haben sollten. Da darüber hinaus das Karenzurlaubsgeld seit einiger Zeit nicht erhöht werden konnte, sollte man meiner Ansicht nach einer Erhöhung des bestehenden Karenzurlaubsgeldes absolute Priorität einräumen, wenn solche Spielräume entstehen.

Ich möchte aber auf der anderen Seite auch darauf verweisen, daß gerade für die Frauenbeschäftigung die Frage der Lohnnebenkosten eine nicht unwesentliche Frage ist und der Familienlastenausgleich eine nicht unwesentliche Belastung bei den Lohnnebenkosten darstellt. Ich glaube daher, daß es sinnvoll ist, daß im Rahmen der Steuerreformdiskussion diesem Aspekt besondere Bedeutung beigemessen wird und dies auch in Betracht gezogen wird.

Darüber hinaus darf ich Sie davon informieren, daß die Regierung im vergangenen Jahr in Aussicht genommen hat, im Jahr 2000 die Bemessungsgrundlage für die Berücksichtigung der Ersatzzeiten in der Pension für die Karenzzeiten anzuheben. Hiezu sind aber auch zusätzliche Mittel erforderlich. Ich glaube, daß dem die absolute Priorität einzuräumen ist, weil damit auch sichergestellt ist, daß Frauen in Zukunft eine bessere Chance haben, die erhebliche Lücke in den Pensionsansprüchen zwischen den Männern und den Frauen etwas zu verringern. *(Beifall der Abg.* ***Binder.)***

Präsident Dr. Heinz Fischer: Danke, Frau Bundesministerin.

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Die nächste Anfrage formuliert Herr Abgeordneter Dr. Feurstein.

Abgeordneter Dr. Gottfried Feurstein (ÖVP): Frau Bundesministerin! Ich möchte Sie folgendes fragen:

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Sind Sie für eine Weiterentwicklung der Abfertigungsregelungen in Richtung mehr Vorsorge für die Arbeitnehmer?

Präsident Dr. Heinz Fischer: Bitte, Frau Bundesministerin.

Bundesministerin für Arbeit, Gesundheit und Soziales Eleonora Hostasch: Sehr geschätzter Herr Abgeordneter! Ich glaube, daß es recht wichtig war, daß die Frage der Abfertigung wieder einmal thematisiert wurde. Für mich hat die Abfertigung mehrere Funktionen: Zum einen ist sie ein praktisch aufgeschobenes Entgelt, die Abfertigung hat eine Kündigungsschutzfunktion, sie hat auch die Funktion, als Überbrückung zu gelten, wenn jemand aus dem Arbeitsmarkt gedrängt wird. Zum anderen hat sie aber auch die Funktion einer zusätzlichen persönlichen Pensions- und Altersvorsorge, wenn jemand die entsprechende Entscheidung für sich trifft.

Die Abfertigung weist aus meiner Sicht derzeit aber auch einige Mängel auf. Ich sehe die Mängel darin, daß kein Abfertigungsanspruch bei Selbstkündigung besteht, daß kein lineares Anwachsen gegeben ist und daß insbesondere saisonale Beschäftigungen de facto nicht berücksichtigt werden.

Ich glaube daher, daß es sinnvoll ist, das Abfertigungsrecht zu überarbeiten, daß es aber wichtig ist, es der autonomen persönlichen Entscheidung zu überlassen, inwieweit die Abfertigung auch für eine Pensionsvorsorge verwendet wird.

Präsident Dr. Heinz Fischer: Zusatzfrage: Herr Abgeordneter Dr. Feurstein.

Abgeordneter Dr. Gottfried Feurstein (ÖVP): Frau Ministerin! Sie wissen, daß die ÖVP einen Vorschlag unterbreitet hat, der einerseits ein lineares Anwachsen der Abfertigung vorsieht, andererseits aber auch gerade diese Altersvorsorge ganz stark betont, so wie dies in anderen Staaten bereits der Fall ist. Ich erinnere daran, daß es EU-Staaten gibt, in denen 60 bis 70 Prozent der Arbeitnehmer einen eigenen Anspruch auf eine Betriebspension haben. In der Schweiz sind dies bereits 90 Prozent, bei uns in Österreich 10 Prozent.

Wir glauben daher aus unserer Sicht *(Ruf: Frage! – Präsident Dr.* ***Fischer*** *gibt das Glockenzeichen.)* – ja, ich komme schon zur Frage –, daß das eine neue Alternative wäre. Sind Sie bereit, mit uns über diese neue Alternative, die wir bereits vorgestellt haben, auch entsprechende Gespräche zu führen?

Präsident Dr. Heinz Fischer: Bitte, Frau Bundesministerin.

Bundesministerin für Arbeit, Gesundheit und Soziales Eleonora Hostasch: Sehr geschätzter Herr Abgeordneter! Ich glaube, Sie kennen mich lang genug, um zu wissen, daß wir immer wieder bei jedem Thema gesprächsbereit waren und letztlich auch immer wieder versucht haben, zu gemeinsamen Ergebnissen zu kommen. Ich möchte in der Frage der Pensionen jedoch betonen, daß für mich die staatliche Versorgung, die erste Säule unseres Pensionssystems, absolute Priorität hat. Aber ich war recht stolz, hier in diesem Parlament gewesen zu sein, als wir auch das Pensionskassenmodell verabschiedet haben, das Betriebspensionsgesetz diskutiert und gemeinsam beschlossen haben, und ich sehe daher eine sinnvolle Ergänzung in diesen Systemen. Ich glaube aber, daß zu betonen ist, daß eine Erweiterung in diesem Bereich nie zu Lasten der ersten Säule gehen darf.

Präsident Dr. Heinz Fischer: Danke vielmals. – Zusatzfrage: Herr Abgeordneter Öllinger, bitte.

Abgeordneter Karl Öllinger (Grüne): Frau Bundesministerin! Die Grünen sind für eine Abfertigungsneuregelung, die Mobilität und Entscheidungsfreiheit fördert. Können Sie sich vorstellen, Frau Bundesministerin, daß die Abfertigung in Zukunft auch so konzipiert wird, daß sie nicht nur eine Überbrückungsfunktion beim endgültigen Ausscheiden aus dem Arbeitsleben hat, sondern auch beim vorübergehenden Ausscheiden, also etwa bei Erziehungs- oder Bildungskarenz?

Präsident Dr. Heinz Fischer: Bitte, Frau Ministerin.

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Bundesministerin für Arbeit, Gesundheit und Soziales Eleonora Hostasch: Sehr geschätzter Herr Abgeordneter! Ich glaube, daß man alle diese Varianten in die Diskussion mit aufnehmen sollte, und ich kann auch einem sogenannten Rucksackprinzip, also daß man die Abfertigung immer mitnimmt, viel abgewinnen. Meiner Meinung nach wäre es sicher sinnvoll, in der Abfertigungsdiskussion Lösungen anzustreben, wie sie zum Beispiel hinsichtlich der Bauarbeiter-Urlaubs- und Abfertigungskasse bestehen.

So kämpfen wir derzeit darum, für den Bereich des Tourismus eine ähnliche oder möglichst gleichwertige Lösung zu finden, weil gerade dort die Beschäftigten nie in den Anspruch einer Abfertigung kommen. Ich bedauere es sehr, daß die Kollektivvertragsverhandlungen trotz Unterstützung auch der öffentlichen Hand keine Fortschritte erzielen, und ich sehe – wenn ich vielleicht noch auf die jetzige Diskussion zu sprechen kommen kann – in dem ÖVP-Vorschlag einen Mangel darin, daß bei kurzfristigen Arbeitsverhältnissen, also gerade bei saisonaler Beschäftigung, dezidiert ausgenommen ist, daß dieser Anspruch entstehen soll.

Ich glaube, hier gilt es, eine umfassende Diskussion zu führen und dafür zu sorgen, daß gerade jene, die bisher nicht von den Ansprüchen profitieren konnten, weil sie keine durchgängigen langen Arbeitsverhältnisse haben, gleichermaßen in einen Abfertigungsanspruch hineinwachsen können. *(Beifall bei der SPÖ.)*

Präsident Dr. Heinz Fischer: Zusatzfrage: Herr Abgeordneter Mag. Peter. – Bitte.

Abgeordneter Mag. Helmut Peter (Liberales Forum): Frau Bundesministerin! Halten Sie Abfertigungen für Lohnnebenkosten, und welche Auswirkungen hat eine Steigerung der Lohnnebenkosten auf Beschäftigung?

Präsident Dr. Heinz Fischer: Frau Bundesministerin, bitte.

Bundesministerin für Arbeit, Gesundheit und Soziales Eleonora Hostasch: Sehr geschätzter Herr Abgeordneter! Ich konnte in der Beantwortung einer vorangegangenen Frage die Bedeutung der Lohnnebenkosten auch im Zusammenhang mit der Abfertigung unterstreichen. Ich glaube aber, daß die Abfertigung ein Teil des laufenden Entgeltes ist und somit zum Gesamtanspruch eines Dienstverhältnisses gehört, weshalb es zu keiner Umfunktionierung und damit zu einer Reduzierung von Ansprüchen von Arbeitnehmern kommen darf.

Präsident Dr. Heinz Fischer: Danke, Frau Ministerin. – Herr Abgeordneter Dietachmayr, bitte.

Abgeordneter Helmut Dietachmayr (SPÖ): Frau Bundesminister! Ich komme nochmals auf das Problem zu sprechen, das schon diskutiert wurde, und frage Sie: Wie beurteilen Sie das von der ÖVP vorgeschlagene Modell, Abfertigungen durch eine Kassenlösung zu sichern? Sehen Sie in dieser Umgestaltung auch eine Möglichkeit der Altersversorgung als zweite Säule? Ich glaube nämlich, daß da viele Probleme entstehen, speziell bei den kurzfristig Beschäftigten, bei den Saisonbeschäftigten.

Präsident Dr. Heinz Fischer: Bitte um Beantwortung.

Bundesministerin für Arbeit, Gesundheit und Soziales Eleonora Hostasch: Sehr geschätzter Herr Abgeordneter! Ich sehe in dem Vorschlag, der von seiten der ÖVP in die Diskussion gebracht wurde, sehr sinnvolle Ansätze, wie zum Beispiel das lineare Anwachsen oder die Möglichkeit, daß auch bei Selbstkündigung ein Anspruch entsteht, wenn auch nicht in der optimalen Form, wie ich es gerne hätte. Es ist zumindest einmal eine Basis, darüber reden zu können.

Bedenken habe ich aber doch hinsichtlich des Umstandes, daß keine Freiwilligkeit für die Entscheidung, daß die Abfertigung als Pensionsergänzung herangezogen wird, besteht, daß das nicht in der Trennung erfolgt, wie ich es mir vorstelle und auch glaube, daß es wichtig wäre.

Ich glaube, daß Fondslösungen, Kassenlösungen durchaus sinnvolle Modelle sind, um gleichwertige Ansprüche für alle erarbeiten zu können, wo auch die Möglichkeit gegeben ist, daß Ansprüche nicht verlorengehen. Eine Fondslösung hätte auch den Vorteil, daß zum Beispiel bei Insolvenzen von Unternehmungen aus dem Fonds die Leistungen bezogen werden können. Das könnte auch dazu führen, daß der Insolvenzausgleichsfonds damit wieder entlastet werden könnte, weil ja die Vorsorgen für die Abfertigungsansprüche nicht erfolgen müssen. Ich glaube, daß da sehr viel Phantasie dabei ist. Ich sehe aber aus meiner Sicht auch Grund zur Kritik an diesem ÖVP-

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Vorschlag.

Präsident Dr. Heinz Fischer: Danke. – Letzte Zusatzfrage: Herr Abgeordneter Dolinschek, bitte.

Abgeordneter Sigisbert Dolinschek (Freiheitliche): Frau Bundesminister! Sie haben vorhin erwähnt – und da sind wir einer Meinung –, daß das bestehende Abfertigungssystem einige gravierende Nachteile hat. Sie haben ausgeführt, daß dadurch die Mobilität der Arbeitnehmer sehr eingeschränkt ist, daß es Berufsgruppen mit großer Fluktuation größtenteils ausschließt und es auch die Arbeitgeber motiviert, vor dem nächsten Stufensprung die Arbeitnehmer zu kündigen.

Meine Frage an Sie lautet: In welchem Zeitraum ist in dieser Richtung an eine Reform gedacht, und wie stellen Sie sich die Übergangsregelung für bestehende Abfertigungsansprüche, die die Leute heute schon haben, vor?

Präsident Dr. Heinz Fischer: Bitte, Frau Ministerin.

Bundesministerin für Arbeit, Gesundheit und Soziales Eleonora Hostasch: Sehr geschätzter Herr Abgeordneter! Ich glaube, daß es sehr wichtig war, daß darangegangen wurde, die Frage der Abfertigung und nach Möglichkeit auch die Frage der Beseitigung von Mängeln des jetzigen Systems einer Lösung zuzuführen. Aus der Sicht meines Ressorts ist es oberste Priorität, erfolgreiche Verhandlungen zur Umsetzung der sogenannten "Aktion Fairneß" zu führen. Es ist unsere politische Zielsetzung, daß arbeitsrechtlich nicht sachlich gerechtfertigte Unterschiede zwischen Arbeitern und Angestellten beseitigt werden sollen. Ich habe gestern dieses Gesetz in Begutachtung geschickt, um die Chance zu haben, noch in dieser Legislaturperiode zu einem Ergebnis zu kommen.

Ich glaube, daß es wichtig wäre, diesem Gesetz zum Durchbruch zu verhelfen und sich dann in weiterer Folge mit einer weiteren Ausgestaltung und Neugestaltung des Abfertigungsrechtes auseinanderzusetzen. *(Beifall bei der SPÖ.)*

Präsident Dr. Heinz Fischer: Danke vielmals. – Ich bitte nun Herr Abgeordneten Dr. Kier, noch die von ihm eingebrachte Anfrage vorzulesen, und dann sind kurze Zusatzfragen zu stellen und kurze Antworten darauf zu geben.

Abgeordneter Dr. Volker Kier (Liberales Forum): Frau Bundesministerin! Meine Frage lautet:

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Welche Erwartungen verbinden Sie mit der Ernennung Dr. Roman Obrovskis zum neuen AMS-Bundesgeschäftsführer sowie Herbert Buchingers zum Wiener Landesgeschäftsführer, besonders angesichts des kritischen Zustands des Wiener Arbeitsmarkts und der desaströsen Organisationsstruktur des AMS Wien, nicht zuletzt im Hinblick auf die Vergabe von Psychoscreenings, die von Ihnen nach meinen Informationen bisher leider nur vorläufig gestoppt wurde?

Präsident Dr. Heinz Fischer: Bitte, Frau Ministerin.

Bundesministerin für Arbeit, Gesundheit und Soziales Eleonora Hostasch: Sehr geschätzter Herr Abgeordneter! Erlauben Sie mir, mit allem Respekt den Begriff "desaströs" zurückzuweisen. Er ist in keiner Weise zutreffend. Die Kolleginnen und Kollegen des Arbeitsmarktservice Wien, aber auch in den anderen Dienststellen arbeiten hervorragend, und auch die Organisationsstruktur hat sich bewährt. *(Beifall bei der SPÖ.)*

Ich möchte nun zu Ihrer konkreten Frage kommen. Zum ersten ist festzuhalten, daß personelle Entscheidungen und auch das operative Geschäft in der Verantwortung der Entscheidungsträger der bestellten oder gewählten Organe liegen, sodaß auch Personalentscheidungen nicht von mir getroffen werden, sondern von den dafür zuständigen Organen.

Ich erachte es aber als richtig und sinnvoll, daß ich in meiner politischen Verantwortung, die ich für diesen ganz wichtigen Bereich, nämlich den österreichischen Arbeitsmarkt, und damit für den Großteil der Bevölkerung habe, auch Vorstellungen entwickle, wie Dinge optimiert werden können.

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Daher war meine Überlegung, die Diskussion in den Organen dahin gehend zu führen, daß wir uns spezifisch, schwerpunktartig den besonderen Problemen des Wiener Arbeitsmarktes widmen können. Wien ist ein ganz schwieriger Bereich, weil in einer Großstadt – überhaupt in einer so großen wie Wien – schon allein aufgrund der Struktur, welche besondere arbeitsmarktpolitische Herausforderungen darstellt, Probleme entstehen.

Wenn sich da die Chance, wie ich meine, zeigt, daß der Bundesgeschäftsführer Herbert Buchinger, der über sehr hohe Kompetenz und große Erfahrung verfügt, für eine Funktion in Wien zur Verfügung steht, dann glaube ich, daß es richtig ist, das in die Diskussion zu bringen.

Gleichermaßen bedarf es natürlich auch Überlegungen hinsichtlich der Nachfolge, hinsichtlich der Frage, wer dann Bundesgeschäftsführer im Arbeitsmarktservice werden soll. Da meine ich, daß mit einer möglichen Kandidatur des Herrn Kollegen Obrovski, der in Oberösterreich hervorragend arbeitet, eine gute Wahl getroffen würde, denn wenn Sie sich die Arbeitsmarktentwicklung in Oberösterreich ansehen, dann können Sie feststellen, daß sowohl auf dem Lehrlingsmarkt als auch bei der Lösung des Problems der Langzeitarbeitslosen große Erfolge erzielt werden. Ich werde daher, sollte ein Vorschlag zur Besetzung der Bundesgeschäftsführerstelle durch die Person Obrovskis auf den Tisch kommen, einen solchen von außen her unterstützen, ohne mich aber in die autonome Entscheidung des Arbeitsmarktservice und seiner Organe einzumischen.

Präsident Dr. Heinz Fischer: Danke. – Zusatzfrage, bitte.

Abgeordneter Dr. Volker Kier (Liberales Forum): Frau Bundesministerin! Ich habe Verständnis dafür, daß Sie den Ausdruck "desaströs" zurückweisen. Fest steht aber, daß beim Arbeitsmarktservice Wien eine vorzeitige Ablöse der derzeitigen Leitung vorgesehen ist. Fest steht auch, daß sich die Arbeitslosigkeit in Wien katastrophal entwickelt und daß es der AMS-Bundesgeschäftsführer, der jetzt das AMS Wien übernehmen soll, offenbar bisher verabsäumt hat, das AMS Wien und das AMS Niederösterreich zu harmonisieren.

In diesem Zusammenhang stelle ich folgende Zusatzfrage: Wie wird bei der bis 15. November dieses Jahres auszuarbeitenden Konzeption für Lehrlinge in den Lehrlingsstiftungen vorgegangen? Wird da das AMS Wien eingebunden sein, oder wird das AMS Wien mit diesen Dingen nichts zu tun haben, zumal es offenbar derzeit führungslos ist?

Präsident Dr. Heinz Fischer: Frau Bundesministerin, bitte.

Bundesministerin für Arbeit, Gesundheit und Soziales Eleonora Hostasch: Sehr geschätzter Herr Abgeordneter! Ich weise den Vorwurf, daß das AMS Wien "führungslos" ist, absolut zurück. Das AMS Wien arbeitet hervorragend, und auch der Landesgeschäftsführer, Klaus Werner, erbringt eine sehr gute Leistung. Die ganze Neuordnung der Wiener Organisation mit den Job-Centern, mit mehr Versichertennähe, mit besseren Angeboten ist dem Einsatz des Kollegen Klaus Werner zu verdanken. Auch viele Maßnahmenerfolge, nicht zuletzt der Abschluß eines territorialen Beschäftigungspaktes in Wien mit der Wiener Politik, sind auch auf seine Initiative und sein Bemühen zurückzuführen. Daher sage ich mit aller Deutlichkeit: Die Leistungen des Landesgeschäftsführers im AMS Wien, Klaus Werner, lasse ich nicht madig machen. *(Beifall bei der SPÖ.)*

Präsident Dr. Heinz Fischer: Zusatzfrage: Herr Abgeordneter Haupt, bitte.

Abgeordneter Mag. Herbert Haupt (Freiheitliche): Sehr geehrte Frau Bundesminister! Das größte Problem ist, glaube ich, die schlechte Einkommenssituation, die die Frauen in Österreich nach wie vor haben, obwohl die Bemühungen in diesem Zusammenhang darauf gerichtet sind, in entsprechender Form die Einkommensunterschiede zwischen Mann und Frau zu beseitigen. Wichtig wären Beschäftigungsprogramme, die auf das Beenden des Bezugs der Notstandshilfe und die Rückkehr in den Arbeitsprozeß abzielen. Die Frage ist nur, wie sie am sinnvollsten umzusetzen sind.

Ich habe in letzter Zeit festgestellt, daß es in Ihrer eigenen Fraktion erhebliche Unterschiede – und zwar zwischen Ihnen und dem Landeshauptmannstellvertreter Schachner-Blazizek aus der Steiermark – in bezug auf die Erarbeitung von Konzepten gibt. Ich will Sie daher fragen: In welcher Form gedenken Sie die Lücke in der Einkommenssituation zu schließen und mehr Beschäftigung für Frauen herzustellen?

Präsident Dr. Heinz Fischer: Herr Abgeordneter! Ich muß jetzt bei Ihnen genauso streng sein wie vorhin bei der Kollegin vom Klub der Grünen, bei deren Frage ich den inhaltlichen Zusammenhang auch nicht erkennen konnte. Es geht in dieser Frage um das Arbeitsmarktservice.

Abgeordneter Mag. Herbert Haupt (Freiheitliche): Ich darf nun präzisieren, Herr Präsident. Sehr geehrte Frau Bundesminister! Im Zusammenhang mit dem Arbeitsmarktservice ist auffallend, daß im Bereich des Arbeitsmarktservice für Frauenförderungen überproportional Mittel aufzuwenden sind und sich trotzdem die Schere zwischen den Einkommen der Männer und jenen der Frauen in Österreich weiterhin öffnet.

Ich stelle, wenn ich mir die ausgearbeiteten Konzepte ansehe, erhebliche Unterschiede zwischen den Aussagen des Arbeitskreises, den Schachner-Blazizek in der Steiermark leitet, und Ihren diesbezüglichen Aussagen fest.

Frau Bundesministerin! Ich möchte daher wissen, was Sie zu unternehmen gedenken, um im Bereich des Arbeitsmarktservice in der Frage der Frauennachschulung beziehungsweise Betreuung von arbeitssuchenden Frauen effizienter zu werden, damit die Lücke bei den Einkommen geschlossen werden kann.

Präsident Dr. Heinz Fischer: Frau Bundesministerin, bitte.

Bundesministerin für Arbeit, Gesundheit und Soziales Eleonora Hostasch: Sehr geschätzter Herr Abgeordneter! Ich weiß jetzt nicht, welche Differenzen, welche inhaltlichen Unterschiede des von Ihnen genannten Arbeitskreises zu meinen Positionen Sie meinen. Ich glaube, daß es legitim ist, in den Arbeitskreisen unterschiedliche Überlegungen zu haben, die dann einer politischen Diskussion unterworfen werden, aber ich kann jetzt zu diesem Punkt nicht konkret Stellung nehmen, weil mir nicht bekannt ist, worauf Sie konkret Bezug nehmen.

Zu der Frage der Leistungen des Arbeitsmarktservice gerade in Richtung Unterstützung von Frauen möchte ich darauf verweisen, daß in den verschiedenen Förderungsprogrammen für Wiedereinsteigerinnen, für Qualifizierungsmaßnahmen ein überproportionaler Anteil an Förderfällen in Relation zu den arbeitslosen Frauen und auch in Relation zu den erwerbstätigen Frauen gegeben ist. Das heißt, daß die Landesgeschäftsstellen meinen politischen Auftrag, durch das arbeitsmarktpolitische Programm den Frauen einen besonderen Stellenwert beizumessen, übererfüllen.

Weil Sie die Einkommensunterschiede ansprechen, sehr geschätzter Herr Abgeordneter, darf ich darauf verweisen, daß diese viele Ursachen haben und daher auf vielen Ebenen anzusetzen ist. Das betrifft die verschiedenen Formen der Arbeitszeit. Es ist da auch die Partnerschaft, die Verteilung von Familienpflichten, die nicht wirklich funktioniert, als Beispiel zu erwähnen. Es ist auch die Frage angesprochen, wie familienergänzende Einrichtungen geschaffen werden. Es gibt eine Fülle von auch gesellschaftspolitischen Themen, die Einfluß auf unterschiedliche Einkommenssituationen haben.

Mein Bestreben ist es, überall dort, wo diese Unterschiede sachlich nicht gerechtfertigt sind, mich insbesondere mit den Sozialpartnern dafür einzusetzen, daß diese beseitigt werden.

Präsident Dr. Heinz Fischer: Danke, Frau Ministerin. – Vorletzte Zusatzfrage: Frau Abgeordnete Gatterer. Bitte.

Abgeordnete Edeltraud Gatterer (ÖVP): Sehr geehrte Frau Ministerin! Im Dezember 1997 gab es in Österreich 81 494 Notstandshilfebezieher. Davon gab es in Wien 33 057 Fälle, also einen überproportional hohen Anteil. Das sind 40 Prozent aller Notstandshilfebezieher, wenn man die Bevölkerung Wiens – das sind 20 Prozent – zur Gesamtbevölkerung Österreichs in Relation setzt. Meinen Sie nicht auch, daß das AMS Wien da eine eigene Praxis entwickelt hat, da in Wien bei einem sehr großen Arbeitsmarkt ein so hoher Prozentsatz von Notstandshilfebeziehern gegeben ist?

Präsident Dr. Heinz Fischer: Frau Bundesministerin, bitte.

Bundesministerin für Arbeit, Gesundheit und Soziales Eleonora Hostasch: Sehr geschätzte Frau Abgeordnete! Kurz verweisend darauf, was ich vorhin gesagt habe, nämlich daß der Wiener Arbeitsmarkt für Männer und Frauen ein besonders schwieriger Arbeitsmarkt ist, weil da viele strukturelle Probleme zusammenfallen – es gibt eine hohe Zahl von Einpendlern, weil große Institutionen wie Sozialversicherung, Banken, Versicherungen, der öffentliche Dienst in Wien konzentriert sind, welche aber in der Beschäftigungspolitik sehr restriktiv vorgehen –,

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möchte ich sagen, daß es daher besonders schwer ist, Zugang zur Beschäftigung zu finden, was dementsprechend auch für Frauen gilt.

Das Arbeitsmarktservice Wien ist sehr bemüht, jeden, der vorgemerkt ist, zu vermitteln, aber es bedarf auch des entsprechenden Angebotes an Arbeitsplätzen aus der Wirtschaft, damit eine Beschäftigung auch angenommen werden kann. Ich hoffe, daß die weitere Entwicklung doch Chancen bringt, daß wir auch in Wien noch mehr Menschen in Beschäftigung bringen können.

Präsident Dr. Heinz Fischer: Danke. – Herr Abgeordneter Öllinger, bitte.

Abgeordneter Karl Öllinger (Grüne): Frau Bundesministerin! Sie haben sich, als die Aktion des Roten Kreuzes mit dem Psychofragebogen bekannt wurde, gegen eine Fortsetzung dieser Aktion ausgesprochen, also meiner Ansicht nach richtig gehandelt. Ist Ihnen bekannt, daß in anderen Bundesländern ähnliche Fragebogenaktionen über das AMS laufen, die teilweise ähnliche beziehungsweise offensichtlich noch wildere Fragestellungen enthalten?

Präsident Dr. Heinz Fischer: Bitte, Frau Ministerin.

Bundesministerin für Arbeit, Gesundheit und Soziales Eleonora Hostasch: Sehr geschätzter Herr Abgeordneter! Sie verweisen zu Recht auf die Initiative, die ich in Wien gestoppt habe und hinsichtlich welcher ich vom Landesgeschäftsführer des AMS Wien am 28. August ein entsprechendes Schreiben erhalten habe. Mir sind aus anderen Bundesländern diesbezüglich keine Detailinformationen bekannt.

Präsident Dr. Heinz Fischer: Danke, Frau Bundesministerin.

Damit ist die Fragestunde beendet; ich danke für die Beantwortung der Anfragen.

Einlauf und Zuweisungen

Präsident Dr. Heinz Fischer: Hinsichtlich der eingelangten Verhandlungsgegenstände und deren Zuweisung verweise ich auf die im Sitzungssaal verteilte schriftliche Mitteilung.

Die schriftliche Mitteilung hat folgenden Wortlaut:

A) Eingelangte Verhandlungsgegenstände:

1. Anfragebeantwortungen: 4542/AB bis 4544/A.

2. Regierungsvorlagen:

Finanzreformgesetz 1998 (1466 der Beilagen),

Bundesgesetz, mit dem das Richterdienstgesetz, das Gerichtsorganisationsgesetz, das Staatsanwaltschaftsgesetz, das Beamten-Dienstrechtsgesetz 1979, das Gehaltsgesetz 1956, das Nebengebührenzulagengesetz, die Reisegebührenvorschrift 1955, das Pensionsgesetz 1965 und das Bundesfinanzgesetz 1999 geändert werden (1467 der Beilagen),

Bundesgesetz, mit dem das Verbrechensopfergesetz geändert wird (1472 der Beilagen).

B) Zuweisungen in dieser Sitzung:

zur Vorberatung:

Ausschuß für Arbeit und Soziales:

Übereinkommen (Nr. 176) über den Arbeitsschutz in Bergwerken; Empfehlung (Nr. 183) betreffend den Arbeitsschutz in Bergwerken (1463 der Beilagen);

Außenpolitischer Ausschuß:

Bundesgesetz, mit dem das Konsulargebührengesetz 1992 geändert wird (1431 der Beilagen);

Budgetausschuß:

2. Budgetüberschreitungsgesetz 1998 – 2. BÜG 1998 (1 450 der Beilagen),

Bundesgesetz, mit dem das Bundesfinanzgesetz 1998 geändert wird (3. BFG-Novelle 1998) (1451 der Beilagen),

Bundesgesetz, mit dem das Bundesfinanzgesetz 1999 geändert wird (3. BFG-Novelle 1999) (1452 der Beilagen);

Finanzausschuß:

Bundesgesetz über die Erhöhung der Quote Österreichs beim Internationalen Währungsfonds (1432 der Beilagen);

Gleichbehandlungsausschuß:

Antrag 920/A (E) der Abgeordneten Dr. Volker Kier und Genossen betreffend geschlechtergerechten Sprachgebrauch in Verordnungen;

Justizausschuß:

Antrag 924/A der Abgeordneten Mag. Dr. Maria Theresia Fekter, Dr. Johannes Jarolim und Genossen betreffend ein Bundesgesetz, mit dem das Bundesgesetz über das internationale Privatrecht geändert wird;

Unterrichtsausschuß:

Antrag 923/A (E) der Abgeordneten Mag. Karl Schweitzer und Genossen betreffend Reform des Dienst- und Besoldungsrechts für Lehrer;

Wirtschaftsausschuß:

Antrag 921/A (E) der Abgeordneten Dr. Volker Kier und Genossen betreffend Sicherung der Aufgabenerfüllung durch die Außenwirtschaftsabteilung (-organisation) durch nachhaltige Strukturreformen, Effizienzsteigerungen und Einsparungen in allen Bereichen der Kammern der gewerblichen Wirtschaft,

Antrag 922/A (E) der Abgeordneten Dr. Volker Kier und Genossen betreffend Schaffung der Möglichkeit der Anrechenbarkeit von Mitgliedsbeiträgen zu freiwilligen Interessenvertretungen auf die Kammerumlagen;

Ausschuß für Wissenschaft und Forschung:

Bundesgesetz, mit dem das Studentenheimgesetz geändert wird (1441 der Beilagen).

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Ankündigung einer Dringlichen Anfrage

Präsident Dr. Heinz Fischer: Die Abgeordneten Mag. Trattner und Genossen haben das Verlangen gestellt, die vor Eingang in die Tagesordnung eingebrachte schriftliche Anfrage 5129/J der Abgeordneten Trattner an den Herrn Bundesminister für Finanzen betreffend Bankenaufsicht und Riegerbank dringlich zu behandeln.

Diese Dringliche Anfrage wird um 15 Uhr zum Aufruf gelangen.

Verlangen auf Durchführung einer kurzen Debatte über die Anfragebeantwortung 4484/AB

Präsident Dr. Heinz Fischer: Weiters teile ich mit, daß gemäß § 92 der Geschäftsordnung das Verlangen vorliegt,

eine kurze Debatte über die Anfragebeantwortung 4484/AB zur Anfrage 4823/A der Abgeordneten Scheibner und Genossen betreffend die angespannte Situation bei den Hubschrauberstaffeln des Fliegerdienstes und der Fliegerdivision durch den Herrn Bundesminister für Landesverteidigung abzuhalten.

Da bereits, wie soeben bekanntgegeben wurde, um 15 Uhr die Verhandlung einer Dringlichen Anfrage stattfindet, wird diese Debatte im Anschluß daran zur Durchführung gelangen.

Fristsetzungsantrag

Präsident Dr. Heinz Fischer: Weiters teile ich mit, daß Frau Abgeordnete Dr. Heide Schmidt beantragt hat, dem Justizausschuß zur Berichterstattung über die Petition Nr. 48 betreffend rechtliche Verankerung von Partner- und Partnerinnenschaften, überreicht von den Abgeordneten Mag. Stoisits, Dr. Kier und Dr. Karlsson, eine Frist bis 19. Jänner 1999 zu setzen.

Der gegenständliche Antrag wird nach den Bestimmungen der Geschäftsordnung nach Beendigung der Verhandlungen in dieser Sitzung zur Abstimmung gebracht werden.

Absehen von der 24stündigen Aufliegefrist

Präsident Dr. Heinz Fischer: Um die Punkte 4 und 18 der Tagesordnung der heutigen Sitzung in Verhandlung nehmen zu können, ist nach § 44 der Geschäftsordnung erforderlich, mit Zweidrittelmehrheit von der 24stündigen Aufliegefrist des Ausschußberichtes Abstand zu nehmen, weil die entsprechenden Ausschußberichte erst seit gestern nachmittag vorliegen.

Es handelt sich dabei um den Bericht des Verfassungsausschusses über das Stenographische Protokoll betreffend die parlamentarische Enquete zum Thema "Einführung des Minderheitsvotums am Verfassungsgerichtshof" und um den Bericht des Immunitätsausschusses über das Ersuchen des Landesgerichtes Wiener Neustadt um Zustimmung zur behördlichen Verfolgung des Herrn Abgeordneten zum Nationalrat Dr. Jörg Haider in 1474 der Beilagen.

Ich bitte jene Damen und Herren, die der Abstandnahme von der Aufliegefrist für diese beiden Ausschußberichte ihre Zustimmung erteilen, um ein diesbezügliches Zeichen. – Dies ist mit Mehrheit, und zwar mit der erforderlichen ***Zweidrittelmehrheit, beschlossen.***

Behandlung der Tagesordnung

Präsident Dr. Heinz Fischer: Es liegt mir der Vorschlag vor, die Debatte über die Punkte 1 bis 3, 5 bis 10, 11 und 12 sowie 13 bis 16 der Tagesordnung jeweils zusammenzufassen.

Gibt es dagegen einen Einwand? – Das ist nicht der Fall. Dann werden wir so vorgehen.

Redezeitbeschränkung

Präsident Dr. Heinz Fischer: Ich gehe nunmehr in die Tagesordnung ein.

In der Präsidialkonferenz wurde Konsens über die Dauer der Debatten wie folgt erzielt: Es wurde eine Tagesblockzeit von 9 "Wiener Stunden" vereinbart, aus der sich folgende Redezeiten ergeben: SPÖ 135 Minuten, ÖVP 126 Minuten, Freiheitliche 117 Minuten, Liberales Forum und Grüne je 81 Minuten.

Gibt es gegen diesen Vorschlag Einwendungen? Er bedarf der Zustimmung des Hohen Hauses. – Es gibt keine Einwendungen. Damit ist das so ***beschlossen.***

1. Punkt

Bericht des Verfassungsausschusses über die Regierungsvorlage (1390 der Beilagen): Bundesgesetz über die Rückgabe von Kunstgegenständen aus den österreichischen Bundesmuseen und Sammlungen und

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über den Antrag 877/A der Abgeordneten Mag. Dr. Heide Schmidt und Genossen betreffend ein Bundesgesetz über die unentgeltliche Übereignung von beweglichem Bundesvermögen (1464 der Beilagen)

2. Punkt

Bericht des Verfassungsausschusses über die Regierungsvorlage (1429 der Beilagen): Bundesgesetz betreffend Zuwendungen an den Internationalen Fonds für Opfer des Nationalsozialismus (1465 der Beilagen)

3. Punkt

Bericht und Antrag des Verfassungsausschusses über den Entwurf eines Bundesgesetzes, mit dem das Bundesgesetz über den Nationalfonds der Republik Österreich für Opfer des Nationalsozialismus geändert wird (1469 der Beilagen)

Präsident Dr. Heinz Fischer: Nun können wir die Verhandlung der Punkte 1 bis 3 der heutigen Tagesordnung in Angriff nehmen.

Berichterstatter zu allen Punkten ist Herr Abgeordneter Dr. Cap. Eine Berichterstattung wird aber offenbar nicht gewünscht.

Erster Redner ist Herr Abgeordneter Dr. Khol. Freiwillige Redezeitbeschränkung: 15 Minuten. – Bitte, Herr Abgeordneter.

10.11

Abgeordneter Dr. Andreas Khol (ÖVP): Frau Bundesminister! Meine Damen und Herren! Heute beschäftigen wir uns mit zwei Gesetzen, die zur Linderung des Unrechtes bestimmt sind, das an Opfern des nationalsozialistischen Terrorregimes begangen wurde. Jeder Generation in diesem Land ist die Auseinandersetzung mit den Folgen des Holocaust ständig aufgetragen, und je deutlicher das Unrecht, das Verbrechen wird, umso wichtiger wird auch unsere Verantwortung, und das ist positiv, meine Damen und Herren. Als Ergebnis der historischen Forschung, als Ergebnis von Bildung und Ausbildung steigt das Unrechtsbewußtsein in Österreich und steigt die Bereitschaft, Verantwortung wahrzunehmen.

Was unseren jüdischen Mitbürgerinnen und Mitbürgern von Nationalsozialisten angetan wurde, können wir nicht wiedergutmachen. Aber wir müssen uns damit auseinandersetzen, und wir müssen das tun, was wir können, um die Folgen dieses Unrechtes zu tilgen, um die Folgen dieses Unrechtes zu lindern. *(Beifall bei der ÖVP. – Abgeordnete von den Grünen verteilen das Buch "Die Auslöschung. Der Fall Thorsch" von Hubertus Czernin an alle Abgeordneten.)*

Meine Damen und Herren von der grünen Fraktion! Frau Moser, Frau Stoisits und Herr Öllinger! Es geht jetzt um ein sehr ernstes Thema, und ich stelle fest, daß Ihr Aktionismus offensichtlich der Ernsthaftigkeit dieses Themas nicht angemessen ist. *(Beifall bei der ÖVP. – Abg. Mag.* ***Stoisits:*** *Ganz im Gegenteil! Das ist eine Lektüre, die einem Abgeordneten guttun wird, sie zu lesen! – Die angesprochenen Abgeordneten setzen mit der Verteilung des genannten Buches fort. – Empörung bei der ÖVP. – Abg. Dr.* ***Höchtl:*** *Das ist unerhört! Das ist eine Frechheit!)* Darf ich in meiner Rede fortsetzen. Vor allem und für alle ...

10.13

Präsident Dr. Heinz Fischer: Meine Damen und Herren! Ich unterbreche jetzt die Sitzung für fünf Minuten, denn ich will Herrn Abgeordneten Dr. Khol nicht zumuten, seine Rede zu diesem wichtigen Thema zu halten, während etwas verteilt wird. Ich anerkenne andererseits eine ehrliche Absicht der grünen Fraktion. Ich kenne das Buch, das hier verteilt wird.

Die Sitzung ist ***unterbrochen.***

(Die Sitzung wird um 10.14 Uhr ***unterbrochen*** *und um 10.19 Uhr* ***wiederaufgenommen.)***

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Präsident Dr. Heinz Fischer: Sehr geehrte Damen und Herren! Ich ***nehme*** die unterbrochene Sitzung ***wieder auf.***

Wir haben eine kurze Aussprache gehabt. Es ist unbestritten, daß in den vergangenen Jahren hin und wieder toleriert wurde, daß etwas verteilt wurde, es ist aber jetzt innerhalb einer Stunde zweimal erfolgt. Es ist ein sehr ernstes Thema, das wir jetzt hier verhandeln. Der Erstredner hat sich gestört gefühlt, und ich verstehe das *(Abg. **Kiss:** Zu Recht, Herr Präsident! Es war eine reine Provokation, da Pakete auszupacken!),* und wir haben daher vereinbart, daß vom Präsidium solche Verteilaktionen bis auf weiteres nicht akzeptiert werden. Das ist von allen, die an der Besprechung hier teilgenommen haben, für richtig befunden worden.

Wir werden uns in der Präsidialkonferenz noch gründlich damit auseinandersetzen, damit irgendwelche netten Gesten nicht unterbunden werden, aber alles unterbunden wird, was als eine Störung der Sitzung oder als eine Störung des Redners empfunden werden muß oder zumindest empfunden werden kann. Ich bitte um Verständnis dafür.

Herr Abgeordneter Dr. Khol wird jetzt noch einmal mit seiner Rede beginnen, und ich hoffe, daß gerade diese Debatte in einer Form über die Bühne gehen wird – und davon bin ich überzeugt –, mit der sich alle Mitglieder dieses Hohen Hauses identifizieren können. Danke vielmals.

Herr Abgeordneter Dr. Khol, Sie haben das Wort. – Bitte.

10.20

Abgeordneter Dr. Andreas Khol (ÖVP): Meine Damen und Herren! Hohes Haus! Ich beginne meine Rede zu diesem wichtigen Thema noch einmal. Wir beschäftigen uns heute mit zwei Gesetzen, die das Unrecht lindern sollen, das während des nationalsozialistischen Terrors und danach an Opfern des nationalsozialistischen Regimes begangen wurde.

Meine Damen und Herren! Ich betone: Jeder Generation, auch der unsrigen, ist die Auseinandersetzung mit den Folgen des Holocaust ständig aufgetragen, ist die Auseinandersetzung mit den Folgen des Nationalsozialismus ständig aufgetragen. Und je deutlicher das Unrecht, das Verbrechen wird, umso deutlicher wird auch die Verantwortung. Durch die historische Forschung, durch die Ausbildung und Bildung, die die Menschen an unseren Schulen und unseren hohen Schulen erhalten, steigt das Unrechtsbewußtsein, weil die Verbrechen immer deutlicher zutage treten. Wenn wir heute diese Gesetze beschließen, die gleichsam zwei kleine Schritte sind, werden wir diesem gesteigerten Verantwortungsbewußtsein gerecht. *(Beifall bei der ÖVP und bei Abgeordneten der SPÖ.)*

Was unseren jüdischen Mitbürgerinnen und Mitbürgern von Nationalsozialistinnen und Nationalsozialisten angetan wurde, können wir nicht wiedergutmachen, aber wir müssen uns damit auseinandersetzen und das tun, was wir tun können, um Unrecht als Unrecht zu brandmarken und um Folgen des Unrechtes zu lindern. *(Beifall bei der ÖVP und bei Abgeordneten der SPÖ.)*

Vor allem und für alle gilt: Unrecht kann nicht durch Zeitablauf zu Recht werden. Das gilt nicht nur für die Opfer der Shoa, nicht nur für die anderen Opfer des Nationalsozialismus, sondern das gilt für alle. *(Beifall bei der ÖVP und bei Abgeordneten der SPÖ.)*

Unsere jüdischen Mitbürgerinnen und Mitbürger wurden in der Zeit des Nationalsozialismus an Leib und Leben verletzt und beraubt. Aber auch nach dem Ende des NS-Terrors wurden in der jungen Zweiten Republik Fehler gemacht, aus welchen Gründen immer und von wem immer, und auch das müssen wir heute als Abgeordnete einer älter gewordenen Zweiten Republik anerkennen.

Heute kommen wir erneut unserer Verantwortung nach und setzen – ich habe es schon gesagt – zwei kleine Schritte. Der erste Schritt ist, daß wir den Gegenwert für Gold, das uns rechtens zusteht, in Höhe von 100 Millionen Schilling für Härtefälle von Opfern des Nationalsozialismus bereitstellen, Härtefälle, die durch die Maschen des Gesetzes fielen. Das ist der eine Schritt.

Der andere Schritt ist folgendes: Wir geben Kunstobjekte Menschen, die vom Nationalsozialismus beraubt wurden,

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zurück, Kunstobjekte, die zwar nach dem Krieg diesen Menschen zurückgestellt wurden, wovon aber Teile in der Republik verblieben und zum Eigentum der Republik gemacht wurden. Man hat den Opfern dieses Raubes ihre rückgestellten Kunstobjekte zwar gegeben, aber um sie ins Ausland exportieren zu können, mußten sie Teile der Republik schenken. Dieses damals gesetzmäßige, aber nach unserem heutigen Verständnis unrechtmäßige Vorgehen wollen wir nun korrigieren.

Es soll festgehalten werden, daß wir alle unsere Galerien und Museen, alles, was im Eigentum der Republik steht, dahin gehend durchforsten, ob es Kunstobjekte gibt, die zweifelhafter Herkunft sind, die abgepreßt wurden, die geraubt wurden oder die durch Ausnützung eben dieses sogenannten Ausfuhrverbotsgesetzes im Lande blieben, damit die rechtmäßigen Eigentümer andere Kunstobjekte ins Ausland ausführen durften. *(Präsident Dr.* ***Brauneder*** *übernimmt den Vorsitz.)*

Frau Bundesministerin Gehrer hat die sogenannte Provenienzforschung angeordnet, ohne von irgend jemandem gedrängt worden zu sein, sie hat, ihrer Ministerverantwortlichkeit und ihrem Unrechtsbewußtsein folgend, eine Provenienzforschung angeordnet, die alle in ihrer Verwaltung stehenden, aber auch die in der Verwaltung von anderen Ministerien stehenden Kunstsammlungen betrifft, um deren Herkunft zu klären und um dann, wenn unser Gesetz heute angenommen wird, diese unrechtmäßig erworbenen Kunstobjekte den Eigentümern oder ihren Erben schnell und unbürokratisch zurückzustellen. *(Beifall bei der ÖVP.)*

Ich danke Frau Ministerin Gehrer und Herrn Bundesminister für Finanzen Rudolf Edlinger, die gemeinsam mit den Klubs und mit dem Nationalrat sehr schnell diese Gesetze ausgearbeitet haben und das an sich schwerfällige Verfahren zur Rückgabe beziehungsweise zur Hingabe von Bundesvermögen, wo es an sich jedesmal, für jeden einzelnen Gegenstand eines eigenen Gesetzes bedürfte, mit uns gemeinsam beraten und dieses Gesetz ermöglicht haben, das unter Wahrung rechtsstaatlicher Kriterien eine schnelle Ausforschung und eine schnelle Rückgabe dieses unrechtmäßigen Gutes ermöglicht. *(Beifall bei der ÖVP.)*

Ich bedanke mich auch bei allen Fraktionen, denn diese Gesetze werden einstimmig beschlossen, einer Tradition folgend, die wir begründet haben, als wir den Nationalfonds der Republik eingesetzt haben, und wo alle Fraktionen, obwohl viele anderer Meinung gewesen wären, grundsätzlich dieser Regelung zugestimmt haben.

Was geschieht genau, meine Damen und Herren, was ist das Gold, das Raubgold? – Das Raubgold ist nicht Gold, das unseren jüdischen Mitbürgerinnen und Mitbürgern geraubt wurde, sondern das ist Gold, das 1938 aus den Beständen der Oesterreichischen Nationalbank geraubt wurde. 1946 wurden im Washingtoner Abkommen zehn Länder bestimmt, die das Raubgold der Nazis anspruchsberechtigt zurückerhalten können. Wir haben eine erste Tranche unseres Goldes sehr schnell nach dem Zweiten Weltkrieg bekommen, und jetzt eine weitere Tranche, die Endabrechnung sozusagen, und es ist Gold im Werte von 102 Millionen Schilling an die Oesterreichische Nationalbank gegangen. *(Präsident Dr.* ***Fischer*** *übernimmt wieder den Vorsitz.)*

Wir haben, einer Initiative aus Großbritannien und den USA folgend, dieses Gold einem internationalen Fonds zur Verfügung gestellt, der den Opfern der Shoa den Erlös dieses Goldes zukommen lassen soll. Wir waren die ersten, die das gemacht haben. Der internationale Fonds ist begründet. Er wird dieses Gold wiederum unserem Nationalfonds zur Verfügung stellen, und wir werden diese Mittel über die Mittel hinaus, die wir aus dem Bundesbudget für die Opfer des nationalsozialistischen Terrors in Österreich vorgesehen haben, an besonders Bedürftige und an Härtefälle verteilen.

Das ist ein sehr gutes Gesetz, und ich bedanke mich bei allen, die daran mitgewirkt haben. *(Beifall bei der ÖVP.)*

Der zweite Fall ist die Initiative, die Frau Ministerin Gehrer, unterstützt von Minister Edlinger, ergriffen hat. Auch diesbezüglich muß man sagen, daß man da gegen manche Instinkte gehandelt hat, denn es hat sich bei vielen Österreicherinnen und Österreichern ein gewisses Unbehagen entwickelt, als zwei Bilder der Sammlung Richard des großen Malers Egon Schiele aus Tulln in den Vereinigten Staaten ausgestellt worden waren und dann von Opfern des Nationalsozialismus in Anspruch genommen wurden. *(Zwischenruf des Abg.* ***Scheibner.)***

Viele in der Bevölkerung hätten aus dem Instinkt heraus reagiert und gesagt: Die Bilder sind rechtmäßig erworben, es handelt sich hier nicht um unrechtmäßige Dinge, man haut hier auf die Pauke! Wir haben nicht dementsprechend gehandelt, und es war Frau Minister Gehrer, die mit Klugheit, Vorsicht und Gelassenheit reagiert hat, die, vertrauend auf die amerikanische Justiz, richtig reagiert hat. Die Bilder werden sicherlich nach Österreich

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zurückkommen, weil wir Vertrauen in die Justiz in Amerika haben und darauf vertrauen, daß die Dinge geklärt werden. Auf diese Weise wurden Emotionen nicht angesprochen, und ich möchte mich bei Liesl Gehrer für ihr Vorgehen in dieser Angelegenheit bedanken. *(Beifall bei der ÖVP und bei Abgeordneten der SPÖ.)*

Sie hat aber weiter reagiert und hat in allen Museen die Provenienzforschung angeordnet. Es sind im wesentlichen zwei Kategorien von Kunstobjekten aufgetaucht: zum ersten herrenloses Gut, das heißt, von den Nationalsozialisten zusammengeraubt, zusammengestohlen, irgendwo gelagert, man weiß nicht, wem es gehört.

Die zweite Kategorie sind jene Kunstobjekte, die man zwar den Eigentümern, beispielsweise der Baronin Rothschild, zurückgegeben hat, aber als sie sie ausführen wollte, hat man gesagt: Von den 600 Objekten können Sie 550 ausführen, aber 50 schenken Sie der Republik. – Das war damals gesetzmäßig und ist bis vor kurzem auch noch gesetzmäßig gewesen. Ich erinnere zum Beispiel daran, daß der amerikanische Botschafter Lauder ein wertvolles Bild von Schiele ausführen durfte. Als Gegenleistung hat er das Wiener "Krauthappl", also die Kuppel der Secession, vergolden lassen. Bei dieser Kunstschenkung hat man gesagt: Das ist die Gegenleistung, dafür darfst du einen österreichischen Schiele ausführen. – Das war bis vor wenigen Jahren Rechtens, ist aber inzwischen geändert worden. Im übrigen kannten alle Länder derartige Gesetze.

Natürlich sind diese Dinge – und das zeigen die Akten – nicht freiwillig erfolgt, sondern das war eine gesetzliche Zwangslage. Es war das damals zwar gesetzmäßig, aber wir empfinden das heute in diesen Fällen nicht mehr als rechtmäßig, und daher werden diese Kunstobjekte zurückgegeben – nach einem Gutachten einer Kommission, die mit Experten und unabhängigen Wissenschaftern bestückt ist, unter der Ministerverantwortlichkeit und durch Beschluß der Bundesregierung. Ich hoffe, daß wir dieses Gut – unrecht Gut gedeihet nicht! – so schnell wie möglich an die rechtmäßigen Besitzer zurückgeben können.

Damit Sie wissen: Es handelt sich – und wir haben ja riesige Kunstschätze – nur um ein Zehntelprozent eines Prozentes der Objekte, also um eine Menge, die einfach eine Quantité négligeable, eine vernachlässigbare Größe ist. Wir werden dadurch nicht ärmer, sondern wir werden dadurch letztlich reicher.

Ich freue mich auch, daß wir dieses Gesetz im Ausschuß durch die Zusammenarbeit aller Fraktionen so beschließen konnten, daß wir zu einem Zeitpunkt, der jetzt bald naht, mit diesem Gesetz und mit dieser Rückgabe dieser Bilder als Muster in der Welt dastehen, denn, meine Damen und Herren, es sind ja nicht nur Österreicher betroffen, nicht nur österreichische Kunstgalerien und Museen und die Republik Österreich, sondern Raubgut gibt es in ganz Europa. Am 30. November findet in Washington eine internationale Konferenz statt, bei der zwei Tage lang unter dem Scheinwerferlicht der Öffentlichkeit die Fragen des herrenlosen Gutes, des Raubgutes diskutiert werden. Elisabeth Gehrer ist dort eingeladen, aber nicht, um sich anzuhören, was andere uns sagen, sondern um dort das Modell, das wir gefunden haben, vorzustellen. Das ist gut für die Republik! *(Beifall bei der ÖVP.)*

Es wird immer wieder die Frage gestellt: Ja gibt es denn immer neue Objekte? – Ja, es gibt immer neue Objekte, die gefunden werden. Wir haben in den Ausschußberatungen von Frau Minister Gehrer gehört, daß erst 30 Prozent der Bestände unserer Kunstsammlungen gesichtet und darauf geprüft wurden, ob sie rechtes Gut für uns sind oder unrechtes Gut. Daher wird diese Kommission, wird dieses Verfahren – so nehme ich an – in nächster Zeit immer wieder Dinge hervorbringen, und es wird dem Nationalrat darüber berichtet werden.

Meine Damen und Herren! Gerechtigkeit ist universell. Gerechtigkeit ist gerade auch diesem Hohen Haus eine besondere Aufgabe. Es gibt immer wieder Menschen, die sagen: Ist denn ***nie*** ein Ende? Wann ist denn endlich ein Ende mit diesen Sachen? – Ich sage Ihnen das, was ich Ihnen schon zu Beginn gesagt habe: Jeder Generation ist die Auseinandersetzung mit den Folgen des Holocaust erneut und immer wieder aufgetragen, und es wird aus meiner Sicht nie ein Ende geben, diesem unglaublichen und einmaligen Verbrechen gerecht zu werden.

Ich sage aber am Schluß ein Weiteres: Auch anderen ist Unrecht geschehen nach dem Zweiten Weltkrieg – in der Folge des NS-Terrors, aber auch in der Folge des kommunistischen Terrors –, es gab Vertriebene, Enteignete, Beraubte, unabhängig von persönlicher Schuld, unabhängig von persönlicher Verantwortung. Auch da muß Recht Recht bleiben, kann Unrecht durch Zeitablauf nicht zu Recht werden. *(Beifall bei der ÖVP.)*

10.36

Präsident Dr. Heinz Fischer: Nächster Redner ist Herr Abgeordneter Dr. Cap. Freiwillige Redezeitbeschränkung:

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15 Minuten. – Bitte.

10.36

Abgeordneter Dr. Josef Cap (SPÖ): Hohes Haus! Herr Präsident! Ich stimme meinem Vorredner natürlich grundsätzlich zu in seinen Aussagen, die er hier zu diesem so heiklen und sensiblen, aber auch sehr wichtigen Thema getätigt hat. Ich denke aber, wir sollten das alles nicht zu ahistorisch in einem bestimmten Punkt betrachten. Bei aller Freude über diese Gesetzesvorlage, darüber, daß es hier ein einheitliches Auftreten gibt, daß es eine einheitliche Initiative gibt, daß das hier auf breiten Konsens gestoßen ist und daß wir hier wirklich versuchen wollen, über die Grenzen des Landes hinaus ein Symbol zu setzen und einen wichtigen Schritt zu tätigen, muß man doch die Frage stellen: Warum das alles erst nach mehr als 50 Jahren?

Es ist eine wichtige Frage, die natürlich im Zusammenhang steht mit der Aufarbeitung dessen, was es damals alles an Unrecht gab, was es damals an Schicksalen, an Opfern, an Unterdrückung, an Vernichtung gegeben hat. Es wird ein Thema sein, das noch Generationen beschäftigt, aber es muß auch uns beschäftigen und die Generationen danach, warum es in der Zeit nach 1945, knapp nach 1945, so schwer war, Schritte zu setzen, die es erst ermöglicht haben, Jahrzehnte später etwas zu tun. Das ist etwas, mit dem wir uns meiner Auffassung nach auseinandersetzen sollten.

Es ist dies heute eine wichtige Initiative. Die Frau Ministerin wird quasi ermächtigt, etwas zurückzugeben, was noch vorhanden ist. Ich glaube, daß das ein entscheidendes Symbol ist, und ich meine, man sollte sowohl der Frau Ministerin Gehrer als auch dem Herrn Minister Edlinger danken dafür, daß sie mit diesem Thema so sensibel umgegangen sind und daß sie es wirklich geschafft haben, die Diskussion, die es darüber gegeben hat, in einer sehr sinnvollen und würdigen Weise zu bestehen.

Wir sollten, wenn wir dieses Thema heute hier zu diskutieren haben, auch hinzufügen, daß wir mit der Einrichtung des Nationalfonds einen ganz, ganz wesentlichen Schritt gesetzt haben, daß es hier wirklich gelungen ist, bei den Opfern durch diese Einrichtung so etwas wie Vertrauen zu bewirken, daß dieser Nationalfonds eine gute Arbeit geleistet hat, sehr verantwortungsvoll agiert hat und die nötige Sensibilität gehabt hat, um diese schwierige Aufgabe zu bewältigen. Daher ist er auch die richtige Einrichtung, um weitere Aufgaben im Zuge dieser gesetzlichen Initiativen, die wir heute zu setzen haben, zu übernehmen. Man sollte aber Mißverständnissen vorbeugen, daß es hier nicht darum geht, sich irgendwelche Budgetmittel zu ersparen, wenn man aus diesen Erlösen, die dem Nationalfonds zufließen sollen und die er dann einem erweiterten Opferkreis weiterzugeben hat, sondern das sind neue Bereiche, das wird getrennt vom bisherigen Budget zu bedienen sein. Es ist wichtig, auch das einmal in aller Deutlichkeit hier auszusprechen.

Was die Aufarbeitung dessen, was damals passiert ist, angeht, gilt besonderer Dank auch Herrn Bundeskanzler Vranitzky, der eigentlich einer der ersten war, die deutliche Worte zur Rolle von Österreichern in der Zeit des Nationalsozialismus gefunden haben.

Auch wenn es 50 Jahre später ist, es ist heute ein wichtiger Tag, ein historisch bedeutender Tag, daß wir diese gesetzliche Initiative hier gemeinsam einbringen. Man sollte jedoch den jetzigen Generationen, den jetzigen jungen Menschen nach wie vor bewußtmachen, was damals geschehen ist und wie man damals damit umgegangen ist.

Es wird immer der Begriff "Arisierung" in diese Diskussion beziehungsweise in die Aufarbeitung der Ereignisse von damals eingebracht. – In Wirklichkeit war das eine brutale Enteignung aus rassistischen und politischen Überlegungen und Gründen. Dieser Begriff ist ein wenig verharmlosend, weil er ein technokratischer Fachbegriff ist: Aha, "Arisierung"; na, es wird schon seinen Grund haben, wenn man da eben "arisiert" hat, wenn man da jemanden enteignet oder jemandem sein Eigentum abgepreßt hat.

Ich denke, daß es ganz wichtig ist, wenn immer wieder neu in die Diskussionen einfließt und immer wieder neu dargestellt wird, was der Hintergrund war, um zu immunisieren, wenn es wieder politische Strömungen und politische Auffassungen gibt, die als Grundlage ihrer Politik den Rassismus haben, die als Grundlage ihrer Politik die Minderheitenfeindlichkeit, die Gewalt bei der Ausweitung sogenannter Lebensräume, wie das damals geheißen hat, haben, die als Grundlage ihrer Politik damals den Angriffskrieg gewählt haben, die Unterdrückung, die Abschaffung der Demokratie, die Einrichtung von Konzentrationslagern, bis hin – ich sage das auch hier – zur Zwangsarbeit.

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Das alles sind Elemente, die Bestandteil eines ganzen Systems, eines geschlossenen, ganzheitlichen Denkgebäudes sind, wofür eben der Nationalsozialismus gestanden ist. Und da hat es nach 1945 natürlich oft Überlegungen gegeben, aus einer Art innerem Opportunismus, innenpolitischem Opportunismus heraus: Wie geht man mit den ehemaligen Nationalsozialisten um, wie stellt man sich ihnen? Sie waren ja natürlich nicht wenige, und natürlich waren sie auch ein Faktor im Zusammenhang mit Wahlentscheidungen und Wahlauseinandersetzungen. Deshalb hat es nach 1945 den ungustiösen Konkurrenzkampf auch um diese Wählergruppen gegeben. Die Stimmungen und dieses Nichtaufarbeiten und Nichtverarbeiten dessen, was es noch an nationalsozialistischem Gedankengut in den Köpfen der Menschen damals gegeben hat, waren vielleicht mit ein Grund dafür, daß man einfach keine Lösungen gefunden hat, Lösungen, die man jetzt erst, nach Jahrzehnten, nach mehr als 50 Jahren, zu finden bereit ist. Aber das sollte man aufarbeiten, und ich finde, daß das ein ganz wesentlicher Aspekt ist.

Ich darf die Gelegenheit wahrnehmen und noch ein kleines Stückchen weitergehen und auch noch den Aspekt der Entschädigungsdebatte insgesamt berühren, die ja jetzt durch Initiativen amerikanischer Anwälte – teilweise zweifelhafter amerikanischer Anwälte, aber in der Sache selbst ist das natürlich eine durchaus berechtigte Initiative – aufgeflammt ist. Diesbezüglich hat es durchaus unterschiedliche Meinungen gegeben. Ja muß denn das jetzt sein?, hat es da geheißen, oder: Zahlt sich das überhaupt noch aus? – Letzteres ist ja eine besonders perfide Argumentation. Zuerst läßt man fünf Jahrzehnte verstreichen, viele der Opfer sind schon gestorben, und jetzt sagt man, das zahle sich eigentlich gar nicht mehr aus, weil ohnehin nicht mehr viele leben. – Dahinter steckt ein ungeheurer Zynismus.

Folgendes Argument ist auch besonders perfid: Könnte das dem Antisemitismus in Wirklichkeit nicht neue Nahrung geben? Sollte man nicht von dieser Debatte eher ablassen? – Ich meine, da helfen nur klare Worte, da hilft nur klare Aufarbeitung. Das wird man allein durch Erlöse, durch die Möglichkeit, daß man Kunstgegenstände, die einem abgepreßt, abgenommen wurden, die man damals aus dieser Geisteshaltung heraus nicht ausführen durfte, zurückbekommt, nicht aufarbeiten können. Und es war ja nicht nur eine gesetzliche Grundlage, die es nach 1945 dafür gab, es war ja auch eine gewisse geistige Haltung, die da dahinter gestanden ist. Man hätte das ja auch ändern können.

Es ist meiner Meinung nach notwendig, das nach wie vor deutlich auszusprechen und nicht wieder irgendwelche Erwägungen hier einzubeziehen, um das nicht zu diskutieren. Ich erinnere mich an verschiedene Äußerungen in diesem Zusammenhang, etwa an eine Äußerung des Herrn Treichl, der gemeint hat, der Herr Fagan soll lieber die Indianer und die Neger verteidigen. – Ich würde sagen: Das war der falsche Mann zur falschen Zeit, aber das richtige Thema! Es ist dies nämlich ein umspannenderes Thema, das durchaus auch diese Minderheiten und durchaus auch diese historische Schuld mit einbezieht und das man durchaus weiter fassen sollte. Aber man sollte dieses Thema auch als eine Gelegenheit wahrnehmen, um die Diskussion weiterzutreiben. Wir Demokraten verstehen uns ja nicht nur als eine Strömung der Geschichte, sondern wir verstehen Demokratie als einen Wert, als ein Prinzip, als etwas, das über den Tag hinaus Gültigkeit haben soll, das die Basis des zivilisierten Zusammenlebens darstellen soll. Man muß natürlich jetzt schon darüber nachdenken, wie man widerstandsfähig wird und wie man wirklich dem auch entgegenwirken kann.

Daher ist, meine ich, all das eine günstige Gelegenheit, die wir aufgrund dieser Initiative, aufgrund dieser heute zu beschließenden Gesetze haben, daß wir die Diskussion weiträumiger ansetzen und daß wir da auch selbstkritisch sind. Wiewohl ich den Worten des Abgeordneten Khol natürlich in den wesentlichsten Grundzügen zustimme – da gibt es Grundkonsens –, soll man sich noch zusätzlich darüber Gedanken machen: Warum erst jetzt? Was war da eigentlich in der Zeit nach 1945, und was kann man daraus lernen? – Nicht nur, damit das alles nicht wieder passiert, sondern: Was können wir daraus lernen, damit es auch nicht schleichend, in neuen Formen, zu einer anderen Zeit und vielleicht mit noch gefährlicheren Auswirkungen zurückkehren kann.

Es ist heute ein wichtiger Tag, der Tag, der diesen Anstoß geben soll, und die Frau Ministerin wird sicherlich ihren Beitrag dazu leisten, daß das noch stärker Eingang in die Schulen findet und daß diese Aufarbeitung auch anhand dieses Themas, wenn es nicht ohnehin schon Teil der Aufarbeitung und des Unterrichtes ist, noch intensiver erfolgt. Mein Geschichtsunterricht hat seinerzeit vor dem Ersten Weltkrieg geendet. Ich hatte einen alten Geschichtsprofessor, der schon Angst vor dem Ersten Weltkrieg gehabt hat, geschweige denn vor der Zwischenkriegszeit – und die Zeit des Nationalsozialismus hat er überhaupt nicht berührt. Das ist leider lange her, weil ich auch schon ein älteres Semester bin, aber so war der Geschichtsunterricht damals. Ich hätte mir gewünscht, es wäre auch die Zeit des Nationalsozialismus aufgearbeitet worden und die Zwischenkriegszeit und

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der Erste Weltkrieg und der Zweite Weltkrieg aufgearbeitet worden, die Angriffe, all das, was damit zusammenhängt. Das wäre wichtig gewesen, und vielleicht hätte sich so mancher aus meiner Klasse dann anders entwickelt.

Ich halte diese Aufarbeitung für wichtig, und ich denke, Frau Bundesminister, daß Sie da als Unterrichtsministerin eine hohe Verantwortung haben. Aufgrund der Tatsache aber, wie Sie diese Fragen "gehandlet" haben, habe ich tiefstes Vertrauen, daß Sie das sicherlich auch in die Wege leiten werden.

Ich möchte zum Abschluß nur noch folgenden Antrag verlesen:

Abänderungsantrag

der Abgeordneten Dr. Kostelka, Dr. Khol, Dr. Krüger, Dr. Kier, Mag. Stoisits und Genossen betreffend den Gesetzesantrag im Bericht und Antrag des Verfassungsausschusses betreffend ein Bundesgesetz, mit dem das Bundesgesetz über den Nationalfonds der Republik Österreich für Opfer des Nationalsozialismus geändert wird

Der Nationalrat wolle in zweiter Lesung beschließen:

1. Nach § 2a Abs. 2 wird folgender Abs. 3 eingefügt:

"(3) Der Fonds kann von Rechtsträgern, die Beiträge an den Internationalen Fonds für Opfer des Nationalsozialismus (§ 1 Abs. 2 des Bundesgesetzes betreffend Zuwendungen an den Internationalen Fonds für Opfer des Nationalsozialismus, BGBl. I Nr. xxx/1998) leisten, Zuwendungen zur Unterstützung von Projekten gemäß Abs. 2 und zur Gewährung von Leistungen an Opfer der nationalsozialistischen Verfolgung entgegennehmen und zu diesem Zweck einen Vertrag abschließen, in dem insbesondere die Art der Leistungen und Projekte zu regeln sind."

2. Der bisherige Abs. 3 erhält die Bezeichnung Absatz "(4)".

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Ich bin froh darüber, daß wir heute diese Gesetze beschließen. *(Beifall bei SPÖ und ÖVP.)*

10.49

Präsident Dr. Heinz Fischer: Der Fünf-Parteien-Abänderungsantrag, der soeben referiert wurde, ist ausreichend unterstützt und steht mit in Verhandlung.

Zu Wort gelangt Herr Abgeordneter Dr. Krüger. – Bitte.

10.49

Abgeordneter Dr. Michael Krüger (Freiheitliche): Herr Präsident! Frau Bundesminister! Meine sehr geehrten Damen und Herren! Das Jahr 1998 ist ein Jahr voller Jubiläen und Gedenktage. Der wohl traurigste Gedenktag wird erst in einigen Tagen stattfinden, am 9. November 1998, an welchem des 9. November des Jahres 1938 gedacht wird. Damals gingen als österreichischer Beitrag zum Holocaust die Synagogen in Wien, in Linz und in anderen Städten Österreichs in Flammen auf.

Heute hat uns letztlich, auch aufgrund der Beschlußfassung, aufgrund der einhelligen Beschlußfassung des Nationalrates der anstehenden Gesetzesmaterien, gewissermaßen die Vergangenheit wieder eingeholt. Ich pflichte meinem Vorredner bei, wenn er jene Frage stellt, die wohl auch für unsere Generation von solch großer Bedeutung ist: Wie konnte es passieren, daß erst so viele Jahre – über 50 Jahre! – nach dem Krieg eine Aufarbeitung von Unrechtsgesetzen stattfindet? – Ich gebe meinem Vorredner in der Analyse grundsätzlich recht, ich darf Ihnen aber eines sagen: Ich hätte mir gerade von Klubobmann Khol ganz klare Worte des Bekenntnisses und der Mitschuld seiner Fraktion, aber auch der anderen Regierungspartei in den Jahren der Besatzungszeit erwartet, nämlich ein Bekenntnis dahin gehend, wieso es zu diesem In-die-Länge-Ziehen dieser wichtigen Gesetzesmaterien kommen konnte.

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Herr Klubobmann Khol! Salbungsvolle Worte allein in dieser Frage sind zuwenig. Man kann nicht die Geschichte Ihrer Partei nach 1945 und die der SPÖ mit einem Halbsatz streifen und sagen, daß damals möglicherweise Unrecht geschehen ist. Es ist eine Anforderung an unsere Generation und an die Abgeordneten dieses Hauses und umso mehr an die Klubobleute, hier ein klares Bekenntnis und eine klare Analyse darüber abzugeben, wo denn die Fehler nach 1945 gemacht wurden. Das wäre sehr wichtig gewesen! *(Beifall bei den Freiheitlichen.)*

Es geht in dieser Debatte nicht etwa um eine politische Verwertung dieses Themas, darum, politisches Kleingeld zu schlagen, aber es ist sehr wichtig, daß wir uns die Ereignisse nach dem Jahr 1945 vor Augen halten. Meine sehr geehrten Damen und Herren! Ich verkenne nicht, daß sich die jetzigen Regierungsparteien um die Wiedererrichtung der souveränen Republik Österreich und der Demokratie große Verdienste erworben haben, aber diese Verdienste sind auch im Zusammenhang mit den damaligen Handlungen von ÖVP und SPÖ zu sehen, mit denen sie sich ehemals arisiertes Vermögen in ihre Parteikasse einverleibt haben. Meine sehr geehrten Damen und Herren! Da sind klare Worte des Bekenntnisses der Regierungsparteien gefragt. *(Beifall bei den Freiheitlichen.)*

Kollege Cap hat zu Recht eine – ich zitiere wörtlich – klare Aufarbeitung dieser Ereignisse eingefordert, und ich möchte dazu gerne einen Beitrag leisten. Ich zitiere aus dem Protokoll der 52. Ministerratssitzung vom 14. Jänner 1947, bei der Bundesminister Dr. Gruber eine Information aus Amerika zur Sprache gebracht hat, derzufolge für das Leben der Juden in Österreich nach dem Abzug der Besatzungsmächte infolge der antisemitischen Stimmung im Land keinerlei Garantie bestehe.

Da sagte Herr Bundesminister Helmer – Herr Präsident, erlauben Sie mir doch, daß ich meine Verwunderung ausdrücke, wenn ich kürzlich in einem "profil"-Interview lesen mußte, daß Sie den Namen Helmer in einem Atemzug mit wirklich verdienstvollen Politikern der Nachkriegsära genannt haben –, jener berüchtigte Helmer, der sich insbesondere deshalb in das Geschichtsbuch eingetragen hat, weil er gesagt hat: Ich bin dafür, die Frage der Rückstellung und der Entschädigung "in die Länge zu ziehen"!, folgendes: Aus Ungarn, Polen, Rumänien und der Tschechoslowakei werden die Juden ausgewiesen. Hier in Österreich werden sie durchgeschleust und aufgenommen und machen als Dank dafür Propaganda, daß in Österreich zuwenig gegen den Antisemitismus unternommen werde. – Zitatende.

Bundeskanzler Figl sagte dazu: Die Juden möchten halt rasch reiche Leute werden, und so hat in Bad Gastein ein Jude dem Bürgermeister erklärt, er habe bereits 120 000 S in kürzester Zeit erwirtschaftet – das österreichische Volk sei nicht geschäftstüchtig.

Ich zitiere weiters aus der 5. Kabinettssitzung, unmittelbar nach Kriegsende, vom 10. Mai 1945: Da bringt Staatssekretär Helmer im Zusammenhang mit dem Entwurf bezüglich Vermögensrückstellungen die Frage der Wiedergutmachung in die Debatte ein, nämlich der Wiedergutmachung und auch der Rückstellung zugunsten der Parteien SPÖ und ÖVP. Dazu sagte Staatskanzler Dr. Renner – ich zitiere –:

Ich nehme es als selbstverständlich an, daß ein solches Gesetz gemacht werden muß – nämlich zugunsten der SPÖ und der ÖVP. Es wäre doch ganz unverständlich, daß man jeden kleinen jüdischen Kaufmann oder Hausierer für seinen Verlust entschädigt, daß man aber einer Bewegung – gemeint ist die sozialdemokratische Bewegung –, der 47 Prozent der Bevölkerung angehört haben, straflos und ohne Ersatz das Ergebnis ihrer emsigen Sammlungstätigkeit und ihrer Organisationsarbeit glatt wegnehmen kann. – Zitatende.

Meine sehr geehrten Damen und Herren! Von einer emsigen Sammeltätigkeit der SPÖ zugunsten ihrer Parteikassen war die Rede!

Worin hat diese Sammeltätigkeit bestanden? – In der Erstausgabe der Zeitschrift "Format" steht zu lesen: SPÖ und auch ÖVP, also beide Parteien, haben eine Fülle von ehemals arisiertem Vermögen in ihre Parteikasse, in ihr Parteivermögen gebracht. Die SPÖ und die ÖVP haben sich nicht damit begnügt – ich habe auf die historischen Verdienste hingewiesen; ich bin diesbezüglich nicht einäugig, das können Sie mir glauben –, Österreich in zwei Hälften aufzuteilen, nämlich in eine sozialistische und in eine schwarze Hälfte, und sich etwa die Nationalbank angeeignet und dergleichen, sondern sie haben sich auch ehemals arisiertes Vermögen, das zurückzuerstatten gewesen wäre, unter den Nagel gerissen.

Das ist die Wahrheit! Die SPÖ hat etwa den "Vorwärts"-Verlag genommen; nach 50 Jahren, so höre ich, prüft die Partei nun endlich die Verdachtsmomente – und die ÖVP die Vorgänge rund um das Springer Schlößl, wo ihre

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Akademie untergebracht ist. Eine Entschädigung für die zerstörten Anwesen wurde verweigert.

Es gibt eine Vielzahl von Vermögen, das sich diese Parteien, SPÖ und ÖVP, einverleibt haben, und sie denken bis heute nicht daran, irgendeine Entschädigung zu leisten. *(Beifall bei den Freiheitlichen. – Abg. Dr.* ***Haider:*** *Da war nichts davon in der Rede von Herrn Khol!)* – Davon war nichts in der Rede!

Es ist wirklich kein Wunder, wenn dann in einer österreichischen Zeitschrift, nämlich in der zitierten Erstausgabe des "Format" folgende Karikatur erscheint: Zwei mit Zylindern versehene schwarze SPÖ- und ÖVP-Gestalten, bepackt mit einem Rucksack, schleichen sich als Diebe davon und eignen sich jüdisches Vermögen an.

Herr Kollege Cap! Ich hätte mir auch kritische Worte von Ihnen erwartet und nicht nur, daß Sie sagen, wir sollten das Ganze untersuchen, es sei unverständlich. Sie wissen aufgrund Ihres Bildungsstandes genau, welche Gründe damals dafür ausschlaggebend waren, daß keine rasche Rückstellung stattgefunden hat.

Meine sehr geehrten Damen und Herren! Ich befasse mich jetzt spezifisch mit dem Gesetz, insbesondere mit dem Kunstgegenstände-Rückstellungsgesetz. Ich habe bereits im Ausschuß auf zwei Bereiche verwiesen, die meines Erachtens verfassungsrechtlich bedenklich sind; ein Bereich ist moralisch in jedem Fall bedenklich. Und ich habe mich schon über die Haltung von SPÖ und ÖVP in dieser Frage gewundert.

Im Kunstgegenstände-Rückstellungsgesetz ist essentieller Bestandteil und Anspruchsvoraussetzung für die Rückgabe der Kunstgegenstände und der Bilder deren Existenz. Das ist auch logisch, denn nur das, was vorhanden ist, kann zurückgegeben werden. Es stellt sich aber die Frage: Was ist mit jenen Kunstgegenständen – es sind erst 30 Prozent erfaßt, und ich garantiere Ihnen, es wird eine Vielzahl von Kunstgegenständen geben –, die nicht mehr vorhanden sind, die beispielsweise verkauft, vertauscht oder sonst abhanden gekommen beziehungsweise, wie es in der unschönen Behördensprache heißt, in Verstoß geraten sind? – Für diese ehemaligen Eigentümer gibt es nichts, die sollen leer ausgehen.

Ich verstehe nicht, daß man sagt: Ihr könnt eure Bilder haben, wir haben ohnedies so viele im Kunsthistorischen Museum, wir haben ohnedies eine stolze Sammlung von Bildern von Rembrandt, Hals und so weiter, wir haben die Sammlung der Holländer, ihr könnt zurückhaben, was da ist, aber zahlen wollen wir jenen, deren Bilder nicht mehr vorhanden sind, nichts! – Das ist eine Haltung, meine sehr geehrten Damen und Herren, die ich nicht nachvollziehen kann.

Ein anderer Punkt betrifft die Außerkraftsetzung der Anwendung des Ausfuhrverbotsgesetzes. Es wurde zu Recht davon gesprochen, daß es bei diesem Gesetz um keine Wiedergutmachung geht, denn es gibt leider Gottes Dinge, die nicht mehr wiedergutzumachen sind. Es geht also um eine schadenersatzrechtliche Restitution, die aber jetzt natürlich nur pro futuro wirkt. Wir schreiben jetzt das Jahr 1998. Es soll das Ausfuhrverbotsgesetz außer Kraft gesetzt werden, damit die Bilder nicht nur in Österreich zurückgegeben werden, sondern von den Betroffenen dann auch ausgeführt werden können.

Ich habe bereits im Ausschuß die Auffassung vertreten, daß es da eine Ungleichbehandlung geben könnte, und ich hätte mir erwartet, daß man eine gerechte Lösung findet, die mit der Gesetzeslage kompatibel ist. Diese Kompatibilität wäre erst dann zustande gekommen, wenn man das Ausfuhrverbotsgesetz novelliert hätte, das dann gleichermaßen auch für Österreicher und hier für zu Entschädigende zur Anwendung gekommen wäre. Es besteht nämlich jetzt schon die Gefahr, daß viele sagen, damit werde neues Unrecht geschaffen, wenn etwa Familien der österreichischen Altaristokratie, die ihre Schlösser nicht mehr erhalten können, nicht in der Lage sind, ihre Bildersammlungen zu verkaufen, und die Frage stellen, wieso sie dies nicht dürfen. Da besteht schon ein historischer Unterschied, das ist überhaupt keine Frage; aber wir schreiben jetzt das Jahr 1998. Eine Gleichheit, eine verfassungsrechtliche Gleichheit, die allen Genüge getan hätte oder Genüge tun würde, wäre im Zusammenhang mit einer Änderung des Ausfuhrverbotsgesetzes möglich gewesen. *(Präsident Dr.* ***Neisser*** *übernimmt den Vorsitz.)*

Ich komme zum Schluß meiner Ausführungen. Meine sehr geehrten Damen und Herren! Ich pflichte meinen Vorrednern bei. Auch ich freue mich, daß es in den Ausschußberatungen einhellige oder sehr ähnliche Bekenntnisse und Stellungnahmen gegeben hat. Meine Partei wird die wesentlichen Kernpunkte, nämlich die Gedanken, die dahinter stehen, mittragen. Wir bringen allerdings auch einen Abänderungsantrag ein, der in der zweiten Lesung zur Abstimmung kommen wird, betreffend die beiden möglichen Verfassungswidrigkeiten und

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Ungleichheiten, die ich aufgezeigt habe. Der Abänderungsantrag ist zur Verteilung gekommen, daher kann ich mir dessen Verlesung ersparen. – Danke. *(Beifall bei den Freiheitlichen.)*

11.04

Präsident Dr. Heinrich Neisser: Herr Abgeordneter Dr. Krüger, Sie haben jetzt am Schluß auf einen Abänderungsantrag Bezug genommen, der, wie Sie richtig erwähnt haben, aufgrund seines großen Umfanges schriftlich verteilt wurde.

Der Antrag hat folgenden Wortlaut:

Abänderungsantrag

der Abgeordneten Dr. Krüger, Mag. Stadler, Dipl.-Ing. Schöggl und Kollegen zur RV 1390 d. B. betreffend ein Bundesgesetz über die Rückgabe von Kunstgegenständen aus den österreichischen Bundesmuseen und Sammlungen in der Fassung des Ausschußberichtes 1464 d. B.

Der Nationalrat wolle beschließen:

Die im Titel genannte Vorlage wird wie folgt geändert:

1. Nach § 2 wird folgender § 2a eingefügt:

(1) Der Bundesminister für Unterricht und kulturelle Angelegenheiten, der Bundesminister für wirtschaftliche Angelegenheiten und der Bundesminister für Landesverteidigung werden ermächtigt, die ursprünglichen Eigentümer oder deren Rechtsnachfolger von Todes wegen bezüglich jener Kunstgegenstände gemäß § 1, die sich nicht mehr im Eigentum des Bundes befinden, jedoch als Gegenstand von Rechtsgeschäften (z.B. Verkauf, Tausch) zu einem geldwerten Vorteil für den Bund geführt haben, festzustellen.

(2) Die genannten Bundesminister werden ermächtigt, die festgestellten Eigentümer oder deren Rechtsnachfolger von Todes wegen mit dem geldwerten Vorteil, den der Bund für die genannten Kunstgegenstände erzielt hat, zu entschädigen. Der erzielte geldwerte Vorteil ist entsprechend der Entwicklung des Verbraucherpreisindex zu valorisieren.

(3) Die genannten Bundesminister haben vor der Auszahlung der Entschädigung den nach § 3 eingerichteten Beirat anzuhören. Durch die Bestimmungen dieses Bundesgesetzes wird kein Anspruch auf Entschädigung begründet.

(4) Der Bundesminister für Unterricht und kulturelle Angelegenheiten hat den Nationalrat über die erfolgten Entschädigungen in einem Bericht jährlich zu informieren.

2. § 3 Abs. 1 lautet:

§ 3 (1) Beim Bundesministerium für Unterricht und kulturelle Angelegenheiten wird ein Beirat eingerichtet, der die in § 2 und 3 genannten Bundesminister bei der Feststellung jener Personen, denen Kunstgegenstände zu übereignen sind, oder die zu entschädigen sind, zu beraten hat.

3. § 4 lautet:

§ 4 Die Bestimmungen des Denkmalschutzgesetzes BGBl. Nr. 533/1923, in der Fassung des Bundesgesetzes BGBl. Nr. 473/1990, über die freiwillige Veräußerung von Denkmalen, die sich im alleinigen Eigentum des Bundes befinden, finden auf die Übereignung sowie die Ausfuhr von Gegenständen, die nach den Bestimmungen dieses Bundesgesetzes ausgefolgt werden, auf die Dauer von 25 Jahren nach Inkrafttreten diese Bundesgesetzes keine Anwendung.

4. § 6 Z 2 lautet:

§ 6 Z 2

hinsichtlich der §§ 2, 2a und 3 der Bundesminister für Unterricht und kulturelle Angelegenheiten, der Bundesminister für wirtschaftliche Angelegenheiten und der Bundesminister für Landesverteidigung, soweit ihr Wirkungsbereich betroffen ist.

Begründung

Nach dem vorliegenden Entwurf sollen nur jene Kunstgegenstände im Sinne des § 1 an die ursprünglichen Eigentümer oder deren Rechtsnachfolger von Todes wegen unentgeltlich übereignet werden, welche sich noch im Eigentum des Bundes befinden.

Der Umstand, ob sich ein Kunstwerk noch im Eigentum des Bundes befindet, ist jedoch in vielen Fällen allein vom Zufall abhängig. Gerade im Bereich der Kunst findet zwischen den einzelnen Museen und anderen Sammlern ständig ein reger Verkehr von Objekten statt, sei es im Wege von Veräußerungen oder im Tauschwege. Die ursprünglichen Eigentümer der Kunstgegenstände bzw. deren Rechtsnachfolger von Todes wegen, die sich deshalb nicht mehr im Eigentum des Bundes befinden, würden dadurch benachteiligt, da diese Kunstgegenstände naturgemäß nicht mehr zurückgestellt werden können. Diese Benachteiligung ist jedoch äußerst bedenklich. Durch den eingefügten § 2a soll die Möglichkeit geschaffen werden, daß diese Personen dann entschädigt werden, wenn der Bund durch Rechtsgeschäfte mit diesen, nicht mehr in seinem Eigentum befindlichen Kunstgegenständen, einen geldwerten Vorteil erzielt hat. Dadurch soll jede Bereicherung des Bundes, die aufgrund der den Gegenstand dieses Gesetzes bildenden Kunstgegenstände erfolgt ist, im Interesse einer schonungslosen Bereinigung rückgängig gemacht werden.

Im § 4 der Vorlage werden die übereigneten Gegenstände ausdrücklich von der Anwendung des Denkmalschutzgesetzes sowie des Ausfuhrverbotsgesetzes ausgenommen. Die Ausnahme von der Anwendung des Ausfuhrverbotsgesetzes ist sachlich nicht gerechtfertigt. Es wird dadurch nämlich eine Gruppe von Eigentümern begünstigt, während alle anderen an die strengen Ausfuhrbeschränkungen für Gegenstände geschichtlicher, künstlerischer oder kultureller Bedeutung gebunden bleiben. Für eine derartige Begünstigung besteht jedoch kein Anlaß, da für die Eigentümer eine allfällige Nutzung bzw. Verwertung der gegenständlichen Objekte auch in Österreich in Betracht kommt.

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Präsident Dr. Heinrich Neisser: Nach der Geschäftsordnung müssen aber die Kernpunkte die-ses Antrages zumindest in zwei, drei Sätzen erörtert werden. *(Abg. Dr. **Krüger:** Ich habe sie erläutert!)* – Ich habe jetzt gerade den Vorsitz übernommen, also gehe ich davon aus, daß in Ihren Ausführungen diese Erläuterung stattgefunden hat.

Nächste Rednerin ist Frau Abgeordnete Dr. Schmidt. – Bitte, Frau Abgeordnete.

11.04

Abgeordnete Mag. Dr. Heide Schmidt (Liberales Forum): Herr Präsident! Frau Ministerin! Ein Wort zu den Ausführungen des Abgeordneten Krüger: Er hat hier offensichtlich nach dem Sprichwort "Angriff ist die beste Verteidigung" seine Rede gehalten, denn das, was er gesagt hat, aus dem Munde jenes Abgeordneten zu hören, der von diesem Rednerpult aus verteidigt hat, daß der Begriff "Straflager" für Konzentrationslager zulässig sei, hat schon eine besondere Frivolität. *(Beifall beim Liberalen Forum, bei SPÖ und ÖVP.)*

Ich will mich damit gar nicht näher auseinandersetzen, weil jene, die hier sind, wissen, wovon ich rede, und ich hoffe, auch über dieses Haus hinaus weiß man, wovon ich spreche. *(Abg. Dr. **Graf:** Das war doch Kostelka in der "ZiB 3"!)*

Ich glaube, daß die drei Vorlagen, die jetzt behandelt werden, ein Beitrag zur Aufarbeitung eines blinden Flecks unserer Geschichte sind. Franz Rauscher hat es als "Schandfleck unserer Geschichte" bezeichnet. Ich meine damit nicht die Vorkommnisse oder die Tatsache, daß es Österreicherinnen und Österreicher zugelassen haben und aktiv daran beteiligt waren, daß sich ein verbrecherisches Regime festsetzen konnte – ein verbrecherisches Regime, zu dessen Zielen es auch gehört hat, Menschen systematisch umzubringen. Ich finde dafür auch gar nicht das richtige Wort. Ich glaube, daß unsere Sprache nicht ausreicht und daß all die Worte, die dafür gefunden werden, nur Hilfsworte sind.

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Ich denke doch, daß sich die Mehrheit darüber einig ist und daß von diesem Pult aus keine neuerlichen Bekenntnisse abgelegt werden müssen. Diese sind ein Selbstverständnis. Als "blinden Fleck" oder auch "Schandfleck" bezeichne ich jenen Umstand, wie Österreich mit moralisch verwerflichen Dingen umgegangen ist, die durchaus zugegebenermaßen von einer Mehrheit erst im nachhinein als verwerflich erkannt wurden, aber auch jenen Umstand, wie Österreich mit jenen Dingen umgeht, deren Verwerflichkeit schon zum Zeitpunkt des Setzens der Tat ersichtlich war, und – das ist ein wesentlicher Punkt – in welchem Maß Österreich bereit ist, sich all diesen Fragen zu stellen, und mit welcher Offenheit und mit welcher Großzügigkeit dies passiert. Das ist für mich der Gegenstand dieser drei Punkte, die wir heute beraten und beschließen werden.

Ich anerkenne diese drei Vorlagen als einen wichtigen Schritt. Ich gebe auch Klubobmann Khol durchaus recht, wenn er meint, daß das Unrechtsbewußtsein gestiegen ist, aber in einem gebe ich Ihnen nicht recht: Ich habe nämlich durchaus den Eindruck, daß das, was wir heute beschließen, sehr wohl durch Druck in die Wege geleitet wurde – ich werde darauf zurückkommen, was ich darunter verstehe –, daß es zu spät – darin werden wir uns einig sein – in die Wege geleitet wurde und daß diese Schritte – darüber werden wir uns vielleicht nicht einig sein – meiner Meinung nach zu verkrampft und zu ängstlich sind.

Die achtziger Jahre können, sagen wir es einmal so, als "Waldheim-Jahre" bezeichnet werden, und ich hoffe doch, daß jedenfalls die politisch Verantwortlichen überwiegend daraus gelernt haben. Die neunziger Jahre, die als die Bedenkjahre bezeichnet werden können, sollten jene Jahre sein, in denen auch die Schlußfolgerungen gezogen werden. Der Nationalfonds ist ein richtiger, positiver, auch wirksamer erster Schritt – auch dazu, wie dieses Gesetz gehandhabt wird. Ich halte ihn für richtig, und daran gibt es auch aus oppositioneller Sicht nichts zu kritisieren.

Der zweite Schritt ist jener, den wir heute beraten, bei dem es auch um die Restitution geht. Der dritte Schritt, der auch notwendig wäre, ist noch völlig offen, nämlich wie wir damit umgehen, daß sich Österreicherinnen und Österreicher an der Zwangsarbeit bereichert haben. Es ist zu wenig, dieses Problem nur als Überschrift in den Raum zu stellen. Und ich habe noch nicht erkannt, welche konkreten Ansätze von den Regierungsfraktionen – wir sind bereit, daran mitzuarbeiten – dazu gefunden wurden. Da haben wir noch einen blinden Fleck, einen Schandfleck vor uns, für den die Problemlösung für mich noch nicht absehbar ist.

Was den Kunstraub betrifft, so stimme ich Abgeordnetem Khol nicht zu, wenn er sagt, Sie, Frau Bundesministerin, hätten – ich anerkenne auch alles Positive von Ihnen, aber dies ist einfach zu viel des Lobes für Sie –, ohne von jemandem gedrängt worden zu sein, aus eigenem Bewußtsein heraus diese Schritte gesetzt. Das ist bitte schlicht und einfach nicht objektivierbar. Das mag eine Sicht der ÖVP sein, und das verstehe ich durchaus, aber ich möchte es von diesem Rednerpult aus doch klarstellen. Ich weiß es unter anderem auch deswegen, weil wir in einer parlamentarischen Anfrage darauf reagiert haben, nämlich konkret auf einen Artikel im "Standard" von Thomas Trenkler vom 14. Feber, in dem er sich mit einem Jubiläumsband des Kunsthistorischen Museums auseinandergesetzt hat. – Das Kunsthistorische Museum ist manchmal in mehrerlei Hinsicht ein Sorgenkind von uns.

Das Kunsthistorischen Museum hat im Jahr 1991 – 1991, Frau Ministerin! – einen Jubiläumsband über die 100jährige Geschichte herausgegeben. Darin wurde ein Thema nur kursorisch behandelt. Ich zitiere dazu aus dem "Standard":

"Die Baronesse Clarisse de Rothschild widmete dem Museum 1947/48 eine Anzahl bedeutender Gemälde zum Gedächtnis an ihren verstorbenen Gatten Alphonse. "Warum, wird nur klar", so schreibt er, "wer die Akten kennt." Und jetzt kommt der Punkt: "Und diese gelangen erst jetzt, auf Betreiben des STANDARD, an die Öffentlichkeit – gegen den Willen von Generaldirektor Wilfried Seipel ..."

Ich möchte dazu mehr sagen: Man hätte auch aufgrund der Aufarbeitung anläßlich eines Jubiläumsbandes, wenn es diese politische Verantwortlichkeit und das Bewußtsein gegeben hätte, früher der Sache nachgehen können – sowieso schon früher. In diesem Zusammenhang hätte es konkrete Aufhänger gegeben. Doch wie ist man dann damit umgegangen, als ein engagierter Journalist recherchiert hat? – Man hat dann immer noch versucht, die Mauer zu machen. Ich gebe zu, daß dann jemand aus Ihrem Ressort – wir haben es auch in unserer Anfrage vom 25. Februar, die wir kurz darauf an Sie gestellt haben, erwähnt, weil man durchaus auch das Positive erwähnen sollte –, nämlich Sektionsleiter Wran, die Unterlagen auf den Tisch gelegt und gesagt hat: Wir haben nichts zu vertuschen!

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Es ist aber trotzdem etwas anderes, wenn Sie in der Anfragebeantwortung die Vorgehensweise dieses Direktors, der nicht dazu beigetragen hat, daß etwas aufgedeckt wird, sondern offensichtlich versucht hat, noch eine Mauer aufrechtzuerhalten, solange es geht, verteidigen. Sie haben das getan, und das halte ich für negativ. Sie waren durch diesen Artikel in der Öffentlichkeit gedrängt, daher war dies keine freiwillige Aktion, die Kollege Khol hier belobigt hat.

Aber – jetzt komme ich zu meiner durchaus positiven Bewertung Ihrer Vorgehensweise – Sie haben dann aufgrund des Artikels reagiert. Das hätten Sie in dieser Form nicht so schnell machen müssen, wir sind von Regierungsfunktionären anderes gewohnt, und insofern bewerte ich das positiv. Sie haben daraufhin eine Kommission eingesetzt, die den Provenienzen des Kulturgutes nachgehen sollte. Sie haben das allerdings auch wiederum in einer Weise getan, von der ich meine, daß sie etwas zu ängstlich, zu zögerlich und zu verkrampft im Hinblick auf all diese Bereiche ist. Sie haben die Museen, damit halt alles unter sich bleibt, damit beauftragt, jeweils jemanden zu benennen. Uns wäre es lieber gewesen, Sie hätten auch unbefangene, nämlich ausländische, Kulturschaffende oder sonst jemanden einbezogen, um den Anschein der Befangenheit und des Eigeninteresses nicht einmal aufkommen zu lassen. Aber es soll so sein. – Sie haben reagiert, das ist positiv, und das möchte ich durchaus anerkennen. Es ist auf diese Weise etwas in die Wege geleitet worden.

Obwohl jetzt ein Beirat ins Leben gerufen wird, hat man immer noch das Gefühl – das meine ich mit zwar anwachsendem, aber immer noch nicht ausreichendem Bewußtsein –, daß alles bei uns unter den Fittichen bleiben muß, wir es kontrollieren können müssen. Das heißt, wir haben es wenigstens durchsetzen können, obwohl es mühsam genug war, daß nicht nur Sie, Frau Ministerin, das Nominierungsrecht haben, sondern daß auch die Rektorenkonferenz ein solches Nominierungsrecht hat. Auf diese Weise können also wissenschaftliche Personen mit einbezogen werden, nämlich jene, die von einer unabhängigen Institution benannt werden und nicht nur von der politischen Verantwortung, wie es eben im Bereich eines Ministeriums der Fall ist.

Eines wiederum konnten wir nicht durchsetzen, nämlich daß ausländische Beteiligte mit einbezogen werden. Es gibt also immer noch dieses Mauern: Wir sind zwar bereit, ein bissel etwas zu tun, aber nur soviel, daß wir es überblicken können. Das muß man anmerken, auch wenn das Ganze positiv ist. Wir müssen uns jetzt nicht belobigen, wie wunderbar doch alles ist, wir sollten auch den Blick für die Defizite nicht verlieren, also für das, wo die Haltung noch nicht offen sichtbar und spürbar wird.

Aufgrund dieser Tatsache und aufgrund dessen, daß wir das auch im Februar so gesehen haben, haben wir bereits im Juli einen Antrag eingebracht, der die gesetzliche Grundlage für die Restitution liefern sollte. Wir haben das deswegen getan, weil wir aufgrund der Erkenntnisse und Erfahrungen, die wir bislang gesammelt haben, die Befürchtung hatten, daß das wieder auf die lange Bank geschoben wird. Glücklicherweise haben wir mit unseren Erfahrungen oder mit unseren Befürchtungen, sage ich jetzt einmal, nicht recht behalten. Vielleicht war dieser Antrag der Liberalen jene Trägerrakete, die Druck gemacht hat. Wir mußten ihn allerdings im September noch einmal einbringen. – Ich sage das für jene dazu, die ausnahmsweise einmal auch den Ausschußbericht gelesen haben, weil dort der Antrag der Liberalen erwähnt ist, der mit dieser Vorlage mit erledigt ist. Bei diesem Antrag scheint das Datum 18. September auf, was dadurch zustande kommt, daß unser erster Antrag vom Juli dem Kulturausschuß zugewiesen wurde, wir uns aber darauf verständigt haben, die Materie im Verfassungsausschuß zu behandeln. Um diesen Antrag auch im Verfassungsausschuß behandelbar zu machen, mußten wir einen neuen Antrag einbringen. Ich sage das nur deshalb dazu, damit man weiß, warum das Datum September draufsteht. Dieser Antrag, der jedenfalls schon im Juli seine Wirkung entfaltet hat, so glaube ich jedenfalls, hat durchaus dazu geführt, daß dann etwas zustande gekommen ist, was heute auch mit den Stimmen der Liberalen beschlossen werden wird.

Ich sage aber trotzdem noch etwas dazu: Die innere Erleichterung, die man in einer solchen Situation durchaus empfinden kann, wenn man das Gefühl hat, daß etwas auf die richtige Schiene kommt, die innere Erleichterung, die man trotz allem Unbehagen, trotz schlechtem Gewissen, trotz aller unangenehmen Gefühle, die man nie loswerden wird, verspürt, ist enorm. Auch als Nachgeborene – ich bin Jahrgang 1948 – empfinde ich eine Verantwortung für das, was in der Zeit vor 1948 passiert ist. Also bei all diesem Unbehagen hat man im Regelfall doch ein gutes Gefühl, wenn man meint, jetzt sei es am richtigen Weg. Ich würde es für zu früh halten, wenn sich dieses gute Gefühl bereits jetzt, also mit Beschlußfassung dieser drei Vorlagen, einstellte.

Ich würde es deswegen für verfrüht halten, weil es davon abhängt, wie nun diese Gesetze vollzogen werden. Das, was ich vorher gesagt habe, die Offenheit, die Großzügigkeit, der Mut und die Kraft zur Einsicht und auch zur

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Wiedergutmachung in jenem Sinne, wie es aufgrund dieser Vorlagen möglich ist, diese Einstellung also ist die Voraussetzung dafür, wie die Konklusionen aus den Bedenkjahren tatsächlich zu bewerten sind und wie sie gezogen werden.

Alle fünf Fraktionen in diesem Haus werden zwar heute diese drei Vorlagen beschließen, aber die Bewertung dessen, was beschlossen wird, liegt noch vor uns, und dessen, Frau Ministerin, sollten sich die politisch Verantwortlichen bewußt sein. – Danke. *(Beifall beim Liberalen Forum und bei den Grünen.)*

11.18

Präsident Dr. Heinrich Neisser: Zu Wort gemeldet ist Frau Abgeordnete Mag. Stoisits. – Bitte.

11.18

Abgeordnete Mag. Terezija Stoisits (Grüne): Meine sehr geehrten Damen und Herren! Pos˘tovane dame i gospodo! Sehr geehrte Frau Bundesministerin! Sehr geehrter Herr Präsident! Ich gehöre einer Generation an, die vom Krieg und vom Holocaust nur erfahren und zum Teil auch etwas darüber gelernt hat. Es ist nicht ganz aus den Geschichtsbüchern und aus dem Unterricht ausgelöscht gewesen. Natürlich war das, was ich gehört habe, sehr subjektiv gefärbt. Und es mag sein, daß es etwas einfacher ist, sich mit diesem Thema zu beschäftigen, wenn man der betroffenen Generation nicht angehört hat, wie etwa manche Zeitzeugen, manche Widerstandskämpfer, manche Täter, manche Mitläufer, aber vor allem auch die Opfer.

Wir haben vor nicht allzu langer Zeit in einem ganz anderen Zusammenhang miterlebt, wie schwierig es ist, sich unbefangen mit dieser Zeit – mit unbefangen meine ich jetzt nicht sorglos – zu beschäftigen. Erinnern Sie sich nur an die heftigen Diskussionen rund um die Wehrmachtsausstellung, die vor zwei Jahren stattgefunden hat. Wie schwer fällt es manchen immer noch, der Geschichte und damit der Wahrheit ins Auge zu blicken! Das "Privileg", später geboren zu sein und das nicht selbst erfahren, sondern nur gelernt zu haben, das "Privileg", in einer bestimmten Zeit aufgewachsen zu sein, stellt für mich eine ganz besondere Verpflichtung dar. Es ist die Verpflichtung, sich mit diesem Teil unserer Geschichte und letztlich auch meiner Geschichte zu beschäftigen. Es ist die Verpflichtung, sich mit den Folgen dieser Zeit, mit den Spuren, die diese Zeit hinterlassen hat, die heute noch deutlich, spürbar und greifbar immer präsent sind, zu beschäftigen.

Auch wenn man erst eineinhalb Jahrzehnte nach diesem monumentalsten Verbrechen der Geschichte geboren wurde und dadurch anders dazu steht – das Wort "Unbefangenheit" sehe ich diesbezüglich nicht unkritisch –, wenn man in seinem Freundeskreis beispielsweise nicht eigentlich und direkt betroffene Opfer hat, sondern vor allem Betroffene der zweiten und dritten Generation, wenn man die Auseinandersetzung mit diesem schwierigen Thema also sozusagen aus dieser Sicht erlebt, muß man trotzdem sagen, daß es die Opfer viel Kraft kostet, da es immer wieder Enttäuschungen gab und gibt.

Leute wie ich kennen aus ihrer Erfahrungswelt nicht direktes Leid und direkte Betroffenheit als physische Person, sondern nur durch ihre Familien. Darum scheinen mir als Politikerin die Gesetze heute eine ganz wesentliche Aufgabe zu sein – nicht deshalb, weil ich einer Partei angehöre, die, weil sie erst in den achtziger Jahren entstanden ist, nicht in diesen Diskussionsprozeß einbezogen werden kann, was Herr Kollege Krüger gesagt hat. Er hat vieles gesagt, was wahr ist, er hat aber, was ihm eigen ist, immer nur einen einseitigen Blick gehabt – eine sehr subjektiv gefärbte Sicht der Geschichte. In solchen Reden sind die Weglassungen das Wesentliche und nicht das, was gesagt wird, auch wenn es richtig ist.

Ich habe das Privileg, einer Partei anzugehören, die diese Geschichte nicht hat. Würde ich einer Partei angehören, die eine längere Geschichte hätte, dann hätten wir Grünen sicherlich auch in diesen Fragen eine Geschichte. Darum habe ich die spezielle Verpflichtung, jetzt ein besonderes Augenmerk auf diese Dinge zu legen. Daher kann über die Politik Österreichs im Zusammenhang mit den Opfern des NS-Regimes in den letzten Jahrzehnten nicht genug geredet und geforscht werden, und es wird, wie wir sehen, auch nie zu spät sein. Aber die Zeit, meine sehr geehrten Damen und Herren, läuft uns davon, und sie läuft im wahrsten Sinn des Wortes davon – nicht mir, nicht Ihnen, aber den Opfern, die auf Gesten warten.

Wir haben im Rahmen der Diskussion bei der Einrichtung des Nationalfonds gesehen, wie die Zeit läuft und wie sehr das Motto "Wer schnell hilft, hilft am besten, und wer sofort handelt, handelt am besten!" in der Politik auf diesem Feld gilt, wiewohl es auch in anderen Feldern gelten sollte.

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Darum, meine sehr geehrten Damen und Herren, bin auch ich, so wie Frau Dr. Schmidt vorher ausgeführt hat, froh, daß heute drei Gesetze geändert werden. Die Grünen geben ihre Zustimmung – selbstverständlich, so würde ich fast sagen –, und zwar der Tatsache, daß sich der Nationalrat damit beschäftigt, wiewohl ich natürlich manche Dinge ein wenig anders einschätze, unter anderem, ***warum*** der Nationalrat jetzt handelt. Wenn Herr Dr. Khol in seinen Ausführungen davon gesprochen hat, daß die Frau Bundesministerin ganz ohne Druck und ganz auf ihre eigene Initiative hin die Provenienzforschung begonnen hat, dann, so muß ich sagen, ist das eine subjektive Wahrnehmung seinerseits. Denn es ist sicherlich kein Zufall, daß Anfang Jänner dieses Jahres wertvolle Bilder in New York beschlagnahmt wurden. Es war fraglich, wann sie wieder nach Österreich zurückkommen werden; und kurze Zeit später begann die Provenienzforschung in Österreich. Frau Bundesministerin! Sicherlich ist kein persönlicher Druck auf Sie ausgeübt worden, aber es kann doch wohl kein Zufall sein, daß man genau in diesem Moment begann, etwas an die Öffentlichkeit zu bringen – ich schätze die Arbeit, die getan wurde, ganz ohne Zweifel –, als im Ausland die Diskussion begonnen hat.

Diese Art der Vorgangsweise zieht sich wie ein roter Faden durch die ganze Restitutions-, Entschädigungs- und Wiedergutmachungsfrage in Österreich. Ich habe jetzt wieder das Privileg, in einer Zeit im Nationalrat Abgeordnete zu sein, in der tatsächlich etwas passiert ist. Erinnern Sie sich an die Rede von Bundeskanzler Vranitzky 1991, die ein einschneidendes Ereignis in bezug auf das Einbekennen der Mitverantwortung betreffend Verbrechen zur Zeit des NS-Regimes in Österreich gewesen ist. Wir im Nationalrat haben seinerzeit diesen Worten von Dr. Vranitzky weit weniger Bedeutung beigemessen, weil es dabei um eine ganz andere Diskussion gegangen ist. Ich glaube, es ging damals um Jugoslawien, als er mitten in einer Rede einige Passagen diesbezüglich gesagt hat. Heute stellt sich das Gewicht dieser Worte in seiner Dimension als viel wesentlicher und größer dar, als es damals wahrnehmbar war.

Ich bin grundsätzlich – darum bin ich auch Oppositionspolitikerin – skeptisch und meine, daß es angebracht gewesen wäre, das auch ins Zentrum von Ausführungen zu stellen. Nichtsdestotrotz ist wichtig, was gesagt und wie gehandelt wird. Es gibt Damen und Herren des Nationalrats, die maßgeblich am Zustandekommen des Nationalfonds beteiligt waren und mitgewirkt haben. Präsident Fischer und Präsident Neisser waren sozusagen Frontmänner dieser Initiative und sind jetzt durch den Vorsitz im Kuratorium und durch ihre Arbeit im Komitee des Nationalfonds dafür direkt verantwortlich, daß das, was dort geleistet wird, als ein positiver Beitrag zur Auseinandersetzung mit der eigenen Geschichte und zur Aufarbeitung der Vergangenheit gesehen wird.

Deshalb ist auch die heutige Gesetzesänderung nicht unwesentlich, wiewohl ich aber die Ansicht, die auch vertreten wurde, nicht zur Gänze teile, nämlich daß wir betreffend die 102 Millionen Schilling aus dem internationalen Goldgeld ein bißchen Lob bekommen sollten, weil es etwas ist, was uns – uns, das heißt der Republik Österreich – gehört, und wir widmen es jetzt Opfern. In meinem eigenen Ausschußbericht wird festgestellt, daß es nicht ganz klar ist, ob es ausschließlich Währungsreserven waren, sondern daß es Goldbestandteile – es sind die Höhe und der Umfang nicht zur Gänze geklärt – sind, die geraubt wurden, und zwar Opfern des Nationalsozialismus. Darum ist für mich die einzig vorstellbare Möglichkeit, diese Summe aus dem Internationalen Fonds wieder Opfern des Nationalsozialismus zurückzugeben.

Wenn ein Weg gefunden wurde – das ist gar nicht der Weg, den wir gefunden haben, sondern das ist auch etwas, was der Internationale Fonds uns, Österreich, vorschreibt –, das vor allem jenen Opfern zugute kommen zu lassen, die bisher gar keine oder sehr wenig "Gesten" von seiten Österreichs gesehen haben, dann ist das meiner Ansicht nach der einzig richtige, weil der einzig mögliche Weg. Darum sind wir selbstverständlich – wie alle anderen Parteien auch – dafür, daß dieses Gesetz so beschlossen wird.

Aber, meine sehr geehrten Damen und Herren, wenn schon neue Bestimmungen in das Nationalfondsgesetz aufgenommen werden, dann bleibt eine Frage offen, die heute von Frau Dr. Schmidt angesprochen, aber bisher noch nicht erwähnt wurde, nämlich betreffend jene Opfergruppe, die bisher von seiten der Republik Österreich oder des offiziellen Österreichs noch gänzlich unerwähnt blieb, und zwar jene zivilen Ausländer und Ausländerinnen, die in der damaligen Ostmark Fremdarbeiter waren, jene Kriegsgefangenen, deren Arbeitskraft ausgebeutet wurde, und jene KZ-Häftlinge, die nicht nur KZ-Häftlinge waren, sondern deren physisches Zugrundegehen auch maßgeblich davon bestimmt war, daß ihre Arbeitskraft bis zu ihrer Vernichtung ausgebeutet wurde.

Meine sehr geehrten Damen und Herren! Diese Opfergruppe ist eine sehr große Gruppe von Betroffenen. Es sind ohne Kriegsgefangene und ohne KZ-Häftlinge, die auch Zwangsarbeit leisten mußten, damals 580 000 Personen

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gewesen, die betroffen waren. Die Wissenschafter, die sich schon seit Jahren damit beschäftigen, schätzen, daß 10 bis 12 Prozent dieser Betroffenen heute noch leben. Also man könnte sagen, heute sind es zwischen 50 000 und maximal 60 000 Menschen, die noch leben.

Das sind natürlich Menschen, die alle über 70 Jahre alt sind. Jemand, der Zwangsarbeiter war, ist damals zumindest 10, 12, 15, 17 Jahre alt gewesen. Das sind keine jungen Menschen, aber sie leben noch. Diese haben seitens der Republik Österreich noch keine Geste erhalten.

Darum habe ich mich gemeinsam mit Dr. Kier auch im Ausschuß massiv dafür eingesetzt, daß wir diese Gelegenheit der Änderung des Nationalfondsgesetzes auch dafür benutzen, um auf diese Opfergruppe aufmerksam zu machen, indem wir sie als eine Gruppe, die aus dem Nationalfonds Leistungen bekommen kann, ausdrücklich im Gesetz festhalten. Dieses unser Ansinnen wurde im Ausschuß mit den Worten: "Man muß erst objektiv aufarbeiten, bis man weiß, worum es geht!" abgetan.

Meine sehr geehrten Damen und Herren! Auch wenn man in der Schule nie Geschichte gelernt hat, so weiß man doch – und es ist nichts mindestens so präsent in Österreich wie diese Tatsache –, daß es in Österreich Zwangsarbeiter gegeben hat. Es muß nur jeder an seine eigene Familiengeschichte denken oder sich in seiner Umgebung umblicken. 35 Prozent dieser fast 600 000 Menschen, nämlich 180 000 Menschen, waren in Österreich in der Landwirtschaft, in der Gärtnerei und in der Tierzucht beschäftigt. Das sind nicht die großen Betriebe, die jetzt auch in Diskussion stehen, bei denen die Drohung von Sammelklagen im Raum steht. Das waren Leute, die bei Bauern, bei kleinen Betrieben, bei Gärtnereien oder in der Landwirtschaft beschäftigt waren, und diese sind nicht organisiert und können keine Sammelklagen einbringen.

Mir geht es in der ganzen Überlegung, in deren Rahmen wir uns mit dieser Opfergruppe beschäftigen, auch um diese Opfer, darum, daß diese eine Möglichkeit bekommen, diese "Geste" zu empfangen. Denn die Republik hat diese Mitverantwortung einbekannt. Die Zeit ist nun hoffentlich vorbei, in der es in Österreich üblich oder Praxis war, sich auf die Moskauer Deklaration zu beziehen, laut der Österreich erstes Opfer war, und in der man natürlich immer – ich sage jetzt: absichtlich – unterlassen hat, zu sagen, daß Österreich zwar ein – nach der Moskauer Deklaration – erstes Opfer war, aber dort selbstverständlich genauso festgelegt ist, daß Österreich auch Mitverantwortung hatte. Das wurde aber jahrzehntelang weggelassen.

An wen sollen sich – jetzt komme ich auf das Thema Zwangsarbeiter zurück – diese Menschen, die heute noch leben, wenden, wenn nicht an die Verantwortlichen dieser Republik? – Darum sind die Abänderungsanträge, die Dr. Kier und ich gemeinsam heute einbringen, auch in erster Linie diesen Opfergruppen sozusagen gewidmet, um die Möglichkeit zu schaffen, diese "Geste" in Empfang zu nehmen.

Meine sehr geehrten Damen und Herren! Sie wissen, daß man auf Leistungen aus dem Nationalfonds keinen Rechtsanspruch hat, daß diese Leistung eine Geste gegenüber den Opfern darstellt, und genau um diese Geste dieser Opfergruppe gegenüber geht es. Deshalb bringe ich Ihnen einen kurzen Text zur Verlesung, mit dem man diese Möglichkeit schaffen könnte:

Abänderungsantrag

der Abgeordneten Mag. Terezija Stoisits, Dr. Kier, Freundinnen und Freunde

Der Nationalrat wolle beschließen:

Das Bundesgesetz über den Nationalfonds der Republik Österreich für die Opfer des Nationalsozialismus, BGBl. Nr. 432/1995, wird wie folgt geändert:

Nach § 2 Abs. 1 wird folgender Abs. 1a eingefügt:

"Abs. 1a

Der Fonds erbringt Leistungen an Personen, die vom nationalsozialistischen Regime zur Zwangsarbeit auf dem Gebiet der heutigen Republik Österreich angehalten wurden."

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Mit dieser Einfügung bestünde die Möglichkeit, Zwangsarbeiter als Opfer anzuerkennen. Das ist überhaupt noch kein Präjudiz dafür, wieviel sie bekommen. Wir wußten auch damals, als das Gesetz für den Nationalfonds beschlossen wurde, noch nicht, wie hoch die einzelnen Leistungen sein werden. Da plädiere ich massiv dafür, daß man diesen Weg des Konsenses beibehält. Aber dafür braucht man diese Möglichkeit.

Jetzt komme ich zum zweiten Teil dieser Überlegungen, zu den aktuellen Diskussionen. Sie wissen selbstverständlich, daß Sammelklagen gegenüber Banken und Unternehmungen aus dem Ausland im Raum stehen. Ich vermeide das Wort "Androhung" von Sammelklagen von Zwangsarbeitern gegenüber Firmen und Unternehmen in Österreich. Die Idee, die wir damit verfolgen, ist, Rechtsträgern – Rechtsträger ist eine Umschreibung von Unternehmen, Firmen, aber auch Einzelpersonen – die Möglichkeit zu geben, durch Spenden oder Zuwendungen, die sie an den Nationalfonds erbringen, ähnlich wie jetzt der Internationale Fonds, kleine Entschädigungsleistungen zu erbringen. Deshalb sollte der notwendige zweite Teil im Nationalfondsgesetz folgendes vorsehen – unsere Formulierung weicht nur in einem Punkt von jener ab, die wir heute schon als Fünf-Parteien-Antrag gehört haben –:

Abänderungsantrag

der Abgeordneten Mag. Terezija Stoisits, Dr. Kier, Freundinnen und Freunde

Der Nationalrat wolle beschließen:

Das Bundesgesetz über den Nationalfonds der Republik Österreich für die Opfer des Nationalsozialismus, BGBl. Nr. 432/1995, wird wie folgt geändert:

1. Im neu einzuführenden § 2a wird nach Abs. 2 folgender Abs. 3 eingefügt:

"(3) Der Nationalfonds kann von jedem Rechtsträger Zuwendungen zur Unterstützung von Projekten gem. Abs. 2 und zur Gewährung von Leistungen an die Opfer der nationalsozialistischen Verfolgung entgegennehmen und zu diesem Zweck einen Vertrag abschließen, in dem insbesondere die Art der Leistungen und Projekte zu regeln sind."

2. Aus dem bisherigen Abs. 3 wird Abs. 4.

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Jeder Rechtsträger heißt: Jeder, der will, kann dem Fonds einen Beitrag widmen. Der Fonds, der sich als ein exzellentes Instrument dieser Handhabung erwiesen hat, könnte diese Geste setzen. Ich bitte Sie, diesen Aspekt bei der heutigen Novelle noch zu überdenken und zu berücksichtigen.

Ich habe erst vor kurzer Zeit in einer Diskussion bei der P.S.K. erlebt, wie notwendig diese Möglichkeit wäre. Die P.S.K. hat aus eigener Initiative einen Historiker beauftragt, endlich diesbezüglich zu forschen: Was ist mit den ruhenden Konten bei der P.S.K.? – Professor Rathkolb hat diese Forschung durchgeführt und ist draufgekommen, daß es 7 000 Konten mit Einlagen gibt, die heute umgerechnet einen Gegenwert in der Höhe von 2,4 Millionen Schilling darstellen würden. Jetzt könnte man den Schluß ziehen, die heutige P.S.K. hat die Verantwortung, 2,4 Millionen Schilling an Opfernachkommen auszuzahlen, und damit hat es sich. Die P.S.K. geht diesen Weg nicht. Der Generaldirektor der Postsparkasse hat schon vehement zum Ausdruck gebracht, daß seine Bereitschaft weit darüber hinausgeht. Der Weg über den Nationalfonds wäre das geeignete Instrument, diese Möglichkeit zu bieten und auch Firmen die Möglichkeit zu bieten, Vergleichen mit etwaigen Klägern in Form von Sammelklagen zu entgehen.

Meine sehr geehrten Damen und Herren! Das möchten wir Ihnen heute noch als Anregung geben, und ich bitte, diesen Schritt bei der Änderung des Fondsgesetzes zu bedenken. – Danke. *(Beifall bei den Grünen und beim Liberalen Forum.)*

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Präsident Dr. Heinrich Neisser: Frau Abgeordnete Mag. Stoisits hat zwei Abänderungsanträge vorgetragen, die ausreichend unterstützt sind. Sie werden in die Verhandlungen mit einbezogen.

Frau Bundesministerin Gehrer hat sich zu Wort gemeldet. – Bitte.

11.39

Bundesministerin für Unterricht und kulturelle Angelegenheiten Elisabeth Gehrer: Sehr geehrter Herr Präsident! Hohes Haus! Wir beschließen heute hier im Parlament ein Gesetz über die Rückgabe von Kunstgegenständen aus den österreichischen Bundesmuseen und Sammlungen. Wie ich sehe, wird das Gesetz von allen Fraktionen unterstützt. Ich meine, dieses Gesetz ist ein sehr wichtiger Schritt am Ende dieses geschichtlich belasteten Jahrhunderts.

Wie ist es nun zu diesem Gesetz gekommen? – In den neunziger Jahren gab es bereits eine Aufarbeitung des Archivmaterials zum Thema "Raub und Restitution von Kunst- und Kulturgegenständen". Ein konkreter Anlaßfall war dann die Zurückbehaltung der Schiele-Bilder aus der "Sammlung Leopold" im Jänner 1998. Ich habe dann im Jänner 1998 verfügt, daß alle Archive der Bundesmuseen und Sammlungen und des Bundesdenkmalamtes für eine systematische Aufarbeitung zu öffnen sind. Ich habe bereits im Jänner die Direktoren all dieser Einrichtungen zu mir eingeladen und mit ihnen die Vorgangsweise besprochen.

Ich bin aber sehr dankbar für die öffentliche Berichterstattung, die dann erfolgt ist, und für alle Fachartikel, die in weiterer Folge geschrieben wurden, denn sie haben sehr viel zu einer positiven Meinungsbildung für dieses Gesetz beigetragen.

Im März 1998 habe ich die Kommission eingesetzt, die die Provenienzenforschung an allen Bundesmuseen und Sammlungen koordiniert, und den Vorsitzenden Professor Ernst Bacher beauftragt, die gesamte Archivalienarbeit, die gesamte Aufarbeitung zu koordinieren. Gleichzeitig wurde eine Arbeitsgruppe eingesetzt, die die Erarbeitung dieses Gesetzes in Angriff genommen hat. Ich möchte auch erwähnen, daß der Bundesverfassungsdienst in dieser Arbeitsgruppe sehr konkret und sehr positiv mitgearbeitet hat, daß dort natürlich auch die Fragen der Verfassung diskutiert wurden und uns auch von dieser Seite bestätigt wurde, daß unser Gesetz verfassungskonform ist.

Die wichtigen Eckpunkte dieses Gesetzes sind: Es gibt drei Kategorien. Die erste Kategorie sind Kunstgegenstände, die während des Krieges geraubt, nach dem Krieg restituiert, aufgrund des Ausfuhrverbotsgesetzes aber zurückbehalten wurden.

Die zweite Kategorie sind Kunstgegenstände, die zwar rechtmäßig in das Eigentum des Bundes gelangt sind, jedoch zuvor Gegenstand eines Rechtsgeschäftes gemäß dem Nichtigkeitsgesetz waren.

Die dritte Kategorie sind Kunst- und Kulturgegenstände, die trotz der Durchführung von Rückstellungsverfahren nicht zurückgegeben werden konnten und als herrenloses Gut in das Eigentum des Bundes übergegangen sind.

Das heißt also: Wenn Ansprüche oder vermeintliche Ansprüche vorhanden sind, die nicht unter diese drei Kategorien fallen, dann müssen sie auf dem ganz normalen Rechtsweg eingeklagt und auch abgehandelt werden.

Das Gesetz hat weiters den Eckpunkt, daß ein Beirat – bestehend aus Vertretern der Bundesministerien für Justiz, Wirtschaft, Unterricht und kulturelle Angelegenheiten und Landesverteidigung, aus einem Vertreter der Finanzprokuratur und aus einem Experten auf dem Gebiet der Geschichte sowie der Kunstgeschichte – die Aufarbeitung überprüft und dann Empfehlungen für die Rückgabe ausarbeitet.

Die Experten auf dem Gebiet der Geschichte sowie der Kunstgeschichte werden von der Rektorenkonferenz benannt. Ich werde dem Parlament auch jährlich einen Bericht über die Vollziehung dieses Gesetzes übermitteln.

Die Rückgaben sind auch von allen Beschränkungen des Ausfuhrverbotsgesetzes und von allen Abgaben befreit. Ich halte es für besonders wichtig, einmal klar festzuhalten: Wir haben diese Gegenstände unentgeltlich und ohne Bewertung erhalten, wir werden sie unentgeltlich und ohne Bewertung zurückgeben.

Wenn dieses Gesetz heute im Parlament beschlossen ist, werde ich sofort alle Institutionen schriftlich auffordern,

Vertreter für den Beirat zu nominieren. Es ist mir ein ganz besonderes Anliegen, daß dieser Beirat bereits in den nächsten Wochen zu arbeiten beginnt und daß wir noch im heurigen Jahr die ersten Rückgaben durchführen können. *(Beifall bei der ÖVP und bei Abgeordneten der SPÖ.)*

Sehr geehrte Damen und Herren! Ich bin nicht stolz, daß wir 50 Jahre für dieses Gesetz gebraucht haben, aber ich bin froh, daß es nun einen breiten Konsens für eine gesetzliche Grundlage zur Rückgabe von Kunstgütern gibt, auf welche die Besitzer einen moralischen Anspruch haben. Es ist keine Wiedergutmachung, aber es ist ein Stück mehr Gerechtigkeit, die wir mit diesem Gesetz zeigen wollen. Wir werden die Kunstwerke ihren Eigentümern oder Erben zurückgeben. Österreich setzt damit für sich selbst, aber auch über seine Grenzen hinaus ein Signal zu einem neuen Bewußtsein in der Aufarbeitung eines unrühmlichen Teils seiner Geschichte.

Ich danke allen, die in den letzten Monaten mit großer Intensität ihren Beitrag zur Erforschung der Provenienzen in den Bundesmuseen und Sammlungen geleistet haben, und ich danke allen, die zur Erarbeitung dieses Gesetzes beigetragen haben. *(Beifall bei ÖVP und SPÖ.)*

11.45

Präsident Dr. Heinrich Neisser: Nächste Rednerin ist Frau Abgeordnete Dr. Brinek. Freiwillige Redezeitbeschränkung: 8 Minuten. – Bitte.

11.45

Abgeordnete Dr. Gertrude Brinek (ÖVP): Herr Präsident! Frau Bundesministerin! Hohes Haus! Gestatten Sie mir zum vorliegenden "Reparaturgesetz" eine Anmerkung zu den Ausführungen der Vorrednerin Schmidt.

Es ist schon zu überlegen und in das Wissen miteinzubeziehen, daß das Kunsthistorische Museum seit 1945 Aufarbeitungen tätigt – allerdings unter den jeweiligen Bedingungen betreffend personelle Besetzung, unter den besonderen Bedingungen der Nachkriegszeit; dann gab es den großen Sprung, der etwa mit der Teilrechtsfähigkeit einsetzte. Und es ist Direktor Seipel zu verdanken, daß er im wesentlichen aus diesen Mitteln den Jubiläumsband 1991 erstellen ließ und in diesem sehr offen und ehrlich die Lücken der Aufarbeitung dargestellt hat.

Ich meine, es muß auch in Rechnung gestellt werden, unter welchen Bedingungen Aufarbeitung in den Bundesmuseen, in den Sammlungen insgesamt stattgefunden hat – nicht zureichend, das soll keine Beschönigung sein. Aber um der Gerechtigkeit die Ehre zu erweisen, sollte man doch sagen, wie dieser Prozeß in Gang gekommen ist. *(Zwischenruf der Abg. Dr.* ***Schmidt.)***

Zur Dynamik der Frau Ministerin: Sie haben in öffentlichen Stellungnahmen lesen können, daß man ihr für die Dynamik, für das Tempo und für das Engagement gedankt hat. Das soll von denselben Leuten zitiert werden, die sie im Zusammenhang damit gemeint haben, daß die Republik nicht das nötige Tempo an den Tag gelegt hätte.

Ich meine, daß das auch gesagt sein soll, wenn es darum geht, eine Stellungnahme zu dem abzugeben, was wir heute tun. Heute geht es ganz sicher um ein Reparaturgesetz, das noch nicht die Zwangsarbeiter miteinbezieht. Diese Zwangsarbeiter-Anerkennung wird aber hoffentlich in einer nächsten Maßnahme, nämlich in einer differenzierten Aufgabenerweiterung des Nationalfonds für Opfer des Nationalsozialismus, in gewisser Weise möglich gemacht werden. Aber eines nach dem anderen.

Es gibt zwei Dinge, die mir in diesem Zusammenhang wichtig sind, vor allem in der Konfrontation und in der Gegenüberstellung mit der Jugend. Was ist es, was wir hier tun? – Spät, aber doch verhelfen wir Leuten zu ihrem Eigentum. Wenn wir am Ausgang unseres Jahrhunderts, Jahrtausends das Privateigentum und seine Wertschätzung so hochhalten, dann müssen wir diese Anerkennung von Eigentumsrechten als das benennen, was sie eben sind.

Wir haben gesagt, es sei unlauter und nicht in Ordnung, von einer Wiedergutmachung reden zu wollen. Also was ist es? – Es ist ein Versäumnis gutzumachen, das längst hätte gutgemacht werden sollen. Aber es geht jetzt nicht mehr darum, ein Rad zurückzudrehen, sondern darum, aus dieser Einsicht in die Versäumnisse zu lernen.

Weiters: Was sagen wir vor allem jungen Leuten gegenüber, warum es denn erst jetzt zu einem zweiten Anlauf

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gekommen ist? Sie wollen nicht nur wissen, was geschehen ist und was wir heute tun, sondern warum erst jetzt. – In der Zeit nach 1945, in der die Österreicher über sich selbst und ihre eigene Verführbarkeit erschrocken sind, hat so etwas wie eine Paralysierung, eine Lähmung eingesetzt. Mehrheitlich waren Österreicher gefangen und haben diesen offiziellen Verdrängungsweg beschlossen. Stellvertretend – es ist heute schon aus dem Ministerratsprotokoll zitiert worden – sei der Satz genannt: "Ich wäre dafür, daß man die Sache in die Länge zieht!" – Das war ein sehr symptomatischer Satz und der Ausdruck einer großen Hilflosigkeit.

Die handelnden Personen waren nicht einmal zu jenem Pragmatismus fähig, wie ihn Doron Rabinovici etwa sinngemäß zitiert: Man muß wissen, daß ein Gläubiger, dem man seine Schulden nicht zurückzahlt, psychologisch gefährlicher und belastender ist als einer, dem man sie zurückzahlt.

Zu diesem Ins-reine-Kommen war man nicht fähig. Dieses Ins-reine-kommen-Wollen, das zu wenige wollten, hatte auch viele Facetten. Es ist meiner Ansicht nach von einer doppelten Ironie der Verdrängung gezeichnet, nämlich daß Freud ein Österreicher war und als solcher auch wieder nicht anerkannt war und in seinem Ansinnen, als Naturwissenschafter anerkannt zu werden, nicht anerkannt wurde, weil seine Theorie in die Geisteswissenschaften gehörte. Diese mehrfache Ironie ist, so meine ich, auch wieder repräsentativ für unser Schicksal und für unsere Geschichte.

Noch einmal zurück zum "Warum" und "Warum heute": Es ist schon angesprochen worden, daß etwa die Globalisierung eine neue Dimension der internationalen Auseinandersetzung gebracht hat. Daß wir heute weltweit Informationen austauschen können, in einen Diskurs über Menschenrechte treten können, das hat auch mit den technischen Möglichkeiten, die mit dieser Globalisierung zusammenhängen, zu tun. Diese sollten wir nützen und auch die positive Seite dabei sehen.

Ein weiterer wichtiger und mir vor allem sehr wichtiger Punkt liegt in der Dimension der gestiegenen Bildung. Ich bin sehr froh darüber, daß es heute immer weniger der von Josef Cap erwähnten Geschichtslehrer gibt, nämlich jene, deren Unterricht beim Ende der Monarchie aufhört und die somit das kapitalste Unrecht, das die Menschheit zustande gebracht hat, auslassen.

Vor folgendem möchte ich in diesem Zusammenhang warnen: Die gesamthaft politisch-rassistische und pseudoreligiöse Weltvorstellung der Nazis war Ausgangspunkt und Unterfutter für ihr Verbrechen. Es war ein antirationales Konzept.

Ich sehe auch heute wieder so manche Zeitströmung, so manches esoterisch-spiritistische Wertegebäude auftauchen, das der Jugend und den Menschen das Denken abnehmen will, das Rationalität und intellektuelle Aufklärung schmäht und eine dumpfe, archaische, atavistische Schwüle an dessen Stelle setzt. Ich meine, daß eine wesentliche Lehre aus der Geschichte und aus dem, was wir heute verabschieden, ist, sich gegen Anfänge jedweder Geistlosigkeit zu wehren und gegen jede Antirationalität, die in den Schulen auch wieder Eingang zu finden beginnt, aufzutreten. *(Beifall bei der ÖVP, bei Abgeordneten der SPÖ sowie des Abg.* ***Smolle.****)*

Meine Damen und Herren! Mit Rücksicht auf das schon Ausgeführte möchte ich mit einem Motto schließen, das ich mir von Václav Havel sozusagen ausgeborgt habe. Er hat sein Leben, sein Dichten und Denken unter das Motto gestellt: Der Versuch, in der Wahrheit zu leben. – Möge dieses Motto über dem Gesetz, das wir heute im Konsens verabschieden, über dem Datum des 9. November sowie über dem des 12. November stehen und möge dafür heute ein guter Tag sein. – Danke schön. *(Beifall bei der ÖVP, bei Abgeordneten der SPÖ sowie des Abg.* ***Smolle.****)*

11.52

Präsident Dr. Heinrich Neisser: Nächste Rednerin ist Frau Abgeordnete Dr. Pittermann. 12 Minuten. – Bitte.

11.52

Abgeordnete Dr. Elisabeth Pittermann (SPÖ): Herr Präsident! Frau Bundesministerin! Hohes Haus! Ich begrüße auch die Generalsekretärin des Nationalfonds, Frau Mag. Lessing, die vom Balkon aus diese Debatte mitverfolgt.

In vier Tagen gedenken wir des 60. Jahrestages des 9. November 1938, jener Nacht, in welcher grauenhaft vorgezeigt wurde, was noch wesentlich furchtbarer als je vorausgeahnt eintreffen sollte. Wenn Sie, Herr Abgeordneter Krüger, von den brennenden Synagogen sprachen, dann sage ich Ihnen: Es brannten nicht nur

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Synagogen, es wurden auch Menschen getötet. Vergessen Sie das niemals! Es ist bemerkenswert, daß Sie sonst mit keinem Wort auf die Verbrechen zwischen 1938 und 1945 eingegangen sind.

Bei der heutigen Debatte sieht man so besonders die Sympathien für die einen, die mangelnden Anteilnahmen für die anderen.

Obwohl Juden wußten, was sich seit Hitlers Machtergreifung in Deutschland abspielte, obwohl man seit dem Einmarsch deutscher Truppen zunehmend entrechtet wurde, ahnten die österreichischen Juden nicht, daß ihnen die Zukunft den völligen Verlust von Menschenrechten und die Vernichtung bringen wird. Da die österreichischen Juden im ausgehenden 19. und beginnenden 20. Jahrhundert weitgehend assimiliert und integriert waren und sie daraus Schutz erwarteten, dachten sie nicht rechtzeitig an Flucht. Rasch schnappte die Falle zu, und um ihr nacktes Leben eventuell zu retten, mußten sie alles, was sie besaßen, den Machthabern, ihren Anhängern und Mitläufern abgeben. Zu Spottpreisen erwarben diese jüdisches Vermögen, als "Reichsfluchtsteuer" wurde der Kaufpreis einbehalten.

Die Glücklicheren unter ihnen konnten Österreich verlassen und somit den KZs und Gaskammern entgehen. 65 000 wurden grausam vernichtet, Familien wurden zerstört! Oft blieb nur ein einziger Überlebender großer Familien. Existenzen wurden vernichtet, und für jene, denen die Emigration gelang, begann ein dorniger Weg. Vor allem für die nicht mehr ganz Jungen war es äußerst schwer, sie waren Wiener mit Leib und Seele. Viele der urwienerischen Lieder wie das Fiakerlied, "Sag zum Abschied leise servus" und vieles andere, wie wir vor einigen Jahren bei einer exzellenten Ausstellung sehen konnten, stammten von Wiener Juden. Hermann Leopoldi, eigentlich Hersch Kohn – unter diesem Namen hätte man seine wunderbare Musik damals wohl abgelehnt –, gelang die Emigration. Fritz Grünbaum wurde ermordet. Ungeheuer großes geistiges Potential wurde verjagt und ausgerottet.

Wenn heuer begeistert geschrieben wurde: Endlich erhält wieder ein Österreicher den Nobelpreis!, dann bin ich darüber nur verwundert. 16 Jahre ließ man ihn hier leben, 59 Jahre war er woanders, damit er überleben konnte, lernen konnte, sich bilden konnte. Auch wenn in seinem Herzen, trotz Ermordung seiner Eltern – Todesurkunden gibt es nicht einmal –, Wien einen Platz hat: An diesem Nobelpreis aber hat Österreich ***keinen*** Anteil!

Wenn wir hören müssen, warum nur die Juden etwas bekommen sollen, andere hätten durch den Krieg auch Verluste erlitten, bin ich fassungslos. Mit der Shoa ist nichts zu vergleichen!

Es gibt natürlich wieder einen Abänderungsantrag der "F", in dem sie die Shoa relativieren wollen. Ist es denn so unerträglich für Sie, daß man Juden zu ihrem Recht verhelfen will? Berührt Sie deren Schicksal überhaupt nicht? *(Abg. Dr. **Krüger:** Das ist doch eine Unredlichkeit der besonderen Art! Eine Unseriosität!)* Verbrechen oder Schuld zu diminuieren ... *(Neuerlicher Zwischenruf des Abg. Dr. **Krüger.**)* Es wird von Ihnen mit unzulässigen Vergleichen gearbeitet, und daher lehnen wir Ihren Abänderungsantrag ab! *(Beifall bei der SPÖ, bei Abgeordneten der ÖVP sowie des Abg. Mag. **Barmüller.** – Abg. Dr. **Krüger:** Sie sind unredlich!)* – Natürlich, für Sie sind Juden immer unredlich, das weiß ich! *(Abg. Dr. **Krüger:** Sie sind unredlich!)* Ja, sagen Sie mir das nur, das weiß ich von Ihnen, das kann ich gut bewerten! *(Zwischenrufe bei den Freiheitlichen.)* Meine Familie ist vernichtet worden!

Der kaltblütige Plan zur Ausrottung von Juden, der mit Elan und Mithilfe vieler Mitmenschen schnell durchgesetzt wurde, findet nirgends Parallelen! Ihr Vermögen erhielten die Juden selten zurück – selbst nach 1945 nicht. Man setzte das Unrecht fort und tat auch wenig, zuwenig für die in bitterer Armut lebenden Emigranten. Diese standen viele Jahre nach der Shoa noch so unter Schock, daß sie aus Angst, man könnte es ihnen übel nehmen und eventuell Antisemitismus erwecken, selten wagten, für ihr Recht zu kämpfen. Die Überlebenden fühlten sich schuldig, überlebt zu haben. Sie konnten den Verlust von Familien und Freunden niemals überwinden und lebten mit maximaler Verdrängung weiter.

Trotz allem liebten sie dieses Österreich. Sie liebten Wien und träumten davon, die geliebte Stadt wiederzusehen. Das war für sie mit unerhörten psychischen Belastungen und auch Zusammenbrüchen verbunden. Wollten sie ihre Wohnungen sehen, ließen sie die Ariseure selten hinein, und wenn es doch geschah, sahen sie dort ihr Eigentum stehen. Viele konnten sich den Traum, Wien wiederzusehen, niemals erfüllen. Sie konnten in ihrer neuen Heimat mit ihren erlernten Berufen schwer Fuß fassen, und die Kosten für eine solche Reise überstiegen ihre Möglichkeiten. Viele Jahre schwiegen und verdrängten die Überlebenden. Manche suchten erst jetzt psychologische Betreuung, sei es bei Esra, sei es bei Amcha oder ähnlichem, auf. Die Kinder wußten oft gar nicht, daß sie Kinder von Juden waren. Sie erhielten erst sehr spät Auskunft über die Shoa und Antworten auf ihre

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Fragen.

Es wuchs eine neue Generation heran, eine, die sich nicht schuldig fühlte, daß ihre Eltern überlebten, und sie entwickelte ein neues Selbstbewußtsein. Sie wußte aber auch, Antisemitismus kann man durch sogenanntes Wohlverhalten, durch Verzicht auf die Rechte nicht vermeiden, und sie meldete Anspruch auf ihre Rechte an. Es wuchs aber auch eine neue Generation von den Kindern derer, die anders lebten, heran, auch jener, die sich fragten: Wie konnte das geschehen, wieso habt ihr es nicht verhindert? Und so haben wir heute eine neue Zeit, daß wir jetzt endlich diese Gesetze beschließen können. Denn eine Demokratie kann es sich moralisch nicht leisten, das Unrecht einer verbrecherischen Diktatur anzuerkennen und zum Recht zu erklären!

Jene, die die nötige Distanz haben und wissenschaftlich durch namhafte Historiker aufgeklärt sind, fühlen sich verpflichtet, gestohlenes Gut zurückzugeben und auch Arbeitsleistungen zu bezahlen. Eine demokratische Republik kann sich eines Besitzes, der ihr auf so grauenhafte Weise zufiel, nicht erfreuen. Ein Land muß auch zugeben können, welche Verbrechen hier möglich waren, und wenigstens den materiellen Schaden wieder rückerstatten. Selbst die großen christlichen Kirchen Österreichs bekennen sich im 60. Jahr nach dem Anschluß zwar nicht schuldig, aber nicht frei von Schuld an dem, was zur Shoa letztendlich führte, und daran, nichts zur Verhinderung beigetragen zu haben.

Meine Damen und Herren, sagen Sie nicht, es wäre unmöglich gewesen, dies alles zu verhindern! Schauen Sie sich nur das Beispiel Dänemark an: Die dänische Bevölkerung hat ihre Juden gerettet.

Wir wollen unsere Museen niemals mehr mit geraubtem Gut schmücken und nicht Nutznießer geraubten Geldes und Goldes sein. Wir wollen den Eigentümern rückerstatten, was ihnen gehört, und mit der Vergangenheit ins reine kommen. Unrecht fortzusetzen ist für uns kein demokratischer Grundsatz. All jene Güter, die nicht mehr rückerstattbar sind, weil die Eigentümer unauffindbar oder tot sind, sollen dem Nationalfonds übereignet werden.

Wir wollen damit jenen, die arm waren und arm blieben, helfen. Die Übertragung des österreichischen Restanteils am Goldpool auf den Internationalen Fonds für Opfer des Nationalsozialismus wird ermöglicht. Dieses Gold ist nicht nur Währungsgold von 1938, wie vorher ausgeführt, sondern laut Regierungsvorlage 1429 auch Gold, das individuellen Opfern geraubt wurde. Man hat ihnen aber nicht nur Bankgold und Schmuck geraubt. Es war viel schlimmer: Die Goldzähne wurden Häftlingen und Vergasten, die einer größtmöglichen "wirtschaftlichen Verwertung" zugeführt wurden, aus dem Mund, die Ringe von den Fingern gerissen. Diese Mittel aus dem Raubgold werden den Opfern zugute kommen.

Im Zusammenhang mit der Shoa zu sagen, ich sei froh darüber, wäre eine Lästerung. Es erfüllt mich als Kind einer entrechteten Jüdin und einzige in Österreich lebende Nachkommin einer großen vernichteten und vertriebenen Familie mit Genugtuung, daß wir wenige Tage vor der 60. Wiederkehr der Novemberpogromnacht in diesem Haus und Hort der Demokratie mit den Stimmen aller fünf Parteien beschließen, die geraubten Kunstschätze und das Gold der Opfer des Nationalsozialismus endlich rückzuerstatten, und daß wir mit Scham und Trauer die Verbrechen eingestehen und uns schwören, niemals wieder solche nicht zu verhindern. *(Beifall bei der SPÖ, den Grünen und beim Liberalen Forum sowie bei Abgeordneten der ÖVP.)*

12.02

Präsident Dr. Heinrich Neisser: Zu Wort gelangt jetzt Herr Abgeordneter Dr. Ofner. Freiwillige Redezeitbeschränkung: 6 Minuten. – Bitte.

12.03

Abgeordneter Dr. Harald Ofner (Freiheitliche): Herr Präsident! Frau Bundesministerin! Meine Damen und Herren! Eine meiner Vorrednerinnen hat den Terminus von der "Gnade der späten Geburt", wenn auch nicht expressis verbis, gebraucht. Ich halte diesen Begriff für falsch. Es ist nicht eine Gnade, die späte Geburt auf sich beziehen zu können, es ist ein Nachteil, wenn es um die Beurteilung von Dingen geht, die in der Vergangenheit stattgefunden haben. Wenn man länger auf der Welt ist, dann hat das zumindest den Vorteil, daß man nicht auf die selektive Berichterstattung Älterer angewiesen ist, sondern sich selbst ein Bild aus seiner eigenen Wahrnehmung machen kann – aber soviel nur als Einleitung. *(Beifall bei den Freiheitlichen.)*

Das verbrecherische Regime des Nationalsozialismus und der Zweite Weltkrieg haben Abermillionen Opfer

gefordert. Hinsichtlich einer bestimmten Anzahl von Opfergruppen trifft Österreich eine besondere Fürsorgepflicht. Dazu gehören die jüdischen Mitbürger, die aus Österreich vertrieben worden sind, die zu einem sehr hohen Prozentsatz umgebracht worden sind. Dazu gehören aber auch die Altösterreicher aus dem Gebiet der ehemaligen österreichisch-ungarischen Monarchie, die aus ihrer Heimat vertrieben worden und auch zu einem hohen Prozentsatz umgebracht worden sind. *(Beifall bei den Freiheitlichen. – Abg. Dr.* ***Nowotny:*** *Das ist schon wieder genau die Aufrechnung!)* – Nein, eine Aufrechnung ist es nicht, es ist ein Anspruch der Gerechtigkeit, Kollege Nowotny. Ich habe nur sechs Minuten Redezeit, wir können dann auf dem Gang über anderes weiterreden. *(Abg. Dr.* ***Nowotny:*** *Ich hoffe, Sie haben der Frau Dr. Pittermann zugehört!)*

Ich wehre mich dagegen, daß man unter den armen Teufeln Hierarchien einzieht, daß man Rangordnungen macht und sagt: Du bist vertrieben worden, du bist ein gutes Opfer, und du bist vertrieben worden, du bist ein schlechtes Opfer! *(Beifall bei den Freiheitlichen. – Abg. Dr.* ***Nowotny:*** *Das sagt ja niemand!)* Dein Vater ist umgebracht worden, aber du bist ein schlechter Hinterbliebener, und dein Vater ist umgebracht worden, aber du bist ein guter Hinterbliebener. Das steht uns nach 60 Jahren ... *(Abg. Dr.* ***Nowotny:*** *Das sagt ja niemand! – Abg.* ***Aumayr:*** *Sie sagen es!)* Implizite wird es gesagt! Ihr Zwischenruf sagt das. Opfer ist Opfer! *(Beifall bei den Freiheitlichen. – Abg. Dr.* ***Nowotny:*** *Sie haben der Frau Dr. Pittermann nicht zugehört!)* Ob jemand aus Wien vertrieben worden ist, ob jemand aus Brünn vertrieben worden ist, ob er auf dem Marsch von Brünn nach Wien umgebracht wurde oder auf dem Weg von Wien woandershin, ist für den Betroffenen und seine Hinterbliebenen egal. Opfer ist Opfer in diesem Zusammenhang! *(Beifall bei den Freiheitlichen.)*

Ich darf auf noch einen Umstand hinweisen: Sie sind in Wahrheit ***alle*** Opfer des Nationalsozialismus, die einen wie die anderen – die einen direkte und die anderen indirekte. Denn auch die aus Brünn ... *(Abg. Dr.* ***Nowotny:*** *Und die Täter kommen auch noch dazu! Die sind auch noch Opfer!)* – Das täte Ihnen so passen, Kollege Nowotny! – Aber auch die aus Brünn sind Opfer des Nationalsozialismus. *(Beifall bei den Freiheitlichen.)* Denn hätte es den Nationalsozialismus nicht gegeben, wären diese Menschen beziehungsweise ihre Hinterbliebenen heute noch in Brünn. Daher wehre ich mich dagegen, daß man jetzt eifersüchtig – so wie Sie – hergeht und sagt: Die Opfer, denen ich näherstehe, sind die guten Opfer, und die anderen sind die schlechten Opfer. Dagegen wehre ich mich! *(Beifall bei den Freiheitlichen. – Abg. Dr.* ***Nowotny:*** *Täter gibt es bei Ihnen keine mehr!)*

Wir Freiheitlichen treten daher dafür ein, daß die Wiedergutmachung auch allen in entsprechender Weise zugute zu kommen hat. Es geht nicht nur darum, Lücken zu schließen, wo es noch welche zu schließen gibt. Es geht auch darum, daß man in die Richtung denkt und in der Richtung handelt, in der auf diesem Sektor wirklich noch wenig geschehen ist.

Ich darf zum Beispiel in Erinnerung rufen – weil Sie bezweifeln, daß das Opfer sind –, daß ich dieser Tage gelesen habe, daß es einen bemerkenswerten Fall in einer tschechischen Stadt gibt, wo eine alte Frau nun ihre Wohnung verlassen wird müssen. Das Haus, in dem sich ihre Wohnung befindet, ist im Jahre 1945 "tschechisiert" worden. Aus Gründen, die heute nicht mehr nachvollziehbar sind, hat sie aber damals mit ihrer Familie das Haus nicht verlassen müssen. Sie hat es aber weder vor der Wende noch nach der Wende zurückbekommen, was eigentlich selbstverständlich gewesen wäre. Aber jetzt wird dieses Haus an Dritte verkauft. Und die Dritten schmeißen sie aus ihrem Haus hinaus. *(Ruf bei den Freiheitlichen: Ungeheuerlich!)* Ja, das ist ungeheuerlich!

Wir Freiheitlichen haben daher einen Abänderungsantrag eingebracht, der zum Gegenstand hat – er ist vervielfältigt und verteilt worden –, daß es uns dem Umfange nach, den Betroffenen nach, den Adressaten nach zuwenig ist, was die Regierungsvorlage verlangt. Wir wollen, daß die direkten Opfer und die indirekten Opfer des Nationalsozialismus von diesem Gesetz umfaßt werden. Wir wollen, daß durch dieses Gesetz alle, die durch das verbrecherische Regime des Nationalsozialismus direkt oder indirekt zu Schaden gekommen sind, entsprechende Vorteile, entsprechende Gesten, wenn Sie wollen – ich habe diesen Ausdruck gehört – auch Wiedergutmachung, aus diesem Fonds bekommen können. *(Beifall bei den Freiheitlichen.)*

Ich halte dieses unser Wollen nicht für Aufrechnung. Aufrechnung ist nicht erlaubt, aber es ist ein Lieblingsausdruck von Leuten, die nicht wollen, daß Gerechtigkeit geschieht. *(Abg. Dr.* ***Nowotny:*** *Aber das tun Sie! Das ist es, was Sie machen!)* Ja, ich möchte Gerechtigkeit. *(Abg. Dr.* ***Nowotny:*** *Das wollen wir auch!)* Der Antrag ist daher logisch, er ist konsequent und er ist gerecht. *(Abg. Dr.* ***Nowotny:*** *Gerechtigkeit wollen wir auch!)* Und weil Sie das wissen und weil Ihnen das nicht paßt, sagen Sie, man darf nicht aufrechnen. *(Beifall bei den Freiheitlichen.)* Wir wollen, daß ***alle*** Opfer des Nationalsozialismus zum Zug kommen – nicht nur die, die Ihnen passen, Herr Kollege! *(Neuerlicher Beifall bei den Freiheitlichen. – Abg. Dr.* ***Nowotny:*** *Was heißt "Ihnen passen"?*

Das ist unerhört!)

12.08

Präsident Dr. Heinrich Neisser: Der Abänderungsantrag, den Herr Abgeordneter Dr. Ofner in seinen Grundzügen vorgetragen hat, ist gemäß § 53 Abs. 4 der Geschäftsordnung wegen seines Umfanges im Saal verteilt worden. Er ist ausreichend unterstützt und steht mit in Verhandlung.

Der Antrag hat folgenden Wortlaut:

Abänderungsantrag

der Abgeordneten Dr. Ofner, Dr. Graf, Mag. Haupt und Kollegen zum Antrag des Verfassungsausschusses betreffend ein Bundesgesetz, mit dem das Bundesgesetz über den Nationalfonds der Republik Österreich für Opfer des Nationalsozialismus geändert wird

Der Nationalrat wolle beschließen:

Die im Titel genannte Vorlage in der Fassung des Ausschußberichtes (1469 der Beilagen) wird wie folgt geändert:

Das Bundesgesetz über den Nationalfonds der Republik Österreich für Opfer des Nationalsozialismus, BGBl. Nr. 432/1995, wird wie folgt geändert:

1. Die Überschrift lautet:

Bundesgesetz über den Nationalfonds der Republik Österreich für direkte und indirekte Opfer des Nationalsozialismus

2. Artikel I § 1 lautet:

§ 1. (1) Beim Nationalrat wird ein Fonds zur Erbringung von Leistungen an direkte und indirekte Opfer des Nationalsozialismus eingerichtet. Er trägt die Bezeichnung "Nationalfonds der Republik Österreich für direkte und indirekte Opfer des Nationalsozialismus".

(2) Der Fonds hat das Ziel, die besondere Verantwortung gegenüber direkten und indirekten Opfern des Nationalsozialismus zum Ausdruck zu bringen.

(3) Der Fonds besitzt eigene Rechtspersönlichkeit und dient ausschließlich gemeinnützigen Zwecken. Er ist von allen Abgaben befreit.

3. Artikel I § 2 Abs. 1 lautet:

§ 2. (1) Der Fonds erbringt Leistungen an Personen,

1. die vom nationalsozialistischen Regime direkt oder als Folge des nationalsozialistischen Regimes indirekt aus politischen Gründen, aus Gründen der Abstammung, Religion, Nationalität, sexuellen Orientierung, auf Grund einer körperlichen oder geistigen Behinderung oder auf Grund des Vorwurfes der sogenannten Asozialität verfolgt worden oder auf andere Weise Opfer typisch nationalsozialistischen Unrechts geworden sind oder das Land verlassen haben, um einer solchen Verfolgung zu entgehen; oder die als Altösterreicher indirekt als Folge des nationalsozialistischen Regimes aus Gründen der Abstammung, Religion, Nationalität, sexuellen Orientierung, auf Grund einer körperlichen oder geistigen Behinderung oder auf Grund des Vorwurfes der sogenannten Asozialität bis einschließlich 1948 aus ihrer angestammten Heimat auf dem Gebiet des ehemaligen Österreich-Ungarn ausgesiedelt oder vertrieben worden sind oder dieses Gebiet verlassen haben, um einer Verfolgung zu entgehen; oder die zum Zwecke der Landbeschaffung für militärische Anlagen der Deutschen Wehrmacht in Österreich zwangsausgesiedelt worden sind; und

2. die

a) am 13. März 1938 die österreichische Bundesbürgerschaft – als Altösterreicher die Staatsbürgerschaft eines zumindest zum Teil auf dem Gebiete des ehemaligen Österreich-Ungarn gelegenen Staates – und einen Wohnsitz in Österreich – als Altösterreicher einen solchen auf dem Gebiete des ehemaligen Österreich-Ungarn – oder

b) bis zum 31. März 1938 durch etwa zehn Jahre hindurch ununterbrochen ihren Wohnsitz in Österreich – als Altösterreicher auf dem Gebiete des ehemaligen Österreich-Ungarn – gehabt haben beziehungsweise in diesem Zeitraum als Kinder von solchen Personen in Österreich geboren worden sind, oder

c) vor dem 13. März 1938 die österreichische Bundesbürgerschaft – als Altösterreicher die Staatsbürgerschaft eines zumindest zum Teil auf dem Gebiete des ehemaligen Österreich-Ungarn gelegenen Staates – oder ihren zumindest zehnjährigen Wohnsitz dort selbst verloren haben, weil sie wegen des unmittelbar bevorstehenden Einmarsches der Deutschen Wehrmacht das Land – als Altösterreicher den betreffenden zumindest zum Teil auf dem Gebiete des ehemaligen Österreich-Ungarn gelegenen Staat – verlassen haben, oder

d) als Kinder von solchen Personen im Konzentrationslager oder unter vergleichbaren Umständen auch in Österreich geboren worden sind;

3. an Altösterreicher aus dem Gebiet des ehemaligen Österreich-Ungarn, ausgenommen das Gebiet der Republik Österreich, jedoch nur, wenn sie am 27. April 1995 österreichische Staatsbürger gewesen sind oder ihren Wohnsitz in Österreich gehabt haben.

4. Artikel I § 2 Abs. 3 lautet:

(3) Der Fonds kann auch Projekte unterstützen, die direkten und indirekten Opfern des Nationalsozialismus zugute kommen, der wissenschaftlichen Erforschung des Nationalsozialismus und des Schicksals seiner direkten und indirekten Opfer dienen, an das nationalsozialistische Unrecht und an das Unrecht der Entrechtung und Verfolgung von Altösterreichern und ihrer Aussiedlung und Vertreibung aus ihrer angestammten Heimat als mittelbare Folge des nationalsozialistischen Unrechts erinnern oder das Andenken an alle diese Opfer wahren.

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Präsident Dr. Heinrich Neisser: Zu Wort gelangt jetzt Herr Abgeordneter Dr. Kier. – Bitte, Herr Abgeordneter.

12.09

Abgeordneter Dr. Volker Kier (Liberales Forum): Herr Präsident! Frau Bundesministerin! Sehr geehrte Damen und Herren! Hohes Haus! Die Materien, die hier zur Verhandlung anstehen, haben eine größere Tiefe, als dies in den Papieren sichtbar wird. Es ist jetzt ein Kapitel aufgeschlagen worden, bei dem wir beginnen, eigene Versäumnisse, eigene Fehler und bestenfalls positivistisch rechtmäßige Verhaltensweisen – aber sicher nicht in einem Verständnis von Anständigkeit – der Zweiten Republik aufzuarbeiten. Wir arbeiten heute nicht so sehr Probleme auf, die wir als Folgen des Nationalsozialismus vorgefunden haben, es handelt sich jetzt vielmehr um ein Kapitel, bei dem wir als Republik Österreich seit 1945 in einer auch selbstverantworteten kontinuierlichen historischen Verbindung stehen, mit – ich sage es einmal vorsichtig – Denkfehlern, die passiert sind.

Man war nämlich zum Beispiel im Jahre 1945 der Meinung, ein Gesetz, das im Jahre 1918, in der Stunde der Gründung dieser Republik, geschaffen wurde, um zu verhindern, daß Kunstgüter im beliebigen Ausmaß davongeschafft werden können, nämlich das Ausfuhrverbotsgesetz, als Mittel anwenden zu sollen, um Schenkungen von Leuten zu erzwingen, die aus dem Territorium dieser Republik gewaltsam vertrieben wurden oder gerade noch entkommen sind und hier einen ganz anderen Anspruch gehabt hätten. Daher meine ich, daß diese aus moralischer Sicht doppelbödige Verhaltensweise der ersten Jahre der Zweiten Republik langsam zu sanieren sein wird – natürlich kausal verursacht durch das Unrecht, die Unrechtstatbestände, die vorgefunden wurden, nachdem die Republik wiederausgerufen war. Aber ich meine, diese Diskussion ist noch nicht ganz zu Ende, sie wird noch gründlicher zu führen sein.

Kollegin Stoisits hat ja schon zwei Anträge eingebracht, die mit der Materie, die wir heute diskutieren, in Zusammenhang stehen. Ich möchte einen weiteren Antrag, den ich mit ihr gemeinsam hier vorlege, einbringen, und zwar einen, der sich damit beschäftigt, wer denn der Personenkreis von Opfern im Zusammenhang mit diesen

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Problemen ist, die wir hier besprechen – ich komme auf diesen Aspekt später noch zurück –, ob es logisch und konsequent gewesen ist, daß wir bei der Beschlußfassung über das Bundesgesetz über den Nationalfonds der Republik Österreich für Opfer des Nationalsozialismus eine zehnjährige Aufenthaltsfrist vorgesehen hatten, oder ob uns dabei nicht ein Fehler insofern unterlaufen ist, als wir gedankenloserweise der Meinung waren, daß auch in den Jahren 1933 und 1934 in Österreich die zehnjährige Anspruchsfrist für die Erlangung der Staatsbürgerschaft bestanden hat, so wie wir sie heute haben. – Wir haben einfach übersehen, daß die damalige Rechtslage eine ganz andere war und daß im Bundesgesetzblatt 285/1925 in der Fassung des Bundesgesetzblattes 369/1933 eine vierjährige Frist vorgesehen war.

Daher stellen Kollegin Stoisits und ich folgenden Antrag:

Abänderungsantrag

der Abgeordneten Dr. Schmidt, Dr. Kier, Mag. Stoisits und PartnerInnen betreffend den Bericht des Verfassungsausschusses 1469 der Beilagen, mit dem das Bundesgesetz über den Nationalfonds der Republik Österreich für Opfer des Nationalsozialismus geändert wird

Der Nationalrat wolle beschließen:

Änderung des Berichtes des Verfassungsausschusses 1469 der Beilagen, mit dem das Bundesgesetz über den Nationalfonds der Republik Österreich für Opfer des Nationalsozialismus geändert wird:

Der Nationalrat hat beschlossen:

Änderung des Berichtes des Verfassungsausschusses 1469 der Beilagen, mit dem das Bundesgesetz über den Nationalfonds der Republik Österreich für Opfer des Nationalsozialismus, BGBl. Nr. 432/1995 geändert wird:

Ziffer 1 lautet: § 2 Abs. 1 Z 2 lit. b lautet: "bis zum 13. März 1938 durch etwa vier Jahre hindurch ununterbrochen ihren Wohnsitz in Österreich gehabt haben beziehungsweise in diesem Zeitraum als Kinder von solchen Personen in Österreich geboren wurden oder ..."

Die bisher im Bericht angeführte Änderung des Bundesgesetzes erhält die Ziffer 2.

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Der Zusammenhang mit der Materie, die wir hier diskutieren, ist evident. Wenn wir nämlich jetzt diesen Personenkreis nicht in der richtigen Weise erfassen, dann wird das, was wir im Rahmen der Rückerstattung von geraubten und nachher abgepreßten Kunstgütern zurückgeben, nur einen verkürzten Personenkreis treffen. Wir sind der Meinung, daß, wenn wir diesen Schritt setzen, auch der Kreis der Anspruchsberechtigten besser abgegrenzt werden muß.

Aber zurück zum Hauptthema, das uns hier beschäftigt. Die Demokratie des Verschweigens und der Diskussionslosigkeit, die wir im Jahr 1945 begonnen haben, diese Demokratie des Friedensschlusses durch Nichterörterung, diese Quasikonkordanzdemokratie, die wir im Jahr 1945 in die Welt gesetzt haben, müssen wir jetzt aufarbeiten, weil eine Weiterentwicklung des Bewußtseins notwendig ist, und zwar bezüglich des gesamten Problembereiches, der damit zusammenhängt. Und die Zeit arbeitet dabei gegen uns! Daher bin ich der Meinung, je rascher wir das Problem erledigen, je rascher wir diese Diskussion aufnehmen, desto besser ist es – und zwar nicht nur deswegen, weil zunehmend die Opfer gestorben sein werden, an die wir uns zu wenden haben, wenn wir noch Wiedergutmachungen leisten wollen, sondern auch deswegen, weil die Zeitzeugen, die in der ersten Phase der Zweiten Republik am Werke waren, uns auch abhanden kommen werden.

Aber ich bin andererseits nicht der Auffassung des Kollegen Ofner, daß man über Geschichte nur reden darf, wenn man Zeitzeuge war. Ich bin nicht dieser Auffassung. *(Abg. Dr. **Ofner:** Man tut sich nur leichter!)* Man tut sich zum Teil leichter, zum Teil aber auch nicht – lieber Harald Ofner, zum Teil aber auch nicht, denn wenn man selber in einer großen unmittelbaren Betroffenheit steht, dann ist es manchmal viel schwerer, sich zu einer objektiven Position durchzuringen, als wenn man sich als unbeteiligter Dritter selbstverständlich auch mit Zeitzeugen zu unterhalten hat, sich aber die gesamten Fakten anschauen kann und es mangels inneren Bebens einfach leichter

hat, sich eine Meinung zu bilden, die vielleicht schmerzlich ist, aber eben nicht unbedingt für einen selbst in der direkten Betroffenheit, und das erleichtert es manchmal. Es ist dann aber auch kälter, das gebe ich zu. Geschichtsschreibung und Aufarbeitung sind kälter als die eigene Betroffenheit, aber die eigene Betroffenheit kann auch unter Umständen so stark sein, daß sie das Gesichtsfeld verengt, daß sich das Bewußtsein auf wenige Teilprobleme, die natürlich wichtig sind, beschränkt. Und das ist der Nachteil der persönlichen Betroffenheit.

Wenn ich persönlich mein Geschichtsbild ausschließlich von der persönlichen Betroffenheit meiner physischen Teilnahme an Vertreibungsvorgängen ableiten würde, dann hätte ich ein verqueres Geschichtsbild – einerseits, weil man als Kind manches ganz anders erlebt, und andererseits, weil das ein millimetergroßer Ausschnitt aus einem großen Ablaufszenario wäre, von dem aus ich dann sozusagen vielleicht in einer Art historischer Nabelschau die Welt betrachten würde. Ich bin gelegentlich – und das gebe ich hier von diesem Rednerpult aus zu – ganz froh darüber, mich darauf berufen zu können, daß ich weiß, wovon ich rede, weil ich auch dabei war, aber ich war vier Jahre alt. Und es ist zynisch, so etwas dann zu überziehen. Aber immerhin, in manchen Bereichen ist diese persönliche Betroffenheit vielleicht eine zusätzliche emotionale Legitimation. Mehr ist es nicht – keine Qualifikation. Es ist keine Qualifikation!

Daher tut es mir leid, daß, wenn Harald Ofner von diesem Rednerpult aus ein bestimmtes Thema aufgreift, er das in der falschen Debatte tut. Das tut mir leid, weil die Themenstellung ernst ist, und wir haben sicherlich auch darüber noch zu reden. Auch hier sind von Verantwortungsträgern der Zweiten Republik nach 1945 gelegentlich – vorsichtig formuliert – Fehler gemacht worden. Ich könnte dazu vieles erzählen, was ich nicht unbedingt nur selbst erlebt habe, sondern auch als Kind von Betroffenen ganz genau begriffen habe, aber nicht in dieser Debatte. *(Abg. Dr. **Ofner:** Schäm dich nicht, erzähl!)* Ich schäme mich überhaupt nicht, sonst hätte ich das nicht von mir aus hier angeschnitten. Ich bin ja nicht ganz dumm. Wenn ich dem hätte ausweichen wollen, hätte ich in dieser Debatte überhaupt nicht darüber gesprochen. Ich muß dir aber sagen, daß es eben in ***dieser*** Debatte nicht zu erörtern ist, nicht deswegen, weil Kollege Nowotny vielleicht dann den Aufrechnungsvorwurf erhebt, der so falsch nicht ist, aber natürlich sehr scharf, wenn er an einen Betroffenen adressiert ist. *(Abg. Dr. **Ofner:** Er ist rechtlich falsch! ...)*

Kollege Ofner! Ich bin nicht der Meinung, daß man sich diesen Problemen ausschließlich mit den Werkzeugen des Rechtsanwaltes nähern kann. Das hat eine größere Dimension. Das ist nicht nur Ursache und Wirkung im einfachen Sinn der Kausalitäten eines Bürgerlichen oder eines Strafgesetzbuches. Das hat eine wesentlich größere Dimension. Da sind geschichtsmächtige Abläufe dahinter, und in dem Rahmen der geschichtsmächtigen Abläufe gibt es ganz andere Kausalitätsverantwortlichkeiten: Von welcher Volksstimmung muß jemand getragen sein, wenn er Nürnberger Gesetze beschließen oder durchsetzen kann? Vor welchem Hintergrund muß Politik ablaufen, wenn sie auf keinen nennenswerten Widerstand stößt, wenn sie Menschen zur Zwangsarbeit rekrutiert und in Lager verschickt, und auf deren Meldezetteln "abgemeldet nach Theresienstadt" steht? – Das setzt eine gewisse kollektive Bereitschaft zum Nichtwiderstand voraus. Das heißt nicht, daß die Leute applaudieren. Das heißt auch, daß viele, die gerne Widerstand geleistet hätten, vielleicht nur zu ohnmächtig waren, ihn wirklich auch zur Geltung zu bringen. Das heißt das alles, das ist dann sehr diffizil im Einzelfall zu betrachten. Aber insgesamt kann sich keine staatliche Autorität über eine längere Periode halten, wenn sie nicht in Wirklichkeit doch von ihrer Bevölkerung getragen ist.

Ob das ein demokratischer Staat ist, in dem sich dieses Verhalten in Wahlen sehr deutlich manifestiert – auch nicht immer so deutlich, wie man es als Oppositionspolitiker vielleicht gerne hätte; ich meine jetzt den Widerspruch dabei –, oder ob das ein autoritäres Regime ist, dem applaudiert wird, dem Spalier gestanden wird, dem mit Fahnen zugewunken wird, in einem Land, in dem Menschen an Abstimmungen teilnehmen, von denen sie wissen, daß sie ***nicht*** frei sind, durch ihre Teilnahme aber gleichzeitig erwirken, daß man nachher ein Ergebnis von 99,9 Prozent verlautbaren kann, ist nicht die Frage. Die Menschen hätten vielleicht nicht hingehen müssen; das ist auch ein Ansatz.

Das alles sind Elemente, die mit zu bedenken sind; nicht in einem Prozeß in irgendeiner Schadenersatzfrage vor den Gerichten – woher auch immer der Schadenersatzanspruch kommen mag –, sondern in einer gesamthaften Beurteilung, ob eben ein Opfer, das persönlich in jedem Fall genauso betroffen ist – das räume ich ein –, auch in einem anderen Kontext zum Opfer wurde. Daher ist es schlecht, solche Debatten zu vermischen. Aber ich bin völlig der Meinung, daß auch die andere Debatte zu führen ist. Selbstverständlich ist sie zu führen. Man kann ja nicht sagen, es spiele überhaupt keine Rolle, wenn irgendwelche Menschen irgendwo und irgendwann ermordet wurden. Nur stellt sich auch die Frage: Aus welcher Legitimation heraus und in welcher Betroffenheit, nämlich heutiger Betroffenheit, führt man welche Debatte?

Wir haben uns als Republik Österreich und als österreichischer Nationalrat in diesen Themenstellungen in erster Linie um die Fragen zu kümmern, die auch territorial oder personell mit Österreich – auch als es noch Ostmark hieß – verbunden sind. Wir haben hier ohnedies etwas zu leisten, was schwierig ist, denn staatsrechtliche Anknüpfungen gibt es wenige. Die Moskauer Deklaration ist uns sicher eine Hilfe, wenn es um die staatsrechtlichen Anknüpfungen geht. Aber ich brauche nicht in die verfassungsrechtlichen und völkerrechtlichen Aspekte hinüberzugleiten, sondern bleibe jetzt bewußt im politischen Raum stehen. Das Bewußtsein in dieser Richtung bezieht sich aber durchaus sehr stark auf Österreich, die Republik Österreich, das Territorium der Republik Österreich. Da mag es spitzfindige Abgrenzungsfragen geben, wenn sich zwischen den Jahren 1938 und 1945 vielleicht die territorialen Außengrenzen der Republik Österreich – damals Ostmark – anders darstellen: Untersteiermark und so weiter. Darüber kann man gerne in Seminaren diskutieren, das ist aber nicht die politische Frage.

Die politische Frage ist folgende: Anerkennen wir in diesem Punkt eine materielle Verantwortungsnachfolge? – Diese haben wir für unser Territorium auszuüben, und das ist durchaus in diesem Sinne. Um diese Fragen geht es im Zusammenhang mit dem Thema, das wir heute hier diskutieren. In jenem Moment, in dem man andere – auch wichtige – Fragen hineinbringt, macht man einen Fehler. Und mir fällt auf, daß dieser Fehler deswegen so schmerzlich ist, weil die anderen Themen darunter leiden. Sie werden nämlich dadurch diskreditiert und es muß zu bedingten Abwehrreflexen kommen – siehe Zwischenruf des Kollegen Nowotny. Ich möchte dieser Passage in meinen Überlegungen nicht zuviel Raum widmen, aber es war mir ganz, ganz wichtig, das hier gesagt zu haben, weil ich es leid bin – ich bin es wirklich leid! –, immer wieder diese ***Nicht***aufrechnungsdebatte führen zu müssen.

Hat sich das denn noch nicht herumgesprochen? – Ich kann es nicht verstehen, daß man diese Debatte in dieser Form nicht führen darf, wenn man tatsächlich jene Anliegen hat, die man damit zu vertreten meint. Ich bitte Sie, noch einmal darüber nachzudenken. Es hilft den sogenannten Heimatvertriebenen nichts, wenn Sie sie – wie auch heute in dieser Debatte – letztlich zu Fußnoten einer Diskussion machen, anstatt sie in den Mittelpunkt einer anderen Diskussion zu stellen. Sie machen sie zu Fußnoten einer Debatte, anstatt sie in den Mittelpunkt einer anderen Debatte zu stellen! *(Beifall beim Liberalen Forum.)* Und das haben diese Heimatvertriebenen nicht verdient. Das sage ich jetzt mit der Legitimation des Betroffenen: Ich will das für mich nicht! Ich will diese Anwaltschaft für mich nicht!

Ich habe inzwischen mit vielen Leuten in diesem Bereich Gespräche geführt. Ich habe zum Beispiel im Zusammenhang mit dem sogenannten Heimatrecht über die Vertriebenen gesagt: Wenn diese Länder, um die es dabei geht, Mitglieder der Europäischen Union sein werden – und ich hoffe bald, zum Beispiel die Tschechische Republik –, dann wird es die Niederlassungsfreiheit geben und das Heimatrecht wird eine historische Figur geworden sein. Warum diskutieren wir nicht über die Zukunft, um gemeinsam in der Zukunft Versöhnung zu finden, anstatt in der Vergangenheit Aufrechnung stattfinden zu lassen?

Das, was wir heute hier beschließen, sind Versöhnungsgesten an die übriggebliebenen Opfer. Das ist ja keine Wiedergutmachung im eigentlichen Sinn des Wortes. Durch die Rückgabe von Kunstgegenständen gelingt sie vielleicht sogar da und dort zur Gänze. Das ist richtig. Aber im Prinzip, vor dem Hintergrund des Gesamtproblemes, sind das Versöhnungshandlungen, die in die Zukunft gerichtet sind. Daher ist das auch ein Ermächtigungsgesetz und kein Rechtsanspruchsgesetz. Das alles ist weise und erwogen. Deswegen freue ich mich auch, daß es in dieser Materie zu einer Fünf-Parteien-Einigung gekommen ist. Daß wir gerne noch mehr hätten, haben Frau Kollegin Stoisits und ich schon zum Ausdruck gebracht, aber das ändert nichts daran, daß wir mit dem Kern, der hier beschlossen wird, wirklich sehr zufrieden und auch froh darüber sind.

Genau in diesem Sinne und zum Abschluß meiner Ausführungen darf ich noch einen Entschließungsantrag vortragen, der aus unserer Sicht deswegen sinnvoll und notwendig, allerdings nur im Zusammenhang mit unseren Abänderungsanträgen zu verstehen ist, weil, wenn auch Zwangsarbeiter in den Personenkreis der Anspruchsberechtigten im Sinne des Nationalfondsgesetzes aufgenommen werden, deren Ansprüche nicht aus den schon vorhandenen Mitteln bezahlt werden können, sondern nur dann, wenn zusätzliche Mittel für diesen Zweck bereitgestellt werden. Ich weiß, daß das noch eine lange Debatte werden wird. Das ist mir bewußt, und daher verlese ich folgenden Antrag:

Entschließungsantrag

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der Abgeordneten Mag. Terezija Stoisits, Dr. Volker Kier und Genossen betreffend die Absicherung der finanziellen Dotation des Nationalfonds der Republik Österreich im Hinblick auf die ausstehende Entschädigung von Zwangsarbeitern in der NS-Zeit

Der Nationalrat wolle beschließen:

"Die Bundesregierung wird aufgefordert, in der Regierungsvorlage für das nächste Bundesfinanzgesetz sicherzustellen, daß Maßnahmen zur Entschädigung von Zwangsarbeitern gemäß § 2 Abs. 1a Nationalfondsgesetz durch zusätzliche Mittel bedeckt werden, sodaß es zu keiner Schmälerung der Entschädigung von Verfolgten gemäß § 2 Abs. 1 kommt."

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Ich habe diese Entschließung damit also pflichtgemäß und wie es der Geschäftsordnung entspricht verlesen. Sie soll aber nicht der Schlußsatz meines Redebeitrages sein.

Ich möchte noch einmal sagen: Die andere Debatte wird auch zu führen sein. Meine wirkliche Bitte ist: Die Trennung von Themen in einem wirklich weitherzigen und vernünftigen historischen Verständnis wird der Versöhnung und auch den Anliegen der Opfer eher gerecht werden als eine Vermischung der Themen. Nicht jede Mischung ist eine gute. – Danke schön. *(Beifall beim Liberalen Forum und bei den Grünen.)*

12.27

Präsident Dr. Heinrich Neisser: Herr Abgeordneter Dr. Kier hat einen Abänderungsantrag vorgetragen und jetzt einen Entschließungsantrag verlesen. Die beiden Anträge sind ausreichend unterstützt, überreicht worden und stehen mit in Verhandlung.

Zu Wort gelangt Herr Abgeordneter Morak. 5 Minuten Redezeit haben Sie begehrt. – Bitte.

12.28

Abgeordneter Franz Morak (ÖVP): Sehr geehrter Herr Präsident! Frau Bundesministerin! Meine Damen und Herren! Es ist heute vieles gesagt worden, viel Richtiges. Ich möchte auf ein paar Aspekte eingehen, die mir wichtig erscheinen.

Das eine ist folgendes: Es gibt natürlich auch in Österreich noch immer Leute, die fragen – das ist heute auch schon kurz angeklungen; die einen sagen es offen, die anderen sachlich, aber hinter vorgehaltener Hand, weil es nicht der "political correctness" entspricht –: Brauchen wir dieses Gesetz? – All denjenigen möchte ich zurufen: Ich lade euch dazu ein, einmal die Briefe zu lesen, die vom Bundesdenkmalamt, von den Bundesmuseen nach dem Krieg in dieser Sache verfaßt wurden. In diesen Akten steht einiges, bei dem einem speiübel wird, wenn man sieht, wie mit Menschen umgegangen wurde!

Daß im Zuge des nationalsozialistischen, organisierten Massenmordes jüdisches Eigentum geraubt und Menschen umgebracht wurden, ist nicht neu. Doch die Akten über die Rückstellung jüdischen Eigentums, mit deren Folgen wir uns heute befassen, sind nicht nur Zeugnisse einer gigantischen NS-Raubaktion, sondern auch Zeugen des gelegentlich bis zum Zynismus gehenden bürokratischen Spiels ***unserer*** Republik mit den heimgekehrten Opfern.

Wer diese Dokumente studiert, ist empört und erschüttert über die Art und Weise, wie die Bürokratie unseres Landes quasi von oben herab mit diesen Opfern umgegangen ist, die keine andere Schuld auf sich geladen hatten, als daß ihnen das Vermögen weggenommen wurde – im günstigsten Fall –, und als Überlebende den verstehbaren, den nachvollziehbaren Wunsch hatten, das Land, in dem ihnen so viel angetan wurde, zu verlassen. Das war ein schikanöses Spiel rund um die Ausfuhrgenehmigung geraubter Kunstwerke beziehungsweise um den "Tausch" – unter Gänsefüßchen – solcher Genehmigungen gegen Schenkung an die Republik. Es war in Wahrkeit eine Kombination aus Gesetzesbruch und sittenwidrigem Geschäft, einer Nötigung durch die Republik.

Im Rückstellungsverfahren artikulierte sich den Opfern gegenüber ein hartes, selbstgerechtes: "Mir san mir!" Und: "Mir ham nix tan!" Über allem schwebt dieser heute schon öfter zitierte Satz von Oskar Helmer "Ich bin dafür, die Sache in die Länge zu ziehen." – Diese Worte haben das moralische Klima der Zweiten Republik bis zum heutigen

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Tag vergiftet.

Ich möchte sagen, daß der Autor Ralph Giordano von einer "zweiten Schuld" gesprochen hat, nämlich jener, daß man nicht auf Auschwitz, auf die Tatsache der Hinrichtung von Juden reagiert hat und daß man das quasi als "zweite Schuld" mit in die Republik geschleppt hat.

Mit dem heute zu beschließenden Gesetz möchte ich die Hoffnung verbinden, daß wir im Angesicht dieses Satzes von Oskar Helmer sagen können: Wir sind am Ende dieser Länge angekommen. – Ich möchte noch hinzufügen, daß es das Verdienst – und das sage ich jetzt ganz bewußt – einer ÖVP-Ministerin war, daß sie 15 Jahre nach Kreisky und vier Jahre nach Scholten dieses Gesetz, das wir heute beschließen, erarbeitet und vorgelegt hat.

Ich möchte damit diese Sache zwar nicht ruhen lassen, aber ich möchte nicht mehr darüber reden. – Aber ich möchte doch noch einiges sagen, und zwar zu den gestrigen Vorfällen:

Kollege Haigermoser hat hier folgendes gesagt – ich zitiere –: "In der Parteiakademie der Österreichischen Volkspartei, das ist jenes Springer Schlößl, das die ÖVP einem jüdischen Vorbesitzer abgestohlen hat ..."

Präsident Dr. Heinz Fischer: "Herr Abgeordneter, bitte, ich ..." – Abgeordneter Dr. Haider: "Das stimmt ja!" – Zitatende.

Ich möchte noch einmal zum Mitschreiben wiederholen: Das Springer Schlößl ist nach 1938 arisiert worden, im Jahre 1947 an den Besitzer, an die Besitzerin rückgestellt worden und im Jahre 1953 zu einem marktgerechten Preis an den "Verein der Wiener Volksheime" verkauft worden. Wenn Dr. Haider und Herr Haigermoser sagen, das wäre erstohlen und gestohlen worden, dann ist das, bitte, eine politische Verleumdung der Sonderklasse, und zwar noch auf Kosten eines Gesetzes, zu dem wir uns angeblich alle hier im Nationalrat bekennen! *(Beifall bei ÖVP und SPÖ.)*

Jetzt sage ich Ihnen noch etwas: Bei der Vergangenheit Ihrer Partei sollten Sie sich hier nicht zum Sittenrichter aufspielen! *(Ruf bei den Freiheitlichen: Das ist ungeheuerlich! Diese Unterstellungen! Ordnungsruf!)*

Und noch einmal: Eine Partei, die einen Parteiführer hat, der im Bärental wohnt, sollte nicht mit Springer Schlößln um sich werfen. – Danke schön. *(Beifall bei ÖVP und SPÖ sowie bei den Grünen.)*

12.34

Präsident Dr. Heinrich Neisser: Zu Wort gelangt Herr Abgeordneter Scheibner. 5 Minuten freiwillige Redezeitbeschränkung. – Bitte. *(Abg. Dr. **Krüger** – in Richtung ÖVP –: Das habt ihr nicht entgegnet, was im "Format" gestanden ist! ... die zerstörten Anwesen ...!)*

12.34

Abgeordneter Herbert Scheibner (Freiheitliche): Herr Präsident! Meine Damen und Herren! Der Debattenbeitrag des Kollegen Morak hat ja gezeigt, daß er sich nicht ganz wohl in seiner Haut fühlt *(Beifall bei den Freiheitlichen)* – auch die ÖVP nicht, auch die SPÖ nicht, wenn nun eben Dinge zutage treten, die man bis jetzt verschwiegen hat. Ich erinnere etwa an die Sendung "Zur Sache", in der der Historiker Jagschitz ja von einigen anderen Beispielen, wer sich – nämlich nicht nur die damals vorhandenen politischen Parteien, sondern auch Interessenvertretungen und andere staatliche und halbstaatliche Institutionen, Kollege Morak – nach dem Krieg so alles unter den Nagel gerissen hat, berichtet hat. *(Beifall bei den Freiheitlichen.)*

Das sind doch die Dinge, die wir heute – 50 Jahre nach Kriegsende – einmal aufzeigen und bei denen wir uns überlegen sollten: Was ist damals wirklich mit diesem vorher arisierten Eigentum passiert, was ist wirklich den wahren Eigentümern vorenthalten worden, was ist mit diesen Gütern passiert und wer profitiert vielleicht noch bis heute von diesen Gütern? – Es wäre doch einmal interessant, auch das durch eine Historikerkommission untersuchen zu lassen.

Meine Damen und Herren! Es ist doch interessant, daß wir uns 50 Jahre nach Ende des Zweiten Weltkrieges, 50 Jahre, nachdem all diese Verbrechen – all diese unglaublichen Verbrechen! – passiert sind, heute hier im Parlament noch immer darüber unterhalten müssen, wie man zumindest finanziell – "Wiedergutmachung" ist

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wahrscheinlich wirklich das falsche Wort –, dieses Unrecht zumindest in materieller Hinsicht teilweise wiedergutmachen kann.

Da ist doch wirklich die Frage zu stellen: Was ist denn in den letzten 50 Jahren passiert? – Aber, meine Damen und Herren, dieses Gesetz zur Rückstellung der Kunst- und Kulturgüter beispielsweise ist ja kein Problem der unmittelbaren Nachkriegszeit, bei dem man sagen könnte, daß damals vielleicht irgendwelche Fehler gemacht worden seien. – Nein! Dieser Vergleich, diese Problematik, die wir heute zu bereinigen haben, stammt doch aus den fünfziger Jahren!

Eine österreichische Bundesregierung, demokratisch gewählt, eine große Koalition, bestehend aus SPÖ und ÖVP, hat damals mit den Eigentümern dieser Kunstschätze, die diese Kunstschätze in das Ausland transferieren wollten, einen Vergleich geschlossen. Um ihnen die Ausfuhr zu ermöglichen, hat man ihnen nahegelegt, auf einen Teil dieser Kunstschätze zu verzichten, den Rest könnten sie dann ausführen. Die demokratische Republik Österreich, eine in den fünfziger Jahren demokratisch gewählte Regierung in einem Österreich, das von den Besatzungsmächten kontrolliert war, hat diesen Vergleich geschlossen.

Jetzt könnte man fragen: Was ist an diesem Vergleich auszusetzen? Das war ja eine demokratische Regierung, es herrschten doch friedliche Umstände, man kann doch nicht sagen, daß das erzwungen worden sei. – Und trotzdem und zu Recht stehen wir heute hier und müssen das bereinigen. Da muß man doch hinterfragen: Wie demokratisch, wie gerecht war denn die Politik der damaligen Jahre? Wie demokratisch und gerecht war denn eine politische Führung in diesem Staat, die solche Vergleiche abgeschlossen hat? Und warum hat es denn weitere 40 Jahre gedauert, bis wir heute dazu kommen, uns über diese Dinge zu unterhalten?

Wenn man sich etwa Ministerratsprotokolle aus dieser Zeit, aus den vierziger und fünfziger Jahren, ansieht, dann merkt man doch, meine Damen und Herren – auch das sollten wir heute zur Sprache bringen –, daß man gerade in jener Zeit, in der es noch möglich gewesen wäre, eine große Anzahl an überlebenden Geschädigten, an überlebenden Opfern zumindest teilweise zu entschädigen, in der es noch möglich gewesen wäre, die wirklich Betroffenen entsprechend besserzustellen, diesen Geist weitgehend vermissen hat lassen.

In diesen Protokollen ist etwa zu lesen, daß ein Minister Übeleis am 12. November 1946 gesagt hat:

Na ja, die deutschen Reichsbahnen und die Reichspost haben schon eine Anzahl von Privatunternehmen übernommen und auch Autokonzessionen von Privaten erworben, aber das ist doch im öffentlichen Interesse. Das ist damals, im Jahr 1938, abgelöst worden. Da kann man nicht davon sprechen, daß das "arisiert" worden sei, und eine Rückgabe dieser Dinge würde dem öffentlichen Interesse widersprechen. – Zitatende.

Im Jahre 1952 – also in der demokratischen Republik Österreich des Jahres 1952 – hat ein SPÖ-Vizekanzler folgendes gesagt: Wenn wir durch den Staatsvertrag dazu nicht gezwungen sind, so können wir doch kein Präjudiz schaffen. – Es geht dabei um einen Fonds aus erblosem Vermögen, also genau um jene Sache, über die wir heute sprechen. – Aus der Behauptung heraus, es handle sich um herrenloses Gut, können wir uns doch nichts wegnehmen lassen – können wir uns doch nichts wegnehmen lassen!; das sagt der sozialdemokratische Vizekanzler des Jahres 1952! – Ich bin überzeugt – so sagt er weiter, und da wird es sogar noch schlimmer! –, daß in Österreich die Zahl der Juden, die umgekommen sind, verhältnismäßig gering ist. – Zitatende.

Meine Damen und Herren! Das war die Geisteshaltung einer österreichischen Regierung aus dem Jahre 1952! Die anderen Kommentare erspare ich mir jetzt, weil meine Redezeit fast schon abgelaufen ist.

Wenn man hier große Worte spricht, dann sollte man sich auch überlegen: Warum hat es 40, 50 Jahre gedauert, bis man solche Gesetze beschließt? Warum, Kollege Nowotny – das sei mir zum Schluß auch noch erlaubt zu fragen –, ist man heute, 50 Jahre nach Ende des Zweiten Weltkrieges, nicht dazu in der Lage, endlich einmal aufzuhören zu sagen, das sei Aufrechnung, wenn man verlangt, man solle ***alle*** Opfer soweit wie möglich entschädigen? *(Abg. Dr. **Nowotny:** Um das geht es doch nicht! Das wissen Sie doch ganz genau!)* Es gibt kein gutes oder schlechtes Unrecht, sondern es gibt nur Recht und Unrecht! *(Beifall bei den Freiheitlichen.)*

Überall dort, wo Unrecht passiert ist, muß man es aufzeigen und versuchen, den Geschädigten und den Opfern zu Gerechtigkeit zu verhelfen. Das ist keine Aufrechnung, sondern das ist eine Aufgabe für jeden demokratischen Politiker! *(Beifall bei den Freiheitlichen. – Abg. Dr. **Nowotny:** Um das geht es ja gar nicht!)*

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12.41

Präsident Dr. Heinrich Neisser: Zu Wort gelangt jetzt Herr Abgeordneter Smolle. – Bitte. *(Abg. Dr. **Ofner:** Wer war denn der Vizekanzler? Ich habe es vergessen! – Abg. **Schieder:** Wir sitzen **heute** im Parlament, nicht damals! Wir sitzen heute im Parlament, und heute müssen wir es ordentlich machen! – Abg. Dr. **Cap:** Ich buchstabiere: VDU! – Weitere Zwischenrufe.)*

Herr Abgeordneter, Sie können beginnen. – Bitte.

12.41

Abgeordneter Karl Smolle (Liberales Forum): Herr Präsident! Frau Ministerin! Hohes Haus! Visoki Dom! Gospod predsednik! Gospa ministrica! Ich glaube, es ist ganz in Ordnung, wenn sich dieser Dialog auch hier entspinnt, und zwar in der vollen Länge. Nehmen Sie das Buch von Alfred Elste zur Hand, auch Sie, meine Damen und Herren von den Sozialdemokraten! Ich bitte Sie, einmal zu prüfen und Gewissenserforschung zu betreiben in bezug auf Kontinuität beziehungsweise Veränderung nach dem Jahre 1945. Dieses Buch – ein Kärntner Historiker hat es geschrieben – weist nach, wie viele Nationalsozialisten vor allem nach dem Jahre 1948 gleich direkt in die Großparteien, und in Kärnten vor allem zur Sozialdemokratie gewandert sind. Das hat ein Historiker geschrieben. Ich kann Ihnen das Buch nur empfehlen.

Ich meine, es geht nicht an, die Frage damit anzugehen, einfach nach links, nach rechts, nach oben oder unten, vor allem aber nie auf sich selber zu zeigen. Die Republik insgesamt ist verantwortlich dafür, daß sie erst heute damit beginnt, die Versäumnisse von 50 Jahren wiedergutzumachen. Zu dieser Republik gehören alle diese Elemente, auch die politischen Elemente, wie sie hier im Hause sitzen. *(Zwischenruf bei den Freiheitlichen.)* – Auch ich, ja. Diese spaßhafte Bemerkung ist ein bißchen unpassend. Das ist ein zu ernstes Thema. *(Beifall beim Liberalen Forum und bei den Grünen.)*

Meine Damen und Herren der Freiheitlichen Partei! Ich möchte Sie in aller Redlichkeit auf einen Fehler aufmerksam machen, den Sie begehen. Sie können Unrecht nicht gegen Recht und Recht nicht gegen Unrecht aufrechnen. *(Abg. Dr. **Ofner:** Tut ja keiner! Das bist du selbst, der das sagt! Opfer ist Opfer! Wir tun nicht aufrechnen!)* Erlauben Sie mir, diesen Gedanken auszuführen: Viele Täter sind nach dem Jahre 1945 auch Opfer geworden, aber sie können sozusagen von ihrer Täterschaft nicht das in Abzug bringen, was sie in der Folge als Unbill erlebt haben. Das ist eine zu einfache Art der Moral! *(Abg. Dr. **Ofner:** Davon redet kein Mensch! Wir reden von den Opfern!)* Ich habe nicht so eine Art der Moral: Man begeht fünf Sünden, tut drei gute Werke, ergibt nur mehr zwei Sünden. – Herr Kollege Ofner! So einfach geht das nicht. *(Abg. Dr. **Ofner:** Kein Mensch hat das gesagt! Das würde dir so passen!)* Man muß sich zu seinen Fehlern bekennen und versuchen, diese zu vermeiden. *(Abg. Dr. **Ofner:** Wir reden von den Opfern!)*

Aber die Geschichte der Zweiten Republik wurde ja mit einer Legende begonnen, nämlich mit der Legende, daß Österreich Opfer war. Das war sozusagen die politische Prämisse, unter der gearbeitet wurde, um unsere Partner davon zu überzeugen, daß wir eigentlich ohnehin immer brav gewesen sind. Wir waren ja nie dabei. Irgendwelche Deutschen sind gekommen und haben irgend etwas gemacht. Die Österreicher waren immer brav und anständig. Wir tun sozusagen nie etwas Böses.

Schauen Sie sich die Zahlen und die Namen an, gerade auch im Zusammenhang mit den Verbrechen der Wehrmacht, im Zusammenhang mit dem KZ und im Zusammenhang mit den Aussiedlungen! Sie können daraus ersehen, daß auch Österreicher daran beteiligt waren. Die Listen für das KZ der Kärntner Slowenen, die Listen für die Aussiedlung der Kärntner Slowenen haben Kärntner, haben Österreicher erstellt. Das ist die Wahrheit, meine Damen und Herren, und zu dieser Wirklichkeit müssen wir uns bekennen! *(Beifall beim Liberalen Forum und bei den Grünen.)*

Noch heute stellt sich das österreichische Bundesheer in St. Jakob im Rosental vor einem Denkmal mit NS-Bezug auf, weil darauf geschrieben steht: Für ein deutsches Kärntnerland fanden den Heldentod ... – Wenn man dagegen nicht protestiert und dieses Haus nicht gemeinsam aufsteht und dem Herrn Minister sagt, daß das nicht geht, daß das das falsche Denkmal ist, dann verstehe ich Sie nicht, meine Damen und Herren!

Eines ist ganz klar: Wir haben diese Geschichte aufzuarbeiten. Wir haben diese Geschichte – und das ist eben

mein Spezifikum – auch angesichts der Schuld gegenüber den Volksgruppen in Österreich aufzuarbeiten *(Abg. Dr. **Ofner:** Alle!)*, aber auch die Schuld der Zweiten Republik, lieber Kollege Ofner! *(Abg. Dr. **Ofner:** Ah ja?)* Wir haben nach über 15 Jahre lang darum gekämpft, daß wir unsere kleinen Ortsbanken wieder errichten durften, die man zu inkorporieren versucht hat, die in den Jahren 1937/38 schöne Bilanzen gestellt haben, dann aber aufgelöst wurden. *(Abg. Dr. **Ofner:** Wie schaut es jenseits der Grenze aus? Wie schaut es mit der Volksgruppe dort aus?)*

Herr Kollege Ofner! Studieren Sie die Geschichte des Verhaltens der deutschen Volksgruppe und einiger Deutscher in Slowenien zur Zeit des NS-Regimes *(Abg. Dr. **Ofner:** Du bist nicht der Kreisky! Mir kannst du nicht sagen, ich soll Geschichte lernen!)*, und vor allem nach dem Einmarsch der Hitlertruppen in Slowenien. *(Anhaltende Zwischenrufe der Abg. Dr. **Petrovic.** – Abg. Dr. **Ofner:** Nur nicht aufrechnen!)* – Ich rechne nichts auf, sondern ich wehre mich dagegen, daß man sozusagen nachfolgende Opferschaft gegen die frühere Täterschaft aufrechnet und sagt: Eigentlich ist ja nichts gewesen. *(Abg. Dr. **Petrovic** – in Richtung der Freiheitlichen –: Schämen Sie sich! – Zwischenruf bei den Freiheitlichen.)* – Ich habe niemandem gegenüber eine Aggression.

Meine Damen und Herren! Die Summe betreffend die Liquidation des slowenischen Vermögens, die wir für das Jahr 1937 und dann in Folge ab dem Jahr 1938 erhoben haben, beläuft sich knapp auf unter einer Milliarde zum damaligen Wert. Das ist eine unvorstellbare Summe, welchen diese kleine Volksgruppe im Jahre 1938 als Beitrag an das Deutsche Reich leisten mußte.

Meine Damen und Herren! Ich möchte Ihnen auch ein Beispiel nennen, das Sie sehr betroffen machen wird. Es geht dabei um das Vermögen Ihres Partei- und Klubobmannes Haider. *(Zwischenruf des Abg. **Gaugg.**)* Folgendes stammt aus dem Ferlacher Grundbuch *(Abg. **Gaugg:** Konzentriere dich auf die Zukunft!):*

Dort wurde Vermögen arisiert. Um aber den Preis für den damaligen Übernehmer möglichst niedrig anzusetzen, hat man ihm zusätzliche politische Aufträge erteilt, Auflagen, die den Kaufpreis entsprechend sinken ließen. – Zitatende. *(Zwischenrufe bei den Freiheitlichen.)*

Weiters: In Punkt 3 des Bescheides des Generalreferenten für forstliche Sonderaufgaben in Wien heißt es: Der Käufer hat seinen ständigen Wohnsitz in Feistritz im Rosental und Umgebung zu nehmen, um dadurch zum Ausdruck zu bringen, daß er den Besitz nicht nur als Kapitalanlage erwirbt – und nun kommt es! –, sondern ihn auch selbst zu bewirtschaften beabsichtigt, um damit das Deutschtum im gemischtsprachigen Gebiet zu stärken. – Zitatende.

Solche Verträge könnte ich Ihnen reihenweise vorlegen. *(Abg. Dr. **Ofner:** Du darfst das nicht aufrechnen!)* All diese Damen und Herren sind auch weiterhin im Besitz dieses Vermögens geblieben, das sie günstig erwerben konnten. *(Abg. Dr. **Ofner:** Das wirfst du mir vor?)* Auch das ist ganz reale Geschichte, die bis in die heutige Zeit hineinreicht. *(Beifall beim Liberalen Forum und bei den Grünen.)*

Ich verstehe das nicht. Man kann doch solch ein Problem nicht so lauthals betreiben wie Sie, meine Damen und Herren! Gehen Sie doch lieber in sich, denken Sie darüber nach! Das muß einen doch betroffen machen, wenn man solche Papiere über den eigenen Parteiobmann lesen muß, meine Damen und Herren. Das muß Sie doch betroffen machen! *(Abg. Dr. **Ofner:** Ich bin nicht der Parteiobmann! – Abg. **Gaugg:** Volksverhetzung ist das, Smolle! – Präsident Dr. **Neisser** gibt das Glockenzeichen.)*

Ich bitte um einen Ordnungsruf. *(Abg. **Schieder** – in Richtung des Abg. Gaugg –: Ein "schönes" Wort zu dieser Debatte! Genieren Sie sich! Passend ausgesucht: Volksverhetzung! Genieren Sie sich! – Abg. Dr. **Fischer:** Das ist das "richtige" Vokabular!)*

Präsident Dr. Heinrich Neisser: Herr Abgeordneter Gaugg! Dieser Ausdruck ist wirklich unpassend. Ich bitte jetzt, wenigstens dafür Sorge zu tragen, daß der Schluß dieser Debatte noch in einem angemessenen Rahmen über die Bühne gehen kann.

Bitte, Herr Abgeordneter Smolle, setzen Sie fort!

Abgeordneter Karl Smolle *(fortsetzend):* Herr Präsident! Ich danke Ihnen dafür, daß Sie sich eingemengt haben. Ich halte es für unerhört, was hier geschehen ist, lasse mich aber nicht provozieren. *(Beifall beim Liberalen Forum, bei der SPÖ und den Grünen sowie bei Abgeordneten der ÖVP.)*

003275

Meine Damen und Herren! Wir stellen fest, daß die österreichischen Volksgruppen auch in der Zweiten Republik nicht jene Entschädigung erhalten haben, die sie vor allem aufgrund der in der Zeit des Nationalsozialismus erlittenen Schäden, aber auch aufgrund jenes Schadens, der ihnen in den Jahren 1945 bis 1955 und danach zugefügt wurde, bekommen hätten müssen. So haben sich zum Beispiel die slowenischen Genossenschaften darum bemüht, all jene Kreditinstitute, die vor dem Jahre 1937 bestanden haben, wiederzuerrichten. Ich könnte Ihnen ganz Pakete von Materialien vorlegen, die belegen, daß das von seiten des damaligen österreichischen Finanzministers abgelehnt wurde. *(Abg. Dr. **Ofner:** Wie hat er geheißen?)* – Das können Sie sich ohne weiteres mit einigen Damen und Herren auf der anderen Seite ausmachen, ich habe das schon am Anfang gesagt.

Die Roma, die vor allem großen persönlichen Schaden erlitten haben, warten heute noch auf eine Entschädigung, ebenso viele Angehörige der tschechischen Volksgruppe. Vor dem Krieg gab es in Wien eine blühende Landschaft von Bibliotheken und Archiven. Vieles davon wurde vernichtet, verbrannt, vieles konnte man nur mehr rudimentär retten. All das harrt noch einer Entschädigung. Diesbezüglich muß ich mit Bedauern feststellen, daß wir – nach mehr als 40 Jahren! – immer noch auf die Erfüllung des Artikels 7, des Versuchs eines Abschlusses dieser schrecklichen Epoche, warten.

Meine Damen und Herren! Nach wie vor warten die burgenländischen Kroaten auf die zweisprachigen Ortstafeln, nach wie vor ist die Sprache der Volksgruppen als Amts- und Gerichtssprache nicht überall durchgesetzt – ich erwähne das ohnehin fast bei jeder meiner Debattenbeiträge! Vor allem aber hat es noch keine finanzielle Entschädigung gegeben. Man hat auch zur Zeit der Besatzung mit Hilfe etwa der Kärntner Landesregierung die Angehörigen der Besatzungsmacht – bei uns waren das die Briten – bewußt vor allem in slowenischen Institutionen untergebracht, sodaß slowenische Institutionen und Häuser lange Zeit sozusagen doppelt besetzt waren, und zwar auf Empfehlung des damaligen – Sie haben recht – sozialistischen Landeshauptmannes, der gemeint hat, sie sollten am besten dorthin gehen. Das hatte zur Folge, daß diese Institutionen über 15 Jahre lang ihre Tätigkeit nicht entfalten konnten! Ich habe selbst noch Engländer in einem Haus erlebt, das später ein Studentenheim wurde.

Meine Damen und Herren von der Freiheitlichen Partei! Ich halte Ihren Antrag, in dem Sie von direkten und indirekten Opfern sprechen, für nicht in Ordnung. Man hat dabei fast das Gefühl, daß dahinter der Gedanke steht, daß es am besten ist, wenn wir uns die Schäden, die wir anderen verursacht haben, gleich wieder selber auszahlen, weil wir ja alle "irgendwie ein bißchen" geschädigt sind aus dieser Zeit. Das ist eine sehr schlampige Vorgangsweise! *(Abg. Dr. **Ofner:** Du polemisierst!)*

Wie Sie wissen, wurden über 300 slowenische Familien zur NS-Zeit ausgesiedelt. Viele sind ins KZ gekommen, jene, die zurückgekehrt sind, fanden überwiegend leere, ausgeraubte Höfe vor. Die Slowenen waren aber alle dazu bereit, die Südtiroler, Kanaltaler und sonstigen Volksdeutschen auf ihren Bauernhöfen aufzunehmen! Und ich möchte betonen, daß mir kein einziger Fall bekannt ist, bei dem es anders gewesen wäre! Sie gaben ihnen allen – und es gab viele, auch Familien mit Kindern! – weiterhin Obdach in ihrem eigenen Haus; eine großartige Leistung angesichts des Umstandes, daß sie selbst nichts hatten! *(Abg. Dr. **Ofner:** Und wie ist das Ganze weitergegangen? – Abg. **Gaugg:** Sagt Ihnen der Name König aus Globasnitz etwas?)*

Meine Damen und Herren! Ich kann hier nur auf einzelne Bereiche eingehen. Die Moskauer Deklaration war ein ganz wichtiger Meilenstein auf dem Weg unserer Republik zur Selbständigkeit! Erst vor kurzem haben wir die Ehre gehabt, ein einschlägiges Buch vorgestellt zu bekommen. Gerade dadurch konnten sich Außenminister Gruber und andere auf den Beitrag Österreichs zur eigenen Befreiung berufen. Und es gab nur wenige Gruppierungen, die sich damals klar als Widerstandkämpfer betätigt haben, darunter vor allem Kärntner Slowenen, burgenländische Kroaten und Wiener Tschechen! Daß sich viele Deutschsprachige, etwa in Kärnten, am Widerstand beteiligt haben, will ich aber ebenfalls anerkennen!

Wir müssen jedoch vor allem über jene Fehler diskutieren, für die wir unmittelbar verantwortlich sind: das sind die Fehler und die Unterlassungen der Zweiten Republik!

Meine Damen und Herren! In diesem Sinne werden sich die österreichischen Volksgruppen bemühen, die Schäden der Jahre 1938 bis 1945, aber auch jene aus der Zeit danach klar zu dokumentieren und vorzulegen. Ich werde mir erlauben, die Ergebnisse von dieser Stelle aus vorzutragen. – Danke. *(Beifall beim Liberalen Forum, bei den Grünen sowie bei Abgeordneten der SPÖ.)*

12.56

003276

Präsident Dr. Heinrich Neisser: Herr Abgeordneter Gaugg – er ist im Augenblick nicht im Saal –, ich erteile Ihnen für die Formulierung "das ist Volksverhetzung" einen ***Ordnungsruf.***

Meine Damen und Herren! Wir haben jetzt noch zwei Redner in dieser Debatte, und ich bitte Sie, dafür Sorge zu tragen, daß diese Diskussion in einer Atmosphäre beendet wird, die dem Thema gerecht wird.

Nächster Redner ist Herr Abgeordneter Dr. Graf. – Bitte.

12.57

Abgeordneter Dr. Martin Graf (Freiheitliche): Sehr geehrter Herr Präsident! Frau Minister! Hohes Haus! Die heutige Debatte hat uns aus meiner Sicht wieder einmal sehr deutlich vor Augen geführt, wie notwendig und wichtig es auch im Zusammenhang mit der von allen immer wieder beschworenen Aufarbeitung ist, daß wir eine in Österreich unabhängige, internationale, mit anerkannten Experten besetzte Historikerkommission einsetzen, damit eine erfolgreiche Aufarbeitung der Versäumnisse auch der Nachkriegszeit bewerkstelligt werden kann.

Aus diesem Grunde bringen wir folgenden Antrag ein:

Entschließungsantrag

der Abgeordneten Dr. Krüger und Kollegen betreffend restlose Aufklärung der Bereicherung von SPÖ und ÖVP zu Lasten der NS-Opfer

Der Nationalrat wolle beschließen:

Die Bundesregierung wird aufgefordert, unverzüglich die erforderlichen Veranlassungen zur Einsetzung einer wirklich von den österreichischen Parteien unabhängigen, mit internationalen Experten besetzten Historikerkommission zur Aufarbeitung der im Zusammenhang mit dem Schicksal und dem Vermögen der NS-Opfer festzustellenden Versäumnisse der Nachkriegszeit und insbesondere der Rolle der österreichischen Bundesregierung und der damaligen Koalitionsparteien zu treffen.

Dabei ist es unverzichtbar, daß die Funktion des Vorsitzenden der Kommission international ausgeschrieben wird und alle Mitglieder der Kommission im Einvernehmen mit den Organisationen der NS-Opfer und deren Nachkommen bestellt werden.

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Aufgrund der Kürze meiner Redezeit möchte ich es dabei belassen, die Diskussion darüber wurde ohnehin bereits geführt. Ich möchte jedoch insbesondere zu zwei Debattenbeiträgen, nämlich jene des Kollegen Smolle und des Kollegen Kier, Stellung nehmen und von dieser Stelle aus noch einmal klar und dezidiert folgendes festhalten:

Herr Kollege Smolle! Wir reden ***alle*** von Aufarbeitung, nur Sie reden immer dann, wenn es Ihnen politisch in den Kram paßt, davon, daß die Aufarbeitung, die der andere genauso fordert wie Sie, Aufrechnung bedeutet. *(Beifall bei den Freiheitlichen.)*

Das ist unrichtig: Aufarbeitung ***aller*** Schicksale, ***aller*** Opfer, ***aller*** Vermögensfragen ist angesagt, und nicht der Vorwurf der Aufrechnung, der in jeder Diskussion mehr oder weniger als Totschlagskeule verwendet wird. *(Abg. Dr.* ***Nowotny:*** *"Totschlagskeule" ist kein schönes Wort in diesem Zusammenhang! – Abg. Dr.* ***Mertel:*** *Das ist eben die Sprache der Freiheitlichen!)* – Es ist eben so! Sie wollen damit die Debatte abwürgen, aber es ist leider Gottes so! *(Abg. Dr.* ***Nowotny:*** *Ihre Worte verraten Sie!)*

Kollege Kier hat heute von diesem Rednerpult aus gesagt, daß diese Debatte auch im Zusammenhang mit den Sudetendeutschen geführt werden muß, nur nicht hier! – Ich habe in den letzten fünf Jahren in jeder diesbezüglichen Debatte in diesem Hause gesehen und gehört, wie immer wieder mit dem gleichen Argument versucht wurde, die Frage der Sudetendeutschen und der an ihnen verübten Greueltaten von diesem Hohen Haus fernzuhalten. *(Beifall bei den Freiheitlichen.)*

003277

Ein einziges Mal ist es gelungen, eine echte Debatte über diese Frage zu beginnen, und zwar ab dem Sommer dieses Jahres bis in den Oktober hinein. Das hat letztendlich auch medial seinen Niederschlag gefunden, auch in den Medien wurde über dieses Thema ausreichend und wirklich gut diskutiert, die Leserbriefe dazu zeigen das. – Man kann aber nun seit geraumer Zeit nichts mehr über diese Frage in den Medien lesen, und es wird hier schon wieder versucht, diese Debatte zu beenden. Das ging – aus meiner Sicht, die ich Ihnen aber nicht vorenthalten möchte – Hand in Hand mit einem bestimmten Ereignis, nämlich der Vernaderung und Verleumdung des Altbürgermeisters Zilk! Mit diesem Thema war die Debatte über die Sudetendeutschen tatsächlich beendet.

Nachdem am 9. Oktober auf Seite 2 der "Kronen Zeitung" ein halbseitiger, vollkommen richtiger Artikel zu den Benes̆-Dekreten erschienen war und auch alle andere Medien begannen, dieses Thema erstmalig in der Nachkriegsgeschichte öffentlich aufzuarbeiten, hat meiner persönlichen Überzeugung nach der in Tschechien immer noch vorhandene Geheimdienst seine Funktion erfüllt, indem er diese öffentliche Debatte – wie man in Österreich so schön sagt – "abgestochen" hat. *(Präsident Dr. **Brauneder** übernimmt den Vorsitz.)*

Man hat damit noch etwas anderes erreicht: Durch diese Geschichte wurde auch jemand, der sich immer wieder für die Belange der Sudetendeutschen in Tschechien eingesetzt hat, nämlich Präsident Havel, getroffen. Man hat also den Ombudsmann der "Kronen Zeitung" instrumentalisiert, um diese Debatte zu verhindern. Das ist der eigentliche Skandal in dieser Geschichte, aber einen Aufschrei darüber habe ich hier noch nie gehört, auch heute nicht. Meiner Ansicht nach wäre aber dieses Ereignis in die Aufarbeitung mit einzubeziehen. *(Beifall bei den Freiheitlichen.)*

Ich wiederhole noch einmal klar und deutlich: Bei der Frage nach den Opfern darf es in Österreich keinen Ruf nach "Schluß der Debatte!" geben – egal, wer diese Opfer sind und woher sie kommen. Das darf nicht passieren, sonst leistet man damit, wie ich schon oft gesagt habe, auch in anderen Fällen einen Beitrag zu weiteren ethnischen Säuberungen in Europa, aber auch auf der ganzen Welt. *(Beifall bei den Freiheitlichen.)*

Und es ist kontraproduktiv, wenn, sobald einmal eine ehrliche Aufarbeitung begonnen wird, von der linken Seite immer wieder behauptet wird, das sei eine Aufrechnung. Damit "sticht" man dieses Thema "ab". Uns geht es darum, ***alle*** Opfer in ihrem Schicksal gleichzubehandeln und ihnen ihre gerechte Entschädigung, aber auch ihre gerechte moralische Wiedergutmachung zuteil werden zu lassen. *(Zwischenruf des Abg. Dr. **Nowotny.**)* – Das lassen wir uns auch von Ihnen, Herr Nowotny, nicht wegdiskutieren. Wir werden uns immer dafür einsetzen! *(Beifall bei den Freiheitlichen.)*

Auch an Ihre Adresse sei gesagt: Wir Freiheitlichen in diesem Hause fühlen uns auch permanent dafür verantwortlich und dazu verpflichtet, uns auch für jene Kommunisten und Sozialdemokraten einzusetzen, die bis zum Jahre 1945 in Theresienstadt eingesessen sind und dort beinahe zu Tode gekommen sind, und auch nach dem Jahre 1945 wieder in Theresienstadt gesessen sind, nur weil sie Sudetendeutsche waren. Auch für diese Leute setzen wir uns ein, das ist eine moralische Verpflichtung! *(Beifall bei den Freiheitlichen. – Abg. Dr. **Nowotny:** Natürlich! Das ist auch richtig!)*

Diese Leute sind ebenso in diese Debatte und in die Aufarbeitung miteinzubeziehen, das lassen wir uns von Ihnen nicht wegdiskutieren! *(Abg. Dr. **Nowotny:** Nur Sie dürfen nicht aufrechnen!)* Sie sind Opfer, nur weil sie Sudetendeutsche sind! *(Abg. Dr. **Nowotny:** Sie sind Opfer, aber nicht aufrechenbar!)*

Auch die Kinder, die Säuglinge, die nach 1945 zu Tode gekommen sind, sind Opfer. Denn unter den 241 000 Toten waren auch sehr viele Kinder, Säuglinge und Greise. Kinder haben keine politische Ausrichtung, Kinder können niemals Täter sein, wie Sie es uns vorwerfen wollen! Daher haben wir die Verpflichtung, in diesem Zusammenhang auch diesen Kindern letztlich Gerechtigkeit zuteil werden zu lassen. Dieses Thema gehört hier debattiert, genauso, wie wir es wollen. *(Abg. Dr. **Nowotny:** Darum geht es ja jetzt nicht!)*

Sicherlich geht es darum, Herr Kollege Nowotny! Sie haben immer wieder gesagt, daß das, was wir betreiben, Aufrechnung sei. *(Abg. Dr. **Nowotny:** Ja, das ist es auch!)* Wir setzen uns aber für die Rechte der Kinder der vertriebenen Sudetendeutschen ein, auch wenn Sie das nicht wollen! *(Beifall bei den Freiheitlichen.)* Und wir werden uns immer dafür einsetzen, weil wir uns von Ihnen nicht das Wort verbieten lassen! – Danke. *(Beifall bei den Freiheitlichen.)*

13.04

003278

Präsident MMag. Dr. Willi Brauneder: Der soeben verlesene Entschließungsantrag ist ordnungsgemäß eingebracht, entsprechend unterstützt und steht daher mit in Verhandlung.

Zu Wort gemeldet ist Frau Abgeordnete Dr. Petrovic. – Bitte, Frau Abgeordnete.

13.04

Abgeordnete MMag. Dr. Madeleine Petrovic (Grüne): Herr Präsident! Frau Bundesministerin! Hohes Haus! Seit der Antrag der Freiheitlichen betreffend die direkten und indirekten Opfer eingebracht worden ist, nimmt die Debatte eine traurige, bislang die österreichische Färbung an. Ich hoffe aber, Frau Bundesministerin und meine Damen und Herren von den Regierungsparteien, daß gleichzeitig mit dem heute vorliegenden Gesetz, das die Grünen gerne mitbeschließen, allerdings nur als einen ersten Schritt sehen, diese bisher in unseren Augen zu verwaschene österreichische Linie durch eine klarere und deutlichere ersetzt wird und dann Anträge dieser Art ganz eindeutig als das zu erkennen sein werden, was sie in Wirklichkeit sind, nämlich eine Fortsetzung der Verhöhnung der Opfer und eine Vergrößerung des Unrechts.

Man baut auf plausible Argumente wie etwa, daß jeder Krieg Opfer auf allen Seiten schaffe. – Ja! Das stimmt leider, das ist wahr. Niemals werden die Gesetze, die Normen, die Regeln der Humanität in Kriegen eingehalten. Und je länger Kriege dauern und je entsetzlicher die Brutalitäten sind, desto mehr grassiert das Unrecht auf allen Seiten. – Das stimmt!

Aber das Thema, mit dem sich diese Republik heute und in Zukunft zu beschäftigen hat, ist das Unrecht des Nationalsozialismus, das Unrecht, das ***diesen*** Opfern zugefügt wurde. *(Abg. Dr. **Ofner:** Direkte und indirekte!)* Und das ist eine historische Perfidie sondergleichen, irgendwelche anderen Dinge dazuzuzählen, denn das wird auch diesen anderen Opfern nicht gerecht. Es ist eine Verfälschung der Geschichte, es ist eine Relativierung des Unrechts und es ist, wie bereits gesagt, eine historische Perfidie! – Die Absicht, die dahintersteckt, ist klar, nämlich eine politische Botschaft an die Nachkommen jener Täter, die das Unrecht ***nicht*** eingesehen haben, die es nach wie vor vertuschen, verleugnen, verniedlichen und nicht wahrhaben wollen. Das ist die politische Botschaft an eine Gruppe, die es immer noch gibt in diesem Land – sie ist nicht allzu groß –, und es ist auch eine Botschaft an jene, die sich vielleicht nicht ausreichend, nicht tiefgreifend mit der Geschichte beschäftigt haben.

Es ist zulässig, über die Frage der Opfer auf den verschiedenen Seiten zu reden, aber ***nicht*** bei ***dieser*** Debatte, ***nicht*** bei ***diesem*** Bundesgesetz und auch ***nicht*** in ***dieser*** Form. *(Abg. Mag. **Stadler:** Wann dann, Frau Kollegin? Wann ist es denn Zeit?)* Dieser Fonds, in dem es um die Frage der gestohlenen, geraubten und abgepreßten Kulturgüter in den Bundesmuseen geht, darf mit nichts anderem verglichen, mit nichts anderem aufgerechnet und in keinen anderen Kontext gebracht werden.

Für das andere Unrecht gibt es eine einzige Art und Weise, sich damit auseinanderzusetzen, sie ist mühsam und langwierig, aber Österreich hat bereits ein Beispiel dafür vorzuweisen, wie dieser Weg gegangen werden kann, nämlich das Modell Südtirol. Ein anderes Modell für diese Fragen sehe ich nicht. *(Abg. Mag. **Stadler:** Mit Südtirol hat das nichts zu tun!)* – Ihre Zwischenrufe entlarven Sie immer wieder, aber ich werde mich nicht beirren lassen. Wir werden diese Debatte weiterführen. Es wird an dieser Bundesregierung, an den Regierungsparteien liegen, ob der Weg, der heute richtigerweise beschritten worden ist, nun auch zügig – zwar spät, aber doch – weitergegangen werden kann.

Daß es immer wieder möglich war, diesen historischen Schleier über das größte Verbrechen der Menschheitsgeschichte zu breiten, liegt natürlich auch an der Art und Weise, wie über 50 Jahre lang damit umgegangen worden ist. Da es immer anschaulicher ist, anhand von konkreten Beispielen über diese Geschehnisse zu reden, möchte ich Ihnen Beispiele dafür bringen, daß das Unrecht ***nicht*** nach dem Jahre 1945 aufgehört hat *(Abg. Dr. **Ofner:** Das ist richtig! Die Benes˘-Dekrete sind nach 1945!)*, und zwar jenes Unrecht, das die Opfer des Nationalsozialismus betrifft, und daß der bisherige Umgang der Zweiten Republik mit den Opfern solche "Nebelwerferei" und derartige Anträge beinahe nahegelegt hat.

Es wurde in diesem Hause heute ein Büchlein über den Fall Thorsch verteilt. Ich bitte Sie, die schriftlichen Ausführungen der Republik in Sachen dieser Opfer des Nationalsozialismus wirklich einmal zu lesen. So wird etwa im Zusammenhang mit der Rückgabe von in diesem Fall nicht Kulturgütern, sondern Bankenkonzessionen im Jahre 1971 festgestellt: Im Hinblick auf den Umfang des österreichischen Kreditapparates wurde bei der Verleihung

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von Bankenkonzessionen eine sehr restriktive Haltung eingenommen. Die Anzahl der zwangsliquidierten Bankunternehmen rechtfertigt es auch weiterhin, restriktiv zu bleiben.

Das bedeutet also, daß den Opfern von Verbrechen und ihren Nachkommen eine bankentechnische Antwort gegeben wurde. Das ist eine Antwort, die nicht angeht, sie ist in sich unrecht und darf nicht so stehen bleiben. Dieselbe Antwort wurde aber noch im heurigen Jahr, im Juni 1998, vom Sekretär des Finanzministers in einer historisch völlig unkritischen Art und Weise wiederholt. Dieser Sekretär des Finanzministers, Herr Holnsteiner, meint, daß Bankenkonzessionen, die man diesen Opfern – widerrechtlich! – weggenommen hat, nicht wieder vergeben werden können. Er argumentiert also im Jahre 1998 mit dem Schutz der öffentlichen Ordnung und wirtschaftlichen Interessen. Es ist eine neue Ordnung eingekehrt, und diese wird eben verteidigt.

Diese solchermaßen verteidigte Ordnung ermöglicht es, sowohl Opfer als auch Täter und die Nachkommen der Opfer und der Täter in einem einzigen Nebel gleich erscheinen zu lassen. Sie müssen sich diesem Problem stellen. – Frau Bundesministerin! Herr Staatssekretär! Ich ersuche Sie wirklich, im Rahmen der Bundesregierung diese Frage aufzuwerfen.

Ich bringe Ihnen ein weiteres Beispiel, das Sie beide auch in Ihrem derzeitigen Ressortbereich betrifft. Erst dieser Tage wurde das letzte Atelier von Gustav Klimt in Wien Unter St. Veit entdeckt. Es ist zwar anhand von Fotos schon lange in ausländischen Kulturzeitschriften als ***das*** originale Klimt-Atelier erkannt und entsprechend belegt worden; das wurde aber bei uns in Österreich bis zuletzt bestritten. Dennoch ist es eindeutig das Atelier Klimts, wo sich nach der Jahrhundertwende österreichische – jüdische wie nichtjüdische – Intellektuelle, Künstlerinnen und Künstler getroffen haben, wo Gustav Klimt zu seinem Schaffen inspiriert wurde und bis zu seinem Tode gearbeitet hat. Die Geschichte dieses Objektes und des ganzen Areals ist bis in unsere Zeit, bis heute, die Geschichte eines entsetzlichen Unrechts!

Die Liegenschaft gehörte der Familie Klein, sie waren Weinhändler im Westen von Wien. Zuerst wurde diesen Weinhändlern der Fuhrpark durch Beschlagnahme weggenommen – die Nazis haben ja immer versucht, ihrem Handeln den Schein der Rechtmäßigkeit zu unterlegen –, sodaß sie ihren Auslieferungsverpflichtungen nicht nachkommen konnten und in finanzielle Schwierigkeiten gerieten. Der ganze Betrieb wurde "kassiert", die Eigentümer wurden zur Ausreise gezwungen. Sie konnten nur ihr Leben retten!

Nach dem Krieg sollte Frau Ernestine Klein dieser Grundbesitz aufgrund der Rückstellungsgesetze zurückgegeben werden. Allein diese Liegenschaft ist heute viel mehr wert als der ganze Nationalfonds, nämlich mehr als 100 Millionen Schilling. Diese Liegenschaft wurde von der Republik Österreich ***nach*** dem Krieg, in den neunziger Jahren, nicht etwa mit dem Ausdruck des Bedauerns und jeder Entschuldigung, die man nur aussprechen kann, zurückgegeben. – Nein! Man hat Frau Ernestine Klein ihr zurückgegebenes Eigentum durch öffentliche Verfügungen unbrauchbar gemacht: Es wurden mitten durch dieses Areal Straßen projektiert, also eine öffentliche Widmung als Straßenfläche ausgesprochen. Diese Straßen wurden zwar nie gebaut, die Wiese blieb weiterhin unangetastet, aber man mußte der Dame "leider" sagen, daß die Fläche als private Liegenschaft nicht mehr nutzbar und auch nicht als solche zu verkaufen war. Denn wer kauft schon eine Liegenschaft, durch die lauter Straßen führen?

Frau Ernestine Klein ist nichts anderes übrig geblieben als diese wertvolle Liegenschaft um einen Bettel zu verkaufen. Sie hat sie letztlich der Stadt Wien verkauft, diese hat sie wiederum im Jahre 1993 an eine Grundstücksgesellschaft des Herrn Golabi, "Arier", verkauft. Und siehe da, Herrn Golabi ist in kürzester Zeit das gelungen, was den Beraubten, Bestohlenen, Vertriebenen und Geschädigten nicht gelungen ist: Die Stadt Wien, die MA 21 B, der Herr Senatsrat Vokaun, hat diese Flächenwidmung geändert. Die Straßen sind wieder weg, man konnte das Grundstück aufteilen und mit dem vollen Wert von Liegenschaften in Wien Ober St. Veit, also in bester Lage, verkaufen.

Es kamen noch einige Tricks dazu. So wurde der Bezirksvertretung zunächst gesagt, man wolle ein Altersheim errichten. Davon ist jetzt keine Rede mehr. Nachdem die Umwidmung rechtskräftig geworden ist, will man von einem Altersheim, das in gewisser Weise noch eine soziale Komponente in diese Unrechtsgeschichte gebracht hätte, nichts mehr wissen. Das sind beinharte Liegenschaftsspekulationen! Was den Geschädigten nicht gelungen ist, ist Herrn Golabi mit einem Fingerschnipser gelungen.

Eine Bürgerinitiative hat, wie gesagt, nur durch Zufall entdeckt, daß das ein Klimt-Atelier ist. Der Zufall bestand darin, daß permanent japanische Touristen kamen und nach der Gedenktafel für Gustav Klimt fragten. Die Nachbarn

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haben gesagt, sie wüßten es nicht. Sie wüßten gar nichts, es gebe keine Gedenkstätte. – Es gibt keine, weder für Gustav Klimt noch für Frau Klein, die man bestohlen und beraubt und auch ***nach*** dem Krieg um ihr Eigentum gebracht hat.

Diese historische Zufälligkeit wird meiner Ansicht nach zwar bei dieser Liegenschaft wohl dazu führen, daß man letztendlich doch vielleicht wenigstens des Unrechts gedenken kann, aber wenn es weiter auf Beamtenebene, welcher politischen Gruppierung diese Beamten auch immer nahestehen mögen, möglich ist, solche Unrechtsakte auf diese ganz subtile, bürokratische Art und Weise zu setzen, dann werden wir immer wieder mit Vertuschungs- und Verschleierungsanträgen nach dem Motto "Unrecht hat es ja überall und immer und allerorts gegeben!" konfrontiert werden. *(Beifall bei den Grünen und bei Abgeordneten der SPÖ.)*

Frau Bundesministerin! Herr Staatssekretär! Auch meine Damen und Herren von den Regierungsparteien! Ich bitte Sie: Besprechen Sie das Problem dieser bürokratischen Schikanen, dieser fortgesetzten "Die wollen wir da nicht!"-Politik in der Bundesregierung! Es wird meiner Meinung nach nicht in allen Fällen möglich sein, das individuelle Unrecht auch nur finanziell wiedergutzumachen. Die Opfer sind weit weg oder verstorben, ihre Erben oft nur schwer auffindbar, oder sie wollen nichts mehr von Österreich wissen.

Es bedarf neben diesen Ansätzen einer finanziellen, einer materiellen Wiedergutmachung und einer Rückgabe von Kunstgegenständen meiner Ansicht nach vor allem einer lückenlosen und ehrlichen Anerkenntnis dieses Unrechts, das über das Jahr 1945 hinaus angedauert hat. Ich glaube auch, daß es von den Spitzen der Ressorts, von der Leitung der Administrationen in Sachen Finanzen in den Ländern und in den Städten klarer Anordnungen bedarf, damit diese Art des fortgesetzten Unrechts nicht mehr stattfinden kann.

Ich bitte Sie, sich im konkreten Fall darum zu kümmern, daß vielleicht anhand dieses Beispiels in Wien Unter St. Veit ein Exempel für das Eingeständnis dieser Republik statuiert wird, das geschehene Unrecht anzuerkennen, verbunden mit dem Bekenntnis an die Opfer und ihre Nachkommen und an die ganze Welt, daß dieses Österreich dafür Sorge tragen wird, daß sich so etwas nie wieder ereignen darf. *(Beifall bei den Grünen, beim Liberalen Forum und bei Abgeordneten der SPÖ.)*

13.20

Präsident MMag. Dr. Willi Brauneder: Weiters zu Wort gemeldet ist Herr Abgeordneter Dr. Höchtl. – Bitte, Herr Abgeordneter.

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Abgeordneter Mag. Dr. Josef Höchtl (ÖVP): Herr Präsident! Frau Bundesminister! Herr Staatssekretär! Meine sehr verehrten Damen und Herren! Wir haben nun einige Stunden lang über ein Ereignis diskutiert – und darauf eine österreichische Antwort zu geben versucht –, das in der Geschichte einmalig war. Wir hoffen, daß diese Einmaligkeit für alle Zukunft gegeben sein wird. Es war ein einmaliges Verbrechen an einem Volk in einer Dimension, die wir alle gemeinsam verurteilen, und wir hoffen, daß alles getan wird, damit sich niemals mehr gegen irgendein Volk ein derartiges, ungeheures Schicksal ereignen wird. *(Beifall bei der ÖVP.)*

Wir haben – von verschiedenen Seiten betont – klar zum Ausdruck gebracht, daß Unrecht nicht aufgerechnet werden darf. Es hat im Laufe der Geschichte viele Völker gegeben, denen Unrecht widerfahren ist, nicht nur im kleinen, sondern sogar im großen Rahmen. Wir – alle fünf Parteien – haben uns aber heute dazu entschlossen, mit diesen drei Gesetzen der Einmaligkeit und der Größe des Verbrechens, das gegen das jüdische Volk begangen worden ist, Rechnung zu tragen.

Es ist aber in dieser Diskussion angeschnitten worden, daß auch andere Völker gelitten haben: unter dem Nationalsozialismus, ja unter den Wirkungen des Zweiten Weltkrieges. Ich möchte deshalb am Schluß dieser Debatte folgendes sagen: Es stimmt, daß einige Völker unter dem furchtbaren Morden und unter der Tragik des Zweiten Weltkrieges, unter dessen Wirkungen und unter dessen Brutalität gelitten haben – darunter auch Sudetendeutsche. Wir stellen ohne jeglichen Vorbehalt fest: 3,5 Millionen Sudetendeutsche gewaltsam zu vertreiben und 241 000 von ihnen brutal zu ermorden, ist ein Verbrechen, das auch nicht vergessen werden darf.

Unrecht kann und darf man nicht aufrechnen. Eines aber müssen wir in Zukunft gemeinsam tun: Wir benötigen in Europa eine gemeinsame Kraftanstrengung, um alle Schatten der Vergangenheit und vor allem alle Schatten und

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Verbrechen des Zweiten Weltkrieges aufzuklären. Denn das ist eine moralische Verpflichtung, der wir uns alle zu verschreiben haben. Ich denke, das ist ein Auftrag, dem wir uns für die Zukunft zu stellen haben. *(Beifall bei der ÖVP.)*

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Präsident MMag. Dr. Willi Brauneder: Zu diesem Punkt ist niemand mehr zu Wort gemeldet. Damit ist die Debatte geschlossen.

Der Herr Berichterstatter wünscht kein Schlußwort. *(Abg. Mag. **Stadler:** Jetzt ist kein Zwischenruf mehr notwendig!)*

Wir treten in das Abstimmungsverfahren ein. Ich bitte die Damen und Herren, jeweils den Platz einzunehmen, und die Mitarbeiter, die Zwischenräume zwischen den Sitzreihen zu verlassen.

Wir gelangen nun zur ***Abstimmung,*** die ich über jeden Ausschußantrag getrennt vornehme.

Zunächst kommen wir zur Abstimmung über den Entwurf betreffend ein Bundesgesetz über die Rückgabe von Kunstgegenständen aus den österreichischen Bundesmuseen und Sammlungen samt Titel und Eingang in 1464 der Beilagen.

Hiezu haben die Abgeordneten Dr. Krüger und Genossen einen Zusatz- beziehungsweise Abänderungsantrag eingebracht.

Weiters liegt ein Verlangen des Abgeordneten Dr. Krüger auf getrennte Abstimmung vor.

Ich werde zunächst über die von dem erwähnten Zusatz- beziehungsweise Abänderungsantrag und dem Verlangen auf getrennte Abstimmung betroffenen Teile und schließlich über die restlichen, noch nicht abgestimmten Teile des Gesetzentwurfes abstimmen lassen.

Die Abgeordneten Dr. Krüger und Genossen haben einen Zusatzantrag eingebracht, der die Einfügung eines neuen § 2a vorsieht.

Ich ersuche jene Damen und Herren, die dem beitreten wollen, um ein entsprechendes Zeichen. – Das ist die Minderheit. Dieser Antrag ist abgelehnt.

Die Abgeordneten Dr. Krüger und Genossen haben einen Abänderungsantrag betreffend die §§ 3 und 6 eingebracht.

Für den Fall Ihrer Zustimmung ersuche ich um ein entsprechendes Zeichen. – Dies ist die Minderheit. Der Antrag ist abgelehnt.

Ich lasse sogleich über diese Teile des Gesetzentwurfes in der Fassung des Ausschußberichtes abstimmen.

Ich bitte Sie im Falle Ihrer Zustimmung um ein entsprechendes Zeichen. – Dies ist die Mehrheit. Angenommen.

Die Abgeordneten Dr. Krüger und Genossen haben einen Abänderungsantrag betreffend § 4 eingebracht.

Ich ersuche die Mitglieder des Hohen Hauses im Falle ihrer Zustimmung um ein entsprechendes Zeichen. – Dies geschieht durch die Minderheit. Der Antrag ist abgelehnt.

Ich lasse sogleich über diesen Teil des Gesetzentwurfes in der Fassung des Ausschußberichtes abstimmen.

Für den Fall Ihrer Zustimmung bitte ich um ein entsprechendes Zeichen. – Dies erfolgt durch die Mehrheit. Der Antrag ist angenommen.

Schließlich komme ich zur Abstimmung über die restlichen, noch nicht abgestimmten Teile des Gesetzentwurfes samt Titel und Eingang in der Fassung des Ausschußberichtes.

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Ich bitte Sie im Falle Ihrer Zustimmung um ein entsprechendes Zeichen. – Dies ist einhellig angenommen.

Wir kommen sogleich zur dritten Lesung.

Ich bitte jene Damen und Herren, die dem Gesetzentwurf auch in dritter Lesung die Zustimmung erteilen, um ein entsprechendes Zeichen. – Dies ist ***einhellig*** so der Fall. Ich stelle ausdrücklich fest, daß der Gesetzentwurf in dritter Lesung ***angenommen*** worden ist.

Wir gelangen nun zur Abstimmung über den ***Entschließungsantrag*** der Abgeordneten Dr. Krüger und Genossen betreffend restlose Aufklärung der Bereicherung von SPÖ und ÖVP zu Lasten der NS-Opfer.

Ich bitte jene Damen und Herren, die diesem Antrag zustimmen, um ein entsprechendes Zeichen. – Dies ist die ***Minderheit.*** Der Antrag ist ***abgelehnt.*** *(Abg. Dr.* ***Haider*** *– in Richtung des aufgestandenen Abg. Smolle –: Bravo, Smolle! Aber die Sudetendeutsche Schmidt ist beim Abstimmen gar nicht da!)*

Nunmehr kommen wir zur Abstimmung über den Entwurf eines Bundesgesetzes betreffend Zuwendungen an den Internationalen Fonds für Opfer des Nationalsozialismus samt Titel und Eingang in 1429 der Beilagen.

Ich ersuche jene Damen und Herren, die dem Gesetzentwurf zustimmen, um ein entsprechendes Zeichen. – Dies ist einhellig der Fall. Der Antrag ist angenommen.

Wir kommen sogleich zur dritten Lesung.

Ich bitte Sie, so Sie dem Entwurf auch in dritter Lesung zustimmen, um ein entsprechendes Zeichen. – Dies geschieht ***stimmeneinhellig.*** Der Gesetzentwurf ist somit auch in dritter Lesung ***angenommen.***

Ich lasse jetzt über den Entwurf betreffend ein Bundesgesetz, mit dem das Bundesgesetz über den Nationalfonds der Republik Österreich für Opfer des Nationalsozialismus geändert wird, samt Titel und Eingang in 1469 der Beilagen abstimmen.

Hiezu haben die Abgeordneten Dr. Ofner und Genossen einen Zusatzantrag eingebracht.

Weiters haben die Abgeordneten Mag. Stoisits und Genossen Zusatzanträge eingebracht.

Ferner haben die Abgeordneten Dr. Schmidt und Genossen einen Zusatzantrag eingebracht.

Schließlich haben die Abgeordneten Dr. Kostelka, Dr. Khol, Dr. Krüger, Dr. Kier, Mag. Stoisits und Genossen einen Zusatzantrag eingebracht.

Ich werde daher zunächst über die erwähnten Zusatzanträge und schließlich über den Gesetzentwurf abstimmen lassen.

Die Abgeordneten Dr. Ofner und Genossen haben einen Zusatzantrag eingebracht, der eine Neuregelung der §§ 1 und 2 Abs. 1 und 3 zum Inhalt hat.

Ich ersuche jene Damen und Herren, die dem zustimmen, um ein entsprechendes Zeichen. – Dies ist die Minderheit. Dieser Antrag ist abgelehnt.

Die Abgeordneten Mag. Stoisits und Genossen haben einen Zusatzantrag eingebracht, der die Einfügung eines neuen Abs. 1a in § 2 vorsieht.

Für den Fall Ihrer Zustimmung bitte ich um ein entsprechendes Zeichen. – Dies erfolgt durch die Minderheit. Abgelehnt.

Die Abgeordneten Dr. Schmidt und Genossen haben einen Zusatzantrag eingebracht, der die Einfügung einer neuen Ziffer 1 betreffend § 2 Abs. 1 Z 2 lit. b vorsieht.

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Für den Fall Ihrer Zustimmung bitte ich um ein entsprechendes Zeichen. – Dies ist die Minderheit. Abgelehnt.

Die Abgeordneten Mag. Stoisits und Genossen haben einen Zusatzantrag eingebracht, der die Einfügung eines neuen Abs. 3 in § 2a sowie die entsprechende Änderung der Absatzbezeichnung vorsieht.

Für den Fall Ihrer Zustimmung bitte ich um ein entsprechendes Zeichen. – Dies ist die Minderheit. Der Antrag ist abgelehnt.

Die Abgeordneten Dr. Kostelka, Dr. Khol, Dr. Krüger, Dr. Kier, Mag. Stoisits und Genossen haben einen Zusatzantrag eingebracht, der ebenfalls die Einfügung eines neuen Abs. 3 in § 2a sowie die entsprechende Änderung der Absatzbezeichnungen vorsieht.

Für den Fall Ihrer Zustimmung bitte ich um ein entsprechendes Zeichen. – Dieses wird stimmeneinhellig erteilt. Der Antrag ist angenommen.

Schließlich komme ich zur Abstimmung über die restlichen, noch nicht abgestimmten Teile des Gesetzentwurfes samt Titel und Eingang in der Fassung des Ausschußberichtes.

Ich bitte jene Damen und Herren, die dem ihre Zustimmung erteilen, um ein entsprechendes Zeichen. – Dieses Zeichen erfolgt einhellig. Angenommen.

Wir kommen sogleich zur dritten Lesung.

Ich bitte jene Damen und Herren, die dem Gesetzentwurf auch in dritter Lesung zustimmen, um ein entsprechendes Zeichen. – Dies geschieht ***stimmeneinhellig.*** Der Gesetzentwurf ist in dritter Lesung ***angenommen.***

Wir gelangen weiters zur Abstimmung über den ***Entschließungsantrag*** der Abgeordneten Mag. Stoisits, Dr. Kier und Genossen betreffend die Absicherung der finanziellen Dotation des Nationalfonds der Republik Österreich im Hinblick auf die ausstehende Entschädigung von Zwangsarbeitern in der NS-Zeit.

Für den Fall Ihrer Zustimmung bitte ich um ein entsprechendes Zeichen. – Dies geschieht durch die ***Minderheit. Abgelehnt.***

4. Punkt

Bericht des Verfassungsausschusses über das Stenographische Protokoll der Parlamentarischen Enquete zum Thema "Einführung des Minderheitsvotums am Verfassungsgerichtshof" (III-151/1473 der Beilagen)

Präsident MMag. Dr. Willi Brauneder: Ich rufe nun den 4. Punkt der Tagesordnung auf.

Auf eine mündliche Berichterstattung wurde verzichtet.

Als Erstredner ist Herr Abgeordneter Dr. Krüger zu Wort gemeldet. Freiwillige Redezeitbeschränkung: 5 Minuten. – Bitte.

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Abgeordneter Dr. Michael Krüger (Freiheitliche): Frau Bundesministerin! *(in Richtung der die Regierungsbank verlassenden Bundesministerin Gehrer:)* Ich nehme an, Sie verlassen die Debatte. – Herr Staatssekretär! Herr Präsident! Hohes Haus! Die Frage der Einführung des Minderheitsvotums bei Erkenntnissen des Verfassungsgerichtshofes ist nicht ohne Diskussion über die Besetzungs- und Bestellungsvorgänge für Richter des Verfassungsgerichtshofes zu führen. Warum ist das so? – Der Haupteinwand gegen die Einführung der "dissenting opinion" ist jener der Nachvollziehbarkeit der Willensbildung und der möglichen Intervention für eine abweichende Willensbildung.

Wir kennen die Bestellungsvorgänge, deren Ablauf es im Ergebnis mit sich bringt, aus welchen 14 Mitgliedern sich der Verfassungsgerichtshof zusammensetzt. Die Richter des Verfassungsgerichtshofes werden einerseits von der

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Bundesregierung, andererseits vom Nationalrat sowie vom Bundesrat entsandt. Im Nationalrat und im Bundesrat haben naturgemäß diejenigen Parteien die Mehrheit, die auch die Regierung bilden. Das heißt, jegliche andere Einflußnahme auf die personelle Besetzung des Verfassungsgerichtshofes ist von vornherein ausgeschlossen. Dieser Bestellungsvorgang, der in der Bundesverfassung geregelt ist, hat dazu geführt, daß die Positionen der Richter des Verfassungsgerichtshofes ausschließlich politisch besetzt sind.

Sie wissen, daß der Präsident des Verfassungsgerichtshofes nicht stimmberechtigt ist. Nach der politischen Farbenlehre besteht dort die Situation, daß sich die Richter, die der ÖVP nahestehen oder ihr angehören, mit den Richtern, die der SPÖ nahestehen oder ihr angehören, die Waage halten, da der Präsident nicht stimmberechtigt ist.

Es handelt sich um einen sehr sensiblen Besetzungsvorgang. Die heutigen Koalitions- und Regierungsparteien sind darauf bedacht, dort ihre Einflußsphären zu sichern. Das ist überhaupt keine Frage. Daher sollte man nicht so tun, als ob der Verfassungsgerichtshof demokratisch – etwa nach dem Verhältnismäßigkeitsgrundsatz – besetzt würde. Statt dessen hat die große Koalition das Alleinbesetzungsrecht, und sie hat es seit dem Jahre 1945 immer gehabt. Der Verfassungsgerichtshof ist daher nicht nur seiner Aufgabe wegen auch ein politischer Gerichtshof, sondern auch wegen des Bestellungsvorgangs.

Das Hauptargument gegen die Einführung des Minderheitsvotums – des Votum separatum – besteht darin, daß Loyalitäten eingefordert werden. Das hat Professor Barfuß in seinem Redebeitrag in der Enquete meiner Ansicht nach sehr eindrucksvoll dargelegt, als er unter anderem sagte: In Österreich kennt jeder jeden.

Die Verfassungsrichter haben sich nach derzeitiger Gesetzeslage und Übung des Verfassungsgerichtshofes einem Hearing zu unterziehen. Meine Damen und Herren! Wer nun glaubt, daß die bessere Performance im Hearing, die Anzahl der wissenschaftlichen Publikationen oder – wenn ich an die Anwaltschaft denke – die Anzahl von erfolgreich beim Verfassungsgerichtshof eingebrachten Rechtsmitteln, daß also insgesamt die höhere fachliche Befähigung ausschlaggebend für die Entscheidung darüber ist, wer Mitglied des Verfassungsgerichtshofes wird – trotz des Hearings –, der ist allerdings naiv. Denn es ist überhaupt keine Frage, daß es Absprachen der beiden Regierungsparteien gibt und daß ganz dezidiert vereinbart beziehungsweise paktiert wird: Dieser Bewerber wird Mitglied des Verfassungsgerichtshofes. *(Abg. Mag. **Stadler:** Das hat man Barfuß auch kaltschnäuzig ins Gesicht gesagt, als er sich beworben hat!)*

Im Grunde ist es eine Frotzelei. Das gehört wirklich einmal öffentlich aufgezeigt, wenngleich ich mir dessen bewußt bin, daß das ein schwieriges Thema ist. Es ist eine Frotzelei! Diese Hearings ... *(Abg. Dr. **Kostelka:** Was hat das mit dissenting opinions zu tun?)* – Das versuche ich Ihnen ja zu erklären. *(Abg. Dr. **Kostelka:** Das erzählen Sie uns später!)* Aber offensichtlich können Sie diesen einfachen Argumenten nicht folgen. *(Abg. Mag. **Stadler:** Michael, überfordere ihn nicht!)* Sie können dem nicht folgen, wahrscheinlich sind Sie damit überfordert.

Es werden also die Loyalitäten eingefordert, wie Professor Barfuß es darlegte. Sie wollen natürlich nachvollziehen, wer welches Votum abgegeben hat. *(Abg. Dr. **Kostelka:** Das weiß eh jeder!)* Sie setzen sich für einen Kandidaten ein, schwören den Koalitionspartner darauf ein und fordern dann Loyalität in der Abstimmung. Das wollen Sie kontrollieren, um nichts anderes geht es Ihnen! *(Beifall bei den Freiheitlichen.)*

Meine sehr geehrten Damen und Herren! Es ist auch kein Zufall, daß diese Diskussion gerade jetzt so heftig geführt wird – alles selbstverständlich unter dem Deckmantel einer auf hohem Niveau stattfindenden Diskussion, einer Enquete unter internationaler Teilnahme. Das ist kein Zufall, sondern nichts anderes als der Versuch, damit den Verfassungsgerichtshof, der mitunter für Sie unliebsame Entscheidungen gefällt hat, zu disziplinieren. Um sonst gar nichts geht es Ihnen! *(Heiterkeit des Abg. **Schieder.**)* Alle Argumente in Hinblick auf Transparenz oder Nachvollziehbarkeit sind nur vordergründig. *(Abg. Dr. **Kostelka:** Wo ist die Disziplinierung? – Abg. Mag. **Stadler** – in Richtung des Abg. Dr. Kostelka –: 30 Millionen Schilling!)* Tatsächlich sind Ihnen die Verfassungsrichter zu selbständig.

Eines muß ich hinzufügen: In der Praxis hat sich der Verfassungsgerichtshof emanzipiert. Das ist überhaupt keine Frage. Daher gilt den Verfassungsrichtern durchaus meine Hochachtung dafür, daß sie trotz dieses bedenklichen Bestellungsvorganges die Einhaltung der Verfassung im Auge haben und objektiv prüfen, ob Gesetze verfassungskonform sind oder nicht. *(Abg. **Schieder:** Gestatten Sie einen Zwischenruf?)* – Von Ihnen immer. *(Abg. **Schieder:** Wenn ich wissen will, wer dagegen stimmt; wenn ich disziplinieren wollte, wie Sie unterstellen, dann wäre*

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es doch nur interessant, zu wissen, wer dagegen war! Das weiß man eh; doch nicht, warum er dagegen war!)

Das ist allerdings bedenklich. Das ist sehr entlarvend, Herr Kollege Schieder, was Sie soeben gesagt haben *(Abg. **Schieder:** Ich folge Ihren ...!):* "Man weiß ohnehin, wer dagegen war." – Herr Kollege Schieder, das sind geheime Beratungen! *(Abg. **Schieder:** Die Mehrheit ist nicht geheim!)*

Freilich, wenn Sie Ihre Richter dort so besetzen wollen, daß in den Besprechungen vielleicht Fraktionssitzungen stattfinden *(Abg. **Schieder:** Nein, nein, tun sie ja nicht!),* wenn Sie es so wie in der Regionalradiobehörde haben wollen, wo Herr Wittmann der Fraktionsführer der ÖVP ist *(Abg. **Schieder:** Warum soll ich nicht wissen, warum er dagegen war?),* wenn Sie es so haben wollen *(Abg. **Schieder:** Nein!),* daß Sie die Verfassungsrichter am Nasenring zu Entscheidungen, die Ihnen genehm sind, zwingen wollen, dann ist das überhaupt keine Frage! *(Beifall bei den Freiheitlichen. – Abg. **Schieder:** Die Frage ist, warum, und nicht, ob! – Abg. Mag. **Stadler** – in Richtung des Abg. Schieder –: Da hat er recht! – Abg. **Schieder:** Nein, da hat er nicht recht!)*

Beim Erkenntnis des Verfassungsgerichtshofes in Fragen der Familienbesteuerung gab es eine Diskussion *(Abg. **Schieder:** – in Richtung des Abg. Mag. Stadler –: Nein, die Frage ist doch, warum er anders ...! – Abg. Mag. **Stadler** – in Richtung des Abg. Schieder –: ... um ihn zu disziplinieren!),* da wurde sofort nach Verrätern in Ihren Reihen gesucht. *(Abg. **Schieder:** – in Richtung des Abg. Mag. Stadler –: Wie sollte ich disziplinieren? – Abg. Mag. **Stadler** – in Richtung des Abg. Schieder –: Bei dem Bestellungsmodus hat das ...!)* Das ist überhaupt keine Frage. *(Abg. Dr. **Kostelka:** Er ist ja schon bestellt!)*

Es ist – das sage ich Ihnen ganz offen – aus meiner Sicht bedenklich, daß Sie, obwohl der Abstimmungsvorgang geheim stattzufinden hat, in Kenntnis des Ergebnisses des Abstimmungsvorganges sind und offensichtlich genau wissen, wer der Verräter war. *(Abg. **Schieder:** Aber wenn Sie verlieren, interessiert Sie nicht nur die Mehrheit!)* Jetzt sagen Sie: Weil wir das durch ein paar Leute, die wir dort sitzen haben, schon wissen, brauchen wir das eh nicht, und es ist das Argument falsch, daß wir kontrollieren wollen, weil wir es ja sowieso wissen, da wir den einen oder anderen Parteigänger, der sich disziplinieren läßt, dort sitzen haben. *(Abg. **Schieder:** Sie sagen, wir verlieren! Dann wissen wir eh, wer die Minderheit war!)*

Ja, das ist das Unschöne an Ihren Gedanken! *(Abg. **Schieder:** Sehen Sie: unlogisch!)* Sie wollen es aber legalisieren, weil es ja sein könnte, daß sich die Mitglieder des Verfassungsgerichtshofes endgültig emanzipieren und daß es dann nicht mehr dazu kommen kann, Herr Kollege Schieder, daß bekannt wird, wer wie entschieden hat. *(Abg. **Schieder:** Das ist unlogisch!)* Darüber sind wir uns ja im klaren, Herr Kollege Kostelka: Sie als Jurist werden mir darin recht geben, daß es Mißbrauch der Amtsgewalt ist, wenn der Inhalt geheimer Beratungen ausgeplaudert wird.

Sie können doch nicht versuchen, einen Sachverhalt, der in die Nähe einer strafrechtlichen Prüfung kommt, dadurch zu legitimieren, daß Sie sagen: Wir muten ihnen nicht zu, daß sie uns das sagen müssen, daher führen wir die "dissenting opinion" ein. Dann wissen wir nämlich, wie entschieden wird. – So kann man doch nicht argumentieren, meine sehr geehrten Damen und Herren.

Ich komme zum Schluß und möchte auch noch den Präsidenten des Europäischen Gerichtshofes zitieren. Mir ist schon klar, diese Leute sind bis zum 70. Lebensjahr bestellt. *(Abg. Mag. **Stadler** – auf leere Sitzreihen bei SPÖ und ÖVP weisend –: Da sieht man ja, wie die SPÖ/ÖVP die "dissenting opinion" "interessiert"! Kein Mensch ist da! – Abg. **Schieder:** Dissenting Zuhörer!)* – Weil sie offenkundig ohnedies alle in Kenntnis darüber sind, wie diese Willensbildung zustandekommt.

Aber ich möchte zum Schluß kommen und den Präsidenten des Europäischen Gerichtshofes zitieren, der sagt, daß nicht geleugnet werden soll, daß in Ausnahmefällen der Druck der öffentlichen Meinung wegen der nationalen Bedeutung eines Verfahrens zu einer Bedrohung der Unabhängigkeit des betreffenden Richters führen könnte, wenn die Voten öffentlich wären.

Meine Damen und Herren! Es geht aber nicht nur um die öffentliche Meinung, sondern es geht auch um die Einflußnahmen. Und wenn Sie das alles als unglaubwürdig hinstellen, dann muß ich Ihnen sagen: Herr Professor Barfuß ist, wie ich meine, über jeden Verdacht erhaben! Er ist einer der angesehensten Juristen dieses Landes, und es stünde Ihnen gut an, wenn Sie sich diesem Thema mit entsprechender Seriosität zuwenden würden. *(Beifall bei den Freiheitlichen.)*

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13.41

Präsident MMag. Dr. Willi Brauneder: Im Hinblick auf den kleinen Kreis der Zuhörer ist das Präsidium ausnahmsweise großzügiger bei der Zulassung von Zwischenrufen, weil die Debatte fast schon Privatissimum-Charakter hat, es bedauert nur, selbst hiervon ausgeschlossen zu sein.

Zu Wort gelangt nun Herr Klubobmann Dr. Kostelka. 15 Minuten freiwillige Redezeitbeschränkung. – Bitte.

13.42

Abgeordneter Dr. Peter Kostelka (SPÖ): Meine Damen und Herren! Hohes Haus! Wir können uns ja, wie der Herr Präsident schon gesagt hat, diesen Themen heute wirklich in privatester Atmosphäre – es hören uns ja "nur" der ORF, die APA und sonst noch einige an dieser Sache interessierte Kollegen zu – widmen. Herr Präsident! Ich bitte aber, feststellen zu dürfen, daß meine Zwischenrufe vorhin nur dazu gedient haben, den Vorredner zum Thema zu bringen. Ohne sie hätte er ja kein einziges Mal zum Thema zurückgefunden. *(Zwischenruf des Abg. Mag.* ***Stadler.)***

In diesem Zusammenhang, Herr Kollege Krüger, möchte ich auch in aller Deutlichkeit sagen: Wer österreichische Zeitungen liest und den Zufall nicht so hoch veranschlagt, daß er annimmt, daß, wenn ein Mitglied des Verfassungsgerichtshofes im Vorfeld oder im Nachfeld einer Entscheidung eine wissenschaftliche Veröffentlichung macht, das etwas anderes als eine "dissenting opinion" ist, dem ist klar, daß es "dissenting opinions" in Österreich schon längst gibt. Meine Damen und Herren! Sie erscheinen namentlich gezeichnet in den österreichischen Zeitungen!

Daher ist dies in Wahrheit eine Diskussion, die dem Versuch eines Etikettenschwindels nahekommt. Wir wollen diesen Etikettenschwindel nicht, sondern wollen, daß diese "dissenting opinions" dort erscheinen, wo sie hingehören, nämlich beim Erkenntnis selbst. Und dafür gibt es sehr, sehr gute Gründe.

Wir gehen nicht mehr von der Illusion aus, daß der einheitliche Wille eines Organs entscheidend ist für das Ansehen, das es in der Öffentlichkeit genießt. Das ist meiner Meinung nach ein sehr wesentlicher Punkt, weil dies in meinen Augen selbstverständlich präkonstitutionell ist.

Mit der Öffentlichkeit, mit der Transparenz des Abstimmens und dem Bekennen seiner Meinung haben wir die Kammergerichtsbarkeit, die der Willkür ja nicht nur ausgeliefert war, sondern sie sogar als Instrument verwendet hat, überwunden. Daher war von vornherein eines klar: Wenn es einen Gesetzgeber, der sich aus frei gewählten Repräsentanten zusammensetzt, zu geben hat, dann hat er das öffentlich zu tun.

Es ist überhaupt keine Frage, daß natürlich auch das Stimmverhalten in der Regierung nicht geheim, sondern öffentlich ist. Und ich glaube, daß ähnlich wie in den Vereinigten Staaten vor 150 Jahren und in der Bundesrepublik Deutschland vor 30 Jahren auch in Österreich in diesem Zusammenhang der Schritt in die Öffentlichkeit und hin zur Transparenz gesetzt werden sollte! *(Beifall bei der SPÖ.)*

Meine Damen und Herren! Es ist eine Illusion, davon auszugehen, daß ein Gericht bestehend aus 14 Verfassungsgerichtshofmitgliedern nur eine einzige Meinung hat. Das widerspricht schon der menschlichen Erfahrung – und der Erfahrung mit Juristen erst recht. Bekanntlich haben drei Juristen drei Meinungen, manche sagen sogar fünf Meinungen. Warum soll das gerade im Verfassungsgerichtshof anders sein? – 14 Juristen – eine Meinung, das ist eine Illusion und widerspricht jeder menschlichen Erfahrung.

Daher gibt es im wesentlichen zwei Argumente, die gegen die "dissenting opinion" sprechen. Das eine Argument ist der Beratungskomfort des Verfassungsgerichtshofes. Ich gebe schon zu, daß eine "dissenting opinion" unter Umständen in der Administrierbarkeit und auch in der Schlußphase der Beratung ein paar Schwierigkeiten mit sich bringt. Das ist aber letztendlich eine Frage der Ausstattung dieses Gerichtshofes. Ich meine jedenfalls, daß die Kollegialität in diesem Organ – und das ist ein weiteres Argument, das immer wieder genannt worden ist – so stark ist, und ausländische Beispiele bestätigen meine Ansicht, daß eine "dissenting opinion" keine Entscheidungsunfähigkeit nach sich zöge – ganz im Gegenteil.

Die Präsidentin des deutschen Bundesverfassungsgerichtes hat uns ausdrücklich nachgewiesen, daß das in ihrem Land zu keinen Schwierigkeiten, sondern in der Schlußphase eher zu einer Beschleunigung des

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Entscheidungsprozesses geführt hat.

Daher noch einmal: Öffentlichkeit, Transparenz und demokratische Verantwortung auch der Justiz sind in einer Demokratie eine Selbstverständlichkeit, und ich fordere sie daher mit Nachdruck ein. Ich weiß, daß wir hier und heute keinen endgültigen Beitrag dazu leisten können. Das Haus ist noch nicht so weit. Ich formuliere es bewußt so: Es ist noch nicht so weit, und auch der Verfassungsgerichtshof ist noch nicht so weit. Aber, meine Damen und Herren, schauen Sie in die Verfassungen Europas und analysieren Sie sie! Sie werden feststellen: Der gesamte angelsächsische Raum und der skandinavische Raum kennen diese "dissenting opinion" als Institution. Und in den modernen, neuen Verfassungen und Verfassungsgerichtsbarkeiten, die hinzukommen, werden Sie feststellen: Bei zwei von dreien gibt es diese "dissenting opinions". Es gibt einen Zug in diese Richtung, und ich bin davon überzeugt, daß es daher auch in Österreich nur eine Frage der Zeit ist, bis wir dorthin kommen.

Es ist aber – ich habe das schon bei der Enquete gesagt und bin davon überzeugt – letztendlich auch eine Kulturfrage. Der protestantische Raum, die angelsächsische Rechtskultur, aber auch die skandinavische und die der Schweiz, haben damit keine Probleme. *(Abg. Dr. **Feurstein:** Die Schweiz schon! Die haben große Probleme damit, Herr Klubobmann! – Abg. Mag. **Stadler:** Der Gottfried hat recht!)* Wir haben offensichtlich Probleme damit.

Meine Damen und Herren! Hätte die Enquete, die wir veranstaltet haben, zum Beispiel im amerikanischen Repräsentantenhaus stattgefunden, dann hätte, davon bin ich zutiefst überzeugt, es niemand gewagt – und ich formuliere es bewußt so –, die Möglichkeit für einen Richter, öffentlich zu bekennen, was er in geheimer Verhandlung tatsächlich argumentiert hat, als politischen Druck zu interpretieren! Eine solche Interpretation wäre in Amerika oder auch in anderen freieren Gesellschaften nicht möglich gewesen!

Das ist es, was Sie in Wahrheit verhindern: Sie nehmen einem Mitglied des Verfassungsgerichtshofes das subjektive Recht, in der Öffentlichkeit so zu argumentieren, wie dies im Gerichtshof selbst geschehen ist. Das, meine Damen und Herren, ist per definitionem kein politischer Zwang, sondern letztendlich nichts anderes als der aufrechte Gang von Mitgliedern des Verfassungsgerichtshofes. *(Abg. Dr. **Krüger:** Sie wollen das ja gar nicht!)*

Meine Damen und Herren! Ich möchte an die Adresse der ÖVP – Kollege Khol ist ja leider nicht da *(Abg. Dr. **Krüger:** Der schwänzt schon längere Zeit!)* – und an alle appellieren, die in diesem Zusammenhang noch Vorbehalte haben: Gewähren Sie Meinungsfreiheit! *(Beifall bei der SPÖ.)*

13.50

Präsident MMag. Dr. Willi Brauneder: Zu Wort gelangt nun Herr Abgeordneter Jung. Freiwillige Redezeitbeschränkung: 4 Minuten. – Bitte.

13.50

Abgeordneter Wolfgang Jung (Freiheitliche): Herr Präsident! Herr Staatssekretär! Sehr geehrte Damen und Herren! Ich war einer der wenigen Nichtjuristen, die an dieser Enquete teilgenommen haben, und habe in meiner Naivität anfangs gedacht, daß es bei dieser Frage der "dissenting opinion" im wesentlichen um die Möglichkeit geht, einem Höchstrichter die Chance zu geben, seine von der Mehrheitsmeinung abweichende Meinung zu äußern. Ich dachte, daß das eine Frage der Rechtstheorie, vielleicht eine philosophische Frage oder in erster Linie eine Zweckmäßigkeitsfrage ist, habe aber im Laufe der fortschreitenden Debatte erkennen müssen, daß auch dieser Bereich – wie fast alles in Österreich – zwischen zwei Parteien aufgeteilt ist, und daß das eine primär politische Frage ist.

Von der Präsidentin des Bundesverfassungsgerichtes, Frau Dr. Limbach aus Deutschland, wurden durchaus interessante Argumente für die Einführung der "dissenting opinion" aufgezeigt.

Sie konnte auch die Befürchtungen zerstreuen, daß das zu einem zu großen Arbeitsaufwand führen würde. Sie hat die Fälle aus Deutschland aufgezählt: Es sind etwa vier bis sechs Fälle pro Jahr.

Das kann also nicht das Argument sein, um das, was dafür spricht – das soll nicht geleugnet werden –, nämlich die bessere Nachvollziehbarkeit eines solchen Gerichtsentscheides, rundweg abzulehnen. Denn dies ist ein überlegenswertes Argument, zumindest aus der Sicht des betroffenen und rechtsuchenden Bürgers.

Allerdings hat sich die Bestätigung für die – das muß man leider auch sagen – Sinnlosigkeit dieser ganzen Veranstaltung einschließlich der Kosten, aber auch des Einsatzes der durchwegs hochwertigen Experten und Referenten, schon sehr bald, nämlich spätestens zur Halbzeit gezeigt, als die beiden Klubobmänner schon zu Mittag, als die Diskussionen noch voll im Gang waren, ihre vorgeprägten Statements abgegeben haben und dann verschwunden sind. *(Abg. Mag. **Stadler:** Das ist jetzt wieder so! Der Leberkäse zieht sie in die Kantine!)* – Ja, es erinnert sehr stark an die gegenwärtige Situation. Man hat anscheinend schon von vornherein gewußt, wie es ausgehen wird. Das Ganze war im Prinzip – und das ist bedauerlich – eine Showveranstaltung unter dem Motto: "Die SPÖ droht dem Verfassungsgerichtshof, und die ÖVP schützt ihren Besitzstand."

Leider muß man in diesem Zusammenhang schon sagen: Sie sehen die Verfassungsrichter mehr oder weniger als Ihren persönlichen Besitzstand und behandeln sie auch danach. Das geht in erster Linie auch aus dem Bestellungsmodus hervor.

Da sehen Sie auch den Unterschied zwischen Ihrer und der Freiheitlichen Partei: Wir erlauben uns, verschiedene Meinungen zu haben und darüber zu diskutieren. *(Abg. **Schieder:** Und Sie dürfen bleiben? – Abg. Dr. **Krüger:** Er muß!)* – Da habe ich keine Sorgen, Herr Kollege Schieder.

Ich verhehle durchaus nicht, daß ich dem Recht der Richter, abweichende Standpunkte zu haben, eine gewisse Sympathie entgegenbringe. Es gibt viele Pluspunkte, die dafür sprechen. Diese Maßnahme ist bereits in vielen europäischen Staaten, wie bereits gesagt wurde, eingeführt worden. Aber Österreich ist noch nicht so weit, hat Kollege Kostelka vorhin gesagt.

Ich kann Ihnen sagen: Österreich ist deswegen noch nicht so weit, weil bei uns der Parteienproporz in einem Ausmaß überhand genommen hat, wie in keinem anderen Land in Europa, und weil leider auch eine gewaltige Einflußnahme auf die Verfassungsrichter besteht. Zum Teil, das muß man auch dazu sagen, ist das in der langjährigen Erziehung dieser Herren im österreichischen Rechtssystem begründet. Es hat sich auch ein vorauseilender Gehorsam entwickelt, das ist ein weiteres Negativum unseres Systems.

Ich sage es noch einmal: Ich stehe an und für sich dem Gedanken der "dissenting opinion" positiv gegenüber. Solange aber aufgrund des vorhandenen Systems dieser eminente Druck auf die Verfassungsrichter möglich ist, lehne ich eine Erweiterung oder eine Änderung der gegenwärtigen Rechtslage ab, da sie nur zu einer Vergrößerung des Parteieneinflusses führen würde, anstatt ihn zu verringern. *(Beifall bei den Freiheitlichen.)*

13.54

Präsident MMag. Dr. Willi Brauneder: Weiters zu Wort gemeldet ist Frau Abgeordnete Mag. Frieser. 8 Minuten freiwillige Redezeitbeschränkung. – Bitte.

13.54

Abgeordnete Mag. Cordula Frieser (ÖVP): Herr Präsident! Herr Staatssekretär! Meine Damen und Herren! *(Abg. **Schieder:** Sie fordern jetzt einen Intelligenztest!)* Bei den Verfassungsrichtern bin ich mir wirklich sicher, daß ein solcher Test nicht notwendig wäre. Abgesehen davon haben sie ja eine so profunde juristische Ausbildung, Herr Kollege Schieder, daß wir ja nur davon träumen können. Leider haben wir sie nicht. Schade, daß Herr Kollege Kostelka jetzt nicht da ist. *(Zwischenruf des Abg. Mag. **Stadler.**)*

Wissen Sie, Herr Kollege Stadler, einmal – erlauben Sie mir ein Privatissimum – werde ich Gelegenheit dazu haben, Ihre Psyche offenzulegen. Wenn ich mir ab und zu Ihre Reden anhöre, insbesondere, was die Kultur anlangt, dann finde ich, Sie müssen ein wirklich tiefenpsychologisches Problem haben, und ich studiere schon Freud, um endlich einmal einen ähnlichen Fall zitieren zu können. Einmal kommt der Tag, an dem ich das tun werde, und darauf freue ich mich schon! *(Beifall bei der ÖVP.)*

Herr Präsident! Meine Damen und Herren! Man kann natürlich über die Einführung und Veröffentlichung der "dissenting opinion" diskutieren, die in anderen demokratischen Rechtskulturen bereits besteht. Ich bin aber zum gegenwärtigen Zeitpunkt gegen die Einführung, und zwar aus einem ganz einfachen Grund.

Es hätte jetzt den üblen Geruch einer Anlaßgesetzgebung, um eine für manche offensichtlich unangenehme Spruchpraxis zu domestizieren und subtile Einschüchterungsversuche vorzunehmen. Denn die Diskussion über die

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"dissenting opinion" ist in den letzten Jahren immer dann aktualisiert worden, wenn gewissen politischen Kreisen Verfassungsgerichtshoferkenntnisse nicht in den Kram gepaßt haben. Dies zeugt nicht von der in solchen Fragen erforderlichen Sensibilität und dem für die Gewaltenteilung einer funktionierenden rechtsstaatlichen Demokratie notwendigen Respekt vor den obersten Verfassungshütern.

Dieses Verhalten nährt neuerdings den seit Jahrzehnten schwelenden Verdacht, daß bei manchen Akteuren in diesem Haus ein gestörtes Verhältnis zur unabhängigen Justiz vorliegt. Das Wort "Klassenjustiz" ist schon allzu oft verwendet worden und der "Richterstaat" wurde ausgerufen – merkwürdigerweise immer dann, wenn Verfassungsgerichtshof oder Verwaltungsgerichtshof ein mißliebiges Urteil gefällt haben.

Herr Kollege Schieder! Wir können uns noch sehr gut noch an die Weisungspraxis der Justizminister von vor 1986 erinnern. Ich finde, daß es ein großes Verdienst dieser Koalition war, daß seit 1987 Parteiunabhängige mit der Führung des Justizministeriums betraut sind. *(Beifall bei der ÖVP. – Abg. Mag.* ***Stadler:*** *Frau Kollegin! "Vor 1983" lasse ich gelten, aber "vor 1986" nicht! Als Ofner Justizminister war, wollte man eine Weisung von ihm haben, aber er hat sie nicht gegeben! – Abg.* ***Schieder:*** *Sie läßt wiederum nicht "vor 70" gelten!)* – Wir werden das historisch aufarbeiten.

Apropos Minister Ofner: Ich schätze Ihren Kollegen Ofner sehr, aber wenn Sie jetzt meinen, zu Zeiten des Kollegen Ofner wäre das anders gewesen, dann möchte ich Sie an etwas erinnern. Mir ist nur ein Spruch von ihm im Ohr, und zwar: "Die Suppe ist zu dünn." *(Zwischenruf des Abg. Mag.* ***Stadler.)*** – Wir werden das noch einmal klären, Herr Kollege Stadler! Es wird mir ein Vergnügen sein. *(Zwischenruf des Abg.* ***Schieder.)*** Das ist beim Kollegen Schieder immer ein Reflex, aber bitte, meine Damen und Herren, ich möchte doch jetzt fortsetzen.

Nochmals: Ein klares Ja zur Gewaltenteilung, aber ein Ja zur "dissenting opinion" nur dann, wenn die Mitglieder des Verfassungsgerichtshofes das auch wollen und wünschen. Ich war die ganze Zeit während der Enquete anwesend und habe eigentlich keinen Verfassungsrichter gehört oder zumindest keinen Debattenbeitrag eines Verfassungsrichters so verstanden, daß er unbedingt die Einführung der "dissenting opinion" wünscht.

Meine Damen und Herren! Wir respektieren die Sprüche des Verfassungsgerichtshofes und auch die Wünsche dieses Höchstgerichtes, wenn diese im Interesse der Stärkung seiner Unabhängigkeit und im Interesse der Gewaltenteilung liegen.

Der Verfassungsgerichtshof genießt in der Bevölkerung glücklicherweise hohes Ansehen und großes Vertrauen. Dies ist besonders wichtig für das notwendige Vertrauen in die demokratischen Institutionen, ohne das eine stabile Demokratie nicht zukunftsfähig ist. Ich bin froh darüber, daß es wenigstens noch ein paar Institutionen gibt, die vertrauensbildend sind, denn in Österreich ist das allgemeine Vertrauen in die Institutionen – nicht zuletzt durch unsere Mitwirkung – ohnehin schon sehr beschädigt. Ich denke dabei besonders auch an das Ansehen dieses Hauses!

Abschließend, meine Damen und Herren, stelle ich fest: Die ÖVP ist zum gegenwärtigen Zeitpunkt gegen die Einführung der "dissenting opinion". Wir sind aber gerne bereit, über dieses Thema weiter zu diskutieren. Wir würden uns insbesondere eine profunde Diskussion über die österreichische Bundesverfassung wünschen. Ich finde, daß dieses Gesetz einer dringenden Reform bedarf. – Danke schön. *(Beifall bei der ÖVP.)*

13.59

Präsident MMag. Dr. Willi Brauneder: Zu Wort gemeldet ist nun Herr Abgeordneter Dr. Kier. – Bitte, Herr Abgeordneter.

13.59

Abgeordneter Dr. Volker Kier (Liberales Forum): Herr Präsident! Herr Staatssekretär! Hohes Haus! Es ist schade, daß die Aufmerksamkeit in dieser Debatte *(Abg. Dr.* ***Feurstein:*** *Wir passen auf! Das ist eine Unterstellung!)* – nein, ich meine jetzt nicht die Anwesenden – so gering ist. Die Enquete war wirklich sehr informativ, und ich möchte gerne von diesem Pult aus wenigstens einen Appell an alle Mitglieder dieses Hauses richten, die Dokumente der Enquete auch tatsächlich zu lesen.

Aber dieser Appell geht ins Leere. Diejenigen, die sich dafür interessieren, sind jetzt ohnehin da, sie waren

teilweise auch bei der Enquete, aber diejenigen, die jetzt nicht da sind, waren auch nicht bei der Enquete. Man kann nur hoffen, daß die Unterlagen gelesen werden, weil sie wirklich sehr interessant sind.

Besonders interessant waren für mich die Ausführungen des Präsidenten des Schweizer Bundesgerichtes, weil er uns nämlich dargestellt hat, daß in einer alten und reifen Demokratie so eine Diskussion – darüber, ob Minderheitsvoten beim Verfassungsgerichtshof veröffentlicht werden dürfen beziehungsweise müssen oder nicht – deswegen gar nicht notwendig ist, weil dort die gesamten Beratungen des Gerichtes, in denen natürlich auch Minderheitspositionen vorgetragen werden, öffentlich sind.

In einem Land, in dem die gesamte Beratung öffentlich ist, braucht man natürlich eine "dissenting opinion", nämlich die Veröffentlichung einer untergegangenen Minderheitsmeinung, ***nicht*** in dem Ausmaß wie anderswo. Diese Ausführungen waren wirklich erhellend.

Mich haben sie auch deswegen gefreut, weil ich in der Debatte das Gefühl hatte, daß diese Worte des Präsidenten des Schweizer Bundesgerichtes Dr. Alexander Müller Überraschung ausgelöst haben. Viele, die zu dieser Enquete gekommen sind, haben zwar gewußt, daß er sprechen wird, und auch, daß es in der Schweiz keine "dissenting opinion" gibt. Sie waren daher in der frohen Erwartung und Hoffnung hingekommen, der Müller würde ihnen jetzt bestätigen, daß die "dissenting opinion" überflüssig ist und daß man so etwas nicht braucht. In einem gewissen Sinn hat er das zwar getan, aber er hat eben zum Ausdruck gebracht, daß man das nur dann nicht braucht, wenn ***alles*** öffentlich ist. *(Abg. Mag. **Stadler:** Über die Öffentlichkeit des Verfahrens kann man reden!)* Richtig!

Damit ist an und für sich alles gesagt, und ich kann, ohne jetzt aus dem Protokoll vorlesen zu müssen, fast an meinen eigenen letzten Redebeitrag in der Enquete anknüpfen und sagen: Es wird unsere Aufgabe sein, eine politische Lösung dafür zu finden, wie die Entscheidungsabläufe in den Gerichtshöfen des öffentlichen Rechtes so transparent wie möglich sein können.

Die "dissenting opinion" ist ein Ansatz, über den man diskutieren kann, dagegen ist gar nichts zu sagen. Aber es geht eben nicht an, so zu tun, als ob der Verfassungsgerichtshof a priori sakrosankt wäre und womöglich noch darunter leiden würde, wenn die rechtsuchende Bevölkerung erkennen würde, daß es keine von vornherein einheitliche Meinung gibt, die sich dort durchsetzt, sondern daß auch dort eine Meinung erst erarbeitet werden muß.

Das wäre vielleicht ganz günstig. Auch Rechtsanwälte sind der Auffassung, daß ein Urteil transparenter ist, wenn man auch sieht, welche Position zwar erörtert wurde, sich aber nicht durchgesetzt hat. – Ich danke für Ihre Aufmerksamkeit. *(Beifall beim Liberalen Forum. – Abg. Dr. **Feurstein:** Der Rechtsanwalt will es, das ist mir klar!)*

14.03

Präsident MMag. Dr. Willi Brauneder: Weiters zu Wort gemeldet ist Frau Abgeordnete Mag. Stoisits. Freiwillige Redezeitbeschränkung: 8 Minuten. – Bitte, Frau Abgeordnete.

14.03

Abgeordnete Mag. Terezija Stoisits (Grüne): Sehr geehrter Herr Präsident! Meine sehr geehrten Damen und Herren! Ich knüpfe an die Ausführungen des Herrn Dr. Kier an und möchte hier feststellen, daß ich den Eindruck, den die Enquete in ihm hinterlassen hat, nicht teilen kann. Er hat versucht, uns hier das Bild zu vermitteln, das Ergebnis der Enquete wäre gewesen, daß es eine einhellige Ablehnung des Instrumentes der "dissenting opinion" gab.

Ganz im Gegenteil! Es haben sich dort – wenn man das in einer martialischen Sprache ausdrücken will – die Fronten klar gezeigt. Die Rechtswissenschafter haben ***alle*** durch die Bank dieses Instrument des Minderheitsvotums begrüßt beziehungsweise seine Einführung gefordert, nicht zuletzt auch deshalb, weil die Wissenschaft ja auch davon lebt, sich mit "dissenting opinions" auseinandersetzen zu können.

Für mich waren die Ausführungen des Präsidenten des Schweizer Bundesgerichtes eine Unterstützung in der Forderung nach dem Minderheitsvotum. Denn er hat – und das hat Kollege Kier ja schon richtig bemerkt – mit seiner Stellungnahme genau jenen Argumenten recht gegeben, die bisher in Österreich ***für*** die Einführung dieses Instrumentes immer wieder in die Diskussion gebracht wurden. Er hat gleichzeitig auch die Bedenken geäußert, die

es gibt, und auch die gewichtigen Argumente bei den Sorgen oder bei den Einwänden bestätigt.

Nichtsdestotrotz sind die Schweiz und Österreich nicht vergleichbar. In der Schweiz gibt es halt die Öffentlichkeit bei den Verhandlungen, und bei uns nicht. Daher sind seine Ausführungen in einem ganz anderen Licht zu sehen als etwa jene der Präsidentin des deutschen Bundesverfassungsgerichtes, die uns ja eine Art Erfahrungsbericht gegeben und erzählt hat – es ist rund 20 Jahre her, daß das dort eingeführt wurde, vielleicht sogar ein bißchen mehr, das habe ich jetzt nicht mehr so genau im Kopf –, welche Auswirkungen das in Deutschland hatte.

Sie hat vor allem davon gesprochen, daß es bei Minderheitsvoten für die Mehrheit, die sich durchsetzt, den Zwang gibt, die Überlegungen schärfer zu durchdenken und überzeugender zu begründen. Das ist auch eines meiner wesentlichsten Argumente für die Einführung.

Ich meine, daß es einen qualitativen Sprung in der Rechtsprechung des Höchstgerichtes darstellt, wenn man von der Anonymität zur Transparenz übergeht und wenn es dazu kommt, daß es von diesem amorphen Spruchkörper des Verfassungsgerichtshofes aus auch ein bißchen den Sprung zum Individuum mit der "dissenting opinion" gibt.

Frau Präsidentin Limbach hat auch versucht, den Zuhörern, den anwesenden Experten und Abgeordneten, die Angst zu nehmen. Die österreichischen Verfassungsrichter begründen ihre Ablehnung vor allem damit, daß der Aufwand und die Arbeit allzu groß sein werden. – Selbstverständlich ist es ein Aufwand, eine "dissenting opinion" zu formulieren und sie dann auch schriftlich auszufertigen! Aber was ich immer noch nicht verstehe, ist, warum man sich vor dieser Aufgabe so scheut! Denn was heißt das? – In der Praxis würde das ja heißen, daß jene, die auch sonst in "dissenting opinion" sind, das nicht genau überlegen und begründen wollen. *(Die Rednerin dreht sich im Zuge ihrer Ausführungen immer wieder nach hinten, zum vorsitzführenden Präsidenten Dr. Brauneder um.)*

Ich spreche immer wieder zum Herrn Präsidenten, weil er ja einer der wenigen ist, die jetzt da sind und auch bei der Enquete anwesend waren. Das Argument, daß der Arbeitsaufwand ein großer ist, ist ja dadurch zu entkräften – und das habe ich ja dort auch den Verfassungsrichtern entgegengeworfen –, daß man fragt: Ja wird denn sonst ***nicht*** genau überlegt und juristisch begründet?! – Das ist für mich eine Frage aus der Praxis der Betroffenheit. Die Antwort darauf sind sie mir auch schuldig geblieben.

Frau Kollegin Frieser informiert das noch anwesende Plenum des Nationalrates sehr falsch, wenn sie meint, daß alle Richter des Verfassungsgerichtshofes ***gegen*** die "dissenting opinion" gewesen seien. Also bitte! Der Präsident des Verfassungsgerichtshofes hat in seinen Ausführungen eine eindeutige Stellungnahme ***für*** die "dissenting opinion" abgegeben!

Er hat dann natürlich, weil er ja der Präsident ist, seine persönliche Meinung zurückgestellt und sich sozusagen der Mehrheit des Spruchkörpers angeschlossen. Das ist genau das, was wir für die Entscheidungen des Verfassungsgerichtshofes einfordern! Das war geradezu ein Musterbeispiel für eine "dissenting opinion"!

Wir fordern, daß jemand, der nicht die Mehrheitsmeinung vertritt, transparent, nachvollziehbar, anschaulich und auch – wir sind ja hier die Volksvertretung! – volksnäher begründet, warum er sich nicht der Meinung der Mehrheit anschließt. Insofern, so muß ich sagen, war diese positive Übung ja ein Beispiel dafür, wie es demnächst im Verfassungsgerichtshof schon sein könnte.

Und was es – sozusagen aus der Sicht der Betroffenen gesprochen – für mich so notwendig macht, dieses Minderheitsvotum einzuführen, ist die Tatsache, daß der Verfassungsgerichtshof diesen Nimbus der Unfehlbarkeit verlieren sollte. Er ist nämlich nicht unfehlbar.

Durch die "dissenting opinion" wird nun die Möglichkeit geschaffen, diesen Nimbus abzubauen, und wird erreicht, daß die Richter sich als das präsentieren, was sie sind, nämlich Menschen auf zwei Beinen mit einem Hirn, die aufgrund der Rechtsordnung bestimmte Entscheidungen zu treffen haben.

Letztendlich ist eine "dissenting opinion" nichts anderes als auszuführen, daß auch anders entschieden hätte werden können, und die Möglichkeit, die wesentlichen Argumente für eine andere Entscheidung, die auch möglich gewesen wäre, nachzuvollziehen.

Ein Letztes noch, liebe Kolleginnen und Kollegen: Ich meine, daß auch die Spannbreite der strittigen Meinungen,

die es im Verfassungsgerichtshof gibt, und dieses Getuschel dann im nachhinein – wer hat wann, wie und wo; ich meine, es spricht sich ja letztendlich alles herum – vermieden werden könnten, daß damit endlich Schluß sein könnte.

Für mich ist es eine Tatsache, daß die Verfassungsrichter und -richterinnen in Österreich nicht nur so klug, sondern auch so besonnen sind, dieses Instrument nur in wirklich wesentlichen Fragen einzusetzen. Es gibt zum Beispiel in Deutschland ja keinen Zwang zur "dissenting opinion", sondern nur die ***Möglichkeit,*** dieses Instrument einzusetzen. Und das wird dort sehr sorgsam getan. Darum, meine sehr geehrten Damen und Herren, verstehe ich – das auch zu Ihnen, Herr Kollege Kier, der Sie bedauert haben, daß niemand da ist –, daß die Kollegen nicht da sind. Ja, wozu sollen sie denn da sein? – Es wird eine qualitativ hochstehende Enquete des Nationalrates veranstaltet, die ein Ergebnis bringt, und dann sagen die Schwarzen zu den Roten: Nein, nicht mit uns, nicht in dieser Legislaturperiode! Und die Roten sagen: Wir würden ja so gern, aber wir sind in den Zwängen der Koalition gefangen! Und dann wird hier ein Schauspiel veranstaltet. Es wird nichts geschehen! Es ist ja schon diese Debatte umsonst.

Aber nichts ist umsonst, meine Damen und Herren! Die wenigen, die anwesend sind, und vor allem die Ewigkeit des Protokolls werden unseren Argumenten recht geben. Und spätestens dann, wenn es diese Koalition nicht mehr gibt, gibt es die "dissenting opinion". *(Beifall bei den Grünen sowie des Abg.* ***Smolle.)***

14.11

Präsident MMag. Dr. Willi Brauneder: Weiters zu Wort gemeldet ist Herr Abgeordneter Dr. Jarolim. Freiwillige Redezeitbeschränkung: 10 Minuten. – Bitte, Herr Abgeordneter. *(Abg. Mag.* ***Stadler:*** *Das war ein Plädoyer für die "Ampel"! Das war die "Ampel", die da gesprochen hat!)*

14.12

Abgeordneter Dr. Johannes Jarolim (SPÖ): Das ist nett! Herr Kollege Stadler hat immer ein passendes Wort auf den Lippen.

Herr Präsident! Herr Staatssekretär! Meine Damen und Herren! *(Abg.* ***Smolle*** *– in Richtung der Freiheitlichen –: Es könnte ja von euch auch jemand reden! Ihr habt ja auch gute Leute! – Abg. Mag.* ***Stadler:*** *Wollen Sie uns ein Koalitionsangebot machen? – Abg.* ***Gaugg*** *– in Richtung Herrn Abg. Smolle –: Bei wieviel Parteien warst du schon überall Mitglied?)* Darf ich in dieser kleinen Runde um das Wort bitten? *(Heiterkeit. – Abg. Mag.* ***Stadler:*** *Wollen Sie uns ein Koalitionsangebot machen, Smolle? – Abg.* ***Gaugg:*** *In welcher Partei warst du noch nicht, Smolle? – Abg. Mag.* ***Stadler:*** *War das ein Koalitionsangebot? – Zwischenruf des Abg.* ***Smolle.*** *– Abg.* ***Gaugg:*** *In wieviel Parteien du schon warst, das ist ja unglaublich! Bei welcher Partei warst du noch nicht, Smolle? – Neuerlicher Zwischenruf des Abg.* ***Smolle.*** *– Abg.* ***Gaugg:*** *Das ist ja eine gefährliche Drohung!)*

Präsident MMag. Dr. Willi Brauneder: Ich habe zuerst eine Bemerkung über dieses Privatissimum gemacht, aber wir wollen das bitte nicht zu einem Massenseminar ausdehnen!

Am Wort ist Herr Kollege Jarolim, und ich bitte Sie, Herr Abgeordneter, machen Sie kräftigst davon Gebrauch.

Abgeordneter Dr. Johannes Jarolim *(fortsetzend):* Ich denke nur, daß gruppendynamische Aktionen irgendwie zur Kenntnis genommen werden können. Das muß ja wohl offenbleiben. *(Neuerliche Zwischenrufe bei den Freiheitlichen. – Abg.* ***Smolle:*** *Wir müßten eine Option vortragen! – Abg. Mag.* ***Stadler:*** *Der Smolle will übertreten!)*

Kollegin Stoisits! Ich möchte nur folgendes relativieren: Daß diese Veranstaltung eine meines Erachtens sehr gute und sehr informative Veranstaltung war und letztlich auch viele Dinge auf den Punkt gebracht hat, und zwar in einer, so finde ich, doch sehr offenen Kontroverse, ist außerordentlich positiv zu bemerken. Ich möchte mich allerdings dagegen verwahren, daß es sich hiebei um ein Schauspiel gehandelt hat, daß etwas vorgespielt wurde, daß unterschiedliche Meinungen vorgetragen wurden, die schließlich dann ohnedies zu nichts führen.

Ich meine, diese Veranstaltung hat eines klar gezeigt: daß sich an einem zentralen Punkt die Geister scheiden, und zwar an der Frage, ob es möglich sein soll, daß innerhalb einer Gruppe, nämlich der Richter des Verfassungsgerichtshofes, einer seinen gesonderten Standpunkt darstellen kann und damit unter anderem die übrige Gruppe ein gruppendynamisches Problem bekommt. Auf diesen Punkt hat sich meines Erachtens die

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Gegenargumentation reduziert.

Ich habe aus der heutigen Diskussion vielfach entnommen, daß sich eigentlich alle, die sich an der Diskussion beteiligten, letztlich mit diesem Sondervotum anfreunden können und es auch als begrüßenswert erachten. Ich denke, es ist auch eine Selbstverständlichkeit, daß Meinungsvielfalt und die Möglichkeit, eine Meinung zu äußern – und es handelt sich ja nur um eine Möglichkeit und nicht um den Zwang, eine Meinung zu äußern –, ganz eindeutig einen demokratiepolitischen, einen rechtspolitischen Fortschritt bedeuten, weil sich daran natürlich auch die Qualität der Argumente mißt.

Wenn damit zu rechnen ist, daß eine offene Diskussion geführt wird, innerhalb der dann der eine oder andere Verfassungsrichter seinen eigenen Standpunkt, den er im Erkenntnis nicht wiederfindet, vielleicht gesondert darstellen möchte, dann denke ich, daß man in der Ausformulierung des Erkenntnisses wahrscheinlich zunächst versuchen wird, auch diesen Standpunkt miteinzubeziehen, wodurch die Argumentationsschärfe sicher erhöht wird. Wenn das Erkenntnis einen derartigen einzelnen Standpunkt nicht wiedergibt, dann hat der Betroffene immer noch das Recht, für sich zu entscheiden: Bestehe ich auf einer gesonderten Stellungnahme, ja oder nein? – Was daran ein Nachteil sein soll, ist schlicht nicht zu erkennen!

Es ist eher unerfreulich, wenn hier von Kollegin Frieser vorgebracht wird, daß die ÖVP einer derartigen Vorgangsweise nicht zustimmt, weil der Eindruck entstehen könnte, daß ein solcher Beschluß anlaßbezogen ist, wiewohl sie gleichzeitig auch konzediert, daß die Diskussion bereits seit Jahren geführt wird. Wenn die Diskussion bereits seit Jahren geführt wird, dann ist es natürlich irgendwie schwierig, gleichzeitig mit dem Argument einer Anlaßdiskussion zu operieren, es sei denn, man geht davon aus, daß jede sachliche Diskussion eine Anlaßdiskussion ist.

Ich darf also herzlich dazu einladen, diese Argumentation, die vom sachlichen Standpunkt aus betrachtet – hier im Haus lustigerweise eigentlich mehr als bei der Enquete – in eine Richtung geht, dann letztlich auch in eine Beschlußfassung münden zu lassen. *(Abg. **Jung:** Was haben Sie sich von der Enquete erhofft, Herr Kollege?)*

Was ich mir von der Enquete erhofft habe, war eine wissenschaftliche Auseinandersetzung hinsichtlich der Für und Wider zu dieser Frage, und was ich aus der Auseinandersetzung gelernt habe, war, daß die Argumente gegen die "dissenting opinion" vielfach Argumente sind, die einer wirklich kritischen Betrachtungsweise nicht standhalten, und zwar aus jenen Gründen, die ich vorher hier darzulegen versucht habe.

Es ist auch das Argument der Beeinflußbarkeit und der Beeinflussung von Personen gebracht worden. Nun muß man sich schon eines vor Augen führen: Die Richter des Verfassungsgerichtshofes sind Wissenschafter, sind Personen, die es gewohnt sind, in der öffentlichen Diskussion pointiert ihren Standpunkt einzunehmen. Ich verstehe nicht, warum man sich um diese Gruppe, die noch dazu auf Lebenszeit bestellt ist, Sorgen macht in der Weise, daß der eine oder andere in seiner Persönlichkeit beeinträchtigt werden könnte *(Beifall bei der SPÖ)* und sich nicht auf jenen Standpunkt stellen würde, den er auch sonst in der Wissenschaft und in der Lehre vertritt.

Das Argument, daß ein Richter ohnedies die Möglichkeit hätte, nach dem Erkenntnis seinen Standpunkt irgendwo zu publizieren, zeigt ja, daß eine Auseinandersetzung zwar möglich sein soll, aber möglichst nicht im Verfassungsgerichtshof. Die Autorität des Verfassungsgerichtshofes manifestiert sich meiner Meinung nach nicht darin, daß es einem einzelnen Mitglied verboten sein soll, seinen Standpunkt zu äußern, und ich gehe auch nicht davon aus – das ist nämlich bedauerlicherweise auch als Argument genannt worden –, daß es sich bei Verfassungsrichtern um Selbstdarsteller handeln könnte. Ich glaube nicht, daß das Persönlichkeiten sind, denen man unterstellen kann, sich selbst präsentieren zu wollen. – Daher ist auch diese Argumentationskette meines Erachtens nicht schlüssig.

Nur noch ein letztes Argument zur Frage der Bestellung der Mitglieder des Verfassungsgerichtshofes: Eine der Alternativen zur derzeitigen Bestellungsform, die genannt worden ist, ist die Selbstrekrutierung, also sozusagen die Rekrutierung aus dem Verfassungsgerichtshof. Ich darf dazu sagen: Es gibt ein derartiges Modell – es wird auch nicht wirklich argumentiert, aber es kommt immer wieder, wenn auch nur ansatzweise, in der Diskussion vor – weltweit in keinem Verfassungsgerichtshof! – Das ist der erste Punkt.

Zweiter Punkt: Der Verfassungsgerichtshof trifft in weitesten Bereichen Wertungsentscheidungen. Daher ist es doch wohl legitim, daß die Gruppierungen eines Landes, die, demokratisch legitimiert durch Wahlen und für ihre Werte

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stehend, dazu berufen sind, zu regieren und sich als Partei zu präsentieren, Vorschlagsrechte haben. Wer sonst soll Vorschlagsrechte haben, meine Damen und Herren? Soll es jene Partei sein, die am wenigsten Akzeptanz in der Bevölkerung hat? – Wenn man die Argumentation immer wieder dahin gehend führt, daß die Bestellungsformen archaisch und sachlich nicht nachvollziehbar wären, würde ich ersuchen, die Situation auch ein bißchen von dieser Warte aus zu sehen. *(Abg. Mag. **Stadler:** Herr Kollege! Wie wäre es mit einem Personalsenat?)*

Meine Damen und Herren! Ich komme zum Schluß. Ich denke, es gibt eine Fülle von zwingenden Argumenten *(Abg. Mag. **Stadler:** Das gibt es ja sonst auch bei Gerichten!),* Herr Kollege Stadler, für das Sondervotum "dissenting" und "concurring opinion", und ich appelliere an das Hohe Haus, die Diskussion nicht abzuschließen, sondern weiterzuführen und schließlich zu einem guten Ende zu bringen. – Danke schön. *(Beifall bei der SPÖ.)*

14.19

Präsident MMag. Dr. Willi Brauneder: Zu Wort gemeldet ist Herr Abgeordneter Dr. Feurstein. Freiwillige Redezeitbeschränkung: 5 Minuten. – Bitte, Herr Abgeordneter. *(Abg. **Gaugg:** Der Arme! Jetzt ist er ganz allein da! – Abg. Dr. **Stippel:** Wo ist die ÖVP?)*

14.19

Abgeordneter Dr. Gottfried Feurstein (ÖVP): Meine Damen und Herren! Herr Präsident! Herr Staatssekretär! Ich möchte klarstellen, daß meine Fraktion deshalb momentan nicht anwesend ist, weil eine Klubsitzung stattfindet *(Abg. **Gaugg:** Welches Thema?),* und ich bitte, das auch so zu werten und nicht durch abfällige Bemerkungen zu kommentieren. *(Abg. **Gaugg:** Welches Thema? – Abg. Mag. **Stadler:** Vorgezogene Neuwahlen?)* Ich glaube, es gibt für jede Fraktion, für jeden Klub immer wieder die Notwendigkeit *(Abg. Mag. **Stadler:** Vorgezogene Neuwahlen!),* daß auch während einer Plenarsitzung eine Fraktionssitzung stattfindet. Das haben alle Fraktionen bisher auch schon gemacht. Ich bitte, das auch so zu werten. *(Abg. **Gaugg:** Es fällt nur auf, daß das immer beim Feurstein ist!)* Von uns tritt Gott sei Dank niemand aus der Partei aus. Wir sind nicht in einer Situation wie die FPÖ. Gott sei Dank haben wir dieses Problem nicht, Herr Abgeordneter Stadler! *(Abg. Mag. **Stadler:** Dann habt ihr Neuwahlen!)*

Meine Damen und Herren! Mein Vorredner hat bereits klargestellt, daß diese Enquete eine ausgezeichnete Veranstaltung war. Ich war während der gesamten Dauer von etwa sieben bis acht Stunden anwesend. Die Teilnehmer – Wissenschafter, Rechtsanwälte und Mitglieder der Gerichtshöfe – haben aus ihrer persönlichen Erfahrung und auch aufgrund ihrer wissenschaftlichen Kenntnisse die Standpunkte erläutert. Den Grünen darf ich sagen, daß es einfach falsch ist, wenn Sie immer wieder behaupten, daß es eine Mehrheit für das Minderheitsvotum im Verfassungsgerichtshof gegeben hätte. Die Mehrheit der Meinungen war eindeutig dahin gehend, daß es Bedenken gegen das Minderheitsvotum gibt.

Ich möchte auch darauf hinweisen, daß eine Reihe von Wissenschaftern diesen Standpunkt vertreten hat. Ich nenne aus der Fülle der Wissenschafter, die sich dort gemeldet haben, nur drei: Universitätsprofessor Mantl hat klar seine Bedenken geäußert, Professor Grabenwarter hat klar diese Bedenken geäußert, und auch Professor Schäffer hat neben vielen anderen Universitätsprofessoren seine Bedenken dargelegt, und zwar mit sehr großem Nachdruck! Die Feststellung der Grünen in diesem Zusammenhang ist einfach unrichtig und falsch, meine Damen und Herren. *(Beifall des Abg. Dr. **Khol.**)*

Ich möchte auch noch einmal zu der Frage Stellung nehmen: Bringt es etwas? Nützt es uns? Bringt es Vorteile für den Verfassungsgerichtshof? – Hiezu gibt es eine ganz klare Aussage, die für mich einleuchtend ist, meine Damen und Herren: Die Verfahrensregeln des Verfassungsgerichtshofes sind so gestaltet, daß tatsächlich jeder Richter seine Meinung einbringen kann und seiner Meinung zum Durchbruch verhelfen kann. Und ich erwarte, daß die Richter des Verfassungsgerichtshofes mit ihrer Meinung im Gerichtshof auftreten und versuchen, ihre Rechtsmeinung dann auch im Urteil verankert zu sehen und nicht anderswo. Ich glaube, daß es nicht gut ist, wenn diejenigen, die an einer Urteilsfindung mitwirken und ein Erkenntnis maßgebend bestimmen können, die ersten Kritiker dieses Erkenntnisses sind. Das ist falsch, und das ist für das Urteil und für die Tätigkeit des Verfassungsgerichtshofes sicher nicht gut, meine Damen und Herren.

Mich hat auch das sehr überzeugt, was Bundesrichter Dr. Müller gesagt hat, der meinte: Wir brauchen natürlich ein sehr starkes Mitwirkungsrecht der Richter – dieses Mitwirkungsrecht soll unter Umständen sogar öffentlich sein –, aber wir brauchen die Solidarität mit dem Urteil, mit dem Erkenntnis, das einmal gefällt worden ist, und diese

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Solidarität ist eben nicht gewährleistet, wenn einzelne Richter ausbrechen und sagen können: Ich bin mit dem Urteil, mit dem Erkenntnis nicht einverstanden. Diese Solidarität mit dem Erkenntnis, mit dem Urteil ist aus meiner Sicht ganz wichtig und sollte beibehalten werden. Das ist auch das große Plus, das den Verfassungsgerichtshof heute auszeichnet, meine Damen und Herren.

Lassen Sie mich noch ein letztes Argument vorbringen, das der langjährige österreichische Richter im Europäischen Gerichtshof für Menschenrechte, Dr. Franz Matscher, geäußert hat. Er meinte nach 22jähriger Erfahrung mit dem Minderheitsvotum, daß die Unabhängigkeit des Richters zumindest gefährdet ist *(Abg. Mag. **Stadler:** Das glaube ich auch! Bei dem Bestellungsmodus schon!),* und ich meine, daß das schon aus diesem Grunde auch ein Gesichtspunkt ist, der mitzuberücksichtigen ist.

Entscheidend ist schlußendlich die Autorität eines Urteiles, die Autorität, die wir einem Erkenntnis des höchsten Gerichtshofes beimessen. Anhand dieser Frage – und zwar ***nur*** anhand dieser Frage – sollten wir entscheiden und überlegen, ob die Diskussion zu diesem Thema weitergeführt werden soll, und wir sollten auch entscheiden, ob es gut oder schlecht ist, wenn wir das Minderheitsvotum zulassen.

Wir sind zu der Meinung gelangt, daß es der Autorität des Gerichtshofes, der Autorität eines Erkenntnisses schaden würde. Aus diesem Grund können wir dieses Instrument nicht positiv bewerten. *(Beifall bei der ÖVP.)*

14.26

Präsident MMag. Dr. Willi Brauneder: Zu Wort ist dazu nun niemand mehr gemeldet. Damit ist die Debatte geschlossen.

Der Herr Berichterstatter wünscht kein Schlußwort.

Wir treten daher sogleich in das Abstimmungsverfahren ein, und ich bitte die Damen und Herren Abgeordneten, den jeweiligen Platz einzunehmen.

Wir kommen jetzt zur ***Abstimmung,*** und zwar über den Antrag des Verfassungsausschusses, das Stenographische Protokoll der Parlamentarischen Enquete zum Thema "Einführung des Minderheitsvotums am Verfassungsgerichtshof" III-151 der Beilagen zur Kenntnis zu nehmen.

Für den Fall Ihrer Kenntnisnahme bitte ich um ein entsprechendes Zeichen. – Dies ist ***Stimmeneinhelligkeit.*** Das Protokoll ist daher ***einstimmig angenommen.***

5. Punkt

Bericht des Finanzausschusses über die Regierungsvorlage (1392 der Beilagen): Bundesgesetz, mit dem das Sparkassengesetz und das Körperschaftsteuergesetz 1988 geändert werden (1443 der Beilagen)

6. Punkt

Bericht des Finanzausschusses über den Antrag 448/A (E) der Abgeordneten Mag. Dr. Heide Schmidt und Genossen betreffend Änderung des Sparkassengesetzes (1444 der Beilagen)

7. Punkt

Bericht des Finanzausschusses über den Antrag 447/A (E) der Abgeordneten Mag. Dr. Heide Schmidt und Genossen betreffend Schaffung eines Privatisierungsgesetzes im Bankenbereich (1445 der Beilagen)

8. Punkt

Bericht des Finanzausschusses über die Regierungsvorlage (1383 der Beilagen): Bundesgesetz über die Zeichnung von zusätzlichen Kapitalanteilen bei der Multilateralen Investitions-Garantie Agentur (MIGA) (1446 der Beilagen)

9. Punkt

Bericht des Finanzausschusses über den Antrag 907/A der Abgeordneten Dr. Ewald Nowotny, Dkfm. Dr. Günter Stummvoll und Genossen betreffend ein Bundesgesetz, mit dem das Tabakmonopolgesetz 1996 und das Tabaksteuergesetz 1995 geändert werden (1447 der Beilagen)

10. Punkt

Bericht des Finanzausschusses über die Regierungsvorlage (1412 der Beilagen): Bundesgesetz über die Veräußerung von unbeweglichem Bundesvermögen (1448 der Beilagen)

Präsident MMag. Dr. Willi Brauneder: Ich rufe nun die Punkte 5 bis 10 der Tagesordnung auf, über welche die Debatte unter einem durchgeführt wird.

Auf eine mündliche Berichterstattung wurde verzichtet.

Wir gehen daher sogleich in die Debatte ein.

Als erster Redner ist Herr Abgeordneter Mag. Firlinger gemeldet. Freiwillige Redezeitbeschränkung: 7 Minuten. – Bitte, Herr Abgeordneter.

14.28

Abgeordneter Mag. Reinhard Firlinger (Freiheitliche): Sehr geehrter Herr Präsident! Herr Staatssekretär! Meine Damen und Herren! Bei der vorliegenden Änderung zum Sparkassengesetz handelt es sich nicht zum ersten Mal, sondern wie schon so oft darum, statt einer Lex generalis eine Lex specialis zu verabschieden. Diese Lex specialis wurde speziell für die Bedürfnisse bestimmter Großbanken zurechtgeschnitten. Für mich handelt es sich um nichts anderes als um die weitere Zementierung des politischen Einflusses: hie AVZ/BA, da Erste Bank/ Sparkassensektor.

Meine Damen und Herren! Es handelt sich dabei nicht um eine dringend notwendige Änderung eines Gesetzes, sondern es handelt sich schlichtweg um eine Änderung eines Koalitionsbedürfnisses beziehungsweise um eine Abänderung eines Koalitionspaktes – ich werde darauf noch weiter eingehen – nach dem Motto: Wechselseitige Geschenke erhalten eine brüchige Freundschaft. Vielleicht – vielleicht aber auch nicht!

Auch wenn die Änderung des Sparkassengesetzes die freiwillige Umwandlung von vermögensverwaltenden Sparkassen in Privatstiftungen vorsieht, so ist das sicher keine verpflichtende Maßnahme. Aber es kann heute schon klar abgesehen werden, welche Folgen dieser Schritt haben wird. Dazu bedarf es wahrlich keiner allzu großen Phantasie.

Worum wird es im Kern gehen?

Erstens: Die Anteilsverwaltung AVZ, die derzeit geringfügig unter 25 Prozent des Aktienanteils an der Bank Austria hält, wird – das ist zu erwarten – in eine Privatstiftung umgewandelt.

Damit ist der Koalitionsvertrag vom 12. Jänner 1997, Herr Kollege Stummvoll, hinfällig, denn im Koalitionspakt, den Sie damals krampfhaft und mit starkem Bauchweh als Lösungsvariante verabschiedet haben und den dann Generaldirektor Randa unterschrieben hat, steht etwas ganz anderes drinnen. Ich werde mir auch erlauben, zu zitieren, was da alles drinsteht und welche Punkte nun verletzt werden.

Zweiter Punkt: Die Sparkasse – das ist jetzt das Gegengeschäft –, der Sparkassensektor erhält ein zwingendes Aufgriffsrecht. Für jede Sparkasse, die auf dem Markt angeboten wird, wird damit ganz sicher gewährleistet, daß niemand anderer als der Sparkassensektor mindestens 50 Prozent hält. Ein Ausscheren aus diesem Sektor ist dann nicht möglich.

Dazu muß ich, meine Damen und Herren von den Regierungsfraktionen, schon sagen: Wenn der Sparkassensektor nur mehr durch ein Zwangsgesetz zusammengehalten werden kann, dann ist dieser Sektor meiner Meinung nach

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nicht mehr sehr viel wert. Sie hätten ja jederzeit die Möglichkeit gehabt, auf dem Sparkassensektor – das wurde auch von führenden Sparkassenfunktionären so gesehen – über Syndikatsverträge weiterhin zu arbeiten, aber das war anscheinend einigen Herrschaften, insbesondere solchen von der schwarzen Reichshälfte, zuwenig ausreichend. Die Devise heißt "Fein sein, beinander bleiben!", aber halt mit jener rechtlichen Klammer, die im Sparkassengesetz vorgesehen wird. *(Beifall bei den Freiheitlichen.)*

Doch das, meine Damen und Herren, kann wohl nicht der Weisheit letzter Schluß sein! Da gibt es große verfassungsrechtliche Bedenken, unter anderem vom Professor Raschauer, der darauf hingewiesen hat, daß diese Bestimmung nicht nur nach österreichischem Recht verfassungswidrig, sondern auch EU-widrig ist.

Die Bedenken, die von Fachleuten, die der ÖVP durchaus nicht abgeneigt sind, geäußert wurden, haben Sie zerstreut. Sie vertreten den Standpunkt: Jetzt machen wir einmal das Gesetz, und dann werden wir schon weitersehen! Sie tun das, weil Sie genau wissen, daß die EU-Mühlen langsam mahlen, daß es ewig dauert, bis da einmal ein Verfahren in Gang kommt. Aber eines Tages kommt dieses Verfahren, und dann wird der Europäische Gerichtshof dieses Gesetz halt als EU-widrig aufheben. Offensichtlich spekulieren Sie damit, daß es noch eine Weile geht.

Dritter Punkt dieses Übereinkommens: Damit der Fall der Fälle nicht eintritt, der "Super-GAU" aus der Sicht der roten AVZ-Funktionäre, nämlich daß die Erste Bank die AVZ-Anteile an der Bank Austria aufgreift, beruft man sich jetzt in der AVZ auf einen Vertrag zwischen der AVZ und der Ersten, wonach das Aufgriffsrecht nur für die AVZ dezidiert ausgeschlossen ist. Das, meine Damen und Herren, ist der dritte Teil dieses politischen Deals, den Sie gemacht haben, dieser Änderung Ihres Koalitionsabkommens.

Herr Kollege Stummvoll! Sie fragten im Ausschuß, was denn daran so schlecht oder so abwegig sei? – Ich darf Ihnen vor Augen führen, was Sie am 12. Jänner 1997 beschlossen haben. Da heißt es unter Punkt 7: Haftungsverzicht oder Haftungsentgelt, ermittelt durch internationale Gutachter für den Vorteil aus der Gemeindehaftung gemäß dem neuen Sparkassengesetz. – Das wird jetzt überhaupt nicht mehr geregelt!

Meine Damen und Herren! Wenn eine Sparkasse in eine Privatstiftung übergeht, dann gibt es plötzlich zwei Arten von Haftungen: eine solche für Verbindlichkeiten, die es vorher gab, und eine solche für jene, die neu sind. Nun gibt es aber keine Haftung mehr, und von einem Haftungsentgelt ist überhaupt keine Rede mehr. Das muß als Bruch dieses Übereinkommens gewertet werden.

Auch in Punkt 13 wird das Übereinkommen gebrochen, denn da heißt es: Novellierung des Sparkassengesetzes hinsichtlich Haftungsverzicht oder Haftungsentgelt.

Aber der größte Bruch Ihres eigenen Übereinkommens, meine Damen und Herren, findet sich hinsichtlich des Paragraphen 1. Da heißt es nämlich: Stimmrechtsanteile von der AVZ werden unter 25 Prozent reduziert. Das ist mit den 24,8 Prozent derzeit wohl eingetreten. Aber dann heißt es weiter: Ab dem sechsten Jahr werden die über 20 Prozent liegenden Anteile der Stimmrechte gleichfalls von den Treuhändern wahrgenommen.

Wer sind denn dann die Treuhänder? Ist der Treuhänder dann eine Privatstiftung? Erachten Sie diese wirklich als einen Treuhänder? Ja, vielleicht als einen Treuhänder von eigenen Gnaden ernannt! Aber Sie werden diese Bestimmung sicher nicht einhalten können. Doch wir von der Opposition sind sicher nicht so dumm, daß wir diesen Zug, diesen Deal, den Sie da gemacht haben, nicht überreißen würden.

Ich halte es für meine Pflicht – auch namens meiner Fraktion –, die Öffentlichkeit darauf hinzuweisen, daß da gemauschelt wird, und zwar gehörig gemauschelt wird. An der Politik vorbei haben Sie wieder in diversen Gremien Ihre politische Zukunft nach altbewährter Manier einze-mentiert.

Eine Reform, meine Damen und Herren, ist das keine, selbst wenn ich einräume, daß da und dort einzelne Sparkassen, kleine Sparkassen durchaus von der Stiftung profitieren könnten. Aber Sie haben es für die beiden rot/schwarzen Machtblöcke gemacht, nach dem Motto: "Fein sein, beinander bleiben!" Diese Devise soll für Sie auch weiterhin aufgehen. *(Beifall bei den Freiheitlichen. – Abg. Dr.* ***Khol:*** *Herr Firlinger! Wissen Sie, wie das Lied weitergeht? Gscheit sein, net einitäppen! – Ironische Heiterkeit bei ÖVP und SPÖ.)*

14.36

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Präsident MMag. Dr. Willi Brauneder: Weiters zu Wort gemeldet ist Frau Abgeordnete Huber. Freiwillige Redezeitbeschränkung: 5 Minuten. – Bitte, Frau Abgeordnete.

14.36

Abgeordnete Anna Huber (SPÖ): Herr Präsident! Herr Bundesminister! Hohes Haus! "Fein sein, beinander bleiben!" – Offensichtlich wünscht sich das Herr Kollege Firlinger in seinen Kreisen ganz besonders. *(Zwischenruf bei der SPÖ.)* Das könnte ein Problem sein.

Herr Kollege Firlinger! Sie haben gemeint, der Sparkassensektor könne nicht mehr viel wert sein. Ich möchte nur die Fakten festhalten: 24 500 Mitarbeiter gibt es dort, und ein Drittel des österreichischen Kreditvolumens wird in den Sparkassen verwaltet. Das ist nicht sehr viel wert?, frage ich Sie.

Die österreichischen Sparkassen können auf eine sehr lange und erfolgreiche Tradition in der heimischen Kredit- und Volkswirtschaft zurückblicken, und ähnlich, wie der Genossenschaftsgedanke in der Landwirtschaft prägend war, sind es die Sparkassen, die der heimischen Kreditwirtschaft ihr Profil geben, und der gemeinnützige Charakter der Sparkassen wurde bereits bei der Gründung im vorigen Jahrhundert im sogenannten Sparkassenregulativ festgelegt.

Nach wie vor steht die regionale Verbundenheit der Sparkassen im Vordergrund, obwohl das ursprünglich verankerte strikte Regionalitätsprinzip, das in Deutschland immer noch gültig ist, mit der Änderung des KWG und des Sparkassengesetzes 1979 eigentlich gefallen ist.

Nach wie vor wird aber der Gewinn in Form von Widmungen für wissenschaftliches, soziales und kulturelles Sponsoring im Einzugsbereich der Sparkassen der Allgemeinheit zur Verfügung gestellt. Daß schon bei der Gründung stiftungsähnliche Überlegungen maßgeblich waren, wird durch die Betriebsmerkmale Eigentümerlosigkeit und Wirkung für die Allgemeinheit dokumentiert.

Gegründet wurden die Sparkassen seinerzeit von Gemeinden oder von Vereinen, und deshalb gelten auch heute noch Gemeinde- und Vereinssparkassen. Daß sich diese Rechtsform weit über 100 Jahre in den unterschiedlichsten wirtschaftspolitischen, aber auch in unterschiedlichen politischen Systemen erhalten hat, ist eigentlich ein sehr schlagender Beweis für die Zeitlosigkeit und für die Bedeutung der Sparkassen für die Volkswirtschaft.

Als wir im Jahre 1986 die Möglichkeit geschaffen haben, daß eine Sparkasse auch in eine AG eingebracht werden kann, an der sowohl juristische als auch natürliche Personen beteiligt sein können, wurde festgelegt, daß die verbleibende, anteilsverwaltende, also die vermögensverwaltende Sparkasse natürlich, so wie ursprünglich festgelegt, eigentümerlos bleibt.

Vor allem international ist diese Rechtsform weitgehend unbekannt. Mit dem Sparkassenstiftungsgesetz, das uns hier heute vorliegt und das Herr Kollege Firlinger als einen Deal bezeichnet hat *(Abg. Mag. **Firlinger:** Was ist es denn sonst?)* – es wurde immerhin nach eineinhalb Jahren Diskussion festgelegt –, soll nun die Möglichkeit einer grundlegenden Änderung der Rechtsformen und der Haftungskonstruktionen im Sparkassensektor geschaffen werden.

Mit dem Privatstiftungsrecht aus dem Jahr 1993 haben wir ein Rechtsinstitut, das eine Anknüpfung an ein modernes Organisationsrecht nach internationalem Vorbild ermöglicht.

Weil diese Stiftungsvariante fakultativ ist – und ich gebe Ihnen recht, wenn Sie meinen, daß es praktische Bedeutung vor allem für große Sparkassen haben wird –, bin ich überzeugt davon, daß man keineswegs behaupten kann, daß es eine "Lex Bank Austria" oder eine "Lex Erste Österreichische" ist, weil die Bank Austria genauso betroffen ist wie die anderen siebzig selbständigen Sparkassen in Österreich.

Wir haben mit diesem Gesetz eine Grundlage geschaffen, die klarlegt, wie sich der gesamte Sparkassensektor in Zukunft entwickeln wird beziehungsweise soll. Das Aufgriffsrecht, das Sie so kritisiert haben, ist eigentlich eine logische Konsequenz des Bemühens, diesen Sektor insgesamt zu erhalten. Ich hoffe sehr, daß damit die Diskussion, die den Sparkassen im besonderen, aber in Wahrheit der gesamten Kreditwirtschaft in Österreich

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absolut nicht dienlich war, abgeschlossen ist.

Die sozialdemokratische Fraktion wird diesem Gesetz daher gerne ihre Zustimmung geben. – Danke. *(Beifall bei der SPÖ.)*

14.41

Präsident MMag. Dr. Willi Brauneder: Als nächster zu Wort gemeldet ist Herr Abgeordneter Mag. Peter. – Bitte, Herr Abgeordneter.

14.41

Abgeordneter Mag. Helmut Peter (Liberales Forum): Herr Präsident! Herr Bundesminister! Meine Damen und Herren! Sechs Gesetzesmaterien stehen jetzt zur Verhandlung – kurz einige Bemerkungen dazu: Die Veräußerung von unbeweglichem Bundesvermögen wird aus meiner Sicht und der der Liberalen vom Finanzministerium mit großer Kompetenz und Umsicht vollzogen. Mein Kompliment dazu, Herr Bundesminister! Wir werden dem diesbezüglichen Gesetz zustimmen.

Die Zeichnung von zusätzlichen Kapitalanteilen bei der Multilateralen Investitions-Garantie Agentur halten wir ebenfalls für richtig. Wir halten fest, daß Sie unsere Fragen im Ausschuß nach der Kontrolle, nach der Evaluierung der Tätigkeit und nach der österreichischen Mitwirkung positiv beantwortet haben. Das ist uns wichtig! Wir bekennen uns zur internationalen Entwicklungszusammenarbeit und glauben, daß das der beste Weg ist, Differenzen und Ungleichheiten auszugleichen und vor allem die Zusammenarbeit mit den mittel- und südosteuropäischen Staaten und auch den GUS-Staaten zu forcieren.

Ganz anderer Ansicht, Herr Bundesminister, sind wir beim Tabakmonopolgesetz. Um offen zu sein: Wir halten das wirklich für ein unnotwendiges Übungsspiel. Ich weiß schon, da gibt es die Sache mit dem Monopol. Trotzdem meine ich: Es ist ein unnotwendiges Übungsspiel, das da betrieben wird!

Es geht dabei um das Monopol der Letztverkäufer, der Trafiken. Sie haben dankenswerterweise sehr prompt die Information gegeben, die wir haben wollten. Von 3 204 Trafiken werden nur noch 1 038 von Behinderten geführt, also nur ein Drittel. Was spielt sich aber in Wirklichkeit ab? – Bei der Übergabe von Trafiken – soweit sie nicht im Erbwege übergeben werden – bildet sich schön langsam ein grauer Markt mit der Forderung nach Zahlung von Ablösen, denn es ist eine hochprofitable Angelegenheit, eine Monopolvertriebsstelle von Tabakwaren zu haben. Daher werden die Trafiken nicht nur an die Monopolverwaltung zurückgegeben, die sie dann weitergibt, sondern unserer Information nach ist dort auch ein reger Ablösehandel im Gange.

Wir glauben, daß dieses Monopol nicht aufrechtzuerhalten ist. Die Tatsache, daß Sie im Dezember 1997 die letzte Novelle des Tabakmonopolgesetzes vorgelegt haben und daß Sie jetzt, im November 1998, die nächste Novelle vorlegen, weil Sie die Europäische Kommission darauf aufmerksam gemacht hat, daß das Gesetz nicht den Wettbewerbsregeln der Europäischen Kommission entspricht, sollte Sie meiner Meinung nach dazu veranlassen, prinzipiell über das Tabakmonopol als solches nachzudenken.

Ich meine, daß wir dieses unselige Gesetz aufheben sollten. Meiner Meinung nach sollten wir den Wettbewerb im Handel mit Tabakprodukten selbstverständlich zulassen – unbenommen der Steuern, Herr Finanzminister, die Sie überall aufschlagen können – und Behinderte so fördern, daß wir sagen: Menschen mit einem bestimmten Behinderungsgrad bekommen, wenn sie im Tabakhandel tätig sind, je nach ihrem Behinderungsgrad einen Steuervorteil im Rahmen des Tabaksteuergesetzes, um ihnen so einen Marktvorteil gegenüber anderen Konkurrenten, die ebenfalls Tabakprodukte verkaufen, zu verschaffen.

Die Zustimmung der Liberalen können Sie weder zur Novelle noch zu dem ganzen Gesetz haben. Lösen Sie es auf und finden Sie einen neuen Ansatz! Das ist ***nicht*** europakonform. Das ist eines modernen Österreichs unwürdig. *(Beifall beim Liberalen Forum und bei den Grünen.)*

Es gibt drei zusammenhängende Materien, die auf der Tagesordnung sind. Ich fange von hinten an: das Privatisierungsgesetz im Bankenbereich, das wir Liberale in Form eines Entschließungsantrages verlangen. Wir sind der Auffassung, meine Damen und Herren, daß der Staat und damit auch die Politik ein für allemal die Finger von den Banken lassen soll. Sie sind schlechte Bankiers! Politischer Einfluß ist eine schlechte Beratung in der

Politik der Banken, und es ist der schlechteste Dienst, den man der Wirtschaft erweisen kann. *(Beifall beim Liberalen Forum.)*

Ich meine, daß sich die Aufgabe des Staates im Bankensektor ausschließlich auf die Kontrolle beschränken soll.

Herr Bundesminister! Wir werden anschließend bei der Behandlung der Dringlichen Anfrage genügend Zeit haben, darüber zu diskutieren, warum diese staatliche Kontrolle – sprich: Bankenaufsicht – nicht funktioniert. Der Staat und damit der Bereich der Parteipolitik soll nicht über Banken verfügen können, sondern soll sich davon lösen. Sie sollten sich wirklich um die Frage der Kontrolle des Bankenapparates kümmern.

Dieser Entschließungsantrag wird von Ihnen wahrscheinlich abgelehnt werden. Wir werden ihn aber trotzdem weiterverfolgen, weil wir der Auffassung sind, daß staatliche und daher politisch beeinflußte Eigentümer von Banken nicht wiederum von staatlichen und daher weisungsgebundenen Bankaufsichten kontrolliert werden können. Das stellt eine Selbstkontrolle der Politik über die Politik dar.

Wir haben einen weiteren Entschließungsantrag eingebracht, und zwar zur Änderung des Sparkassengesetzes, und wir stimmen heute Ihrem Entwurf des Sparkassengesetzes deswegen zu, weil einige unserer Forderungen damit erfüllt werden. Es sind nur wenige – das gebe ich zu –, aber es sind immerhin einige.

Wir haben damals sechs Punkte normiert. Der erste Punkt enthält den Wegfall der Haftung der Gemeinde für Gemeindesparkassen. Wenn die Umwandlung erfolgt, fällt die Haftung schrittweise weg.

Der zweite Punkt sieht die Entrichtung von Haftungsprämien an die Gemeinden vor, die nicht in eine Stiftung umwandeln, wo also Neuhaftungen nicht von der Gemeinde auf die Stiftung übergehen. Diese Forderung fehlt! Es ist ja in einem konkurrierenden Kreditapparat nicht einzusehen, daß der eine Sektor aufgrund der Gemeindehaftung, die entgeltlos erfolgt, eine andere Wettbewerbssituation hat als andere, die sehr wohl an ihre Eigentümer eine Haftungsprämie entrichten müssen. Ich glaube, daß man diese sektorspezifische Wettbewerbsverzerrung mit einer Kondition von fast einem Prozent angeben kann.

Drittens haben wir vorgeschlagen, die Eigentümerlosigkeit der Vereins- und Gemeindesparkassen in ein Eigentum der früheren Haftungs- und Sitzgemeinden umzuwandeln, um viertens dann die Privatisierung dieser Banken zu verlangen. Ich glaube nicht, daß zukunftsorientierte Strukturen mit Eigentümerlosigkeit von Vereins- und Gemeindesparkassen, wie sie in großen Bereichen bei all jenen Sparkassen, die sich nicht in eine AG umwandeln, auch weiterhin existieren werden, heute in die moderne Bankenlandschaft passen.

Wir werden aber trotzdem diesem Sparkassengesetz unsere Zustimmung geben, weil wir es für richtig halten, daß der Sektorenzusammenhalt gegeben ist. Sektorenzusammenhalt heißt, daß Sie eben ein Vorkaufsrecht für eine gewisse Zeit im Sektor weiter aufrechterhalten. Die Sekto-ren haben sich ja bewährt, wohingegen die Strukturen des Sparkassensektors mit der Eigentümerlosigkeit unserer Ansicht nach nicht mehr zeitgemäß sind.

Selbstverständlich muß, wenn die Eigentümerlosigkeit der Vereins- und Gemeindesparkassen dort, wo sie nicht in Stiftungen umgewandelt werden, aufgehoben wird und damit die Gemeinden Eigentümer werden, um die Sparkassen dann zu privatisieren, ein maximaler Veräußerungserlös für die Gemeinden das Ziel sein. Jene Gemeinden, die ihre Gemeindesparkassen veräußert haben, sind eigentlich sehr gut damit gefahren. Ein Beispiel dafür ist die Stadtgemeinde Villach.

Wir werden dieser Novelle des Sparkassengesetzes zustimmen, wohl wissend, daß sie nicht die Breite unserer Forderungen enthält, aber wir glauben, daß sie einen Schritt in die richtige Richtung darstellt.

Nun einige Bemerkungen zu dem Antrag des Kollegen Graf von den Freiheitlichen. Kollege Graf hat damit meiner Auffassung nach einen sehr kompetenten Änderungsvorschlag für das Bankwesengesetz gemacht. Dabei geht es ganz konkret um die Frage der Anonymität. Die Behandlung dieses Antrages haben die Regierungsparteien mittels ihrer Mehrheit im Ausschuß wieder vertagt.

Dieses Thema, Herr Bundesminister, werden wir nicht beliebig vor uns herschieben können. Was schieben wir noch alles vor uns her – weil wir uns vor der Entscheidung drücken und weil der Wahltag naht? *(Abg. **Böhacker:** Die internationale Entwicklung abwarten!)* – Ja, aber das kann ich, offen gestanden, schon nicht mehr hören. *(Abg.*

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Böhacker: *Bis zum Sankt-Nimmerleins-Tag!)* Dieses Argument wäre mir selbst auch eingefallen.

Mir geht es darum, daß wir eine wirkliche Verbesserung, eine strenge Handhabung des Bankgeheimnisses erreichen. Wir haben in Österreich, Herr Finanzminister, ein unbrauchbares, ein schlechtes, ein löchriges Bankgeheimnis. Bitte verbessern Sie dieses Bankgeheimnis gemäß dem europäischen Standard, und dann können wir uns von der Anonymität klammheimlich oder nicht klammheimlich verabschieden! Nur: Die Behandlung solch guter Anträge einer Oppositionsfraktion – wozu ich dem Herrn Dr. Graf gratuliere – einfach wieder zu vertagen und das Thema vor uns herzuschieben, halte ich weder für gute Politik, noch für sonderlich kreativ. – Danke schön. *(Beifall beim Liberalen Forum.)*

14.49

Präsident MMag. Dr. Willi Brauneder: Zu Wort gemeldet ist als nächster Herr Abgeordneter Dr. Stummvoll. 9 Minuten freiwillige Redezeitbeschränkung. – Bitte, Herr Abgeordneter.

14.50

Abgeordneter Dkfm. Dr. Günter Stummvoll (ÖVP): Herr Präsident! Herr Bundesminister! Meine sehr geehrten Damen und Herren! Ich möchte mich in meinem kurzen Redebeitrag nur mit der Novelle zum Sparkassengesetz beschäftigen und möchte kein Hehl daraus machen, daß ich sehr froh darüber bin, daß wir nach monatelangen, zum Teil sehr schwierigen Verhandlungen heute diese für den Sparkassensektor so wichtige Gesetzesnovelle beschließen können.

Meine Damen und Herren! Es gab lange und schwierige Verhandlungen für einen Sektor unserer Kreditwirtschaft, der ungefähr ein Drittel Marktanteil hat, der ungefähr ein Drittel aller Spargelder unserer Bevölkerung verwaltet – das ist immerhin ein Betrag von 1 500 Milliarden Schilling –, für einen Sektor unserer Kreditwirtschaft, in welchem rund 25 000 Personen beschäftigt sind, für einen Sektor unserer Kreditwirtschaft, der heuer mit einer Bilanzsumme von 2 000 Milliarden Schilling gleichsam eine Schallmauer durchbrechen wird, also für einen unglaublich wichtigen Bereich unserer Geld- und Kreditwirtschaft. Daher war es sehr wichtig, daß wir für diesen Bereich das moderne Rechtsinstitut der Stiftung als Möglichkeit eröffnen.

Es ist bisher so gewesen, daß bei Sparkassen, die ihr operatives Geschäft etwa an eine AG ausgegliedert haben, der verbleibende formale Rest als Anteilsverwaltungssparkasse geführt wurde. Diese Rechtsform ist zwar international völlig unüblich, völlig unbekannt, sie ist aber mit weitreichenden Entscheidungskompetenzen, was die operative AG betrifft, verbunden.

Ich gebe zu, daß ich von den Sparkassen jahrelang mit Interventionen konfrontiert worden bin, bei denen man mich gebeten hat: Bitte eröffnet uns doch auch die Möglichkeit, das moderne Rechtsinstitut der Stiftung für uns in Anspruch zu nehmen! – Genau diese Möglichkeit schaffen wir jetzt mit dieser Novelle.

Meine Damen und Herren! Ich bin auch deshalb sehr froh darüber, daß wir heute diese Novelle beschließen können, weil die Sparkassen – und es ist kein Zufall, daß sogar die beiden größten Bankinstitute unseres Landes, nämlich die Bank Austria und die Erste AG, beide rechtlich gesehen eigentlich Sparkassen sind; auch das unterstreicht die Bedeutung dieses Sektors – ein Bereich unserer Wirtschaft sind, der sich durch unglaubliche Kundennähe, durch starke Einbindung in die regionale Wirtschaft auszeichnet, und eigentlich die Hauptfinanziers des gewerblichen Mittelstandes, aber auch des Handels und des Tourismus sind, also ein wirklich wichtiger Teilbereich unserer Wirtschaft.

Weil hier vom Kollegen Firlinger die Frage des Aufgriffsrechts kritisiert wurde, muß ich sagen: Das ist eine Frage der Grundphilosophie, meine sehr geehrten Damen und Herren! *(Abg. Mag.* ***Firlinger:*** *Nicht von mir, sondern von Experten!)* Da stellt sich die Frage: Wollen wir einen einheitlichen starken Sparkassensektor: ja oder nein? Wenn wir ihn wollen, dann ist zwangsläufig ein Aufgriffsrecht vorzusehen.

Herr Kollege Firlinger! Du weißt es ja, daß wir es außerdem auf fünf Jahre befristet haben. Ich glaube, daß das durchaus zu rechtfertigen ist und dem überwiegenden Wunsch der Betroffenen entspricht. *(Beifall bei der ÖVP. – Abg. Mag.* ***Firlinger:*** *Wenn es fünf Jahr dauert, ...!)*

Wir, Herr Kollege Firlinger, richten unsere Politik danach aus, was die Betroffenen brauchen und wünschen. Wir

wollen sie weder zwangsbeglücken noch sonst etwas. Das war ein dringender Wunsch dieses Sektors. *(Neuerlicher Zwischenruf des Abg. Mag. **Firlinger.**)* Ich bin daher sehr froh darüber, daß wir auch diesen Wunsch heute erfüllen und daß wir damit vor allem die Weichen dafür stellen, daß erstens dieser sehr wichtige Sektor unserer Geld- und Kreditwirtschaft – wie gesagt, Marktanteil ungefähr ein Drittel – die Möglichkeit erhält, das moderne Rechtsinstitut der Stiftung für sich zu nutzen, was eine strategische Entscheidung weit bis in das nächste Jahrhundert hinein bedeutet, und daß wir zweitens mit diesem fünfjährigen Aufgriffsrecht auch die Möglichkeit schaffen, daß sich dieser Sparkassensektor in den nächsten fünf Jahren so strukturiert und von den neuen Möglichkeiten so Gebrauch macht, daß wir auch im nächsten Jahrhundert, im nächsten Jahrtausend einen sehr leistungsfähigen Sparkassensektor haben, denn das ist ein Sektor, der ohnehin genauso wie alle anderen Bereiche unserer Wirtschaft unglaublich gefordert ist, und zwar durch die Globalisierung, durch den zum Teil brutalen internationalen Wettbewerb, durch veränderte Kundenwünsche, durch Einführung des Euro und und und.

Ich muß sagen, daß es ist für mich immer wieder erfreulich ist, zu sehen, daß trotz der vielen Megafusionen, von denen wir in der Zeitung lesen können – die "Welt AG" ist im Bereich der Geld- und Kreditwirtschaft schon fast eine gewisse Vision, wie man sieht –, regionale Sparkassen immer wieder beweisen, welche Chancen auch für die mittelständische Geld- und Kreditwirtschaft gegeben sind.

Ich möchte in diesem Zusammenhang ganz bewußt ein Beispiel aus meinem Wahlkreis nennen, und zwar die Waldviertler Sparkasse in Waidhofen an der Thaya. Sie ist heute eine der modernsten Sparkassen in ganz Österreich. Sie ist auch jene Sparkasse, die als erstes Geld- und Kreditinstitut Österreichs von Prag aus eine Filialgenehmigung für Tschechien erhalten hat. Sie ist unglaublich dynamisch und unglaublich vorwärts orientiert. Sie ist eine Einrichtung, die sich eigentlich von einer Sparkasse zu einem Beratungszentrum für die Wirtschaft, zu einem Problemlösungszentrum, in dem Komplettlösungen, Projektfinanzierung inklusive aller Möglichkeiten der EU-Förderung und ähnliches mehr angeboten werden, entwickelt hat.

Das ist moderne Sparkassenphilosophie: Kundennähe, Problemlösung, Dienstleistung. Das ist die Zukunft!

Wir werden heute mit diesem Gesetz die Weichen dafür stellen, daß auch in Zukunft solche Sparkassen – die Sparkassen mit ihren zirka 25 000 Mitarbeitern – die faire Chance haben, erfolgreich im weltweiten Wettbewerb zu bestehen. *(Beifall bei der ÖVP.)*

14.55

Präsident MMag. Dr. Willi Brauneder: Zu Wort gemeldet ist als nächster Herr Abgeordneter Van der Bellen. Er schaut auf die Uhr, ich auch. 5 Minuten Redezeit stünden zur Verfügung. Wollen Sie diese nützen? *(Abg. Dr. **Van der Bellen**: Ja!)* – Bitte. *(Abg. Dr. **Khol** – zu dem in Richtung Rednerpult eilenden Abgeordneten Dr. Van der Bellen –: Carpe diem!)*

14.55

Abgeordneter Dr. Alexander Van der Bellen (Grüne): Herr Präsident! Herr Bundesminister! Meine Damen und Herren! Vielleicht stimmt das ja, Herr Kollege Stummvoll, was Sie über die Sparkasse Waidhofen an der Thaya gesagt haben. – Ich werde meinen Redebeitrag auch auf das Sparkassengesetz konzentrieren, dabei aber auf die Gemeindesparkassen Bezug nehmen, jedoch nicht auf die Sparkasse Waidhofen an der Thaya, sondern auf die AVZ und auf die Bank Austria.

Ich weiß nicht, warum die ÖVP diesem Gesetz zustimmt – ich komme später noch darauf zu sprechen –, aber ich stelle fest, daß das, was die SPÖ hier macht, ein interessanter – ich drücke mich jetzt zynisch aus; ich sage das gleich dazu – Mittelweg zwischen der früheren Kommunalisierung einer Bank und einer nicht stattgefunden habenden Privatisierung einer Bank ist, indem sie als dritten Weg die Feudalisierung einer Bank wählt.

Wie komme ich zu diesem Schluß? – Sie brauchen sich nur anzuschauen, was nach § 27a dieses Gesetzes mit den Organen der AVZ beziehungsweise der Privatstiftung passiert. Diese Organe werden eins zu eins aus der AVZ in die Privatstiftung übernommen. Der Vorstand der AVZ wird der Vorstand der Privatstiftung. Der Sparkassenrat der AVZ wird der Aufsichtsrat der Privatstiftung. Das heißt, daß im Augenblick die 9 : 2-Mehrheit der SPÖ in diesen Gremien zusammengenommen gesichert ist. Aber das ist nicht so sehr das Interessante – das wissen wir ja ohnehin –, sondern interessant ist vielmehr, daß diese SPÖ-Mehrheit in den relevanten Gremien ad infinitum, auf ewig gesichert wird, denn bei den nachfolgenden Besetzungen, dann, wenn einmal jemand stirbt oder aus welchen

Gründen auch immer aus dem Vorstand beziehungsweise Aufsichtsrat der Privatstiftung ausscheidet, nominieren die Gremien selbst nach.

Das ist eine Personalisierung dieser Gremien. Sie werden keinerlei öffentlicher Kontrolle unterliegen, sei es durch den Gemeinderat, sei es durch den Nationalrat oder sonst irgendwelche gewählte Gremien. Das meine ich mit Feudalisierung einer Bank. Es wird mit diesem Gesetz einer Personengruppe eine Macht übertragen, die sie auf immer beibehalten wird. Durch das Selbstergänzungsrecht dieser Gremien bleibt das auch so erhalten.

Zu entscheiden, ob im Fall der AVZ überhaupt eine Privatstiftung errichtet wird, obliegt nicht dem Gemeinderat – das gilt für alle Gemeindesparkassen –, sondern dazu bedarf es eines Beschlusses des Vorstandes der AVZ, bekanntlich teilweise identisch mit dem Vorstand der Bank Austria, plus einer Zustimmung des Sparkassenrates der AVZ, wo wiederum die Betriebsräte ein Vetorecht haben. Eine Zustimmung des Gemeinderates, also jener Körperschaft, die immerhin für die Verbindlichkeiten dieser Sparkasse haftet, ist im Gesetz nicht vorgesehen. Das obliegt einzig und allein den Gremien in den jetzigen Anteilsverwaltungen der Sparkassen, im Falle der Bank Austria der AVZ – und das, obwohl es da um große Beträge geht.

Ich weiß nicht, wie hoch Herr Kollege Trattner den Marktwert der AVZ-Anteile an der Bank Austria im Moment einschätzen würde. Das hängt natürlich auch vom Börsenkurs ab. Aber eine Größenordnung von 20 bis 30 Milliarden Schilling ist, meine ich, durchaus realistisch.

Dritter Punkt: Nicht allein, daß sich die Gremien im Anschluß an die Gründung der Privatstiftung selbst perpetuieren, und nicht allein, daß die Entscheidung, ob überhaupt eine Privatstiftung gemacht wird, eine rein private ist – paßt zum Namen "Privatstiftung" –, obliegt auch die Zweckbestimmung – eine Stiftung muß ja einen Zweck haben, die Erträge aus dem Stiftungsvermögen müssen bestimmten Zwecken zugeführt werden – einzig und allein den Gremien der Privatstiftung, obwohl es sich indirekt um Vermögen der Gemeinden handelt. Welche Zwecke das sein werden, wissen wir heute nicht. Das wissen auch Sie nicht, die Sie heute das Gesetz beschließen werden. Es ist im Gesetz nur von mildtätigen, kirchlichen, gemeinnützigen Zwecken die Rede, aber was das im Detail sein wird, ist eine Frage der sogenannten Stiftungserklärung und der späteren Politik der Privatstiftung.

Mit anderen Worten: Wer dann wirklich die Begünstigten sein werden, weiß man nicht. Es geht da immerhin um Beträge von 500 Millionen Schilling oder einer Milliarde Schilling pro Jahr, die als Erträgnisse aus dieser sogenannten Privatstiftung erzielt werden. Dazu muß ich sagen: Das kann doch nicht der Sinn der seinerzeitigen Gesetze über Privatstiftungen gewesen sein!

Daß die Haftungen bestehenbleiben, darauf hat Kollege Peter von den Liberalen schon hingewiesen, daß die Wettbewerbsverzerrung bestehenbleibt, ist nur ein Detail am Rande, und was das sogenannte Aufgriffsrecht des Zentralinstituts betrifft, Herr Kollege Stummvoll, bezweifle ich erstens, daß das EU-kompatibel ist, denn das ist ein schwerer Eingriff in die Eigentumsrechte der bisherigen Sparkassen, und zweitens – das ist auch nur ein Detail am Rande, aber es ist typisch dafür, wie hier gearbeitet wird – hätte nach dem Gesetz, wenn ich es nicht völlig falsch verstehe, die Erste ein Aufgriffsrecht bezüglich der Bank-Austria-Anteile, wenn die AVZ, die spätere Privatstiftung, später verkaufen will. – Nach dem Gesetz.

Der vorgestrigen Ausgabe des "Kurier" entnehme ich allerdings, daß es einen privatrechtlichen Vertrag zwischen Bank Austria und Erste gibt, daß das in dieser Form nicht vonstatten gehen wird. Jetzt frage ich mich: Wer ist stärker, i oder i?

Präsident MMag. Dr. Willi Brauneder: Herr Kollege Van der Bellen! Es ist 15.01 Uhr. Wollen Sie weiter fortsetzen? *(Abg. Dr. **Van der Bellen:** Später!)* – Gut, Sie setzen dann weiter fort. Ihre Ausführungen sind hiermit unterbrochen. *(Beifall bei den Grünen und beim Liberalen Forum für den das Rednerpult verlassenden Abg. Dr. Van der Bellen.)*

Dringliche Anfrage

der Abgeordneten Mag. Trattner und Kollegen an den Bundesminister für Finanzen betreffend Bankenaufsicht und Riegerbank (5129/J)

Präsident MMag. Dr. Willi Brauneder: Ich rufe nun die dringliche Behandlung der schriftlichen Anfrage 5129/J auf.

Da diese Anfrage inzwischen allen Abgeordneten zugegangen ist, erübrigt sich eine Verlesung durch den Schriftführer.

Die Dringliche Anfrage hat folgenden Wortlaut:

"Österreichs Banken sind einer spezifischen Aufsicht und Kontrolle unterworfen, und zwar vor allem durch die Bankenaufsicht im Bundesministerium für Finanzen. Bei der Bewältigung dieser Aufgabe wird die Bankenaufsicht durch die Oesterreichische Nationalbank unterstützt.

Hauptaufgabe der Bankenaufsicht ist die Sicherung der Funktionsfähigkeit des Bankwesens und insbesondere auch der Gläubigerschutz. Die Bankenaufsicht ist daher zum Eingreifen verpflichtet, falls für die Erfüllung der Verpflichtungen einer Bank gegenüber ihren Gläubigern Gefahr bestünde. Das Bankwesengesetz stellt der Bankenaufsicht neben der Konzessionserteilung, Maßnahmen gegenüber sogenannter Problembanken zur Abwendung möglicher Insolvenzen und unter anderem auch die Möglichkeit der Rücknahme der Konzession als Aufsichtsmittel zur Verfügung. Organe der Bankenaufsicht sind das Bundesministerium für Finanzen als Bankaufsichtsbehörde, Staatskommissär, Regierungskommissär, Bankprüfer, die OeNB und Sonderprüfer. Im Finanzministerium sind derzeit in der Gruppe Bankenaufsicht zwischen 25 und 30 Personen mit der Bankenaufsicht betraut. Darüber hinaus sind weitere rund 200 Bedienstete als Staatskommissäre bestellt, wobei die Bestellung nicht aufgrund fachspezifischer Vorkenntnisse erfolgt.

Bei einer Prüfung der Bankenaufsicht durch den Rechnungshof im Jahre 1993 wird heftige Kritik an der Bankenaufsicht geübt:

‚Die im Vergleich zum Aufgabengebiet sparsame Personalausstattung zwang dazu, nach einer Prioritätenreihung in erster Linie Problemfälle eingehend zu besichtigen. ... Eingehende Kontrollschritte setzten spät, häufig erst nach Eintritt einer Gefährdung ein. Für aufsichtsbehördliche Gegenmaßnahmen vor Ausbruch der Gefährdung fehlte auch ein einsatzbereites und aussagekräftiges Frühwarnsystem, an dessen Entwicklung das BMF allerdings arbeitete. ... Der Rechnungshof bemängelte, daß eingehende Kontrollhandlungen häufig verhältnismäßig spät einsetzten und weiterhin auf dem Zufallsprinzip beruhten. Die Kontrolle auf der Grundlage des Dritten Quartalsberichtes erfolge etwa im November, ..., so daß drohender Schaden nicht mehr rechtzeitig erkannt und bekämpft werden könne. Der Rechnungshof drängte daher auf die Fertigstellung eines funktionsfähigen Früherkennungssystems auf der Grundlage aussagefähiger Kennzahlen als wertvolles Hilfsmittel der Mißstandskontrolle. ... Der Rechnungshof bemängelte die zögernde und wenig zielstrebige Bearbeitung durch die Aufsichtsbehörde. ... Insbesondere beanstandete der Rechnungshof das Fehlen energischer Aufsichtsmaßnahmen, weil die überwiegend gehandhabte Einholung von Auskünften kaum erfolgversprechend war.‘

Quasi als Bestätigung der Rechnungshofkritik spielte die Bankenaufsicht im Zusammenhang mit der Insolvenz der Bank für Handel und Industrie (BHI) im Jahr 1995 eine unrühmliche Rolle. Schon in den Jahren zuvor stand das Verhalten der Bankenaufsicht regelmäßig im Schußfeld öffentlicher Kritik, wie zum Beispiel 1992 beim Bankhaus Rössler in Wien, 1993 bei der EffectInvest, der heutigen Diskont Bank, und 1994 bei den sogenannten ‚Karibik-Geschäften‘ der BAWAG.

Trotz der deutlichen Kritik durch den Rechnungshof und trotz oben angeführter Problemfälle hielt es der Bundesminister für Finanzen nicht notwendig, die Bankenaufsicht zu einem durchschlagskräftigen Kontrollorgan umzugestalten. Entsprechende Anträge der Freiheitlichen wurden immer mit den Stimmen der Regierungsparteien abgelehnt.

Als vorläufigen Höhepunkt für die Unfähigkeit der Bankenaufsicht muß nunmehr das Beispiel Riegerbank angesehen werden.

Bei der Vielzahl von Prüfungen – die Riegerbank wurde als die bestgeprüfte Bank bezeichnet – fiel keinem der Organe der Bankenaufsicht und auch nicht dem Aufsichtsrat auf, daß möglicherweise bereits seit 10 Jahren Bilanzen verfälscht, Außenstände falsch dargestellt, Bankguthaben praktisch erfunden oder nach oben revidiert wurden. Ebenso unbeachtet blieb die Tatsache, daß die Riegerbank wiederholt gegen das gesetzlich

vorgeschriebene ‚Vier-Augen-Prinzip' verstoßen hat. Ohne den Argwohn der Bankenaufsicht zu wecken, wies die Riegerbank bei relativ geringem Geschäftsvolumen stets beträchtliche Ergebnisse aus der ordentlichen Geschäftstätigkeit aus. Dies, obwohl die Riegerbank in allen ihren Wechselstuben extrem hohe Bestände an Valuten hielt und somit dafür keine Erträgnisse abwerfen konnte.

Da der Masseverwalter Klemens Dallinger die Buchhaltung der Riegerbank nunmehr als ein einziges Chaos bezeichnet, erscheint es um so verwunderlicher, daß in den letzten Jahren kein Aufsichtsorgan mißtrauisch geworden ist. Auch für den Leiter des Alpenländischen Kreditorenverbandes, Otmar Koren, bleibt es ‚schleierhaft', daß die Malversationen die längste Zeit niemandem aufgefallen seien. ‚Unter einer gewissenhaften Prüfung muß man verstehen, daß auch Belege angeschaut werden' (‚Die Presse', 4.11.1998). Anerkannt von den Organen der Bankenaufsicht wurden jedoch gefälschte Saldenbestätigungen von Geschäftsbanken, bei denen die Originalvermerke ausgelackt und mittels Schreibmaschine Zahlen, die nicht der Realität entsprachen, eingesetzt worden sind (Format 3/98). Auch kreative Aktivposten in der Bilanz der Riegerbank, wie zum Beispiel ‚Gelder unterwegs', wurden von den Prüforganen nicht hinterfragt.

Obwohl die Bankenaufsicht im Frühjahr 1998 erstmals eine Anzeige wegen Bilanzfälschung erstattete, genehmigte sie den Verkauf der ‚Rieger-Anleihen' ohne Zweckbindung. Die hohe Verzinsung von 7,5 Prozent, eine kurze Laufzeit, ein Verkaufsprospekt mit einer Vielzahl von falschen Angaben und eine Vertriebsprovision von 15 Prozent für die Diskontbank hätten in der Bankenaufsicht oder der Wertpapieraufsicht die Alarmglocken schrillen lassen müssen. Die Tatsache, daß die Riegerbank eine riskante, nicht fundierte Anleihe zum Verkauf angeboten hat, hätte aus Gläubigerschutzinteressen zu einer unmittelbaren Überprüfung durch die Bankenaufsicht und zu einer freiwilligen Überprüfung durch die Wertpapieraufsicht führen müssen. Vor diesem Hintergrund erscheinen diverse Aussagen, wonach jeder Anleihezeichner über das enorme Risiko beim Kauf einer Riegerbank-Anleihe Bescheid hätte wissen müssen, mehr als eigenartig.

Die Tatsache, daß die bestellten Bankprüfer an der Riegerbank in einer solchen Größenordnung beteiligt waren, daß beinahe ein Ausschließungsgrund vorgelegen war, veranlaßte weder die restliche Bankenaufsicht noch den Aufsichtsrat zu einer sorgfältigeren Prüfung der durch die Bankprüfer vorgelegten Unterlagen.

Trotz dieser Vielzahl von Ungereimtheiten, die im Zuge einer ordnungsgemäßen Überprüfung zumindest ansatzweise hätten auffallen und zu Gegenmaßnahmen, wie zum Beispiel Einsetzen eines Regierungskommissärs, führen hätte müssen, lehnen die Organe der Bankaufsicht sowie die Aufsichtsräte jede Verantwortung für die Insolvenz der Riegerbank ab. Dabei stellte nach Ansicht des Bundesministeriums für Finanzen gerade das Erkennen wirtschaftlicher Abläufe in ihrem Zusammenhang eine taugliche Grundlage für die Krisenfrüherkennung dar (Punkt 6.3 des Rechnungshofberichtes aus 1993). Außerdem verwies bereits 1993 das BMF auf die laufenden intensiven Arbeiten an einem Früherkennungssystem, mit dessen Einsatz in einigen Monaten gerechnet werden könne (Punkt 5.3 des Rechnungshofberichtes aus 1993).

Nach bisher bekannt gewordenen Informationen beträgt die Schadenshöhe bereits mehr als eine Milliarde Schilling, wovon auch über 1 000 private Anleihezeichner betroffen sind.

Dennoch beteuert die Bankenaufsicht im Bundesministerium für Finanzen, daß sie ‚immer richtig gehandelt habe und daß es für das offenbar gigantische Verbrechen keine Indizien gegeben habe'. Auch die Nationalbank vertritt die Meinung, daß aus ihrer Sicht nichts schiefgelaufen sei.

Nach vorliegendem Sachverhalt ist eindeutig erwiesen, daß alle Aufsichtsorgane ihre gesetzmäßigen Aufgaben nicht erfüllt und daher versagt haben, wodurch sie wiederum zu einer Schädigung von Gläubigern beigetragen haben. Die Verantwortung dafür liegt bei der Untätigkeit des Bundesministers für Finanzen.

Aus gegebenem Anlaß stellen daher die unterzeichneten Abgeordneten gemäß § 93 Abs. 1 GOG-NR an den Bundesminister für Finanzen folgende

Dringliche Anfrage:

1. Halten Sie das derzeitige System der Bankenaufsicht für ausreichend?

Wenn nein, warum hat das Bundesministerium für Finanzen trotz der Kritik des Rechnungshofes und dem

Versagen der Bankenaufsicht bei der BHI–Insolvenz nicht spätestens 1995 geeignete Reformen in die Wege geleitet?

2. Inwieweit ist das Bundesministerium für Finanzen den Empfehlungen des Rechnungshofes aus dem Jahre 1993 nachgekommen, und inwieweit hat das Bundesministerium für Finanzen die eigenen Ankündigungen umgesetzt?

3. Unterstützen Sie die Einrichtung einer ‚einheitlichen Kapitalmarktaufsicht', welche sich auf Banken, Versicherungen und freie Wertpapierdienstleistungsunternehmen erstreckt?

Wenn ja, wie und wann werden Sie diesbezügliche Maßnahmen ergreifen?

Wenn nein, welche sonstigen Reformen werden Sie setzen?

4. Um die Gewährung welcher Konzession hat Herr Rieger seinerzeit angesucht und welche Konzessionen wurden schließlich erteilt?

5. Hat Herr Rieger die jeweils dafür notwendigen Voraussetzungen erfüllt?

6. Welche Rolle hat der frühere Klubobmann der SPÖ Dr. Fuhrmann bei der Erteilung der Konzession gespielt?

7. In welcher Form ist der ehemalige Klubobmann der SPÖ Dr. Fuhrmann beziehungsweise sind sonstige der SPÖ nahestehende Personen in die Affäre Rieger verstrickt?

8. Hat die Bankenaufsicht dafür Sorge getragen, daß in der Riegerbank eine interne Revisionsabteilung aufgebaut wurde?

Wenn ja, wann und in welcher Art und Weise?

9. Wurde das im Rechnungshofbericht 1993 angekündigte computerisierte Frühwarnsystem im Falle Rieger angewendet?

Wenn nein, warum nicht?

10. Wer war bei der Riegerbank in den letzten fünf Jahren als Bankprüfer tätig?

11. Waren beziehungsweise sind Bankprüfer an der Riegerbank beteiligt?

Wenn ja, zu wieviel Prozent und weshalb hat das Bundesministerium für Finanzen gegen die Bestellung dieser Bankprüfer keinen Widerruf erhoben?

12. Haben die Bankenaufsicht beziehungsweise die Bankprüfer die von der Riegerbank behaupteten Aktiva, insbesondere Guthaben bei anderen Kreditinstituten, überprüft?

Wenn ja, wie?

Wenn nein, warum nicht?

13. Wann sind der Bankenaufsicht erstmals Unregelmäßigkeiten in der Gebarung der Riegerbank aufgefallen und welche Konsequenzen wurden daraus gezogen?

14. Hat die Bankenaufsicht aufgrund vorliegender Verdachtsmomente Anzeigen bei der Staatsanwaltschaft oder anderen Behörden erstattet?

Wenn ja, wann, an wen, mit welchem Inhalt und mit welchem Ergebnis?

15. Hat das Bundesministerium für Finanzen Sonderprüfungen nach dem BWG beantragt?

Wenn ja, aufgrund welcher vorliegender Verdachtsmomente, wann, wer wurde damit beauftragt und welche Ergebnisse wurden hiebei erzielt?

16. Wann und aufgrund welcher Erwägungen wurde die Kanzlei Dr. Staribacher mit der Prüfung beauftragt?

17. Wie erklären Sie sich den Umstand, daß die Kanzlei Dr. Staribacher keinen Anlaß zur Beanstandung fand, obwohl laut Masseverwalter die Buchhaltung der Riegerbank ‚ein einziges Chaos' sei?

18. Welche Prüfungsaufträge hat die Kanzlei Dr. Staribacher in den letzten fünf Jahren vom Bund erhalten und welche Erwägungen waren dafür maßgebend?

19. Welche Konsequenzen werden Sie daraus ziehen, daß die Kanzlei Dr. Staribacher offensichtlich bei der Prüfung der Riegerbank überfordert war?

20. Haben Sie aufgrund der Kritik des Aufsichtsratsvorsitzenden Dr. Androsch wegen des Vorliegens offensichtlicher Unregelmäßigkeiten einen Regierungskommissär gemäß BWG bestellt?

Wenn ja, wen?

Wenn nein, warum nicht?

21. In welchem Verhältnis steht beziehungsweise stand die Riegerbank zur EffectInvest/Diskont Bank?

22. Wer sind die Hauptaktionäre der EffectInvest/Diskont Bank und der Riegerbank?

23. In welcher Form hat die Bankenaufsicht und die Wertpapieraufsicht bei der Begebung der Riegerbank-Anleihe mitgewirkt?

24. Weshalb hat die Aufsichtsbehörde gegen die Begebung der Anleihe keinen Einwand erhoben, obwohl ein Provisionssatz von 15 Prozent für die Diskont Bank und eine Verzinsung von 7,5 Prozent vorgesehen war?

25. Ist es richtig, daß die Riegerbank, ohne die entsprechende Konzession dafür zu besitzen, eine Tranche im Volumen von 250 Millionen Schilling selbst plaziert hat?

Wenn ja, wann hat die Bankenaufsicht erstmals davon erfahren und welche Konsequenzen wurden daraus gezogen?

26. Ist es richtig, daß der Vorstand der Diskont Bank Anleihen der Riegerbank zum Nominalwert von rund 81 Millionen Schilling um ‚unter einer Million Schilling' an die Euro-Invest Bank, welche 1991 Aktien der EffectInvest – der jetzigen Diskont Bank – an der Wiener Börse plaziert hat, verkauft hat?

Wenn ja, zu welchen Konsequenzen wird dies für den Vorstand der Diskont Bank führen?

27. Sind oder waren die Euro-Invest Bank oder deren Eigentümer an der Riegerbank beziehungsweise der Diskont Bank beteiligt?

28. Welche Konsequenzen werden Sie aus dem offensichtlichen Fehlverhalten der Bankenaufsicht und Wertpapieraufsicht ziehen?

29. In welcher Form und wann werden Sie die, durch das offensichtliche Versagen der Aufsichtsbehörden mitverursachte Schädigung der Kleinanleger wiedergutmachen?

30. Beabsichtigen Sie, zur Sicherung des Bankplatzes Österreich den Schutz der Kleinanleger sowohl der Höhe nach als auch auf andere Anlageformen auszuweiten?

Wenn ja, in welcher Form?

Wenn nein, warum nicht?

31. Wie beurteilen Sie Ihre politische Verantwortung aufgrund des Versagens der Aufsichtsbehörden, und welche Konsequenzen werden Sie daraus ziehen?

In formeller Hinsicht wird ersucht, diese Anfrage im Sinne des § 93 Abs. 1 GOG-NR vor Eingang in die Tagesordnung zum frühestmöglichen Zeitpunkt zu behandeln."

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Präsident MMag. Dr. Willi Brauneder: Als erstem Redner erteile ich Herrn Abgeordneten Mag. Trattner das Wort, und zwar zur ersten Fragestellung und zur Begründung, die gemäß § 93 Abs. 5 der Geschäftsordnung 20 Minuten nicht überschreiten darf. – Bitte, Herr Abgeordneter.

15.02

Abgeordneter Mag. Gilbert Trattner (Freiheitliche): Sehr geehrter Herr Präsident! Sehr geehrter Herr Finanzminister! Sehr geehrte Damen und Herren! Wieder werden wir aufgerüttelt durch eine in die Insolvenz geschlitterte Bank. Wieder werden wir aufgerüttelt durch eine Insolvenzgefahr, die für eine andere Bank bereits knapp bevorsteht.

Wir haben in den letzten Jahren in Österreich eine Reihe von Bankenzusammenbrüchen erlebt. In der Nachkriegszeit war das die Krauland-Bank, viel geschildert, die Rössler-Bank, die BHI-Bank, jetzt die Riegerbank, und als nächste ist die Diskont Bank, die ehemalige EffectInvest, gefährdet.

Es gibt Probleme in den einzelnen Sektoren, die aber nicht unbedingt aufscheinen, denn wenn es bei irgendeiner kleinen Sparkasse, bei irgendeiner kleinen Raiffeisenkasse oder bei einer kleinen Volksbank einmal eng wird, dann wird das nicht offengelegt, sondern es wird praktisch vom Landesverband beziehungsweise von der Raiffeisenlandesbank übernommen. Es wird einfach eine Decke darübergelegt, und man hinterfragt gar nicht: Was haben die Aufsichtsorgane in diesen einzelnen kleinen Instituten überhaupt getan? Wie haben sie ihre Funktionen wahrgenommen, damit solche Dinge nicht passieren können?

Die größte Sache, die wir erlebt haben, die auch nicht schlagend geworden ist, weil sie sich nicht im Privatbankenbereich, sondern im Verstaatlichtenbereich abspielte, war die Länderbank. Auch bei der Länderbank das gleiche Bild: Riesengroße Verluste, der Steuerzahler hat dort Milliarden hineinzahlen müssen. Wir zahlen heute noch Millionenbeträge an Zinszahlungen an die jetzige Bank Austria. Es wurde damals ein eigenes Gesetz geschaffen, damit die Ausfälle nicht, wie es wirtschaftlich gerechtfertigt wäre, sofort im selben Jahr abgeschrieben werden mußten, sondern auf 15 Jahre weiter vorgetragen werden müssen.

Und bei all diesen Dingen wird dasselbe Muster sichtbar, nämlich das Versagen der Aufsichtsorgane. *(Beifall bei den Freiheitlichen.)* Das geht von der Bankenaufsicht über die Staats- und Regierungskommissäre, das geht über die Wirtschaftsprüfer, das geht über die Oesterreichische Nationalbank, das geht über die Sonderprüfungen, das geht über die Aufsichtsräte. Da sitzen Herrschaften drinnen, die offensichtlich überhaupt keine Qualifikation haben, die einfach nur dort hineingesetzt werden, weil es eben üblich ist, dort irgendwelche Leute hineinzusetzen. Ohne Qualifikation!

Wir haben am 11. Juli 1997 eine Anfrage gemacht. Darin wollten wir wissen, welche Organe in den Aufsichtsräten, in den Beiräten, als Kommissäre in den einzelnen Geldinstituten sitzen. Allein für die kleingeschriebenen Namen der Ressortbediensteten aus dem Finanzministerium benötigte man dreieinhalb Seiten! Da kommt man sicher auf eine Zahl von weit über 150. Das heißt, es werden einfach aus dem Finanzministerium Bedienstete, ganz gleich, was sie können, als Aufsichtsorgane dorthin entsandt, gleichgültig, ob sie auch die entsprechende Qualifikation haben, die sie befähigt, dort ihrer Aufsichtspflicht nachzukommen.

Es geht wirklich um die Rolle der Bankenaufsicht. – Herr Finanzminister, Sie sind der oberste Chef der Bankenaufsicht, aber Sie haben noch immer nichts getan, obwohl Sie genau gewußt haben, was im Zuge nicht nur der Riegerbank, aber gerade jetzt bei der Riegerbank, passiert ist.

Rieger hat am 2. Dezember 1982 um eine Konzession für eine Devisen- und Wechselstube angesucht. Die hat er auch erhalten. Gleichzeitig mit der Registrierung ist aber das Wort "Bank" hineingerutscht. Das hat natürlich zu Irritationen geführt, und ich weiß jetzt nicht: War das gewünscht oder war das ein Irrtum? Ich glaube, da hat man alle Augen zugemacht, denn derjenige, der den Antrag beim Finanzministerium eingebracht hat, der damalige Rechtsberater des Herrn Rieger, dieser Rechtsanwalt ist Ihnen nicht ganz unbekannt: Dr. Willi Fuhrmann *(Oh!-Rufe bei den Freiheitlichen),* seinerzeit Klubobmann der Sozialistischen Partei, langjähriges Mitglied hier im Hohen Haus und jetzt oberster Richter beim Europäischen Gerichtshof.

Warum hat die Bankenaufsicht damals nicht reagiert? Sie hätten dort reagieren müssen, und Sie haben die Möglichkeit, zu reagieren. Sie haben insoferne die Möglichkeit zu reagieren, indem Sie eine Konzession wieder zurückziehen. Aber da ist nichts passiert. Man kann das aber nicht auf die Bankenaufsicht allein abladen, sondern auch die Oesterreichische Nationalbank wird bei der Erteilung einer Konzession angehört. Und auch die Nationalbank hat geschlafen. Unter welcher Leitung liegt das alles? Das liegt unter der Leitung einer Person unterhalb des Herrn Finanzministers – der Herr Stanzel wieder. *(Abg. **Edler:** Der Kollege Haider ...!)* – Ich komme auf das schon noch zu sprechen.

Es ist also jener berühmte Herr Stanzel, der auch das oberste Kontrollorgan des österreichischen Glücksspiels ist, jener Herr Stanzel, der sich als oberstes Kontrollorgan auch am Glücksspiel in Australien beteiligt hat. Wie läßt sich denn so etwas vereinbaren? Auf der einen Seite bin ich beteiligt, auf der anderen kontrolliere ich mich selber. Diesen Mißstand haben wir damals aufgegriffen, aber, Herr Finanzminister, Sie haben es bis heute nicht der Mühe wert gefunden, diesen Mißstand abzustellen. *(Beifall bei den Freiheitlichen.)*

Dieser Herr Stanzel hat stets behauptet, er habe die Nationalbank immer wieder prüfen lassen. Die letzte Prüfung war im September 1998. Es hat keinen Anlaß zu Beanstandungen gegeben, aber trotzdem hat die Bankenaufsicht mehrere Anzeigen erstattet. Die einen sagen, es waren drei Anzeigen, die anderen sagen, es waren 17 Anzeigen, aber eine entscheidende Anzeige betraf die Bilanz 1996. In dieser Bilanz 1996 hat man eben Unregelmäßigkeiten entdeckt, die Bankenaufsicht hat eine Überprüfung eingeleitet, aber wie bei allen vorangegangenen Prüfungen hat man eben wieder nur Pseudoprüfungen veranstaltet.

Warum hat man dort nur Pseudoprüfungen veranstaltet? Hat man Rücksicht genommen auf den Aufsichtsratsvorsitzenden, weil der auch Ihr Parteikollege ist? Worauf hat man denn Rücksicht genommen? Waren andere Rücksichtnahmen notwendig? – Man hat sich dort ja nicht einmal an die primitivsten Prüfungsgrundsätze gehalten. Man hat sich mit Saldobestätigungen zufriedengegeben, von denen sich jetzt herausgestellt hat, daß sie offensichtlich gefälscht waren oder seitens der saldobestätigenden Institute falsch hinausgeschickt worden sind, aber man hat die Saldobestätigungen nicht einmal aufgrund eines Kontoauszuges nachvollzogen, um zu sehen, wie dieser Saldo überhaupt zustande gekommen ist.

Diese Insolvenz hätte abgewendet werden können, wenn man rechtzeitig geprüft und rechtzeitig entsprechende Maßnahmen gesetzt hätte. *(Beifall bei den Freiheitlichen.)* Denn dieses Chaos war schon bekannt, und Sie hätten die Möglichkeit gehabt, zu prüfen, auch nach dem Bankwesengesetz.

Sie werden sagen, die Riegerbank hat eine Bilanzsumme unter 5 Milliarden Schilling, da kann man keinen Staatskommissär hineinsetzen. Aber den Regierungskommissär können Sie dort bestellen, und dieser hat laut BWG eine viel höhere Kompetenz als der Staatskommissär. Der Staatskommissär kann nämlich nur Einspruch erheben gegen Organbeschlüsse, der Regierungskommissär kann aber sehr wohl in die Geschäftsführung eingreifen. Darauf hat unsere Anfrage, die Anfrage der Abgeordneten Böhacker, Trattner, Firlinger im Mai 1998 abgezielt, nachdem nämlich bekannt geworden war, daß in der Bilanz 1996 Haftungen in der Größenordnung von 24,5 Millionen Schilling nicht verbucht worden sind, daß die gesamte Bilanz falsch war. Da haben wir an Sie eine Anfrage gestellt, worauf das zu begründen ist. *(Präsident Dr. **Fischer** übernimmt den Vorsitz.)*

Wir fragten Sie damals: Um welche Art der Haftung handelt es sich im vorliegenden Fall? Standen diesen Haftungen Erträge in der Gewinn- und Verlustrechnung gegenüber? Wie werden solche Haftungen von anderen Banken in der Bilanz beurteilt? – Sie aber haben sich einfach zurückgezogen, und Ihre Antwort lautete: Über die laufenden Prüfungen der Bankenaufsicht kann wegen der Verpflichtung zur Wahrung der Amtsverschwiegenheit gemäß Art. 20 B-VG keine Auskunft erteilt werden. – Das war Ihre Antwort. Herr Finanzminister! Das war Ihre schriftliche Antwort. *(Bundesminister **Edlinger:** Ich kann ja nichts anderes sagen! – Abg: **Koppler:** Trattner, das gibt es bei der niederösterreichischen FPÖ nicht!)* Wenn Sie schon nicht antworten wollen, dann hätten bei Ihnen

spätestens damals die Alarmglocken läuten müssen! *(Beifall bei den Freiheitlichen. – Abg.* ***Haigermoser:*** *Der Sumpf wird immer tiefer!)* Sie waren nämlich laut § 70 Abs. 2 BWG zur Tätigkeit gezwungen. Bei Gefahr in Verzug, wenn die Bank ihren Verpflichtungen nicht nachkommen kann, für den Fall, daß Gläubiger geschädigt werden, müssen Sie handeln. Sie haben aber nichts getan! Sie haben sich immer nur auf die Amtsverschwiegenheit berufen oder den Standpunkt eingenommen, es sei ohnehin alles geprüft. Aber dort hat man sich nicht einmal die Kontoauszüge angeschaut.

Herr Finanzminister! Was sind denn das für Prüfungen? Wenn dort ein Kommissär gewesen wäre, der diese Aufgaben ernst genommen hätte, dann wäre vieles nicht passiert. Jetzt besteht aber die Gefahr, daß 175 Millionen Schilling Anleihen futsch sind!

Wie ist denn das alles entstanden? – Auch da hätten bei Ihnen die Alarmglocken läuten müssen. Da wurde eine Anleihe mit 7,5 Prozent mit einer sehr kurzen Laufzeit aufgelegt. Derartige Dinge allein sind schon sehr bedenklich und bergen ein großes Risiko in sich. Dazu kommt noch, daß 15 Prozent Provision an die Diskont Bank bezahlt werden mußten. Eine 7,5prozentige Refinanzierung, und zwar nicht von Kapital 100, sondern von Kapital 85, entspricht einer Verzinsung von 9 Prozent. Eine Verzinsung von 9 Prozent am Refinanzierungsmarkt ist absolut unüblich. Sie wissen ganz genau, daß man heute Dreimonatsgeld mit einem Drei-Monats-Vibor refinanziert, der derzeit in einer Größenordnung bei 3,65 Prozent liegt.

Sie haben wieder nicht reagiert! Wo war denn die vielgepriesene Wertpapieraufsicht? Einen Riesenbahöl haben wir gemacht: Wir müssen die Wertpapieraufsicht ausgliedern, weil da so viel passiert! Ich denke nur an die Tiroler Loden – Konsortialführer auch wieder Länderbank/Bank Austria – wo den gesetzlichen Regelungen einfach nicht Genüge getan wurde, den Anlegern eine entsprechende Prospektwahrheit zu vermitteln. Die Klagen haben es gezeigt: Die Bank Austria hat ja zahlen müssen, weil die Prospekte damals falsch waren.

Das war auch der Anlaß dafür, die Wertpapieraufsicht zu gründen. Aber was nützt eine Aufsicht, wenn sie zahnlos ist? Und Sie hätten, wenn Sie dort einen Regierungskommissär hineingesetzt hätten, auch verhindern können, daß – laut Bericht der Oesterreichischen Nationalbank – von der Riegerbank 550 Millionen Schilling ins Ausland verschoben werden können. Wenn Sie dort einen Regierungskommissär hineingesetzt hätten, dann hätte dieser auch verhindern können, daß Herr Rieger mit 107 Millionen Schilling Bargeld ins Ausland übersiedelt.

Das ist jetzt die entscheidende Frage: Warum haben Sie dort nicht reagiert? Die entscheidende Frage betrifft aber auch einen weiteren Punkt: Wenn die Bankprüfer, die Wirtschaftsprüfer der jeweiligen Bank es nicht der Mühe wert finden, dort eine effiziente Kontrolle durchzuführen, das heißt, daß sie die Kontrollmitteilungen mit den entsprechenden Kontoauszügen vergleichen, und Sie haben kein Vertrauen zu den Buchprüfern, dann haben Sie laut BWG auch die Möglichkeit, diese Buchprüfer zurückzuziehen. Jede Bank hat eine Meldepflicht, sie hat den Buchprüfer zu Beginn des Jahres zu melden, und Sie haben die Möglichkeit, den Buchprüfer zurückzuziehen.

Warum hat man das damals nicht gemacht seitens der Bankenaufsicht? Damals war ja bekannt, daß ein Buchprüfer an der Riegerbank selbst beteiligt war. *(Abg. Mag.* ***Stadler:*** *Da schau her!)* Wie soll denn das zusammenpassen? Auf der einen Seite ist er beteiligt, auf der anderen Seite soll er das Unternehmen prüfen? Was soll denn der für ein Interesse an einer ordentlichen Prüfung haben? Natürlich wird er alles entgegennehmen, was ihm an Formularen beziehungsweise an Bestätigungen vorgelegt wird.

Nachdem diese Bank also von mehreren Stellen geprüft worden ist, entsteht einfach der Eindruck, daß es sich hier nur um sogenannte Pseudoprüfungen gehandelt hat, um Pseudoprüfungen in dem Sinne, daß hier ein Unternehmen besser dargestellt worden ist, als es tatsächlich ist, wodurch die kleinen Sparer in die Irre geführt worden sind und dort Anleihen gezeichnet haben, während Sie durch Ihre Nichttätigkeit gegen den Gläubigerschutz verstoßen haben, weshalb Sie natürlich seitens des Finanzministeriums beziehungsweise der Bankenaufsicht zur Haftung herangezogen werden müssen. Das ist ganz klar! Wenn Sie nicht dem Gesetz entsprechend handeln, müssen Sie haften! *(Beifall bei den Freiheitlichen.)*

Sie waren ja auch ganz klar davon informiert, daß die Oesterreichische Nationalbank dieser Riegerbank immer sehr kritisch gegenübergestanden ist. Wir haben ja damals eine Anfrage gemacht in bezug auf die Riegerbank, nicht auf Vermutung, sondern wir haben eine Anfrage gemacht in bezug auf die Riegerbank. *(Zwischenrufe bei der SPÖ.)* Es kommt schon noch! *(Abg.* ***Koppler:*** *Ihr dreht es, wie ihr's braucht!)*

Wir haben eine Anfrage deshalb gemacht, weil es ein oberstgerichtliches Urteil gegeben hat, das eben der Riegerbank damals in der Sache recht gegeben hat. Sie hatte um eine Devisenhandelsermächtigung angesucht. Sie haben das bekämpft bis zum Obersten Gerichtshof, und die Riegerbank hat recht bekommen. Wir haben in dieser Anfrage nur ganz normal gefragt: Wie ist der Stand der Dinge? *(Ironische Heiterkeit und lebhafte Zwischenrufe bei der SPÖ.)*

Herr Finanzminister! Da muß ich Sie auch ganz ehrlich fragen: Wie stehen Sie jetzt dazu, daß Ihr eigenes oberstes Aufsichtsorgan *(Abg. Mag.* ***Stadler:*** *Ist der Androsch ein Freiheitlicher? Ist der Steiner ein Freiheitlicher? – Abg.* ***Koppler:*** *Der Rieger war doch der Informant der Freiheitlichen Partei! Das weiß man ja! – Anhaltende Zwischenrufe. – Präsident Dr.* ***Fischer*** *gibt das Glockenzeichen. – Anhaltende lebhafte Zwischenrufe. – Präsident Dr.* ***Fischer*** *gibt neuerlich das Glockenzeichen.),* daß der oberste Chef der Bankenaufsicht, Herr Stanzel, mit Rieger sogar Vergleichsgespräche über die Höhe des Schadenersatzes anstrengen wollte? Also, auf der einen Seite ist er ein Gauner, auf der anderen Seite soll man doch über die Höhe des Schadenersatzes reden.

Und eines muß ich Ihnen auch ganz ehrlich sagen – und insofern verstehe ich auch den Masseverwalter nicht –: Da gibt es ein rechtsgültiges Urteil seitens des OGH. Die Höhe des Schadens ist zwar noch nicht ausjudiziert, aber der Masseverwalter hat als solcher sehr wohl die Klagslegitimation, damit der Masse etwas zukommt, damit die kleinen Gläubiger zumindest eine Quote bekommen und nicht leer ausgehen. *(Beifall bei den Freiheitlichen.)*

Wenn Sie, Herr Koppler, aufgrund Ihrer Rechtsansicht glauben, daß man einfach über Urteile des Obersten Gerichtshofes hinweggehen kann *(Abg. Dr.* ***Nowotny:*** *Vor allem nach dem, was Sie jetzt wissen!),* dann zweifeln Sie unseren Rechtsstaat an. Das tun wir Freiheitliche ganz sicher nicht! Für uns gilt nach wie vor der gültige Instanzenzug. *(Beifall bei den Freiheitlichen. – Zwischenrufe bei der SPÖ.)*

Wo waren Sie als Bankenaufsicht, nachdem es jetzt auch mit der Diskont Bank Probleme gibt? Die Diskont Bank ist Ihnen ja schon hinlänglich bekannt. Die Diskont Bank müßte Ihnen bekannt sein, Herr Finanzminister, denn sie war ja schon mehrmals unter Aufsicht. Am 7. Dezember 1993 wurde das Unternehmen wegen Gefährdung von Gläubigergeldern unter Aufsicht gestellt; der Betrieb wurde am 28. Feber 1994 wiederaufgenommen. Am 30. März 1994 kam es zur neuerlichen Verhängung einer Aufsicht; diese wurde am 5. April 1994 wieder aufgehoben. Am 7. Juni 1996 wurden die Aktien vom sonstigen Wertpapierhandel zurückgezogen, das Kapital wurde zur Verlustabdeckung um zirka 25 Millionen Schilling abgesenkt. Und diese Diskont Bank bietet jetzt hochverzinste Sparbücher an, und zwar in einer Größenordnung von 4,5 Prozent – auch in österreichischen Tageszeitungen. Diese hochverzinsten Anlagen werden nicht nur seitens einer Tageszeitung, sondern auch vom ORF in der Sendung "Schilling" propagiert, diese hochverzinslichen Sparbücher wurden auch von "GEWINN" und derlei Fachzeitschriften mehr propagiert. Die Diskont Bank sagt: Wir können euch hochverzinste Sparbücher bieten, täglich fällig mit 4,5 Prozent, denn im Hintergrund steht ja ohnedies die Einlagensicherung. – Und das akzeptieren Sie!

Da wird ein Inserat aufgegeben mit 4,5 Prozent, weil im Hintergrund die Einlagensicherung steht – bis 260 000 S kann man locker spekulieren! –, und Sie tun nichts, und auch die Einlagensicherung tut nichts, obwohl Sie genau wissen, welchen Ursprung diese Diskont Bank hat. Der Ursprung war nämlich die sogenannte EffectInvest, und diese EffectInvest ist in sehr starkem Zusammenhang gestanden mit dem European Kings Club. Es ist bekannt, daß dort sehr viele Anleger ihr Geld verloren haben, und Sie schauen diesen Dingen tatenlos zu!

Jetzt auf einmal passiert das mit der Riegerbank und mit der Diskont Bank, und dann kommt der Herr Finanzminister drauf und sagt: Die Bankenaufsicht ist ja wirklich zahnlos!

In der "Presse" vom 21. Oktober 1998 kündigen Sie eine Reform der Bankenaufsicht an: "Sie sei derzeit ‚zahnlos' und sollte schlagkräftiger werden. Es solle aber nicht der Eindruck einer ‚Anlaßgesetzgebung' entstehen, durch welche auf den Fall Rieger reagiert wird, sagte Edlinger."

Herr Finanzminister! Sie hätten schon viel früher reagieren müssen. Ich habe Ihnen am Anfang schon geschildert, welche Fälle wir in Österreich hatten, bei denen Gläubiger um ihr Geld umgefallen sind. Der letzte Fall war die BHI-Bank. *(Beifall bei den Freiheitlichen.)*

Es ist leider traurig, daß Sie immer wieder einen Fall brauchen, um irgendwelche Gesetzesänderungen anzustrengen. Es geht nicht darum, irgendwelche Gesetzesänderungen anzustrengen, sondern Sie haben die Bankenaufsicht mit entsprechend qualifizierten Leuten zu besetzen, die in der Lage sind, die Kontrollfunktion in

einzelnen Banken auszuüben. Die gesetzlichen Regelungen wären derzeit nach Bankwesengesetz ohneweiters gegeben. Sie sind schwer in Verzug. Sie haben nicht gehandelt und damit den Gläubigern einen riesengroßen Schaden zugefügt. *(Beifall bei den Freiheitlichen.)*

Und es kann nämlich noch etwas passieren: Daß sich die Einlagensicherung bei der Diskont Bank verabschiedet, und zwar insofern – und dazu möchte ich jetzt gerne Ihre Stellungnahme hören –, als da ein Zinsangebot gemacht wurde, das weit über den marktüblichen Zins hinausgeht, nämlich 4,5 Prozent. Normal bekommt man, wenn man verhandelt, bestenfalls 3 Prozent. Und es steht ganz eindeutig in der Einlagensicherung: Bei Geschäften, die ein hohes Risiko in sich bergen – und dazu gehört eben ein hoher Zinssatz, eine hohe Veranlagungsrendite –, ...

Präsident Dr. Heinz Fischer: Bitte um den Schlußsatz, Herr Abgeordneter!

Abgeordneter Mag. Gilbert Trattner *(fortsetzend):* ... kann sich auch die Einlagensicherung zurückziehen. Wenn sich die Einlagensicherung zurückzieht, bin ich gespannt, was Sie tun werden. Werden Sie sich dann auch aus der Haftung hinausbegeben wollen oder werden Sie zu dem stehen, was Sie den kleinen Sparern immer zusagen: Das Geld in Österreich ist ihnen sicher! *(Beifall bei den Freiheitlichen.)*

15.23

Ankündigung eines Antrages auf Einsetzung eines Untersuchungsausschusses

Präsident Dr. Heinz Fischer: Bevor ich dem Herrn Bundesminister für Finanzen zum Thema der Dringlichen Anfrage das Wort erteile, gebe ich bekannt, daß Frau Abgeordnete Dr. Madeleine Petrovic gemäß § 33 Abs. 1 der Geschäftsordnung beantragt hat, einen Untersuchungsausschuß zur Aufklärung der Vorgänge rund um das Gebäude des Salzburger Mozarteums, insbesondere zur Frage der Schadstoffkonzentration, und weiters zur Klärung der Frage, ob vergleichbare Schadstoffkonzentrationen und Gesundheitsgefährdungen auch in anderen Bundesgebäuden gegeben sind, einzusetzen.

Es liegt in diesem Zusammenhang das von fünf Abgeordneten nach § 33 Abs. 2 der Geschäftsordnung unterfertigte Verlangen auf Durchführung einer Debatte vor.

Die Debatte und die Abstimmung über diese Frage der Einsetzung eines Untersuchungsausschusses werden nach Erledigung der Tagesordnung durchgeführt werden.

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Nunmehr erhält der Herr Bundesminister das Wort. – Bitte, Herr Finanzminister.

15.24

Bundesminister für Finanzen Rudolf Edlinger: Sehr geehrter Herr Präsident! Hohes Haus! Meine sehr verehrten Damen und Herren! Es ist überhaupt keine Frage, daß ein funktionsfähiges Bankwesen für jede entwickelte Volkswirtschaft von zentraler Bedeutung ist und daß es zur Ausübung dieser wirtschaftlichen Tätigkeit eine Vielzahl von gesetzlichen Rahmenbedingungen gibt, die international vergleichbar sind und sich auch laufend weiterzuentwickeln haben. Diese Regelungen sollen einerseits die Funktionsfähigkeit der Kreditwirtschaft erhalten und wirtschaftlich unvernünftiges Verhalten einzelner Marktteilnehmer verhindern.

Selbstverständlich ist in jedem modernen Wirtschaftssystem auch die Bankenaufsicht als System an die jeweils aktuelle Entwicklung anzupassen. Seit dem Frühjahr 1998 wird daher an einer Veränderung im Bereich der Bankenaufsicht mit dem Ziel der Ausgliederung gearbeitet. Diese Veränderungen sind auch vor dem Hintergrund der Verwaltungsreform zu sehen und sollen den geänderten Bedingungen am österreichischen Kapitalmarkt Rechnung tragen.

Es wurden aber auch – und die Anfrage richtet sich in einem Teil auch sehr konkret darauf – bereits laufend Verbesserungen vorgenommen. So wurden natürlich die Anregungen des Rechnungshofberichtes 1993 aufgegriffen. Auch die von mir veranlaßte Schaffung der Bundeswertpapieraufsicht hat die Finanzaufsicht in Österreich entscheidend verbessert.

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Es ist aber nicht – und das möchte ich schon dezidiert sagen – die Bankenaufsicht alleine, die das Funktionieren der österreichischen Banken und damit den Anlegerschutz sicherstellen soll. Es kommt dabei auf das Zusammenspiel mehrerer Beteiligter an, die arbeitsteilig und in Zusammenarbeit die Systemsicherung zu gewährleisten haben. Dazu gehören natürlich die Geschäftsführung, die interne Revision der Banken, der Aufsichtsrat, die Wirtschaftsprüfer, die letztendlich die Bilanzen zu prüfen haben und den Bestätigungsvermerk erteilen, die Bankenaufsicht und natürlich auch die Gerichte, die allfällige Unregelmäßigkeiten zu verfolgen haben.

Die Bankenaufsicht ist eine Wirtschaftsaufsicht und keine Polizei- und Kriminalaufsicht. Wir wissen alle, daß selbst das beste Regelwerk kriminelles Verhalten von Marktteilnehmern letztendlich nie ausschließen kann. Der Fall Rieger – und ich glaube, das kann man ohne Probleme behaupten – ist ein Kriminalfall. Die Gläubiger der Bank sind nicht durch fehlgelaufene Bankgeschäfte geschädigt worden, sondern sie sind Opfer eines Verbrechens. Und es war die Bankenaufsicht – und das möchte ich schon auch in aller Deutlichkeit feststellen –, die letztendlich den Kriminalfall Rieger aufgedeckt hat. *(Abg. Mag. **Stadler:** Der Androsch in der "Kronen-Zeitung" ...! – Abg. **Haigermoser:** Der "NEWS"-Reporter hat ihn zurückgebracht, den Herrn, von seiner Reise! – Weitere Zwischenrufe bei den Freiheitlichen. – Präsident Dr. **Fischer** gibt das Glockenzeichen.)*

Ich habe Herrn Mag. Trattner sehr aufmerksam zugehört, wie das unter zivilisierten Menschen üblich ist. Sie fragen mich ja etwas. Ich habe mir eigentlich gedacht, daß es nicht zuviel verlangt ist, wenn Sie mir jetzt zuhören, und Sie können sich dann melden. *(Beifall bei der SPÖ. – Abg. Mag. **Stadler:** Wir wollen nur Irrungen verhindern!)* Wenn Sie mich nämlich nicht antworten lassen, dann habe ich eher den Eindruck, daß Sie politisches Kleingeld wechseln wollen, und dafür ist das Parlament zu schade. *(Beifall bei der SPÖ. – Abg. Mag. **Stadler:** Herr Minister! Wir wollen bei Ihnen nur Irrungen vorbeugen! – Abg. **Haigermoser:** Eine Milliarde ist kein Kleingeld!)* – Nein, durch Ihr Verhalten wollen Sie politisches Kleingeld einwechseln. Lassen Sie mich Ihre Fragen beantworten – oder sind Sie daran nicht interessiert? *(Abg. Mag. **Schweitzer:** Nein, wir wollen nur Irrungen vorbeugen! – Anhaltende Zwischenrufe bei den Freiheitlichen.)*

Präsident Dr. Heinz Fischer: So, jetzt ist der Herr Bundesminister für Finanzen am Wort, denn die Geschäftsordnung schreibt vor, daß, wenn etwas gefragt wird, auch eine Antwort erfolgt. – Bitte, Herr Minister.

Bundesminister für Finanzen Rudolf Edlinger *(fortsetzend):* Ich bin gerne bereit, den Gedanken, warum ich der Meinung bin, daß die Bankenaufsicht den Kriminalfall aufgedeckt hat, auch auszuführen, wenn Sie mir gestatten, dies zu tun. *(Abg. Mag. **Schweitzer:** Ich ersuche Sie höflich! – Abg. **Marizzi:** Geh, Schweitzer, sei einmal ruhig!)*

Seit Juli 1997 hat nämlich die Bankenaufsicht eine Reihe von verschiedenen Anzeigen gegen die Riegerbank eingebracht – das ist dokumentiert, das ist klar, ich werde darauf auch noch zurückkommen –, die meisten davon seit dem Frühjahr 1998, als sich die Hinweise auf gravierende Unregelmäßigkeiten verdichteten. So hat die Bankenaufsicht bereits Anfang März 1998 eine Anzeige wegen Verdachtes auf Bilanzfälschung bei der Staatsanwaltschaft Wien erstattet. Leider findet die erste Hauptverhandlung, wie ich höre, erst am 9. November dieses Jahres statt.

Nach dem Aufkommen weiterer Verdachtsmomente hat die Bankenaufsicht Anfang August 1998 einen Wirtschaftsprüfer beauftragt, im Auftrag und auf Kosten des Bundes gleichzeitig in allen Geschäftsstellen der Riegerbank im In- und im Ausland eine physische Prüfung auch der Barbestände und der Bankguthaben durchzuführen. Zuletzt hat die Bankenaufsicht Rieger als Vorstand abberufen und ihm mit Konzessionsentzug gedroht. Sie hat ihn – und das kann man den Medien entnehmen, das sagt auch Rieger selbst – schließlich zur Flucht veranlaßt, womit faktisch die Situation, wie wir sie jetzt vorfinden, entstanden ist.

Das heißt, daß das Kontrollsystem an sich selbstverständlich funktioniert hat. Die Frage ist nur: Wie schnell kann es da zu realistischen Konsequenzen kommen? *(Abg. Mag. **Stadler:** Weil er geflohen ist! – Abg. **Aumayr:** Das ist aber entscheidend!)* – Das ist entscheidend. Darin gebe ich Ihnen völlig recht.

Die Bankenaufsicht kontrolliert in einem sehr sensiblen Bereich, und ich möchte doch auch feststellen, daß sie selbstverständlich im Gefolge mit anderen, vor allem mit Wirtschaftsprüfern, eine sehr essentielle Verantwortung und Aufgabe hat, aber ich kann eine Bankenaufsicht nicht so strukturieren, daß sie letztendlich in jeder Geschäftsführung einer Bank vorsätzlich kriminelle Machenschaften vermutet, sondern es muß ganz einfach auf dieses mehrschichtige System der Kontrolle, das ineinandergreift und bei dem der Wirtschaftsprüfer eine essentielle Bedeutung hat, Rücksicht genommen werden. *(Beifall bei der SPÖ.)*

Meine sehr verehrten Damen und Herren! Ich werde auf weitere Details bei der Beantwortung der einzelnen Fragen eingehen. Ich bitte Sie aber um Verständnis dafür, daß ich dabei in ein laufenden gerichtliches Verfahren nicht eingreifen darf und auch nicht eingreifen will. Ich bitte Sie weiters auch um Verständnis dafür, daß der Bundesminister für Finanzen bei einer solchen Anfragebeantwortung selbstverständlich auch die Grenzen, die durch das Bankgeheimnis gesetzt sind, zu beachten hat.

Meine sehr verehrten Damen und Herren! Hohes Haus! Bevor ich auf die 31 Fragen im einzelnen eingehe, möchte ich gerne eine Frage beantworten, die zwar nicht dezidiert gestellt wurde, die mir aber wichtig zu sein scheint, nämlich die Frage, ob auf die Bankenaufsicht in irgendeiner Form politischer Druck ausgeübt wurde, ihre Kritik an der Riegerbank einzustellen.

Ich muß Ihnen mitteilen, daß es aus meiner subjektiven Einstellung solche Versuche gab. Im Mai 1997 wurde in einer Presseaussendung behauptet, daß die OeNB und die Bankenaufsicht im Zusammenhang mit den devisenrechtlichen Verfahren – ich zitiere – "keine Gelegenheit ausläßt, um die Vertrauenswürdigkeit der Riegerbank AG in Zweifel zu ziehen." In dieser Presseaussendung wurde die OeNB aufgefordert, alles daranzusetzen, um der Riegerbank das Grundrecht auf Freiheit der Erwerbstätigkeit nicht zu verwehren. *(Abg. **Schwarzenberger:** Wer war das?)* Diese Zitate sind in der APA-Aussendung vom 14. Mai 1997 unter dem Suchbegriff "F", FPÖ/Haider, also als Presseaussendung der FPÖ, nachzulesen. *(Oh-Rufe bei SPÖ und ÖVP. – Abg. Dr. **Khol:** Wo ist denn Haider?)*

Meine sehr verehrten Damen und Herren! Ich überlasse es Ihrem weisen Urteil, welche Partei in den letzten Jahren immer wieder öffentlich als Fürsprecher der Riegerbank in Erscheinung getreten ist. *(Beifall bei SPÖ und ÖVP. – Abg. Mag. **Stadler:** Bankenaufsicht ist FPÖ-Sache!)*

Nun zu den konkreten Einzelfragen. *(Abg. Mag. **Stadler:** Androsch ist ein Freiheitlicher! Türke ist ein Freiheitlicher! Fuhrmann ist ein Freiheitlicher! Steiner ist ein Freiheitlicher!)* – Nein, ich habe Herrn Dr. Haider zitiert. Er dürfte noch ein Freiheitlicher sein, glaube ich. *(Heiterkeit und Beifall bei SPÖ und ÖVP. – Abg. Dr. **Haider:** Du bist ein verdeckter Freiheitlicher!)* – Sie haben völlig recht: Ich bin ein freiheitsliebender Sozialdemokrat. *(Neuerlicher Beifall bei SPÖ und ÖVP. – Abg. **Haigermoser:** Da ist aber jetzt ein Widerspruch drinnen!)*

Meine sehr verehrten Damen und Herren! Ich wende mich nun den detaillierten Fragen, die Sie gestellt haben, zu und bitte zunächst einmal, die Fragen 1, 2, 28, 29 und 31 zusammenfassen zu dürfen.

Ich möchte zu diesem Fragenkomplex festhalten, daß der Kriminalfall Rieger von der Bankenaufsicht aufgedeckt wurde. Im Jahre 1993 wurde vom Rechnungshof insbesondere angeregt, mehr Personal einzusetzen, die Kontrollen zu verbessern und vor Ort Prüfungen durchzuführen. *(Abg. **Aumayr:** 1993!)* Diese Anregungen wurden auch aufgegriffen. Seit 1994 kann das Finanzministerium die Notenbank mit Vor-Ort-Prüfungen beauftragen. Die Nationalbank hat dazu ein Prüferteam von 25 Prüfern geschaffen. Schließlich wurde durch eine Novelle zum Bankwesengesetz die Nationalbank beauftragt, Risikomodelle zu erarbeiten. Dadurch wurden die Kontrolle und auch das Frühwarnsystem verbessert. Auch die Schaffung der Bundeswertpapieraufsicht hat die Finanzaufsicht in Österreich entscheidend verbessert.

Ich betone noch einmal, daß der Fall Rieger ein Kriminalfall ist. Die Aufgabe der Bankaufsicht ist es, für ein funktionsfähiges Bankwesen Sorge zu tragen. Die Bankenaufsicht ist daher eine Wirtschaftsaufsicht. Zur Ausübung der wirtschaftlichen Tätigkeit von Banken gibt es eine Vielzahl von gesetzlichen Rahmenbedingungen, die international vergleichbar sind und sich laufend weiterentwickeln. Diese Normen sollen zur Erhaltung der Funktionsfähigkeit der Kreditwirtschaft wirtschaftlich unvernünftiges Verhalten einzelner Marktteilnehmer verhindern.

Selbst – das möchte ich auch feststellen – das beste gesetzliche Regelwerk kann jedoch kriminelles Verhalten von Marktteilnehmern nicht ausschließen. Angesichts der Tatsache, daß sich der Hauptverdächtige in Haft befindet und bisher jede Mithilfe an der Aufklärung verweigert hat, kann aufgrund dieses Falles zurzeit keine wie immer geartete Aussage über allfällige Fehler im gesamten Aufsichtssystem getroffen werden. Über Schuldfragen und Haftungsfragen werden die Gerichte entscheiden. Ich kann in dieser Situation die Ergebnisse dieser Verfahren nicht durch Aussagen präjudizieren. Im übrigen verweise ich auf meine einleitenden Ausführungen.

Zur Frage 3:

Die Bankenaufsicht ist ein komplexes System, welches weiterhin laufend verbessert wird. Seit einem Jahr wird an einer kompletten Reform der Aufsicht über den Finanzbereich gearbeitet. Dies hat jedoch mit dem Anlaßfall Rieger nichts zu tun.

Zur Frage 4:

Auf Antrag von Gastberger und Rieger um Erteilung einer Wechselstubenkonzession vom 17. März 1981 wurden diesen mit Bescheid vom 2. Dezember 1981 die Genehmigung für den Betrieb des Devisen- und Wechselstubengeschäftes erteilt. Am 26. Mai 1986 ersuchte die Riegerbank um Konzessionserweiterung. Dieser Antrag wurde mit Bescheid vom 5. Februar 1987 abgewiesen, jedoch durch eine Entscheidung des Verfassungsgerichtshofes aufgehoben. Aufgrund dieses Erkenntnisses mußte das anhängige Konzessionserweiterungsverfahren mit einer Konzessionserweiterung abgeschlossen werden. Mit Bescheid vom 2. September 1991 wurde daher die bisherige Konzession auf folgende Geschäfte erweitert: Diskontgeschäft, Effekten- und Depotgeschäft, Devisen- und Valutengeschäft, Wechselstubengeschäft, Vermittlungsgeschäft und als Hilfsgeschäfte für das Effekten- und Depotgeschäft das Einlagengeschäft – ausgenommen Spareinlagen, Girogeschäft und Kreditgeschäft.

Zur Frage 5:

Die Voraussetzungen werden beim Unternehmen geprüft. Zum damaligen Zeitpunkt hat das Unternehmen die erforderlichen Voraussetzungen erfüllt.

Zur Frage 6:

Über eine Funktion Dr. Fuhrmanns bei der Konzessionserteilung ist mir nichts bekannt. *(Abg. Mag.* ***Stadler:*** *Aber geh, Herr Minister!)* Sie fragen mich danach, und mir ist nichts bekannt. *(Abg. Mag.* ***Stadler:*** *Sie lesen keine Zeitung, Herr Minister?)* Ich lese viele Zeitungen, aber wenn ich alles glaube, was in den Zeitungen steht, dann würde ich alt werden. *(Beifall bei der SPÖ.)* Also mir ist nichts bekannt! *(Abg. Mag.* ***Stadler:*** *Sie glauben nur Ihren eigenen Zeitungen!)*

Zur Frage 7:

Diesbezüglich ist nichts aktenkundig und ist auch mir nichts bekannt.

Zur Frage 8:

Gemäß den einschlägigen Bestimmungen des Bankwesengesetzes, § 42, müssen Kreditinstitute selbst eine interne Revision einrichten, was beim gegenständlichen Institut auch geschehen ist.

Zur Frage 9:

Das computerisierte Frühwarnsystem wird auf ***alle*** Kreditinstitute angewendet. Ein Computer kann allerdings nur das analysieren, was vorher eingegeben wurde. Das zugrundeliegende Datenmaterial wird von einem Wirtschaftsprüfer begutachtet. Fälschungen waren der Aufsicht nicht ersichtlich.

Zur Frage 10:

Von 1993 bis 1995 die Eurovision Internationale TreuhandgesmbH und von 1996 bis 1997 die Professoren Herbert Schuster, Dkfm. Walter Türke und Mag. Peter Grotschar. All diese Berichte sind jeweils von Dkfm. Walter Türke gezeichnet worden.

Zur Frage 11:

Aus den dem Bundesministerium für Finanzen vorliegenden Unterlagen ist keine Beteiligung ersichtlich.

Zur Frage 12:

Nach Vorliegen konkreter Verdachtsmomente erging umgehend der schriftliche Auftrag an Ernst & Young, Wirtschaftsprüfungs- und Steuerberatungskanzlei, zur Durchführung einer Vor-Ort-Prüfung in der Zentrale und in allen Wechselstuben im In- und Ausland und gleichzeitig zur Feststellung des Kassenbestandes und der Bankguthaben. Der Wirtschaftsprüfer selbst hatte vorher keine Gründe erkannt, die zu einer solchen Überprüfung geführt hätten.

Zur Frage 13:

Die Gebarung selbst wurde unauffällig gestaltet. Verdachtsmomente auf kriminelles Verhalten tauchten erstmalig im Februar dieses Jahres auf, und es wurde umgehend eine Anzeige an die Staatsanwaltschaft gemacht. Darüber hinaus wurde eine Reihe von aufsichtsbehördlichen Maßnahmen in die Wege geleitet.

Zur Frage 14:

Zunächst einmal ja. Persönlich halte ich folgende Anzeigen für wesentlich, und ich möchte sie hier auch mitteilen: am 2. März 1998 an die Staatsanwaltschaft Wien wegen § 255 Aktiengesetz Verdacht auf Bilanzfälschung, am 16. Juli 1998 an die Staatsanwaltschaft Wien wegen der Anleihe, Irreführungsabsichten, am 31. Juli an die EDOK wegen Geldwäsche, am 5. Feber 1998 wegen Geldwäsche in Verbindung mit Rieger, am 5. März 1998 bei der BWA wegen der Anleihe, am 13. Mai 1998 wieder bei der BWA wegen der Anleihe und am 7. Jänner wegen unbefugten Betriebes von Bankgeschäften.

Die sonstigen Anzeigen an die gleichen zuständigen Behörden betrafen den gleichen Sachverhalt beziehungsweise enthielten ergänzende Informationen. Die Verfahren laufen, daher kann ich dazu keine abschließende Aussage treffen.

Zu den Fragen 15 und 16:

Nachdem im Juli 1997 dem Bundesministerium für Finanzen bekannt wurde, daß die Bank Austria ihre Kreditforderungen gegenüber der Riegerbank fällig stellte und mit einer Klagseinbringung drohte, wurde die Riegerbank unverzüglich beauftragt, einen Vermögensstatus der Riegerbank vorzulegen. Dieser war von einem Wirtschaftsprüfer zu erstellen, welcher nicht identisch mit dem aktuellen Bankprüfer der Riegerbank AG war.

Der Bund hat an Dr. Staribacher keinen Prüfungsauftrag erteilt. Das Mandat zur Erstellung des angeforderten Gutachtens erteilte die Riegerbank selbst an die Centurion Wirtschaftsprüfungskanzlei Dr. Staribacher.

Unmittelbar nach Klagseinbringung der Bank Austria gegen die Riegerbank AG wurde die Riegerbank aufgefordert, das Gutachten Staribachers über den Vermögensstatus der Riegerbank für den Fall der Liquidation zu aktualisieren. Der von der Bankaufsicht an Ernst & Young vergebene Prüfantrag bewirkte schließlich das Aufdecken der kriminellen Handlungen Riegers.

Zur Frage 17:

Der Auftrag an die Riegerbank lautete dahin gehend, dem Bundesministerium für Finanzen einen Vermögensstatus auf Basis der vom Wirtschaftsprüfer für richtig befundenen Daten im Falle der Liquidation der Riegerbank per 31. Dezember 1996 zu erstellen. Der Auftrag umfaßte nicht die Prüfung der einzelnen Belege, weil zum damaligen Zeitpunkt kein Anlaß bestand, die vom Wirtschaftsprüfer gelieferten Daten anzuzweifeln.

Zu den Fragen 18 und 19:

Im Bereich der Bankenaufsicht hat Dr. Staribacher vom Bundesministerium für Finanzen keinen Prüfungsauftrag erhalten. Nach den mir vorliegenden Informationen war Dr. Staribacher als Prüfer bis 1994 bei der ATW, weiters bis 1995 und wieder seit 1997 bei der PSK sowie auf Beschluß der Bundesregierung bis 1994 bei der OeNB. Darüber hinaus ist Dr. Staribacher Prüfer für die Parteienförderungen an die SPÖ.

Zur Frage 20:

Nein. Der Regierungskommissär ist deswegen bestellt worden, weil durch die Flucht von Wolfgang Rieger und das

spurlose Verschwinden sämtlicher Buchhaltungsunterlagen eine Gefährdung für die Gläubiger entstanden ist.

Zur Frage 21:

Über personelle Verflechtungen zwischen den Banken ist der Bankenaufsicht nichts bekannt. Die Diskont Bank hat im Jahre 1998 den Vertrieb der Rieger-Anleihe übernommen.

Zur Frage 22:

An der Diskont Bank AG besteht derzeit keine qualifizierte Beteiligung. Daher sind die Aktionäre dem Bundesministerium für Finanzen nicht bekanntzugeben. Sämtliche Aktien der Riegerbank AG sind von der Wolfgang Rieger Privatstiftung erworben worden.

Zu den Fragen 23 und 24:

Die Begebung von Anleihen ist seit 1. Jänner 1992 nicht mehr bewilligungspflichtig. Die Mitwirkung des Bundesministeriums für Finanzen oder der Bundeswertpapieraufsicht an der Begebung von Anleihen ist somit nicht vorgesehen. Dessen ungeachtet hat das Bundesministerium für Finanzen Anfang Juli 1998 Anzeige an die Staatsanwaltschaft Wien erstattet, da die Riegerbank AG mit ihrer Anleihe den Eindruck einer Bankanleihe erweckt hat und sohin der Verdacht einer Täuschung im strafrechtlichen Sinne nicht auszuschließen war.

Im Zuge der Anzeige wurde darauf hingewiesen, daß den Gläubigern dieser Anleihe eine Verzinsung in der Höhe von 7,5 Prozent und der mit dem Exklusivbetrieb dieser Anleihe betrauten Diskont Bank eine Verkaufsprovision eingeräumt wurden.

Zur Frage 25:

Die Begebung von Anleihen ist generell nicht an eine Bankkonzession gebunden. Auch Nichtbanken dürfen ebenfalls ohne eine gesonderte behördliche Bewilligung Anleihen begeben. Die Riegerbank AG benötigte für die Begebung keine Konzession, da diese Tätigkeit nicht als Bankgeschäft zu qualifizieren war.

Zur Frage 26:

Laufende Verfahren unterliegen dem Amtsgeheimnis. Das Bundesministerium für Finanzen führt die notwendigen Verfahren durch. Nach deren Abschluß werden die gesetzlich vorgesehenen Maßnahmen getroffen werden.

Zur Frage 27:

In den gesetzlich vorgesehenen Meldungen an das Bundesministerium für Finanzen wurde die Euro-Invest weder als Eigentümer der Riegerbank AG noch der Diskont Bank AG genannt. Bezüglich der Diskont Bank AG ist jedoch darauf hinzuweisen, daß eine gesetzliche Meldepflicht erst ab einer qualifizierten Beteiligung von 10 Prozent besteht, sodaß für darunterliegende Beteiligungen keine Meldungen an das Bundesministerium für Finanzen zu erstatten sind.

Zur Frage 30:

Der Bankplatz Österreich ist immer in Verbindung mit dem Bankplatz Europa zu sehen. Änderungen können daher nur im Gleichklang mit den anderen Staaten durchgeführt werden. Österreich hat immer darauf geachtet, mindestens den europäischen Standard zu haben. In diesem Zusammenhang sind derzeit die aufgrund der Anlegerentschädigungsrichtlinie notwendigen Anpassungen des BWG, des WAG und des Depotgesetzes im Begutachtungsverfahren. – Ich danke Ihnen für die Aufmerksamkeit. *(Beifall bei SPÖ und ÖVP.)*

15.50

Präsident Dr. Heinz Fischer: Vielen Dank, Herr Bundesminister.

Wir gehen in die Debatte ein. Die Redezeiten sind bekannt, auch die Klubredezeiten.

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Zu Wort gelangt Herr Abgeordneter Mag. Firlinger. Freiwillige Redezeitbeschränkung: 8 Minuten. – Bitte.

15.50

Abgeordneter Mag. Reinhard Firlinger (Freiheitliche): Sehr geehrter Herr Präsident! Herr Bundesminister! Meine Damen und Herren! Ich möchte gleich eingangs auf das polemische Statement des Herrn Finanzministers eingehen *(ironische Heiterkeit bei SPÖ und ÖVP)*, der meinte, die Freiheitliche Partei hätte zugunsten der Riegerbank interveniert.

Herr Bundesminister! Man braucht nur unsere Unterlagen genau nachzulesen, und wenn Sie zitieren, dann möchte ich auch etwas zitieren. *(Zwischenruf des Abg. Dr. **Lukesch.**)* – Ja, Herr Kollege, das können Sie nachher sagen, ich habe nicht so viel Zeit für diesen Schmus. Hören Sie mir lieber zu!

Herr Bundesminister! Wir haben für Sie zitiert, was Höchstgerichte festgestellt haben, und das muß man einmal zur Kenntnis nehmen. *(Beifall bei den Freiheitlichen.)* Und da Sie es nicht verlesen haben, lese ich es Ihnen vor:

"Es darf daher nicht überraschen, daß alle drei Instanzen, das Erstgericht am 11. Jänner 1994, das Berufungsgericht am 21. November 1994 und das Höchstgericht am 17. Oktober 1995, übereinstimmend feststellten, daß der Riegerbank durch den schuldhaft rechtswidrig zustande gekommenen Bescheid der OeNB die Möglichkeit entzogen wurde, aus dem Devisenhandel Gewinne zu erzielen."

Begründet wurde dieses Urteil damit ... *(Abg. Dr. **Nowotny:** Sind Sie wirklich davon überzeugt? Glauben Sie das wirklich?)* – Hören Sie einmal zu, Herr Kollege! *(Ironische Heiterkeit bei SPÖ und ÖVP.)* Nein, Sie wollen nicht zuhören! *(Abg. Dr. **Khol:** Warum sind Sie denn so nervös?)* Sie wollen nicht zuhören, das ist das Problem. *(Abg. Dr. **Khol:** Sprechen Sie zu uns!)*

Begründet wurde dieses Urteil damit, daß das festgestellte Gesamtverhalten der Organe der OeNB als nicht mehr vertretbar beurteilt werden kann. *(Beifall bei den Freiheitlichen.)*

Das steht drin, Herr Bundesminister! Das haben Sie nicht verlesen, und das wollen auch Sie, meine Damen und Herren von der SPÖ, obwohl so viele Personen von Ihnen involviert sind, nicht zur Kenntnis nehmen. Selbst die ÖVP wirft Ihnen diesbezüglich einen kleinen Prügel hin und spricht von mindestens sechs Personen, die auf SPÖ-Seite in diesen Skandal verwickelt waren.

Aber kommen wir auf die anderen Punkte zurück, Herr Kollege Lukesch! Die österreichischen Anleger sind verunsichert, das ist das Problem. 59 Prozent der Österreicher glauben, daß die Sparer und Anleger durch die Affäre der bankrotten Riegerbank zu keinem Geld kommen werden. Das ist die neueste Umfrage, die heute veröffentlicht wurde, aber der Herr Finanzminister stellt sich her und sagt: Ja, mehr konnte man eigentlich nicht machen. *(Abg. Dr. **Krüger:** Er lobt die Bankenaufsicht sogar!)* – Ja, er lobt die Bankenaufsicht.

Herr Bundesminister! Das ist mir zu wenig! Mit Verlaub gesagt, Herr Bundesminister, das kann es wohl nicht sein. Wenn es so war, Herr Bundesminister *(Abg. **Koppler:** Tust dir schon hart, Firlinger!)*, daß Sie bereits im Jahr 1994 die Weichen gestellt haben, damit dieser umfangreiche Prüfungsmechanismus in Gang gesetzt werden konnte, dann frage ich mich: Warum hat die Aufsicht erst frühestens Ende 1997 eingesetzt, warum nicht früher? *(Beifall bei den Freiheitlichen.)*

Wenn Sie das Instrument schon 1994 eingesetzt haben, warum wurde dann erst 1997 leicht und 1998 mit Akribie geprüft? – Diese Frage haben Sie nicht beantwortet. *(Abg. Dr. **Haider:** Zehn Jahre falsch bilanziert!)*

Es geht mir auch noch um etwas anderes: Die Wirtschaftsjournalistin Bettina Schragl, die nicht irgendein Wald- und Wiesenblatt vertritt, sondern immerhin eine angesehene Wirtschaftszeitung, hat dieses Problem ganz zutreffend umschrieben. Sie hat gesagt: Wolfgang Rieger war auch ein Banker, gegen den das Finanzministerium im Sommer Anzeige wegen Verdachtsmomenten bei der begebenen Anleihe eingebracht hat und der trotzdem weiter am Markt nach Kapital für seine Bank suchen durfte. – Das ist das Kernproblem! Denn daraus resultiert, daß jetzt wahrscheinlich eine zweite Bank vor die Hunde geht und die Anleger Sturm bei der Einlagensicherung laufen, weil sie nicht wissen, ob sie ihre Wertpapierdispositionen herausbekommen. – Dabei handelt es sich immerhin um Milliardenbeträge.

So einfach kann man sich das jetzt nicht machen. Es wurden Versäumnisse begangen, und alles dreht sich plötzlich im Kreis. Die Bankenaufsicht sagt: Ja, wir haben eigentlich lange Zeit nichts vorgefunden. Die Oesterreichische Nationalbank, vertreten durch Herrn Wala, sagt im Radio: Ich habe nicht prüfen dürfen. Herr Androsch sagt *(Abg. Mag. **Stadler:** Ich habe nichts gesehen!):* Ich habe keine ausgelackten Zahlen festgestellt. – So dreht sich das im Kreis, und die Bankenaufsicht beruft sich wieder darauf, daß es einen Wirtschaftsprüfer gegeben hat.

Das Karussell geht nie zu Ende. *(Abg. Mag. **Stadler:** Der war an der Bank beteiligt!)* – Ja, der war auch noch mit ein paar Prozentlein an der Bank beteiligt, nur mit ein paar Prozenterln. Niemand hat es der Mühe wert gefunden, sofort – weil Gefahr im Verzug ist – zu intervenieren.

Herr Bundesminister! Da können Sie mir nicht erzählen, daß das System tätig war und gewerkt hat. – Es hat schon gewerkt, aber zu langsam und zu oberflächlich. *(Beifall bei den Freiheitlichen. – Abg. Dr. **Haider:** ... die kleinen Sparer und die kleinen Anleger!)*

Dann wäre noch interessant, Herr Bundesminister, folgendes zu wissen: Es gibt einen Herrn Topolanek, der jetzt eine Firma betreibt, die Euro-Invest heißt. Dieser hat seinerzeit die Aktien an der EffektInvest auf den Markt gebracht und hat jetzt anscheinend ein Nominale in der Höhe von 81 Millionen Schilling um den Preis von 1 Million Schilling bekommen. Das ist Mitte Oktober in letzter Minute geschehen. Jetzt prüfen Ihre Organe, und Sie sagen: Das ist ein laufendes Verfahren, ich kann nicht eingreifen – das war sinngemäß Ihre Aussage –, ich kann nichts sagen. – Da geht es aber um etwas, da geht es nämlich darum, wie auch die Republik dazu beitragen kann, daß die Konkursquote höher und der Anleger entsprechend bessergestellt wird. Darum geht es, und da haben Sie sehr wohl die Pflicht einzugreifen, Herr Bundesminister! *(Beifall bei den Freiheitlichen.)*

Viele Fragen bleiben offen, viele Fragen wurden nicht behandelt, Herr Bundesminister! *(Abg. Dr. **Haider:** Nur die Kleinen und Betroffenen wie bei der BHI-Bank!)* Bitte nehmen Sie zur Kenntnis, daß es Ihr Ministerium ist, das die Aufsicht hat, und bitte nehmen Sie auch die jetzt von wirklich kompetenter Seite geäußerten Vorschläge, wie man diese allumfassende Kapitalmarktaufsicht inszenieren und institutionalisieren kann, ernst. Sorgen Sie aber auch dafür, daß ein Herr Sellitsch nicht sagen kann, die Versicherungen sollen nicht in die "Allfinanzaufsicht" eingebunden werden, denn die hätten immer ihr Bestes gemacht.

Dazu müßten jetzt alle ja sagen, denn sonst wird eine Kapitalmarktaufsicht in diesem Lande nicht funktionieren, und das wäre schlecht für den Finanzplatz Österreich. – Ich danke. *(Beifall bei den Freiheitlichen.)*

15.57

Präsident Dr. Heinz Fischer: Nächster Redner ist Herr Abgeordneter Dr. Nowotny. – Bitte.

15.57

Abgeordneter Dr. Ewald Nowotny (SPÖ): Herr Präsident! Hohes Haus! Herr Bundesminister! Meine sehr geehrten Damen und Herren von der FPÖ, Sie wissen, wir sind manchmal sehr kritisch gegenüber Ihren Anfragen, aber heute möchte ich Ihnen meinen Respekt ausdrücken. *(Abg. **Haigermoser:** Das ist gefährlich, bitte!)* Sie haben mit Herrn Abgeordneten Trattner tatsächlich den richtigen Mann für diese Anfrage gefunden *(Beifall bei der ÖVP)*, denn niemand in diesem Haus kennt Herrn Rieger so gut wie Herr Abgeordneter Trattner. *(Beifall bei SPÖ und ÖVP.)*

Meine sehr geehrten Damen und Herren! Schließlich hat sich Herr Trattner mit Herrn Rieger oft genug getroffen. Wie das Journal "Format" beschreibt, haben Sie sich unter dem wohlwollenden Auge des Nachtklubkönigs Bachheimer in einer Bar mit dem schönen Namen "Claire-Bar" getroffen. *(Zwischenrufe bei den Freiheitlichen.)* Herr Trattner, ich darf Sie zitieren: Trattner wörtlich: "Ich habe Wolfi mit einigen Kollegen aus dem Parlamentsklub in der ‚Claire' nur privat getroffen." – Dazu kann ich nur sagen: Viel Vergnügen, Herr Trattner! *(Zwischenruf des Abg. Mag. **Trattner.** – Weitere lebhafte Zwischenrufe. – Abg. Mag. **Stadler:** Schweinsbraten mit Spinat haben sie gegessen!)* Waren Sie auch dabei? – Offensichtlich! Herr Stadler war auch dabei, er weiß all das.

Nun muß ich folgendes dazusagen: Es ist jedem überlassen, mit wem er sich trifft, wo er sich trifft, das muß man sich eben selbst aussuchen. *(Abg. **Haigermoser:** Einen Schweinsbraten haben sie gegessen! Ein Gansl haben*

sie gegessen!) Herr Kollege Trattner! Ihr Freund Wolfi sei Ihnen vergönnt, problematisch wird es aber, wenn Sie diese Freundschaft in politische Aktionen umsetzen, und genau das haben Sie getan. *(Beifall bei SPÖ und ÖVP.)*

Eines ist bemerkenswert, und es ist witzig, daß Sie sich heute darauf berufen *(Zwischenruf des Abg. **Haigermoser**):* Am 15. Mai 1998, also noch gar nicht so lange her, haben die Abgeordneten Trattner, Böhacker und Firlinger, also sozusagen der Freundeskreis Rieger in der FPÖ, eine Entlastungsanfrage für Herrn Rieger und eine Anfrage ***gegen*** die Bankenaufsicht gestellt.

Heute stellt die FPÖ wieder eine Dringliche Anfrage und behauptet die Untätigkeit des Finanzministeriums. – Also dazu kann man nur sagen: Da schreit einer: Haltet den Dieb! Seriös ist das jedenfalls nicht! *(Beifall bei der SPÖ.)*

Herr Kollege Trattner! Vielleicht haben Sie vergessen, was Sie in Ihrer Anfrage vom 15. Mai 1998 gefragt haben. Die Frage Nummer 8 hat zum Beispiel gelautet – denn Sie sagen, da gab es eine Anzeige; das ist eben eine Anzeige der Bankenaufsicht gewesen –: "Halten Sie die Anzeige der Bankenaufsicht für angemessen?" – Offensichtlich halten Sie sie nicht für angemessen. – Heute fragen Sie: Warum ist sie so spät gekommen? – Herr Kollege Trattner! Ihr Kurzzeitgedächtnis läßt sehr nach! *(Beifall bei der SPÖ.)*

Der nächste Punkt war – es kommt dann schon die Begründung –: Können Sie ausschließen, daß die Vorgangsweise der Bankenaufsicht in keinem Zusammenhang mit dem Verfahren der Riegerbank/Nationalbank betreffend die Erteilung der Devisenhandelsermächtigung steht? – Das heißt, Sie wollten sagen: All das ist nur eine böse Retourkutsche der Notenbank, das Finanzministerium hat falsch gehandelt. – Heute fragen Sie: Warum haben Sie nicht früher gehandelt? – Herr Kollege Trattner! Das ist, so glaube ich, ein klassisches Eigentor, das Sie sich hier geschossen haben.

Nun muß man natürlich schon dazusagen – das sagen Sie auch selbst –, Sie waren ja nicht allein in dem Freundeskreis Rieger, sondern da gibt es eine politische Vorgeschichte. Schon am 14. Mai 1997 gab es eine Dringliche Anfrage des Herrn Abgeordneten Haider, in der er sich auch mit der Riegerbank beschäftigt – aber nicht so wie heute, wo Sie sagen, da gäbe es angeblich Versäumnisse, sondern – Sie haben all das vor sich – Titel dieser Anfrage in bezug auf die Riegerbank war: "Wettbewerbsverzerrung". Sie sagen, das Verhalten der OeNB in Zusammenhang mit der Riegerbank sei skandalös! *(Ah!- und Oh!-Rufe bei der SPÖ.)* Warum war es skandalös? – Ich zitiere wortwörtlich – man muß sich das auf der Zunge zergehen lassen –: Wie die Leitung der OeNB vorgeht, zeigt das nun mehr als ein Jahrzehnt andauernde Bemühen, alles daranzusetzen, um der Riegerbank das Grundrecht auf Freiheit der Erwerbstätigkeit zu verwehren. *(Abg. Mag. **Stadler:** Sind Sie gegen Grundrechte?)* – Milliardenbetrug ist also in Ihren Augen die Freiheit der Erwerbstätigkeit! Meine sehr geehrten Damen! Auf diese Freiheit im Sinne der FPÖ können wir verzichten! *(Beifall bei SPÖ und ÖVP. – Abg. Mag. **Stadler:** Sind Sie Jurist, Herr Nowotny? Sind Sie Jurist? Dann werden Sie wohl wissen, was ein OGH-Erkenntnis ist!)*

Meine sehr geehrten Damen und Herren! Mein lieber Herr Stadler! Gegen diese Anfrage helfen alle juristischen Tricks nichts. Das ist die Freiheit der Erwerbstätigkeit, die Sie meinen, und diese müssen Sie beurteilen. Lieber Herr Stadler! Sie können vielleicht auch dem Freundeskreis Rieger beitreten *(Abg. Mag. **Stadler:** Nein, will ich nicht, aber ich bin wenigstens soweit, daß ich weiß, was ein OGH-Erkenntnis ist!),* aber es ist ein bißchen spät dazu. Da waren andere schon vorher da. Haider war viel früher beim Freundeskreis Rieger, das können Sie nicht mehr nachholen. *(Beifall bei SPÖ und ÖVP. – Zwischenruf des Abg. Mag. **Schweitzer.**)*

Meine sehr geehrten Damen und Herren! Damit wir sozusagen versuchen, aus dieser Anfrage auch weitere Schlüsse zu ziehen, möchte ich doch auch einige Überlegungen zur grundsätzlichen Entwicklung der österreichischen Bankenaufsicht anstellen.

Erstens – das ist mir wichtig – möchte ich betonen: Das österreichische Bankensystem ist solid, das österreichische Bankensystem ist in Ordnung. Wenn es in den letzten Jahren Probleme gegeben hat, so waren das Randerscheinungen kleiner, problematischer Unternehmen. Wenn ein Reinigungsprozeß einsetzt, dann sage ich ganz offen, daß dieser Reinigungsprozeß für den österreichischen Kapitalmarkt nur gut ist und man ihn auch überhaupt nicht verhindern sollte. *(Abg. Mag. **Firlinger:** Sagen Sie das den kleinen Anlegern heute, Herr Nowotny! Die haben kein Verständnis dafür!)* – Dazu komme ich auch noch.

Herr Kollege Firlinger! Es ist richtig: Es gibt neben dem Betrüger – neben dem offensichtlichen Betrüger, er ist noch nicht verurteilt – auch unschuldige Opfer dieses Betrugs. Es ist im Interesse des Bankplatzes Österreich, daß

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streng nach den vereinbarten Spielregeln vorgegangen wird. Das heißt: Dort, wo es über die Einlagensicherung Entschädigungsansprüche gibt, sollen diese Ansprüche rasch und unbürokratisch erfüllt werden. Ich bin allerdings dagegen – ich sage das auch ganz offen –, nachträglich die Spielregeln auf Kosten der Steuerzahler und auf Kosten der übrigen Einleger zu ändern. Da haben wir sicherlich eine neue Dimension des Konsumentenschutzes, auch des Anlegerschutzes zu beachten. Mein Freund Jacky Maier, der in der Praxis große Erfahrung mit solchen Leuten aus Ihrem Freundeskreis hat, wird sich mit dieser Frage noch speziell beschäftigen. *(Abg. Mag. **Stadler:** Staribacher, Fuhrmann, Steiner!)*

Dritter Punkt: Der Fall Rieger hat zweifellos Problembereiche aufgezeigt. *(Abg. Mag. **Stadler:** Herr Nowotny! Ihr Freundeskreis, nicht unserer!)* – Herr Kollege! Es ist zu spät. Der Freundeskreis Rieger in Ihrer Partei ist wahrscheinlich geschlossen. Es werden keine Beitritte mehr akzeptiert.

Ich möchte jetzt noch ein paar Schlußfolgerungen ziehen. Ein weiterer Punkt – das ist ganz offensichtlich geworden – ist der Bereich der Wirtschaftsprüfer. Man muß klar sagen: Im österreichischen Aktienrecht kommt dem Wirtschaftsprüfer im Rahmen des Abschlußberichtes natürlich eine entscheidende Rolle zu. Ohne daß ich jetzt Untersuchungen vorwegnehmen kann, zeigt sich, daß offensichtlich Mißstände bestehen, wobei man schon dazusagen muß: Staribacher hat eine ganz andere Prüfungsaufgabe gehabt. Er mußte sich auf das verlassen, was ihm die Wirtschaftsprüfer testiert haben. Das heißt, es geht um die Frage der Testate. In der Frage der Testate kann man nicht genau genug sein. *(Abg. Mag. **Firlinger:** Hindert ihn das, Belege anzuschauen?)*

Ich begrüße, daß der Präsident der Kammer der Wirtschaftstreuhänder erklärt hat, daß diesbezüglich vorgegangen werde – noch dazu, weil es sich um Prüfer handelt, die offensichtlich immer wieder in solche Situationen verwickelt waren. Ich vertraue auf die Selbstreinigungskraft auch der Kammer der Wirtschaftstreuhänder.

Hohes Haus! Im Rahmen meiner Redezeit ein letzter Punkt zur Oesterreichischen Nationalbank. Ich möchte ganz deutlich sagen: Die Oesterreichische Nationalbank hat eine positive Rolle gespielt! Der Ursprung des ganzen Konfliktes war die Verweigerung der Konzessionserteilung für den Devisenhandel. Ich möchte deutlich sagen: Generaldirektor Wala und auch Direktor Lachs haben richtig gehandelt, haben gegen alle Pressionen, die von Ihnen gekommen sind, Widerstand geleistet. Nur auf diese Weise ist es gelungen, daß letztlich dieser Sumpf zerplatzt ist. *(Zwischenruf des Abg. Mag. **Firlinger.**)*

Überlegen Sie: Wenn die Devisenhandelsbewilligung erteilt worden wäre, hätte der Fall Rieger heute auch eine internationale Dimension. Gott sei Dank wurde das verhindert. Daß es zu einem Urteil des Obersten Gerichtshofes gekommen ist, das macht mich – ich sage es ganz offen – nachdenklich. Es wird auch sicherlich noch über eine Revision dieses Urteils zu sprechen sein, denn es zeigt das Problem, daß wir in einer Situation sind, in der Leute, die sich offensichtlich exzellente Anwälte leisten können, die Möglichkeit bekommen, mit dem Rechtsstaat Unrecht zu tun. Das ist auch eine Entwicklung, die wir im Interesse aller Österreicher nicht wollen. *(Beifall bei der SPÖ, den Grünen und beim Liberalen Forum. – Abg. Mag. **Stadler:** Fuhrmann war der Anwalt!)*

Meine sehr geehrten Damen und Herren! Insgesamt muß man zwei Dinge auseinanderhalten: Es gibt erstens den Kriminalfall Rieger; das ist eine eigene Welt. Es gibt zweitens das österreichische Kreditwesen. Dieses österreichische Kreditwesen ist in Ordnung, ist sauber, ist solide, und darauf können wir stolz sein. *(Beifall bei SPÖ und ÖVP.)*

16.07

Präsident Dr. Heinz Fischer: Zu einer ***tatsächlichen Berichtigung*** hat sich Herr Abgeordneter Böhacker gemeldet. Ich ersuche, mit dem zu berichtigenden Sachverhalt zu beginnen. – Bitte.

16.07

Abgeordneter Hermann Böhacker (Freiheitliche): Sehr geehrter Herr Präsident! Herr Abgeordneter Nowotny hat behauptet, ich gehöre zum Freundeskreis des Herrn Rieger. *(Abg. Mag. **Stadler:** Er hat dich mit dem Scheibner verwechselt!)* – Herr Nowotny! Diese Aussage ist falsch!

Ich berichtige tatsächlich *(Abg. Dr. **Nowotny:** Haben Sie die Anfrage unterzeichnet?):*

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Hören Sie bitte zu: Ich kenne Herrn Rieger weder persönlich, noch habe ich einmal mit ihm telefoniert oder bin mit ihm in einem Schriftverkehr gestanden. Herr Professor, nehmen Sie das zurück, daß ich zum Freundeskreis des Herrn Rieger gehöre!

Jetzt sieht man, wie seriös Sie recherchiert haben und was Sie – zynisch behauptet – unter "seriös" verbreitet haben. Das ist Unfug! *(Beifall bei den Freiheitlichen. – Abg.* ***Schwarzenberger:*** *Da gehören nur Haider und Trattner dazu!)*

16.08

Präsident Dr. Heinz Fischer: Nächster Redner ist Herr Abgeordneter Dr. Lukesch. Die Uhr ist auf 8 Minuten gestellt. – Bitte. *(Rufe und Gegenrufe zwischen der SPÖ und den Freiheitlichen.)*

16.08

Abgeordneter Dipl.-Vw. Dr. Dieter Lukesch (ÖVP): Herr Präsident! Herr Bundesminister! Hohes Haus! Anders als Kollege Nowotny begrüßt die Österreichische Volkspartei diese Dringliche Anfrage in der Sache Riegerbank. Das sei einmal ganz klar gesagt. *(Beifall bei der ÖVP.)*

Wir haben den politischen und schadensmäßigen Aufklärungsbedarf in unserer Interpellation bereits gestern artikuliert. Wir haben eine Anfrage an Sie, Herr Bundesminister, mit dem wesentlichen Inhalt gerichtet: Kann man der Funktion der Bankenaufsicht noch vertrauen? *(Abg.* ***Wabl:*** *Gestern hat es noch ganz anders geklungen! Gestern war es noch ganz anders!)*

Zweitens: Wie haben sich die Aufsichtsräte in der Riegerbank in dieser Angelegenheit tatsächlich verhalten, und welche Rolle spielten die mit der Prüfung betrauten Wirtschaftstreuhänder, einerseits im Rahmen des normalen Prüfungsprozesses, aber auch die Kanzlei des ehemaligen Herrn Finanzministers Staribacher, die mit der Sonderprüfung beauftragt war? – Die ÖVP hat rechtzeitig um Aufklärung ersucht, und wir haben das gestern auch in der Debatte über die Einwendung gegen die Tagesordnung zum Ausdruck gebracht. *(Beifall bei der ÖVP. – Abg.* ***Wabl:*** *Kontrolle ja, aber bei den anderen!)*

Meine Damen und Herren! Lassen Sie mich heute ergänzen: Die Öffentlichkeit hat nicht nur das volle Recht auf Aufklärung dieser Angelegenheit, so wie Sie, Herr Finanzminister, das zugesagt haben, sondern – das ist ganz wesentlich, Herr Kollege Nowotny; das ist in dieser Sache tatsächlich ganz wesentlich – die Öffentlichkeit hat auch ein Recht auf persönliche Haftung der Verantwortungsträger in dieser Bank und im Prüfungsprozeß. *(Beifall bei der ÖVP.)* Es sollte auch keine Mühe gescheut werden, die betreffenden Verantwortlichen zur Schadenswiedergutmachung heranzuziehen.

Drittens hat die Öffentlichkeit auch ein Recht auf Änderung der gesetzlichen Grundlagen, wenn man im Prüfungsverfahren, so wie Sie es angedeutet haben, zu dem Schluß kommt, daß in unserer Aufsichtsorganisation, Bankenaufsicht, Wertpapieraufsicht vielleicht nicht die internationale "best practice" verankert ist, und zwar bezüglich dieser sehr heiklen, sensiblen und das Vertrauen der Anleger in unserem Bankenapparat betreffenden Frage. *(Beifall bei der ÖVP.)*

Aber, meine sehr verehrten Damen und Herren, ich habe das gestern schon gesagt, und die FPÖ hat das schon mitbekommen: Irgendwie kommt mir Heinrich Kleists "Zerbrochener Krug" in den Sinn, wenn ich mir Ihre heutige Dringliche Anfrage anschaue. *(Abg.* ***Haigermoser:*** *Die Sparschweine der Sparer sind zerbrochen, Herr Professor, nicht der Krug!)* Da hat sich doch auch schließlich der Richter – es war der Dorfrichter Adam, nicht der Dorfrichter Trattner – als der Schuldige in dieser Angelegenheit herausgestellt. Da muß man die Tatsachen auf den Tisch legen, Kollege Trattner! *(Abg.* ***Haigermoser:*** *Der Trattner ist der Schuldige?!)* Warum sagen Sie das nicht? – Die FPÖ war ein starker Lobbyist für Herrn Wolfgang oder "Wolfi" Rieger, um Ihre eigene Diktion zu verwenden. *(Beifall bei der ÖVP.)*

Die Tatsachen haben Kollege Nowotny und auch der Herr Bundesminister schon erwähnt. Sowohl in Presseaussendungen als auch in Dringlichen Anträgen haben Sie die Riegerbank, diese kleine, unabhängige Bank, sozusagen als das Opfer der Verfolgungen durch die Oesterreichische Nationalbank hingestellt, der ein Recht verwehrt wird, das die Oesterreichische Nationalbank als zweifelhaft angesehen hat. *(Abg.* ***Haigermoser:*** *Deshalb haben sie nicht geprüft? Deshalb haben sie nicht geprüft? Deshalb haben sie nicht geprüft?)* – Gott sei Dank hat

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die Nationalbank das als zweifelhaft angesehen. Das ist ja wohl klar! *(Zwischenrufe bei den Freiheitlichen.)*

Sie haben es noch als "skandalös" bezeichnet, wie sich die OeNB in dieser Sache verhalten habe, Herr Kollege Trattner! Sie haben es als "skandalös" bezeichnet, wie sie sich gegenüber dem "Wolfi", gegenüber Herrn Rieger verhalten habe.

Interessant ist, erst im Mai dieses Jahres schwenken Sie mit einer Anfrage an den Finanzminister wieder ein wenig um. Sie wissen verdammt viel um diese Riegerbank – für mich und für meinen Geschmack zu viel. *(Beifall bei der ÖVP und bei Abgeordneten der SPÖ.)*

Ich stelle mir die Frage: Was hat die Riegerbank in all diesen Jahren für die FPÖ getan *(Abg. **Achs:** Das ist eine gute Frage!)*, daß die FPÖ ein so starker Lobbyist und Intervenist für die Interessen des "Wolfi" Rieger ist, den Sie heute als Gauner bezeichnen und als jemanden hinstellen, von dem Sie wieder nichts wissen? *(Abg. Dr. **Krüger:** Intervenist! Das sagt ein Professor!)* Da fällt mir gerade Rosensting! ein. Das war auch auf einmal ein Gauner, der überhaupt nichts mit der FPÖ zu tun hat. Was war da eigentlich los? – Die Spur führt natürlich bis nach Tirol. Wenn ich den veröffentlichten Berichten der Medien vertrauen kann, dann waren Kollege Trattner und andere Kollegen zumindest Bekannte oder Vertraute – soweit Bekannte und Vertraute, daß man sich abends, daß man sich nachts in eine Wiener Bar begibt, um dort die freundschaftlichen Beziehungen zu pflegen. Herr Trattner! Sie haben selbst Aufklärungsbedarf, das ist ganz klar. *(Beifall bei ÖVP und SPÖ. – Abg. Mag. **Trattner:** Da trifft man aber auch Kollegen Ihrer Fraktion!)*

Aber ich sage, die letzte Minute meiner Redezeit nützend, auch noch etwas anderes: Die Öffentlichkeit hat ein Recht darauf, daß Aufsichtsräte und Wirtschaftsprüfer, die verwickelt sind, persönlich zur Verantwortung gezogen werden, auch wenn es sich um "rotes Urgestein" wie Hannes Androsch handelt, der als Großunternehmer, ehemaliger Finanzminister, ehemaliger Chef der Bankenaufsicht ganz genau wissen mußte, was in dieser Bank eigentlich vorgeht, wenn er es hätte wissen wollen. Da führt kein Weg vorbei! *(Zwischenrufe bei den Freiheitlichen.)*

Ich selbst war Aufsichtsrat einer Bank, und ich habe mich jeden Abend gefragt: Freund, hast du deiner Aufsichtspflicht und deiner Prüfungspflicht auch tatsächlich entsprechend Rechnung getragen? – Denn so kann es nicht gehen, daß wir ein Aktiengesetz haben, ein BWG haben, und dann werden die persönlichen Konsequenzen nicht gezogen. *(Abg. **Haigermoser:** Da hat es einen Staatssekretär im Finanzministerium gegeben! Johannes Ditz, der Täuscher! Johannes Ditz, der Postfuchs!)* Das trifft – da gebe ich Herrn Kollegen Nowotny recht – auch die Wirtschaftsprüfer, die involviert sind, und zwar im Rahmen einer ganz persönlichen Verantwortung, im Rahmen der jetzt schon geltenden Gesetze. Diese müssen vollzogen werden.

Ich darf letztlich auch sagen: Die ÖVP erwartet, daß die Staatsanwaltschaft endlich einmal auf Trab kommt! Es kann nicht sein, daß Anzeige um Anzeige deponiert und dann nicht gehandelt wird. *(Beifall bei der ÖVP.)*

Herr Finanzminister! Ich will nicht dramatisieren, aber bei dieser Sache geht es um das Vertrauen der österreichischen Anleger in die österreichischen Banken. Wir sollten es mit aller Macht verteidigen! *(Beifall bei der ÖVP.)*

16.17

Präsident Dr. Heinz Fischer: Zu einer ***persönlichen Erwiderung*** beziehungsweise Klarstellung an die Adresse des Herrn Abgeordneten Böhacker hat sich Herr Abgeordneter Dr. Nowotny zu Wort gemeldet. – Bitte.

16.17

Abgeordneter Dr. Ewald Nowotny (SPÖ): Herr Präsident! Es hat Herr Abgeordneter Böhacker eine tatsächliche Berichtigung gemacht, weil ich ihn im Zusammenhang mit dem Freundeskreis Riegers genannt hatte. Das ist tatsächlich so, das könnte implizieren, daß eine persönliche Freundschaft mit Rieger besteht. *(Zwischenruf der Abg. **Aumayr.**)*

Ich möchte korrekt vorgehen: Richtig ist, daß Sie eine Anfrage mitunterschrieben haben; daraus geht aber nicht hervor, daß Sie eine persönliche Freundschaft mit Rieger haben. Ich bemühe mich immer, korrekt vorzugehen. Ich möchte das auch in diesem Fall tun. *(Beifall bei SPÖ und ÖVP.)*

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16.18

Präsident Dr. Heinz Fischer: Nächster Redner ist Herr Abgeordneter Mag. Peter. – Bitte. *(Abg. **Haigermoser:** Du unterscheidest dich von Herrn Khol! – Abg. Mag. **Stadler:** Wohltuend! – Beifall des Abg. **Haigermoser.**)*

16.18

Abgeordneter Mag. Helmut Peter (Liberales Forum): Herr Präsident! Herr Bundesminister! Es ist wohl schwierig, jetzt, nach dem rhetorischen Ausbruch des Herrn Lukesch, zu sprechen. Aber es ist ihm immerhin geglückt, aus der Causa Rieger eine Causa FPÖ zu machen. Ich muß sagen, das ist eine große Leistung. Es mag schon sein, daß einige FPÖ-Abgeordnete mit Herrn Rieger gut waren, aber deswegen zu sagen, die Causa Riegerbank sei eine Causa FPÖ, das halte ich für zu weit hergeholt. Das sollte man schon beweisen, bevor man es behauptet. *(Zwischenruf der Abg. Dr. **Fekter.**)*

In unserem Land muß immer etwas passieren, damit etwas geschieht. Seit Jahren finden wir die Riegerbank in der Zeitung. Deswegen könnte man die FPÖ angreifen, warum sie nicht rechtzeitig zu Herrn Rieger Distanz gewahrt hat. Wir lesen über alle möglichen Streitfälle, Rücktritte, Aufsichtsräte, dubiose Anleihen und was auch immer. Aber das alles war erstaunlicherweise für die Prüfungsverantwortlichen nicht Anlaß genug, tatsächlich zu handeln. Es ist nichts passiert! Der Herr Wirtschaftsprüfer hat weiter testiert, der Aufsichtsrat hat weiter genehmigt, und die Bankenaufsicht hat weiter gemächlich eine Anzeige nach der anderen geschrieben.

Herr Bundesminister! Sie fragen, was Sie machen sollen. Ich werde Ihnen das sagen: Es gibt im Falle von Gefahr in Verzug auch die Möglichkeit, mit den zuständigen Staatsanwaltschaften einen entsprechenden Druck auszuüben. Man hat die Anzeigen abgegeben, war aber offensichtlich ganz zufrieden damit, daß sie nicht behandelt werden, oder man hat es zumindest nicht betrieben. Das kann doch in einem Rechtsstaat nicht sein, Herr Finanzminister, daß eine Bankenaufsicht merkt, daß Gefahr in Verzug ist und fragt: Was sollen wir machen? 17 Anzeigen haben wir abgegeben, aber die Staatsanwaltschaft tut nichts! – Das darf es im Rechtsstaat Österreich doch nicht geben!

Wir erleben im Fall Rieger, daß alle wortreich ihre Unschuld erklären: Wir doch nicht! Und alle finden wunderbare Ausreden. Wenn alle ihr schlummerndes Kreativitätspotential, das sie jetzt für Ausreden nutzen, genutzt hätten, um gut zu prüfen, hätten wir diese Schlamastik heute nicht. Sich auf schlechte Gesetze, sich auf zuwenig Mitarbeiter, sich auf falsche Informationen, auf Testate auszureden, hilft überhaupt nicht. Die Ausrede, man könne sich nicht um alles kümmern, hilft auch nicht, sie exkulpiert nicht. Den Malversationen des Herrn Rieger stehen die Unzuverlässigkeit, die Schlamperei und die Verantwortungslosigkeit der Prüfungsorgane gegenüber. Das ist der Punkt, über den wir politisch diskutieren müssen.

Wir haben nicht die Aufgabe, darüber zu diskutieren, wie sehr und wieviel Herr Rieger Gauner ist. Das machen die Gerichte. ***Wir*** haben zu prüfen, was der Wirtschaftstreuhänder gemacht hat, was der Aufsichtsrat und was die Bankenaufsicht getan hat, die alle eine sehr gute gesetzliche Basis haben. Diese heute gültige gesetzliche Basis lese ich Ihnen ganz kurz vor, damit wir nicht darüber reden müssen, was denn alles nicht gehe.

Das alte gute Handelsgesetzbuch schlägt ganz klar die Pflicht zur Abschlußprüfung fest, legt auch ganz klar Gegenstand und Umfang der Prüfung fest. Es besagt, der Gegenstand und der Umfang der Prüfung haben der ordnungsgemäßen Buchführung zu entsprechen. Das heißt, der Wirtschaftsprüfer hat dem Gegenstand der Prüfung "ordnungsgemäße Prüfung der Buchführung" nicht entsprochen.

Wir gehen weiter: Auch im Aktiengesetz stehen im § 95 ganz klar die Rechte und Aufgaben des Aufsichtsrates, nämlich daß sich der Aufsichtsrat jederzeit über den Vorstand Informationen zu beschaffen hat und der Aufsichtsrat auch das Recht hat, jederzeit andere, eigene Rechtssachverständige, Wirtschaftssachverständige zu benamsen, die ihm, wenn er einen Verdacht hat, über den Vorstand die nötigen Unterlagen liefern.

Der Aufsichtsrat ist dafür verantwortlich, den Wirtschaftsprüfer zu bestellen. Herr Finanzminister! Ganz besonders im Fall der Banken – das regelt das Bankwesengesetz – können Sie der Bestellung eines Wirtschaftsprüfers widersprechen. Warum haben Sie der Bestellung der Wirtschaftsprüferkanzlei Türke und Konsorten nicht widersprochen? Wußten Sie, Herr Bundesfinanzminister, daß diese Kanzlei ... *(Abg. Dr. **Khol:** Bundesminister für Finanzen!)* Das wußte ich, Herr Khol! Sie sagen das immer so. *(Abg. Dr. **Khol:** Der Bundesfinanzminister ist in Deutschland!)* – Danke, Herr Khol. *(Abg. Dr. **Khol:** Sie sind nicht in Deutschland!)* – Herr Khol, vielen Dank! Das wußte ich nicht. *(Abg. Dr. **Khol:** Den Eindruck hatte ich!)* Aber ich weiß, daß ich Sie da habe, Herr Khol, und Sie

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helfen mir immer wieder über meine Unzulänglichkeiten hinweg. Ich bin Ihnen so dankbar. Soll ich jetzt fortsetzen? *(Abg. Dr. **Khol:** Ja!)* – Danke schön.

Das heißt, Sie, Herr Bundesminister für Finanzen – ist es jetzt richtig? *(Abg. Dr. **Khol:** So ist es richtig!)* –, haben ein Widerspruchsrecht. Das heißt, Sie können sagen, wenn ein Wirtschaftsprüfer laut Bankwesengesetz zur Prüfung einer Bank bestellt wird: Nein, diesen lehne ich ab; er hat zuwenig Erfahrung. – Das haben Sie nicht getan!

Weiter im Bankwesengesetz: Darin steht ganz klar, daß bei der Überwachung in einem funktionsfähigen Bankwesen auf die volkswirtschaftlichen Interessen Bedacht zu nehmen ist. Das kann sich nicht darin erschöpfen, daß Sie sich auf den Ausfluchtsweg zurückziehen und sagen, da werde nur Wirtschaftsaufsicht geübt. Natürlich sind das keine "Krimineser", das stellt auch keiner in Frage. Aber auch die Wirtschaftsaufsicht hat Inhalte und Verantwortungen zu erfüllen, die die Bankenaufsicht bei weitem nicht erfüllt hat. Es wird sich die Frage stellen, Herr Bundesminister, wie lange Sie diesen Leiter der Bankenaufsicht, Stanzel, noch halten werden, der schon mehrfach in den letzten drei, vier Jahren Anlaß zu Kritik gegeben hat und der offensichtlich dem Amt nicht gewachsen ist, das er bekleidet. Warum entziehen Sie seinem Stellvertreter den Fall Riegerbank? Ist er auch involviert? – Das müssen Sie wissen. Das ist ***Ihre*** politische Verantwortung. Sie haben beim Einsatz des Wirtschaftstreuhänders nicht widersprochen. Sie haben in der Kontrolle und Aufsicht nicht die nötige Sorgfalt angewandt, die Ihnen in Ihrem Ministerium im Rahmen einer Sektion untersteht.

Darüber hinaus steht darin noch einmal, daß die Bankprüfer und die Prüfer, die Wirtschaftstreuhänder, die die Banken prüfen, selbstverständlich Erfahrung in diesem Bereich haben müssen. Türke und Co. hatten das nicht!

Lassen Sie mich zusammenfassen: Es ist die Frage zu stellen, ob Türke und Co. überhaupt selbst geprüft haben. Jeder Prüfer in einer Bank muß selbstverständlich auch in anderen Bereichen, aber gerade bei der Bank, lückenlos alle Gläubiger bezüglich aller Forderungen, die die Bank hat, direkt anschreiben, alle anderen Geschäftspartner anschreiben, muß sich an seine eigene Adresse – nicht an die Adresse seines Vorstandes – die Bestätigung kommen lassen, ob die Kontostände stimmen. Das kann gar nicht geschehen sein. Ich behaupte daher nicht mehr und nicht weniger, als daß die Kanzlei Türke und Co. eigentlich gar keine Prüfung vorgenommen hat.

Damit kommt der Vorwurf des bedingten Vorsatzes des Abschlußprüfers. Dieser bedingte Vorsatz des Abschlußprüfers besagt klar, daß die Anleger damit das Recht haben, sich am Wirtschaftsprüfer ohne jede Haftungsbeschränkung schadlos zu halten. Ob sie weitergehen und eine Amtshaftungsklage gegen die Bankenaufsicht machen werden, wird wohl den Gläubigervertretern zu überlassen sein.

Die Bankenaufsicht hat in diesem Fall meiner Ansicht nach schmählich versagt. *(Beifall beim Liberalen Forum.)*

Was wir daraus lernen sollten, meine Damen und Herren, ist, daß es nicht nur genügt, wie Nowotny zu sagen: Wir haben einen funktionierenden Kreditapparat. Da haben Sie recht, Herr Professor! Aber was wir brauchen, sind nicht in erster Linie neue Gesetze, sondern wir brauchen in erster Linie die klare Zuordnung von Verantwortung und die Durchführung der bestehenden Gesetze. Das ist jedoch nicht der Fall gewesen!

Die nächste Frage, die wir uns dann stellen können, ist, wieweit wir ohne Anlaßgesetzgebung das Kontrollsystem in unserem Bankenapparat reformieren und neu gestalten müssen. Im Moment geht es aber darum, daß die Einhaltung der bestehenden Gesetze schwer verfehlt wurde. *(Beifall beim Liberalen Forum und bei den Grünen.)*

16.26

Präsident Dr. Heinz Fischer: Nächster Redner ist Herr Abgeordneter Professor Van der Bellen. – Bitte, Herr Abgeordneter.

16.26

Abgeordneter Dr. Alexander Van der Bellen (Grüne): Herr Präsident! Herr Bundesminister! Meine Damen und Herren! Herr Bundesminister, Sie haben heute wörtlich gesagt, daß Ihrer Meinung nach die Bankenaufsicht diesen Kriminalfall aufgedeckt hat. *(Abg. Mag. **Stadler:** Er hat auch gesagt, zur Flucht veranlaßt!)* Auch zur Flucht veranlaßt und dann aufgedeckt. Herr Bundesminister! Ich kann nur hoffen, daß Sie diese Aussage besser argumentieren können, als Sie es heute getan haben. Denn ich wiederhole, was ich gestern schon gesagt habe: Wenn man sich die fünf Institutionen anschaut, die in erster Linie tätig werden sollen und tätig werden müssen –

das ist erstens der Aufsichtsrat, das sind zweitens die Wirtschaftsprüfer, drittens die Bankenaufsicht, viertens die Nationalbank und fünftens die Justiz *(Abg.* ***Smolle:*** *Und die Finanzverwaltung! Finanzamt!);* na ja, das ist noch das geringste Problem in diesem Zusammenhang, aber bitte; sechstens die Finanzämter –, dann kann ich von außen her nur sagen: Die einzige Institution, bei der man über die letzten 15 Jahre nachvollziehen kann, daß sie einen Kleinkrieg, wenn man so will, gegen die Riegerbank geführt hat, und zwar erfolglos, war die Nationalbank und nicht die Bankenaufsicht!

Sie werden das sicherlich noch besser begründen können, Herr Bundesminister, aber ich kann nur sagen, die alternative Interpretation würde bei heutigem Stand lauten – das könnte man für genauso plausibel halten –, daß die Bankenaufsicht diesem Kleinkrieg über all die Jahre amüsiert zugesehen und einmal gewartet hat, wer in diesem "interessanten" Spiel gewinnt. Hat die Bankenaufsicht das als Privatfehde zwischen einigen Leuten in der Nationalbank und Herrn Rieger betrachtet? – Ich stelle nur die Frage, denn es ist undenkbar, daß die Nationalbank nicht laufend – damit meine ich nicht jedes Jahr, sondern jeden Monat – die Bankenaufsicht über ihren Verdacht bezüglich Bilanzfälschungen, ihren Verdacht bezüglich Urkundenfälschung, Geldwäsche informiert hat.

Bezüglich ungefähr allem, was in diesem Zusammenhang nur vorkommen kann, hat die Nationalbank einen Verdacht gehabt; sie hat ihn nur nach Ansicht der Justiz nicht nachweisen können.

Wenn sich aber die Bankenaufsicht, die über diese Verdachtsmomente informiert gewesen sein ***muß,*** beispielsweise darauf zurückgezogen hat, daß die geltende Rechtslage momentan kein Einschreiten, welcher Art auch immer, erlaubt, dann muß man die Frage stellen, Herr Bundesminister: Hat denn der zuständige Sektionschef bei Ihnen und Ihren Vorgängern jedes Vierteljahr interveniert und gesagt: Wir haben dieses Problem, wir wissen nicht, wie wir es lösen, wir bräuchten noch diese oder jene Sanktionsmöglichkeit; die Justiz macht nie mit; wir brauchen mehr Instrumente!? – Hat er das? Oder hat er das nicht?

Einige Kollegen haben das schon angedeutet, aber ich möchte es doch noch einmal stärker herausstellen: Mindestens so sehr wie das Verhalten der Bankenaufsicht scheint mir in diesem Zusammenhang das Verhalten der Staatsanwälte, des Bundesministeriums der Justiz, der Gerichte bis hinauf zu den Höchstgerichten zu hinterfragen zu sein.

Meines Wissens ist bis heute nicht aufgeklärt, wieso der zuständige Staatsanwalt in Wien sagen kann: Es mag schon sein, daß 17 Anzeigen gemacht wurden; bei uns sind aber nur drei eingelangt. – Von denen waren seiner Meinung nach zwei irrelevant und wurden abgelegt, eine war sehr relevant, wurde aber im Auftrag des Bundesministeriums für Justiz für zwei Monate zurückgehalten. Ich meine, das sind Zeitungsberichte an relativ unprominenter Stelle, das muß ich auch dazusagen. Es war, so glaube ich, vorgestern in der "Presse" irgendwo unter "Vermischtes". *(Abg. Mag.* ***Peter:*** *Wie haben Sie es denn gefunden!)* – In einem Augenblick der Langeweile habe ich es dort gefunden.

Oder die kuriose Geschichte mit dem 15. beziehungsweise 16. Sack, den die Freiheitlichen auch schon einmal in einem Dringlichen Antrag erwähnt haben. Die Riegerbank wird nach vielen, vielen Anläufen der Nationalbank einmal gezwungen, Belege und dergleichen auf Wunsch der Nationalbank abzuliefern, nur mit Hilfe der Gerichte, in dem Fall einmal erfolgreich. Nach längerer Zeit, nachdem es ihnen zuerst verwehrt worden war, diese Säcke zu öffnen, was an sich der Sinn ist, daß man sich auch anschaut, was angeliefert wird, ist es dann mit Hilfe der Anwälte gelungen, diese Säcke zu öffnen. Aber in diesen 15 Säcken – bitte, ich berichte das, was mir so zu Ohren gekommen ist – war nur Junk drinnen, also genau das nicht, was die Nationalbank wissen wollte. Daraufhin hat die Riegerbank oder Herr Rieger persönlich, das weiß ich nicht, erklärt: Ja, das stimmt schon, diese Belege waren nämlich im 16. Sack! und legte für diesen 16. Sack eine Empfangsbestätigung der Nationalbank vor.

Die Nationalbank erstattet natürlich Anzeige wegen Urkundenunterdrückung und Urkundenfälschung. Diese bleibt bei der Staatsanwaltschaft zwei Jahre liegen und wird dann als unlösbarer Fall wieder abgelegt. Für sich allein genommen erscheint das vielleicht unbedeutend, aber in der Menge dieser Dinge kommt es einem schon merkwürdig vor.

Herr Bundesminister! Die Bankenaufsicht sei 1998 nachweislich tätig geworden, haben Sie gesagt. Die Nationalbank hat versucht, der Riegerbank schon 1988 die Wechselstubenberechtigung zu entziehen. Kurios war –

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ich berichte wieder, was mir erzählt wird; keine Garantie auf Wahrheit, aber ich habe auch keinen Anlaß, daran zu zweifeln –, daß es wochenlang unmöglich war, einen Zustellungsbevollmächtigten in der Riegerbank zu erwischen, der dieses Schreiben mit dem Entzug der Wechselstubenbefugnis entgegengenommen hätte. Allein das muß man sich einmal vorstellen: Es gibt eine sogenannte Bank, und sei es auch nur eine aufgeblasene Wechselstube, die keinen Zustellungsbevollmächtigten hat, und deswegen kann man halt ein offizielles Schreiben leider nicht zustellen. Das geht so lange, bis eines Tages ein Angestellter oder Herr Rieger selbst in der Nationalbank erscheint, sagen wir um 9 Uhr früh, und sagt: Ich höre, ihr habt einen Brief für mich. Na gebt ihn doch her! Dann wurde ihm dieses Schreiben ausgehändigt – und eine Stunde später war der Beschluß des Verwaltungsgerichtshofes mit der aufschiebenden Wirkung bezüglich des Bescheides der Nationalbank da.

Wenn ich einmal Schwierigkeiten mit dem Gericht habe *(Abg. Mag.* ***Peter:*** *Dann fragen Sie den Herrn Rieger!),* geschweige denn mit dem Verwaltungsgerichtshof, dann wünsche ich mir, daß er binnen einer Stunde auf mein Begehren reagiert.

Der größte und wichtigste Fall in diesem Zusammenhang ist der Prozeß wegen der Devisenhandelsermächtigung. Er geht durch alle Instanzen, und die Notenbank verliert in allen Instanzen. Das wissen Sie vielleicht besser als ich: Hatte die Riegerbank den besseren Anwalt? Weiß der Kuckuck, warum, in der Sache hat die Nationalbank verloren. Aber heute müssen wir sagen, die Notenbank war doch offensichtlich im Recht. Die Bedenken der Nationalbank haben sich doch heute glänzend bestätigt.

Da muß man sich rückwirkend schon fragen, auch die Journalisten, die damals kommentiert haben, aber natürlich auch die Freiheitlichen, die sich auf diese Gerichtsurteile berufen haben ... *(Abg. Mag.* ***Stadler:*** *Und das darf man nicht?)* Ich sage das jetzt nicht so spöttisch wie ein Teil meiner Vorredner, aber OGH-Urteile, VwGH-Urteile von damals haben Sie zum Anlaß genommen, die Riegerbank gegenüber diesen bösen Leuten in der Nationalbank sozusagen zu verteidigen. Aus damaliger Sicht ist das ja verständlich. Aus heutiger Sicht ... *(Abg. Mag.* ***Stadler:*** *Herr Kollege, auf den Rechtsstaat dürfen wir uns noch berufen, oder?)* Ja, schon, aber stellen Sie sich einmal aus heutiger Sicht vor, die Riegerbank hätte die Ermächtigung zur Entgegennahme von Spareinlagen bekommen! Stellen Sie sich das einmal vor mit dem Wissen von heute! Dann wäre der Schaden nicht eine Milliarde gewesen, sondern ein Vielfaches. Deswegen würde ich Sie bitten ... *(Abg. Mag.* ***Stadler:*** *Das verteidigt ja niemand von uns! Hat das jemand verteidigt?)*

Nein, aber ich würde Sie um folgendes bitten: Sie können ja viel mehr Dringliche Anfragen als wir armen Grünen stellen, weil unsere Fraktion ***noch*** ein bißchen kleiner als die Ihre ist. Um diesen Verdacht des Lobbyismus gegenüber Herrn Rieger beziehungsweise seiner Bank nicht wegzukriegen, aber wenigstens zu entschärfen, stellen Sie doch bitte die nächste Dringliche Anfrage an das Bundesministerium für Justiz. *(Abg. Mag.* ***Stadler:*** *Das ist schon vorbereitet! Da sind Sie schon der Zeit hinterher!)* – Schon vorbereitet, super, ausgezeichnet. Darauf freue ich mich schon sehr. *(Abg. Mag.* ***Stadler:*** *Wir gehen stufenweise vor! Wir zäumen das Pferd nicht beim Schwanz auf! Wir fangen beim Finanzminister an!)*

Na ja, Herr Kollege! Trotzdem, so wie dem Kollegen Nowotny ist natürlich auch mir Ihr Dringlicher Antrag betreffend Postenschacher und Freunderlwirtschaft vom 14. Mai 1997 heute wieder in die Hände gekommen. Ein bißchen – wie soll ich sagen? – an der Nase nehmen ist schon angebracht. Denn hier nehmen Sie eindeutig ...

Präsident Dr. Heinz Fischer: Jetzt müssen wir die ***Uhr*** in die Hand nehmen, Herr Professor. *(Heiterkeit.)*

Abgeordneter Dr. Alexander Van der Bellen *(fortsetzend):* ... für die Riegerbank Stellung. Noch einmal: Aus der damaligen Sicht aufgrund der Justizurteile verständlich, aber ***heute*** muß es Ihnen doch etwas peinlich sein. – Danke. *(Beifall bei den Grünen und beim Liberalen Forum sowie des Abg.* ***Wurmitzer.*** *– Abg. Mag.* ***Stadler:*** *Es verteidigt doch keiner!)*

16.36

Präsident Dr. Heinz Fischer: Nächster Redner ist Herr Abgeordneter Dr. Krüger. Redezeit: 7 Minuten. – Bitte.

16.36

Abgeordneter Dr. Michael Krüger (Freiheitliche): Herr Präsident! Herr Bundesminister! Hohes Haus! Herr Kollege Nowotny hat heute ein beliebtes politisches Zitat strapaziert, nämlich die Methode "Haltet den Dieb!" – Herr Kollege

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Nowotny! Diesen Vorwurf kann ich Ihnen eins zu eins zurückgeben, und ich muß ihn für unsere Fraktion zurückweisen. Es ist doch geradezu lächerlich! Was soll denn eine Opposition mit ein paar Anfragen auslösen? Herr Kollege Nowotny! Wer ist denn verantwortlich für die Bankenaufsicht?

Herr Finanzminister Edlinger hat heute erklärt, die Bankenaufsicht habe den Rieger-Skandal aufgedeckt. Das oberste Organ der Bankenaufsicht sitzt hier in der Person des Herrn Bundesfinanzministers, und dieser sagt allen Ernstes, er hätte den Rieger-Skandal aufgeklärt. Bitte, der Herr Rieger hat in seine eigene Bank eingebrochen und ist geflohen. Dadurch ist das Ganze natürlich ruchbar geworden. Dadurch sind dann die Ermittlungen eingeleitet worden, und dadurch ist der Fall Rieger einer Aufklärung zugeführt worden. Das ist doch geradezu lachhaft! *(Abg. **Smolle:** Warum war Ihnen denn der Rieger so ein Anliegen? Das müssen Sie uns erklären!)*

Wer ist denn politisch verantwortlich? Wer hat denn oder hätte denn etwas zu sagen in einer Causa Rieger? *(Abg. Dr. **Khol:** Der Prinzhorn!)* Das sind die für die Nationalbank Verantwortlichen, das sind die für das Finanzministerium Verantwortlichen, das ist der Justizminister, und das ist allenfalls auch der Sicherheitsminister. So schaut es aus. Das sind die Personen, die in diesem Fall die politische Verantwortung tragen. *(Beifall bei den Freiheitlichen.)*

Herr Finanzminister! Eine kleine persönliche Bemerkung: Ich schätze durchaus Ihre Art der Anfragebeantwortung, weil sie von Ihnen immer mit einem gewissen Mutterwitz vorgetragen wird. Heute aber haben Sie meines Erachtens Ihr Pokerface zu sehr strapaziert. Denn wirklich allen Ernstes zu behaupten, Herr Finanzminister, daß die Bankenaufsicht den Rieger-Skandal aufgeklärt hätte, das ist ... *(Bundesminister **Edlinger:** "Aufgeklärt" habe ich nicht gesagt!)* Das haben Sie wortwörtlich gesagt, oder ***aufgedeckt*** hätte. Das ist schon ein starkes Stück!

Ich werde Ihnen jetzt sagen, wieso die Bankenaufsicht – und damit Ihr Ministerium und letztlich, wenn Sie sich verantwortlich fühlen, auch Sie – kläglich versagt hat. Sie hat kläglich versagt, weil nach dem Bankwesengesetz, wie Sie wissen, der Finanzminister oder die Bankenaufsicht bei Gefahr für die Erfüllung von Verpflichtungen eines Kreditinstitutes gegenüber seinen Gläubigern zur Abwendung dieser Gefahr Maßnahmen anordnen kann. So kann sie etwa einen Regierungskommissär einsetzen. Das wurde heute schon vom Herrn Kollegen Trattner doziert. Sie kann einen Regierungskommissär einsetzen – und das ist der springende Punkt.

Ich garantiere Ihnen eines heute schon: Das wird der Ansatzpunkt für die Amtshaftungsklage sein. Was wäre gewesen, wenn Sie rechtzeitig einen Regierungskommissär bestellt hätten? Dieser hätte die Unterlagen geprüft, und die Malversationen, die Auslackungen, die primitiven Fälschungen wären sofort aufgeflogen. Es wäre die Bank zugesperrt worden, und die Anleger wären nicht zu Schaden gekommen. Dieser Verzögerungsschaden, der darin bestanden hat, daß die Bankenaufsicht keinen Regierungskommissär eingesetzt hat, geht zu Lasten Ihres Ministeriums, geht zu Lasten der Republik und ist im Rahmen der Amtshaftung von der Republik zu bezahlen. *(Beifall bei den Freiheitlichen.)*

Ich werde Ihnen auch sagen, Herr Finanzminister, worin die Gefahr in Verzug begründet lag, worin die Verdachtsmomente gelegen haben, die dafür ausschlaggebend sind, daß man einen Regierungskommissär ***zwingend*** im Interesse der Anleger zu bestellen hat.

Da gibt es nicht ***ein*** Indiz für Schwierigkeiten bei der Riegerbank, da gibt es Dutzende. Ich zähle Ihnen einige auf: Die Bank Austria stellt mit großem öffentlichen Getöse – es gab darüber eine Publikation in der Zeitschrift "NEWS" – schon vor einem Jahr einen Millionenkredit fällig. Bitte, das ist doch nicht normal, daß die Hauptbank, nämlich die Bank Austria, die die Geschäftsanteile der Rieger-Privatstiftung in das Pfand genommen hat, wie Sie auch wissen, einen Kredit in dreistelliger Millionenhöhe fällig stellt! – Die Bankenaufsicht schweigt, der Herr Finanzminister schweigt.

Dutzende Anzeigen werden eingebracht, auch von der Bankenaufsicht, das gebe ich durchaus zu, auch von der Nationalbank – aber einen Regierungskommissär, der alles aufdecken könnte, bestellen Sie nicht.

Der Vorsitzende des Aufsichtsrates Dr. Androsch, Minister außer Dienst, legt unter großem Getöse den Vorsitz im Aufsichtsrat nieder. Er beklagt sich heute selbst und fragt: Hat man denn das nicht als Zeichen verstehen können? – Die Bankenaufsicht schweigt, der Herr Minister schweigt. Es wird kein Regierungskommissär bestellt!

Man kommt darauf, daß die Wirtschaftsprüfer, die den Bestätigungsvermerk der Riegerbank attestieren, mehr als

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zulässig selbst beteiligt sind und sich daher selbst Vermögenswerte attestieren. – Die Bankenaufsicht schweigt. Es wird kein Regierungskommissär bestellt! *(Abg. Mag. **Trattner:** Aber sie sind die großen "Aufdecker"!)*

Oder: die Kreditlinien bei der Oesterreichischen Nationalbank, die die Großbanken melden müssen. Sie wissen alle, daß die Banken nicht alles melden. Das heißt, es ist in Wirklichkeit immer mehr, als sie melden. Das muß man sich einmal vorstellen: Die Großbanken meldeten offene Kreditlinien gegenüber der Riegerbank an die Nationalbank in einem wesentlich größeren Ausmaß, als in den Büchern der Riegerbank stand. – Der Herr Finanzminister macht nichts. Er schweigt. Ein Regierungskommissär wird nicht bestellt.

Da wird eine Anleihe mit 7,5 Prozent begeben, zu einer Zeit, wo die Zinsen von marktüblichen Anleihen von Prime-rate-Schuldnern bei 3,5, 3,75, 4 Prozent gelegen sind. Herr Finanzminister! Sie wissen, die Gesetze der Schwerkraft am Finanzmarkt – Professor Van der Bellen wird mir recht geben – kann man nicht außer Kraft setzen. Wenn heute jemand bei banküblichen Anleihezinsen von 3,75 oder 4 Prozent eine 7,5prozentige Anleihe begibt, dann ist das unseriös und hätte Ihnen auffallen müssen. – Wieder wurde kein Regierungskommissär bestellt!

Die dubiose Zusammenarbeit mit der Diskont Bank, der früheren EffectInvest, hätte Ihnen auch auffallen müssen. Die EffectInvest ist unrühmlich mit dem European Kings Club, offensichtlich mit Geldwäsche in Konnex, verbunden. – Wieder meldet sich niemand. Ein Regierungskommissär wird nicht bestellt!

500 Millionen Schilling werden letztlich ins Ausland verschoben, vor den Augen der Nationalbank, vor den Augen des Finanzministeriums und des Finanzministers!

Meine sehr geehrten Damen und Herren! Und dann stellt sich der Finanzminister her und sagt, die Bankenaufsicht habe alles getan und alles aufgeklärt?! Ich frage Sie: Was hat die Bankenaufsicht gehindert, was hat Sie persönlich daran gehindert, einen Regierungskommissär zu bestellen? Ich habe Ihnen bereits ausgeführt, wenn Sie einen bestellt hätten, wäre die ganze Sache in Kürze aufgeflogen. Das kann ich Ihnen garantieren, weil die Fälschungen primitiv waren. Rieger sagt es ja selbst im Interview: Ich habe das primitivst ausgelackt, eine Null dazugegeben bei den Aktiva, ein paar Nullen abgezogen bei den Passiva. – Das wäre doch sofort aufgefallen!

Der Finanzminister steckt sich noch das Federl auf den Hut und sagt, die Bankenaufsicht habe alles aufgeklärt. Für wie naiv halten Sie denn eigentlich die Mitglieder des Hohen Hauses und die Öffentlichkeit? Die werden ja hier wirklich für dumm verkauft.

Jetzt sind wir bei der politischen Verantwortung. Die politische Verantwortung liegt in erster Linie bei Ihnen, sehr geehrter Herr Finanzminister, weil die Bankenaufsicht – auch Kollege Peter hat das sehr richtig ausgeführt – kläglich versagt hat und ein Regierungskommissär nicht bestellt worden ist.

Einer würde heute auch noch hierher gehören, damit er sich das anhört. Auch das Justizministerium hat eine höchst zweifelhafte Rolle. Jetzt werden Sie uns hoffentlich nicht unterstellen, daß wir bei der Justiz so einflußreich sind, daß wir Akten unterdrücken, daß wir verhindern, daß Anklagen eingebracht werden, daß Strafanträge ausgefertigt werden. Dutzende Anzeigen sind bei der Staatsanwaltschaft eingebracht und nicht behandelt worden. Akten sind unterdrückt worden, sind zu Weisungsakten erklärt worden. Die kann man nicht einbringen, wie zu recherchieren und nachzulesen war. Da gab es schon eine fertige Anklage gegen den Herrn Rieger und gegen den Herrn Machatschek wegen Bilanzfälschung. Die ist fix und fertig zur Abfertigung gewesen, aber die wird unterdrückt, die wird zurückgehalten. Da wird der Oberstaatsanwaltschaft berichtet.

Da frage ich mich: Wer ist denn das Umfeld, wer bildet denn das Umfeld? Ein Kommentator hat ganz recht, wenn er schreibt, daß derjenige höchste Beziehungen haben muß. Und das kann nicht bei einer Opposition sein, die gar nichts bewegen kann, die bestenfalls ein paar Anfragen einbringen kann. Wer in diesem Dickicht, in diesem Filz, in diesem Biotop so kriminell gedeiht, der muß beste Beziehungen haben, daß überall Akten verschwinden, zurückgehalten werden und die Bankenaufsicht schweigt. *(Beifall bei den Freiheitlichen.)*

16.46

Präsident Dr. Heinz Fischer: Nächster Redner ist Herr Abgeordneter Maier. – Bitte.

16.46

003330

Abgeordneter Mag. Johann Maier (SPÖ): Herr Präsident! Herr Bundesminister! Hohes Haus! Meine sehr verehrten Damen und Herren! Auch ich begrüße ausdrücklich diese Dringliche Anfrage, weil sie zum einen die Möglichkeit gibt, grundsätzlich zur Finanzmarktproblematik Stellung zu nehmen, und weil wir uns zum anderen mit bestimmten Problemen, die die Riegerbank und die Diskont Bank betreffen, auseinandersetzen können, was wir auch tun müssen.

Nun zum Grundsätzlichen. Der Generaldirektor für die öffentliche Sicherheit hat von einem Sittenbild gesprochen, von einem Umfeld, in dem derartige Geschäfte möglich sind. Gemeint waren damit Banken, Wirtschaftstreuhänder, Vermögensberater, Rechtsanwälte. Die Liste ließe sich fortführen.

Es geht, meine sehr verehrten Damen und Herren, auf dem Kapitalmarkt um kriminelle Handlungen von Bankern, von Finanzdienstleistern, und wir reden hier konkret über den Kriminalfall Rieger. Auf der einen Seite haben wir diese kriminellen Anlagefirmen, Banken, Anlageberater und auf der anderen Seite Anleger – und das muß man hier mit aller Deutlichkeit sagen –, die die Risken, insbesondere wenn hohe Zinsen angeboten werden, nicht beachten. Ich spreche hier aus persönlicher Erfahrung. Wenn Konsumenten in eine Konsumentenberatungsstelle kommen und fragen, ob ein Geschäft seriös sei und ob man damit rechnen könne, einen bestimmten Zinssatz zu lukrieren, und der Berater rät ihnen von diesem Geschäft ab und belehrt sie über das Risiko, dann werden sie das Geschäft trotzdem abschließen. Und darin sehe ich ein Problem.

Gestatten Sie mir, daß ich einige Beispiele darstelle. Nach Aussage der Bundeswertpapieraufsicht in Österreich verschwinden jährlich zwischen 30 und 40 Milliarden Schilling in dubiosen Anlage- und Wertpapiergeschäften. Nach dem Gerlach-Report – den können Sie nachlesen – sind es in Deutschland zirka 70 Milliarden D-Mark. Diese Gelder von Anlegern verschwinden grenzüberschreitend, zumeist organisiert auf obskure Art und Weise. Treuhänder, die in diese Geschäfte eingeschaltet sind, sind den Namen nicht wert, wobei sich dieser Vorwurf auf alle Berufe bezieht, die sogenannte Veranlagungsgeschäfte vornehmen oder selbst daran beteiligt sind. Ich nenne sie auch beim Namen: Das sind Wirtschaftstreuhänder, Rechtsanwälte oder einschlägig tätige Gewerbetreibende.

Abgewickelt wird das alles über Banken. Lassen Sie mich ein konkretes Beispiel bringen. *(Abg. **Böhacker:** Nicht generalisieren! Das weise ich zurück!)* – Ich habe nie generalisiert, ich habe nur eine Feststellung getroffen. – Nehmen wir die Firma Megawert aus Linz her. Kollege Krüger kennt die Megawert. Die Megawert hat Anlagemodelle verkauft, das Prime-invest-Programm. Da haben die Anleger einen Vermögensverwaltungsvertrag abgeschlossen und dann einen Treuhandvertrag. Da war ein Wirtschaftstreuhänder dabei, und jeder hat geglaubt, es sei alles in Ordnung. Es war überhaupt nichts in Ordnung, die Gelder sind über eine Sefa AG in Liechtenstein in die Schweiz verschwunden. Die Anleger haben bis heute ihr Geld nicht erhalten. Die Anleger werden derzeit, zumindest in einigen Fällen, von der Arbeiterkammer vertreten, die Megawert von einer namhaften Linzer Rechtsanwaltskanzlei.

Ein anderes Problem: Vermögensverwaltungsgesellschaften organisieren oder inszenieren einen Anlagebetrug nach dem anderen. Da gibt es den Herrn Brunner in Gmunden – ich weiß nicht, wer von ihm gehört hat –, der Beteiligungen an Liegenschaften und Yachten vertreibt, meistens über Telefonmarketing aus dem Ausland, besser gesagt: er hat sie vertrieben, in der Zwischenzeit sitzt er in Untersuchungshaft. Es wurden steuerschonende Verlustmodelle im Ausland mit österreichischen Anlegern angeboten und enorme Zinsgewinne in Aussicht gestellt. Das Ganze wurde im Schneeballsystem abgewickelt. Da nach Ende der Laufzeit keine Gewinne erzielt werden, müssen sie als Liebhaberei deklariert werden – und, was klar ist, die Steuernachlässe werden zurückgefordert.

Oder ein anderer Problembereich: die grenzüberschreitenden Transaktionen in die Schweiz oder nach Liechtenstein. Liechtenstein, EWR-Mitglied, ist nicht einmal mehr bei der Internationalen Wertpapieraufsichtsbehörde dabei, und was die Schweiz betrifft, haben wir überhaupt keine Möglichkeiten, in diesem Land die Gelder aufzutreiben, weil es keine entsprechenden Abkommen mit der Europäischen Union beziehungsweise zwischen Österreich und der Schweiz gibt, weil die Schweiz eben auf ein bestimmtes Bankgeheimnis beharrt.

Nach Meinung des Vereins für Konsumenteninformation ist der österreichische Finanzdienstleistungsmarkt, den ich jetzt meine, nicht europareif, er ist ein Tummelplatz für Finanzscharlatane. Zweifelhafte Strukturvertriebe und Finanzexperten von eigenen Gnaden erschweren die Entwicklung einer seriösen Beraterstruktur.

Das ist das Problem, von dem wir ausgehen müssen, wenn wir über die Kontrolle des Finanzmarktes reden. Wir müssen darüber nachdenken: Wie soll dieser Finanzmarkt kontrolliert werden? Brauchen wir eine Bankenaufsicht

auf der einen Seite und auf der anderen Seite noch dazu eine Wertpapieraufsicht oder vielleicht noch eine Aufsichtsbehörde? Oder bekennen wir uns zu einem einheitlichen Aufsichtsmodell?

Meine sehr verehrten Damen und Herren! Auf dem Markt wachsen die Banken, Versicherungs- und Wertpapierdienstleister zusammen. Warum soll dann nicht auch eine einheitliche Aufsicht geschaffen werden? Das schafft Effektivität und dient auch zur Kosteneinsparung. Das Gegenargument ist die Machtkonzentration. Darüber werden wir im Detail noch diskutieren müssen.

Ich persönlich bin ebenfalls der Meinung, daß die Tätigkeit der Bankenaufsicht absolut in Ordnung war. Die Bankenaufsicht hat Maßnahmen gesetzt, aber sie hat nicht – und sie konnte das auch nicht – die Rolle der Justiz übernommen. Die Rolle der Justiz halte ich persönlich für absolut aufklärungsbedürftig. Lassen Sie mich das mit aller Deutlichkeit sagen: Die Staatsanwaltschaft – und da gebe ich meinem Kollegen von der ÖVP recht – muß auf Trab kommen. Nur, Kollege Peter, wie soll das verstanden werden, man solle Anzeigen betreiben? Wollen Sie jetzt Weisungen verlangen, Weisungen, die Kollegin Schmidt immer ablehnt? Ich glaube, es muß sichergestellt werden, daß von der Justiz alle offenen Fragen aufgeklärt werden.

Zur FPÖ noch: Kollege Trattner! Schauen Sie sich § 3 Wertpapieraufsichtsgesetz an, dann sehen Sie, welche Möglichkeiten die Wertpapieraufsicht in dieser Frage hatte. Nämlich überhaupt keine! Denn Daueremissionen – und das können Sie nachlesen – unterliegen nicht der Prospektpflicht und müssen auch nicht geprüft werden. *(Abg. Mag. **Trattner:** Eine "schöne" Lücke!)*

Herr Bundesminister! Zum Abschluß folgendes: Das Wirtschaftstreuhandberufsgesetz ist derzeit in Begutachtung; wir werden uns mit der Rolle und den Aufgaben der Wirtschaftstreuhänder auseinandersetzen müssen, insbesondere wenn Beteiligungen vorliegen oder wenn es um die Frage der treuhändigen Beteiligungen geht. Hier sind Maßnahmen notwendig!

Herr Bundesminister, Sie sind ja ein sportbegeisterter Politiker. Der Riegerbank-Skandal hat auch mit dem österreichischen Sport etwas zu tun. Das möchte ich hier ganz klar sagen. Solange derartige Scharlatane als Präsidenten auftreten können, die fremde Gelder in einen Verein stecken, verzerren sie einen nationalen Bewerb. Sie verzerren die Meisterschaft. Ich würde Sie ersuchen, auch in Ihrer Funktion als Finanzminister mit dem ÖFB Kontakt aufzunehmen und sicherzustellen, daß der ÖFB ein entsprechendes Controllingverfahren einführt.

Ganz zum Schluß möchte ich noch sagen: Wir sollten darüber nachdenken, wie es zu einer verbesserten Kontrolle des Finanzmarktes kommt. Ich glaube, es muß zu einer einheitlichen Aufsicht kommen, damit dem Vertrauen der Anleger in Österreich wieder Rechnung getragen wird. – Ich danke für Ihre Aufmerksamkeit. *(Beifall bei der SPÖ.)*

16.54

Präsident Dr. Heinz Fischer: Nächster Redner ist Herr Abgeordneter Wurmitzer. Redezeit: 8 Minuten. – Bitte.

16.55

Abgeordneter Georg Wurmitzer (ÖVP): Sehr geehrter Herr Präsident! Herr Bundesminister! Hohes Haus! Die Dringliche Anfrage der Freiheitlichen Partei gibt mir namens der Österreichischen Volkspartei die Möglichkeit, im Zusammenhang mit der Causa Riegerbank drei Forderungen auf den Tisch zu legen.

Forderung Nummer eins von unserer Seite ist, daß der Sicherheit für die kleinen Anleger absoluter Vorrang eingeräumt werden muß. *(Beifall bei der ÖVP.)* Wir fordern die Untersuchungsbehörden, die Polizei und auch die Justiz auf, alles zu unternehmen, um die Geldflüsse nachzuvollziehen und allfällige Kontenstände sicherzustellen.

Was wir nicht haben wollen und was die breite Öffentlichkeit Österreichs unter keinen Umständen haben will, ist, daß sich die Täter nach der Verbüßung ihrer Strafe ein schönes und ruhiges Leben auf Kosten der Anleger machen können. Dies muß unter allen Umständen unterbunden werden! *(Beifall bei der ÖVP.)*

Die zweite Forderung, die wir stellen, ist, daß die Entscheidungsträger der Riegerbank die volle Verantwortung und persönliche Haftung zu übernehmen haben. Das heißt, sowohl die Vorstandsmitglieder als auch die Aufsichtsratsmitglieder, insbesondere der Vorsitzende des Aufsichtsrates, müssen mit ihrem persönlichen Vermögen für den Schaden, den sie nicht verhindert haben, haften. *(Beifall bei der ÖVP.)* Die

Haftungsbestimmungen sind voll anzuwenden, bevor andere Anleger und vor allem auch die Steuerzahler in Mitleidenschaft gezogen werden.

Die dritte Forderung, die wir stellen, ist, daß es zu einer deutlichen Verbesserung der Bankenaufsicht und zu einer Stärkung der Kontrollorgane kommen muß. Das Frühwarnsystem, das hier schon erwähnt wurde, hat offenbar nur einen alarmiert, das war der Dr. Androsch. Alle anderen haben das nicht zur Kenntnis genommen, und es ist auch auffallend, daß 17 Anzeigen durch die Oesterreichische Nationalbank an die Staatsanwaltschaft zu keinerlei Konsequenzen geführt haben! Da hätten alle Alarmklingeln läuten müssen, und man hätte eine Ausreise des Herrn Rieger, wenn man diese Signale beachtet hätte, jedenfalls verhindern können. *(Beifall bei der ÖVP. – Abg.* ***Aumayr:*** *Das sind schwere Vorwürfe, Herr Minister!)*

Sehr geehrte Damen und Herren! Für die Volkspartei sind die Motive der Freiheitlichen Partei, heute hier als Fragesteller aufzutreten, mehr als durchsichtig. Sie möchten heute die Flucht nach vorne antreten. Wir haben aber noch nicht vergessen, was Sie am 14. Mai 1997 hier in diesem Hause gesprochen und welche Anträge Sie damals an dieses Haus gerichtet haben. Ich darf aus dem Dringlichen Antrag der Freiheitlichen vom 14. Mai 1997 zitieren: Sie schreiben in Ihrer Begründung: "... ist das Verhalten der Oesterreichischen Nationalbank im Zusammenhang mit der Riegerbank AG skandalös ..."

Und sie schreiben weiters: "... das Grundrecht auf Freiheit der Erwerbstätigkeit zu verwehren. Sie läßt keine Gelegenheit aus," – gemeint ist die Oesterreichische Nationalbank – "um die Vertrauenswürdigkeit der Riegerbank AG in Zweifel zu ziehen."

Und weiter hinten schreiben Sie dann: "Die Nationalbank trat im Sommer 1996 an den ehemaligen LASK-Trainer Günther Kronsteiner heran, um Informationen über Malversationen des Herrn Rieger auszukundschaften, damit dessen Verläßlichkeit in Frage gestellt wird." – Es ist erstaunlich, was Sie damals alles zu sagen hatten.

Ich zitiere weiter: Und andererseits war es das Bestreben der Oesterreichischen Nationalbank, die Tätigkeit des Herrn Rieger als Banker zu unterbinden. – Zitatende. Vor einigen Jahren waren Sie der massivste Anwalt, den sich Herr Rieger überhaupt vorstellen hat können. *(Zwischenruf des Abg. Mag.* ***Stadler.)*** Das geht noch weiter, und es ist erstaunlich! Sie haben am 14. Mai 1997 auch den Antrag gestellt, die Oesterreichische Nationalbank aufzulösen. *(Rufe des Erstaunens bei der ÖVP.)* Sie wollten damals jene Stelle, die dem Herrn Rieger und dessen Bank kritisch gegenübergestanden ist, ausschalten. *(Abg. Mag.* ***Stadler:*** *Nur deswegen!)* – Ja, Sie haben andere Vorwände gefunden.

Herr Kollege Stadler! Bevor Sie hier so groß reden, sollten Sie zuerst den finanziellen Saustall der Freiheitlichen Partei Niederösterreich ausmisten – um bei den Worten Ihres Parteichefs zu bleiben! *(Beifall bei der ÖVP.)*

Es war Ihr Ziel, die Oesterreichische Nationalbank mundtot zu machen. Es war Ihr Ziel, die Kritik abzuschwächen. *(Abg. Mag.* ***Stadler:*** *Herr Wurmitzer! Ich bin ertappt! Ich bin erwischt!)* Sie wollten freie Bahn für die Riegerbank auf deren Fahrt in den Abgrund haben. Bei diesen Zielsetzungen waren Ihnen die Anlagen der Anständigen, der Fleißigen und der Tüchtigen völlig egal! *(Beifall bei der ÖVP.)*

Herr Kollege Stadler! Die Freiheitliche Partei hat schon mannigfache Erfahrung im Anstreifen an schillernde Personen in Österreich. Wenn irgendwo eine Grauzone ist, wenn irgendwo eine schillernde Person Österreichs Bühne betritt, dann ist die Freiheitliche Partei dabei. Ich habe genügend Beispiele dafür. Sie erinnern sich sicher noch an den Fall des Klaus Mair, als Kollege Meischberger Millionenbeträge "aufs Handerl" bekommen hat. Sie erinnern sich sicher noch an den Fall Peter Feiersinger, den Sie als ***den*** Unternehmer des Jahrhunderts hochgepriesen haben. Sein Ende ist Ihnen auch bekannt. Sie erinnern sich auch an Wilhelm Papst als Sanierer des Zellstoffwerkes Magdalen, der mit dem damaligen Landeshauptmann Haider in dubiose Geschäfte einsteigen wollte. *(Abg. Mag.* ***Stadler:*** *Lassen Sie den Papst in Ruhe!)*

Sie erinnern sich auch an Ihren Kollegen Rosenstingl und auch an den damaligen Finanzminister Hannes Androsch, zu dem Sie sehr intensive Kontakte aufrechterhalten haben. *(Heiterkeit beim Abg. Mag.* ***Stadler.)*** Und heute haben wir auch vernommen, daß es die freiheitliche Parlamentsriege war, die sich in der "Claire-Bar" aufgehalten hat. *(Präsident Dr.* ***Neisser*** *übernimmt den Vorsitz.)*

Es ist schon interessant zu lesen, daß die Abgeordneten Trattner und Scheibner – hier jedenfalls namentlich

genannt – zu Riegers illustrer Runde gehören. Es ist dann auffallend, wenn dieselben Personen dann die Hauptvertreter von Dringlichen Anfragen hier im Hause sind. Wahrscheinlich glauben Sie mit diesem Doppelspiel, wie Sie es schon vor zehn Jahren praktiziert haben, durchzukommen. Vor zehn Jahren haben Sie öffentlich erklärt: Wir erstatten Strafanzeige gegen Dr. Androsch. – Mit gleicher Post haben Sie ihm Weihnachtsgrüße geschickt und mitgeteilt, daß Sie ihm viel Kraft wünschen, damit er diese schlimme Zeit durchsteht.

Ich hätte einen Vorschlag: Sie können auch Herrn Rieger Weihnachtsgrüße schicken und ihm mitteilen, daß Sie an seiner Seite stehen. *(Beifall bei der ÖVP.)*

17.04

Präsident Dr. Heinrich Neisser: Zu Wort gemeldet ist Herr Abgeordneter Gaugg. 7 Minuten freiwillige Redezeitbeschränkung. – Bitte.

17.04

Abgeordneter Reinhart Gaugg (Freiheitliche): Sehr geehrter Herr Präsident! Herr Bundesminister! Die krausen Phantasien des Abgeordneten Wurmitzer finden jetzt wieder ihre Fortsetzung. Es geht um Pleitebanken in Österreich, aber er verknüpft das wieder mit Einzelpersonen. Ich weiß nicht, ob er vergessen hat, daß es einen Rabelbauer gibt, daß es einen Sauerzopf gibt, daß es einen Soronics gibt, der zu Hause Stapo-Akten für alle Fälle aufbewahrt, die man verwenden könnte, daß es einen Zimper gibt und daß es auch einen Minister gegeben hat, einen gewissen Krauland, der in einen Riesenbankenskandal verwickelt war? *(Beifall bei den Freiheitlichen. – Abg. **Kiss:** Das ist hanebüchen!)* Das sind alles sogenannte christlich-soziale Menschen. Den zweiten Teil spare ich mir noch auf.

Kollege Wurmitzer! Betreffend Änderung der Meinung: Es hat in Kärnten den Magdalen-Skandal gegeben. Da war deine Partei eine der Betreiberinnen, daß das fortgesetzt wird, und dann bist auch du draufgekommen, daß das ein Fehler war, und warst mit im Untersuchungsausschuß. Das ist die Linie der ÖVP. Lieber Freund! Hier geht es nicht um einen gewissen Herrn Rieger; um den geht es hier nicht. Es geht um die Kunden dieser Bank. Darum geht es! *(Beifall bei den Freiheitlichen.)*

Kollege Nowotny hat heute gesagt: Wir haben eine gute Bankenlandschaft. – Das mag schon sein, aber wir haben auch Pleitebanken. Jetzt frage ich, wie der normale Konsument, der Arbeiter, der Angestellte, differenzieren soll, wenn "Bank" auf einem Schild steht. Der geht hinein, veranlagt sein Geld, und niemand käme bei Verlustzuweisungen bei 50 Prozent Gewinnbeteiligung und ähnlichem mehr darauf ... *(Zwischenruf des Abg. **Edler.**)* – Was ist, Eisenbahner? *(Abg. Dr. **Graf** – in Richtung des Abg. Edler –: Du mit deinen 300 000 S Monatsgage!)* Du hast in nächster Zeit Gelegenheit, darüber nachzudenken, was ich jetzt den Herrn Bundesminister für Finanzen fragen werde.

Was wußten Staribacher und Androsch? – Staribacher wurde im Sommer 1997 gebeten, die Bilanz 1996 der Riegerbank zu prüfen. Diese wurde geprüft und hat einen Persilschein bekommen. Im Februar 1998 hat Herr Staribacher dieses Gutachten widerrufen. Im Februar dieses Jahres! Es muß doch einen Grund dafür geben, daß Herr Staribacher dieses widerrufen hat. Es muß auch einen Grund dafür geben, daß der ehemalige Finanzminister Androsch seinen Aufsichtsratsvorsitz zurückgelegt hat. Hätten denn nicht – verdammt noch einmal! – bei der Bankenaufsicht alle Alarmglocken läuten müssen, wenn sich qualifizierte Wirtschaftstreuhänder zurückziehen? *(Beifall bei den Freiheitlichen.)*

Ich frage mich wirklich: Haben die nicht gewußt, was sich dort abspielt? – Die Bankenaufsicht hat versagt. Da stellt der Herr Generalsekretär der ÖVP, Ihr Regierungspartner, schon sehr treffend fest, daß sechs SP-Politiker mit involviert sind: Herr Lacina, Herr Staribacher, Herr Klima und der jetzige Finanzminister Edlinger; alle erwähnt er, bis hin zum Herrn Wala. – Das ist einer heutigen Presseaussendung der APA entnommen. Meine lieben Freunde! Denkt einmal nach über den größten ... *(Zwischenrufe der Abgeordneten **Marizzi** und **Silhavy.**)*

Wie viele Mitwisser hatte Herr Rieger? – Herr Sika hat öffentlich erklärt: Einige werden schlecht schlafen während den Ermittlungen. – Dann werden sich bei Ihnen etliche Reihen lichten *(Abg. **Edler:** Den Trattner fragen!)*, denn nur unter der Federführung des Finanzministers – des seinerzeitigen wie des heutigen – sind Ihre laxe Bankenaufsicht und diese Manipulationen denkbar. Heute wurde gesagt, die Bankenaufsicht müsse verbessert werden, nicht anlaßbezogen, aber sie werde verbessert. Ich würde mir wünschen, daß das die Banken beziehungsweise auch die

Kunden merken, denn die Banken selbst schützen sich schon vor Ausfällen. Als es große Pleiten gab, haben sie sich gegenseitig versichert, daß, wenn es irgendeinen Ausfall gibt, man einander schützen wird. Aber die SPÖ war nicht und ist nicht in der Lage, dafür zu sorgen, daß der Konsument entsprechend geschützt wird. Das wäre Ihre Aufgabe, Herr Finanzminister! *(Beifall bei den Freiheitlichen.)*

17.07

Präsident Dr. Heinrich Neisser: Zu Wort gemeldet ist Herr Abgeordneter Mag. Kaufmann. Soll ich 7 Minuten Redezeit einstellen? – Bitte.

17.07

Abgeordneter Mag. Herbert Kaufmann (SPÖ): Sehr geehrter Herr Präsident! Herr Minister! Hohes Haus! Herr Abgeordneter Gaugg hat gemeint, es gehe in erster Linie um die Kunden der Bank. Das ist schon so ziemlich das einzig Richtige, denn wenn es um die Kunden der Bank geht, dann geht es in erster Linie nicht um die Bankenaufsicht und nicht um Herrn Staribacher et cetera, sondern es geht um drei andere Punkte, die ich anführen werde.

Es geht nicht um die Bankenaufsicht, die, wie Sie gemeint haben, viel zu lax gewesen sei. Vor einem halben Jahr haben Sie noch eine Anfrage gestellt, in der Ihre Meinung ganz klar zum Vorschein gekommen ist, nämlich die Meinung, diese Bankenaufsicht wäre gegenüber der Riegerbank zu streng. Denn Sie fragen darin ja den Finanzminister, ob die Bankenaufsicht angemessen reagiert hat und ob nicht möglicherweise eine zu strenge Handhabung bei dieser Bankenaufsicht gegeben war. *(Abg. **Edler** – in Richtung der Freiheitlichen –: Peinlich!)* Das war in Wirklichkeit der Tenor Ihrer Anfrage.

Es geht also meiner Meinung nach primär um andere Fragen, die in den Vordergrund zu rücken sind. Die erste Frage, die in den Vordergrund zu rücken ist, ist folgende: Wie steht es eigentlich mit der Haftung jener, die diese Anleihen verkaufen? Wie steht es mit der Haftung jener, die Beratungsgespräche führen? Wie steht es zum Beispiel mit der Haftung der Beratungsgespräche in der Diskont Bank?

Es gibt ein Flugblatt der Diskont Bank, auf dem – auf der ersten Seite groß gedruckt! – folgendes zu lesen ist: Ab sofort kann direkt bei der Diskont Bank exklusiv eine österreichische Bankenanleihe – von der Riegerbank ist überhaupt nicht die Rede – erworben werden, die wieder die höchsten Zinsen bietet. Die Rendite liegt bei 7,5 Prozent pro Jahr, und die Laufzeit des Papiers beträgt genau vier Jahre. Damit wird diese Anleihe um ein Drittel besser als andere mit vergleichbarer Laufzeit verzinst. Ein echter Renditenhit! – Zitatende.

Von Risiko ist in diesem Flugblatt – es ist kein Prospekt – weit und breit keine Rede. *(Zwischenruf des Abg. Mag. **Firlinger.**)* Wir haben in der Niederösterreichischen Arbeiterkammer derzeit 200 Anleger, die sehr genau und detailliert schildern, wie diese Beratungsgespräche ablaufen. Diese haben allesamt nicht den Eindruck, daß sie über das Risiko ausreichend informiert wurden. Wenn es also, Kollege Gaugg, um die Kunden geht, dann ist zunächst einmal die Frage zu stellen: Wie läuft das bei den Beratungsgesprächen der Banken – in diesem Fall der Diskont Bank –, und wie weit gibt es hier Schadenersatzansprüche? – Wir werden innerhalb der Niederösterreichischen Arbeiterkammer sehr genau prüfen, inwieweit wir in diesem Punkt nicht einen Musterprozeß führen. *(Ruf bei den Freiheitlichen: Das ist auch eine Bank!)* Zweiter Punkt: Wie ist es – in diesem Fall weniger, aber in vielen anderen Fällen – mit den Vermögensberatern, mit der Haftung der Vermögensberater, mit der Mindestversicherungssumme? Ich kann mich noch daran erinnern, daß wir im Ausschuß und auch hier im Plenum, Kollege Firlinger, in einen Disput geraten sind, weil Ihnen die Mindesthaftung zu hoch erschienen ist. *(Abg. Mag. **Firlinger:** Das verwechseln Sie! Da haben Sie nicht aufgepaßt!)* Ich weiß nicht, ob Sie das jetzt auch noch so meinen oder nicht. – Ich habe nur sehr wenig Redezeit.

Nächster Punkt: Wirtschaftsprüfer. Es gibt bei der Riegerbank einen Wirtschaftsprüfer, der ohnehin massiv kritisiert wird. Es ist aber wichtig, festzuhalten, daß dieser Wirtschaftsprüfer auch schon im Fall Beldomo die Bilanz geprüft hat. Beldomo ist eine Aktiengesellschaft, die Aktien verkauft hat, und kein Mensch weiß, wozu genau dieses Geld verwendet wurde. Einige führende Köpfe der Beldomo AG waren in Untersuchungshaft. Es sind noch immer Strafverfahren anhängig – genauer gesagt, eine Voruntersuchung. Derselbe Wirtschaftsprüfer, der Beldomo geprüft hat, hat auch die Riegerbank geprüft.

Meine Frage: Wie oft kann man sich irren? Kann man sich einmal, zweimal, dreimal irren? Wie ist das mit dem

Schadenersatz der Wirtschaftsprüfer? Führt nicht die Kammer der Wirtschaftstreuhänder momentan ein Disziplinarverfahren beziehungsweise ein Prüfverfahren durch, das eigentlich auch schon im Fall Beldomo, der nicht diese Schlagzeilen hatte, durchgeführt werden hätte müssen? – Das ist eine weitere wichtige Frage, wenn es um die Kunden geht.

Dr. Staribacher war nicht Wirtschaftsprüfer der Riegerbank. Er hat die Bilanz der Riegerbank überhaupt nicht testiert, sondern seine Aufgabe war es ... *(Abg. Dr. **Graf:** Er war "erfolgreicher" Finanzminister!)* – Nein. Die Bilanz hat er nicht testiert, sondern er hatte den Vermögensstatus aufzustellen. Es war völlig klar, daß da nicht vom Beleg weg, sondern von der testierten Bilanz weg zu prüfen war. *(Beifall bei der SPÖ. – Zwischenruf bei den Freiheitlichen.)* Daher ist die Frage: Wer hat die Bilanz testiert? – Das war jener vorher zitierte Wirtschaftsprüfer Dkfm. Türke. *(Abg. Dr. **Graf:** Wieviel hat er für das Gutachten kassiert?)*

Ein weiterer Punkt, den ich unbedingt noch ausführen will, ist die Frage der Gutachter in Strafverfahren. Es dauert oft Jahre, bis ein wirkliches Gutachten erstellt ist, Strafverfahren abgeschlossen und danach die zivilen Verfahren angehängt und abgeschlossen werden können.

In diesem Zusammenhang komme ich noch einmal auf Beldomo zurück. Es hat von unserer Seite auch eine Anzeige gegeben, und es kam zur Einleitung eines Strafverfahrens, und zwar im August 1996, also vor mehr als zwei Jahren. Der Gutachter ist jetzt ausgetauscht und durch einen anderen ersetzt worden, der nun wieder den Fall Beldomo aufarbeitet. Wir haben die große Sorge, daß viele Menschen, die dort Aktien gekauft haben, um ihre Schadenersatzansprüche wegen Verjährung umfallen werden, weil eben dieses Strafverfahren so lange dauert.

Die Frage ist: Wie rasch handeln die Gerichte, und wie rasch agieren eigentlich die Gutachter, die eingesetzt werden, wenn es um die Kunden geht? – Ich sage noch einmal: Es geht wirklich um die Kunden. In dieser Hinsicht ist aber der Bankenaufsicht nichts vorzuwerfen, sondern da sind die Frage der Beratungsgespräche, der Wirtschaftsprüfer und ähnliche Fragen, auch der Versicherungssummen bei Vermögensberatern zu klären, wenn es um die Kunden geht. Das sollte man insbesondere in den Vordergrund rücken!

Neben den Kunden geht es auch um einen funktionierenden Kapitalmarkt in Österreich. Die Frage Beldomo, die Frage Riegerbank, diese Fragen, die wir hier diskutieren – auch die Vertriebsformen, die wir hier öfters kritisiert haben *(Abg. Mag. **Trattner:** Sie sind schon für Gläubigerschutz?)*, Strukturbetriebe et cetera –, sind wirklich dazu angetan, dem Kapitalmarkt in Österreich zu schaden. *(Präsident Dr. **Neisser** gibt das Glockenzeichen.)* Daher ist der Gläubigerschutzgedanke noch mehr als bisher in den Vordergrund zu rücken. Wir haben das immer getan. Sie haben da fallweise, siehe Mindestversicherungssummen, gebremst. *(Beifall bei der SPÖ.)*

17.15

Präsident Dr. Heinrich Neisser: Es hat sich jetzt Herr Abgeordneter Dr. König zu Wort gemeldet. – Sie haben noch eine Redezeit von 9 Minuten zur Verfügung. – Bitte.

17.15

Abgeordneter Dkfm.DDr. Friedrich König (ÖVP): Herr Präsident! Hohes Haus! Meine sehr geehrten Damen und Herren! Ich meine, das, was man aus der heutigen Debatte als Schlußfolgerung ziehen kann, ist, daß es im wesentlichen um zwei Dinge geht:

Erstens um die Schadensminimierung, Schadensminimierung für den Bankenplatz Wien, international und damit für den gesamten an sich ausgezeichneten österreichischen Bankenapparat.

Zweitens natürlich auch um die Schadensminimierung für die Kleinanleger. Auch diese – das hat Kollege Wurmitzer für die Volkspartei heute schon gesagt – müssen vor Schaden bewahrt werden.

Es geht aber noch um etwas anderes: Es geht um die Frage, ob wir in der Lage und bereit dazu sind, diesmal – es ist ja nicht der erste derartige Bankenkrach; das ist Gott sei Dank nicht so häufig, aber es ist nicht der erste Fall – die richtigen Konsequenzen zu ziehen. Die richtigen Konsequenzen sind deshalb so wichtig, weil sie Folgewirkungen für die Zukunft haben. Es sollte ja aus dieser Debatte noch herauskommen, daß das Folgewirkungen für die Zukunft hat. Im Mittelpunkt des Interesses steht natürlich folgende Frage, die jetzt in den Medien strittig behandelt wird: Was ist die Verantwortung und die daraus entstehende Haftung der

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Wirtschaftsprüfer?

Es ist einfach unmöglich, daß der Masseverwalter erklärt, die Buchhaltung sei ein Chaos, und der zuständige Prüfer erklärt, er habe mit der branchenüblichen Sorgfalt geprüft. Ich muß sagen: Hut ab vor dem Präsidenten der Kammer der Wirtschaftstreuhänder, der gesagt hat: Das muß untersucht werden, da muß es ein Disziplinarverfahren geben, da besteht der Verdacht, daß zu salopp geprüft wurde, wenn zwei so grundsätzlich verschiedene Feststellungen getroffen werden.

Wenn man das nämlich nicht macht, dann wird es so weitergehen. Das ist branchenüblich. Dann ist niemand zur Verantwortung zu ziehen. Das gilt natürlich auch für die Sonderprüfung. Es wird nur dann wirklich Folgewirkungen für die Zukunft haben, und zwar positive – mehr Sorgfalt, mehr Wahrnehmung der Verantwortung –, wenn auch Konsequenzen gezogen und Haftungen eingefordert werden. Das auch im Interesse der Schadensminimierung bei den Kleinanlegern.

Der nächste Punkt betrifft die Frage der Aufsichtsräte. Es ist sicher so, daß ein Aufsichtsrat, wenn ihm der Wirtschaftsprüfer in seinem Bericht attestiert, daß alles in Ordnung sei und alles geprüft worden sei, nicht so leicht draufkommen kann, daß dem in Wirklichkeit nicht so ist. Aber es war ja eindeutig, daß zum Zeitpunkt des Rücktrittes des Aufsichtsratspräsidenten Dr. Androsch bereits bekannt war, daß die Bankenaufsicht den Rücktritt des Vorstandes verlangt hat. Es war bekannt, daß zu diesem Zeitpunkt die Nationalbank die Riegerbank bei der Staatsanwaltschaft angezeigt hat wegen 24,5 Millionen Schilling Eventualverpflichtungen, die nicht in der Bilanz aufgeschienen sind. Das war also bekannt.

Das heißt, spätestens zu diesem Zeitpunkt hätten die Aufsichtsräte handeln müssen, aber das haben sie ***nicht*** getan. Nun ist es in Österreich üblich, daß eigentlich noch nie Aufsichtsräte zur Verantwortung gezogen wurden und daß man sich daher immer in der Sicherheit wiegt, es passiert ohnehin nichts. Denn das ist nicht üblich. Der Aufsichtsrat muß sich ja auf die Informationen des Vorstandes verlassen können. Er muß sich auf den Prüfungsvermerk des Wirtschaftsprüfers verlassen können. Dennoch kann es aber nicht so sein, daß die Aufsichtsräte angesichts einer solchen Situation – Anzeige bei der Staatsanwaltschaft, Forderung nach Rücktritt des Vorstandes – einfach zur Tagesordnung übergehen, den Rücktritt des Aufsichtsratspräsidenten zur Kenntnis nehmen, und weiter geschieht nichts.

Was hinsichtlich der Konsequenzen, auch im Zusammenhang mit der Bankenaufsicht, noch geschehen muß, ist nicht nur die Frage einer neuerlichen Reorganisation, sondern im wesentlichen die Frage des raschen Zusammenwirkens mit der Justiz. Denn es ist unglaublich, daß man in der Justiz nicht in der Lage war, auf die verschiedenen Verdachtsmomente und Anzeigen so schnell zu reagieren, wie die Zivilprozesse vor den Gerichten zugunsten der Riegerbank entschieden wurden.

Ich möchte Herrn Professor Van der Bellen hier beipflichten: Die ***einzige,*** die wirklich von Haus aus versucht hat, etwas zu tun, war die Nationalbank. Denn die Nationalbank – wie sagten Sie in Ihrer Anfrage? – hat kein Vertrauen zur Riegerbank gehabt.

Herr Kollege Stadler! Ich glaube, es ist ein Problem, das in diesem Fall Sie trifft, aber es trifft sicher auch uns und andere – das möchte ich nicht bestreiten –, daß man viel zu leicht geneigt ist, einer Intervention nachzugeben, die vordergründig berechtigt erscheint, daß man aber damit, bitte, in Wirklichkeit natürlich etwas Bestimmtes bewirkt. Wenn Sie also mit dem Dringlichen Antrag durchgekommen wären, hätte das, wie Professor Van der Bellen zu Recht bemerkt hat, den Schaden gewaltig vergrößert.

Der Pawlowsche Reflex: Nationalbank, da muß man "drauf", weil sie an sich auch ein Lieblingskind anderer Attacken ist, ohne zu prüfen, ob das Anliegen überhaupt schutzwürdig ist, ob nicht die Nationalbank recht gehandelt hat, ob das, was man ihr vorwirft, nämlich daß sie keine Gelegenheit ausläßt, um die Vertrauenswürdigkeit der Riegerbank in Zweifel zu ziehen, richtig war oder nicht ... *(Abg. Mag.* ***Stadler:*** *Es war Rechtens!)* – Sie haben ja nicht zugehört. Ich habe vorhin gesagt: Eine verbesserte Zusammenarbeit der Aufsichtsbehörde, der Bankenaufsicht mit der Justiz ist notwendig, damit die Strafjustiz schneller arbeitet. Dann wären nämlich nicht alle Instanzen im Zivilverfahren positiv ausgegangen und man müßte nicht jetzt erst versuchen, diese Urteile noch zu revidieren. Das wäre durch ein schnelleres Verfahren in der Strafjustiz sicher verhindert worden.

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Ich glaube, wir müssen erkennen, daß die Nationalbank eigentlich mehrfach wesentlich dazu beigetragen hat, daß letzten Endes die Sache ins Rollen gekommen ist. Sie hat eine Anzeige bezüglich der nicht in der Bilanz aufscheinenden Eventualverpflichtungen gemacht, und sie hat darauf hingewiesen, daß 500 Millionen Schilling auf ausländische Banken verlagert wurden. Sie hat letzten Endes mit der Verweigerung und dem Kleinkrieg gegen die Genehmigung der Devisenhandelskonzession verhindert, daß es noch zu einem wesentlich größeren Schaden gekommen ist.

Ich bin der Meinung, wir wären allesamt gut beraten, wenn wir aus dieser Situation die positiven Konsequenzen zögen, und zwar Konsequenzen, die verhindern sollen, daß der Bankenplatz Wien noch einmal ins öffentliche Gerede kommt und daß Kleinanleger um ihre Gelder bangen müssen. *(Beifall bei der ÖVP.)*

17.23

Präsident Dr. Heinrich Neisser: Meine Damen und Herren! Diese Debatte neigt sich dem Ende zu. Jede Abgeordnete und jeder Abgeordneter dieses Hauses hat die Möglichkeit, nach Schluß dieser Debatte all ihre beziehungsweise seine Interventionen und Bittgesuche beim Bundesminister unterzubringen und anzubringen – wenn ich mir erlauben darf, das so zu formulieren, Herr Minister. Aber während der Debatte sollte das nach Möglichkeit nicht stattfinden. *(Abg. Mag. **Stadler** ist im Begriff, ans Rednerpult zu treten.)* – Nein, Herr Abgeordneter Stadler, noch ist es nicht soweit.

Es folgt eine ***tatsächliche Berichtigung*** des Herrn Abgeordneten Mag. Firlinger. Beginnen Sie mit dem Sachverhalt, den Sie berichtigen wollen. – Bitte.

17.24

Abgeordneter Mag. Reinhard Firlinger (Freiheitliche): Sehr geehrter Herr Präsident! Herr Bundesminister! Hohes Haus! Herr Abgeordneter Kaufmann hat die unrichtige Behauptung aufgestellt, ich hätte mich im Ausschuß für eine Absenkung der Mindesthaftungssummen ausgesprochen. – Das ist unrichtig!

Richtig ist vielmehr, daß ich verlangt und zur Diskussion gestellt habe, anstelle eines überhöhten Eigenkapitals eine höhere Haftungssumme sozusagen im Austauschweg vorzunehmen. – Das ist ein Unterschied; ein Unterschied allerdings, den Herr Kollege Kaufmann nicht zur Kenntnis nehmen wollte. *(Beifall bei den Freiheitlichen.)*

17.25

Präsident Dr. Heinrich Neisser: Herr Abgeordneter Mag. Stadler! Jetzt gelangen Sie zu Wort. Sie haben noch eine Redezeit von 6 Minuten. – Bitte.

17.25

Abgeordneter Mag. Johann Ewald Stadler (Freiheitliche): Meine Damen und Herren! Herr Präsident! Hohes Haus! Immer wenn Kollege Wurmitzer am Rednerpult steht, stramm, adrett, korrekt, wie er es in der Rednerschulung gelernt hat, dann merkt man, daß sein Vater Gauredner war. Aber er hat sich leider wie immer, meine Damen und Herren, im Thema vergriffen. An seiner Art merkt man ja buchstäblich, daß er die private Vergangenheitsbewältigung seiner Familie austrägt: immer gegen die Freiheitlichen, und die Freiheitlichen an allen Ecken und Enden der Welt sind die Bösen, meine Damen und Herren. *(Zwischenruf des Abg. **Kiss.** – Präsident Dr. **Neisser** gibt das Glockenzeichen. – Abg. **Wurmitzer** geht am Rednerpult vorbei.)* – Herr Kollege, nehmen Sie jetzt endlich einmal die Hand aus der Hosentasche, wenn Sie mit uns reden! Die haben Sie nämlich auch ständig in der Hosentasche, wenn Sie am Rednerpult stehen, Herr Kollege Wurmitzer!

Der erste, der von den kleinen Anlegern in einem Nebensatz gesprochen hat, war Herr Wurmitzer. Auch der Herr Minister hat nicht von den kleinen Anlegern gesprochen. Den Sozialdemokraten sind die kleinen Anleger ja ohnehin egal, das haben wir ja gemerkt: Kein einziger hat von den Anliegen der kleinen Anleger gesprochen. Herr Minister, Sie leider auch nicht. Wir wissen schon, daß es die SPÖ – die ÖVP sowieso schon längst – verlernt hat, den "kleinen Mann" zu kennen. Herr Wurmitzer hat also mit der Inbrunst der Überzeugung, wie man es ihm in der Rednerschulung beigebracht hat – ich habe schon darauf hingewiesen, in welcher –, gesagt: Wir wollen den Schutz der Kleinanleger.

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Diese Forderungen, Herr Kollege Wurmitzer, haben Sie zum xten Mal erhoben, zum Beispiel nach dem Zusammenbruch der BHI in der Steiermark. Dann haben Sie gemeinsam mit uns einen Vertrag paraphiert. Ihr damaliger Sekretär – wie hieß er gleich?; Herr Wögerbauer, glaube ich – hat im Auftrag des Klubobmannes Khol eine Paraphe unter einen Vertrag vom 7. Jänner 1997 gesetzt, als es beinahe zu Neuwahlen gekommen ist. Jetzt stehen wir wieder vor vorgezogenen Neuwahlen, wie man hört. In diesem Abkommen hat sich die ÖVP dazu verpflichtet – ich zitiere –, "den Schutz und die Rechte der Kleinanleger zu verbessern".

Ich wünsche mir, daß die Österreichische Volkspartei endlich in die Bundesregierung kommt, damit sie all das umsetzen kann, was Sie seit Jahren fordern, Herr Kollege Wurmitzer. *(Beifall bei den Freiheitlichen.)* Schön vorgetragen, aber leider das Thema verfehlt.

Kollege Wurmitzer! Sie wollen die Komplizen ausfindig machen. Da wird im Nachtclub nachgeforscht, wer sich mit Herrn Rieger beim Knödelessen oder beim Biertrinken zusammengesetzt hat. *(Zwischenrufe der Abgeordneten Dr. **Mertel** und Dr. **Lukesch.**)* – Ja, wir werden Ihnen genau mitteilen, was getrunken, was konsumiert und was versteuert wurde, meine Damen und Herren. Nur erklären Sie mir, wer die anderen Komplizen sind.

Herr Türke, ist das ein Freiheitlicher oder ist das ein Schwarzer? *(Abg. **Schwarzenberger:** Ein Freiheitlicher!)* – Ein Freiheitlicher, sagt der Oberpräsident der Landwirte. Staribacher, ist das ein Freiheitlicher? Der "erfolgreichste" Finanzminister dieser Republik, er war noch erfolgreicher als der derzeitige Finanzminister, er hat nämlich nie ein Budget zustande gebracht und hat damit der Volkswirtschaft dieses Landes viel Schaden erspart. Ist das ein Freiheitlicher? *(Abg. **Schwarzenberger:** Das ist ein Roter!)* Oder Herr Fuhrmann, der Rieger die Konzession verschafft hat. Ist das ein Freiheitlicher? Gestern hat Kollege Van der Bellen gesagt: Ein Würstelstand, bei dem man "Bank" draufschreiben durfte. Wer hat das beantragt? – Der Herr Fuhrmann. Ist das ein Freiheitlicher, Herr Kollege Schwarzenberger? *(Abg. **Schwarzenberger:** Ein Roter!)* – Ein Roter ist das. Wir sind aber nicht rot. Jetzt haben wir es zum ersten Mal, Zeuge Schwarzenberger! *(Beifall bei den Freiheitlichen.)* Und der Herr Androsch, ist das ein Freiheitlicher, Herr Schwarzenberger? – Ein Roter ist er! *(Abg. **Schwarzenberger:** Der Haider hat den Androsch als seinen Wirtschaftsminister angekündigt!)*

Herr Schwarzenberger, weil Sie so auskunftsfreudig sind: Der Herr Steiner, wer ist das? Ist das ein Freiheitlicher? – Das war derjenige, der Herrn Rieger zur Flucht verholfen hat. Das ist der Bruder des Kanzleipartners der Kanzlei Fuhrmann. Ist das ein Freiheitlicher, Herr Schwarzenberger? – Sie wissen es nicht, aber Sie behaupten es einfach – so sagt es jedenfalls Herr Wurmitzer. Und Frau Campregher, ist die eine Freiheitliche? *(Abg. **Haigermoser:** LIF!)* – Beim LIF ist sie, meine Damen und Herren! Dort hat sie ja fleißig hineingecasht und wäre gerne Spitzenkandidatin in Oberösterreich geworden. Sie hat sich nur nicht durchgesetzt, weil dort die Funktionärsklüngel zu hart und nicht mit Geld zu kaufen waren. So spielen sich die Dinge ab!

Meine Damen und Herren, hören Sie doch mit der Heuchelei auf! Wenn sich eine Partei dieses Hauses – und auch Sie, Herr Minister, haben sich da besonders hervorgetan – auf den OGH, auf das Oberlandesgericht Wien, auf das Landesgericht für Zivilrechtssachen in Wien beruft, dann ist das Ihrer Ansicht nach eine Komplizenschaft mit Herrn Rieger. Das ist die Höhe, meine Damen und Herren! Die Gerichte dieses Landes, wenn sie ein Urteil fällen – und das gleich dreimal hintereinander im Instanzenweg –, sind dann die Komplizen des Herrn Rieger. Packen Sie das zusammen, Herr Minister! Packen Sie das zusammen! Damit können Sie sich nicht aus der Verantwortung stehlen! *(Beifall bei den Freiheitlichen.)*

Sie haben mutwillig Kleinanleger geschädigt. Sie haben diese Kleinanleger geschädigt – und nur um die geht es mir –, indem Sie säumig waren. Das ist nicht, wie Kollege Maier gemeint hat, ein Problem des Bankgeheimnisses, sondern das ist ein Problem der Untätigkeit, ein Problem der Ignoranz, ein Problem der Indolenz. Und diese sind nahezu sämtlich in Ihrem Ministerium angesiedelt, Herr Finanzminister! *(Abg. **Schwemlein:** Und die Redezeit ist aus!)*

Meine Damen und Herren! Die nächste Ignoranz, Indolenz und Untätigkeit ist natürlich beim Herrn Justizminister zu finden. Aber glauben Sie mir, der Justizminister wird uns auch noch von der Regierungsbank aus Rede und Antwort stehen müssen. Denn daß bei 16 Anzeigen – und ein paar davon haben Sie ja selber zugegeben – nichts geschieht in der Justiz, ist ja wohl einmalig. Das nenne ich Ignoranz! Das nenne ich Rechtsstaatverweigerung! Das haben aber Sie, die Bundesregierung, zu verantworten, nicht wir Freiheitlichen. *(Beifall bei den Freiheitlichen.)*

Meine Damen und Herren! Wenn Ihnen Herr Rieger über Ihre parteinahen Zeitungen wie die Zeitschrift "NEWS" – ein

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sozialistisches Parteiblatt, das nur von Ihnen lebt ... *(Ironische Heiterkeit bei der SPÖ.)* Nein, ich korrigiere mich, sie lebt auch von der FPÖ, denn wenn es die FPÖ nicht mehr gäbe, hätte "NEWS" kein Thema mehr und wäre nur mehr auf Verbrecher angewiesen, die sie jeweils vor der Polizei ausfindig macht. *(Beifall bei den Freiheitlichen.)*

Wenn Ihnen also Herr Rieger über "NEWS" ausrichten läßt, daß sich Ihre Herren gar nicht ausgekannt haben, dann wird er schon wissen, wovon er redet. Wenn Herr Androsch sagt: Als ich zurückgetreten bin ... *(Präsident Dr. **Neisser** gibt das Glockenzeichen.)* – Herr Präsident, ist die Redezeit vorbei? *(Abg. **Schwemlein:** Stadler! Und Tschüs!)* – Gut, Herr Präsident!

Diese Regierung hat Versäumnisse zu verantworten, für die sie noch in mehreren Dringlichen Anfragen wird geradestehen müssen! Auch Sie, Herr Finanzminister, werden nicht aus der Ziehung entlassen werden! *(Beifall bei den Freiheitlichen.)*

17.31

Präsident Dr. Heinrich Neisser: Herr Abgeordneter Wurmitzer hat sich zu einer ***tatsächlichen Berichtigung*** gemeldet.

Herr Abgeordneter, beginnen Sie mit dem Sachverhalt, dem Sie Ihre Berichtigung gegenüberstellen wollen. – Bitte.

17.31

Abgeordneter Georg Wurmitzer (ÖVP): Sehr geehrter Herr Präsident! Hohes Haus! Herr Abgeordneter Mag. Stadler hat von dieser Stelle aus die Behauptung aufgestellt, mein Vater sei "Gauredner" gewesen. *(Abg. Mag. **Stadler:** Er war also "nur" Nazi!)*

Ich stelle richtig: Mein Vater war weder Gauredner noch jemals Mitglied der NSDAP. Mein Vater war vom 1. September 1939 bis zum 10. Mai 1945 als Soldat Angehöriger der Deutschen Wehrmacht – und **kein** Gauredner! *(Beifall bei der ÖVP und bei Abgeordneten der SPÖ. – Abg. **Koppler:** Das ist dem Stadler Wurscht! – Abg. Dr. **Khol:** Das ist letztklassig!)*

17.32

Präsident Dr. Heinrich Neisser: Es liegt nun keine Wortmeldung mehr vor. Diese Debatte ist geschlossen.

Kurze Debatte über die Anfragebeantwortung 4484/AB

Präsident Dr. Heinrich Neisser: Wir gelangen nunmehr zur kurzen Debatte über die Anfragebeantwortung 4484/AB des Herrn Bundesministers für Landesverteidigung.

Die Anfragebeantwortung ist im Saal verteilt worden, eine Verlesung durch den Schriftführer erübrigt sich daher.

Am Beginn der Debatte rufe ich die Bestimmungen der Geschäftsordnung über die Redezeitbeschränkung in Erinnerung: Jeder Redner darf nicht länger als 5 Minuten sprechen, der Erstredner hat zur Begründung eine Redezeit von 10 Minuten. Wortmeldungen der Regierungsmitglieder und Staatssekretäre sollen ebenfalls 10 Minuten nicht überschreiten.

Ich erteile nunmehr als erstem Redner, welcher der Antragsteller dieses Verlangens ist, Herrn Abgeordneten Scheibner, das Wort. Sie haben eine Redezeit von 10 Minuten. – Bitte, Herr Abgeordneter.

17.33

Abgeordneter Herbert Scheibner (Freiheitliche): Herr Präsident! Herr Bundesminister! Meine Damen und Herren! Die Anfragebeantwortung, um deren Besprechung es heute geht, zu einer parlamentarischen Anfrage der Freiheitlichen bezüglich der angespannten Situation bei den Hubschrauberstaffeln reiht sich in eine ganze Serie von Beantwortungen des Herrn Bundesministers von Anfragen der Opposition – nicht nur von unserer Fraktion – in den letzten Monaten ein. Es ist dabei immer das gleiche Schauspiel zu beobachten:

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Abgeordnete der Opposition, vor allem wir Freiheitliche, decken Mängel und Mißstände im Bereich Ihres Ressorts auf, stellen Ihnen entsprechende Fragen – und zwar schriftlich oder mündlich, ob im Plenum, im Wege von Parlamentsdebatten, in Ausschüssen oder, so wie gestern, im Landesverteidigungsrat – und hoffen, daß Sie uns, wie das Ihre Verpflichtung im Sinne des Interpellationsrechtes der Mandatare ist, entsprechende Antworten geben.

Aber, meine Damen und Herren und werte Kollegen, wenn Sie die Anfragebeantwortungen des Herrn Bundesministers nachlesen – und zwar nicht nur jene, die heute zur Debatte steht, sondern auch die meisten anderen –, dann werden Sie merken, mit welcher Lässigkeit, mit welcher Nonchalance das Ministerium über berechtigte Anfragen und Sorgen von Abgeordneten dieses Hauses hinweggeht und wie schönfärberisch und ungenau diese unsere Fragen beantwortet werden.

Herr Bundesminister! In der heute zur Diskussion stehenden Anfrage und Ihrer Beantwortung geht es um überaus wichtige Probleme! Wir haben in dieser Anfrage auf die problematische Situation der Hubschrauber im Heeresbereich hingewiesen. Gerade diese Hubschrauber stellen sowohl für das Bundesheer – vor allem, was die Lufttransportkapazität anbelangt – als auch auf zivilem Gebiet einen wichtigen Bereich dar. So sind wichtige Funktionen des Bundesheeres, etwa im Assistenzeinsatz an der burgenländischen Grenze, durch Hubschrauber zu gewährleisten, aber auch wichtige Bereiche des Zivilschutzes, wie etwa im Sanitäts- und Katastropheneinsatz, werden von den Hubschraubern des Bundesheeres mit unterstützt.

Und wir hören immer wieder – nicht nur durch Klagen aus der Truppe, sondern auch durch eigene Wahrnehmung und, wenn es wieder einmal einen Defekt oder, wie leider in der Vergangenheit passiert, einen Absturz eines Bundesheer-Hubschraubers gibt, durch Zeitungsberichte –, in welch prekärer Situation sich die Luftstreitkräfte und im besonderen die Hubschrauberflotte des österreichischen Bundesheeres befinden.

Wenn wir aber nun in einer Anfrage nach Ihren Konzepten zur Bereinigung dieser problematischen Situation fragen, bekommen wir nur lapidare Antworten wie etwa, daß im Prinzip alles in Ordnung sei oder – ich erinnere auch an andere Dinge, die die Einsatzbereitschaft des Bundesheeres insgesamt betreffen – daß es vielleicht besser sein könnte, aber Sie seien ohnedies bereits darangegangen, das durch Nachbeschaffungen zu verbessern, und die Aufträge des Heeres seien trotz aller Schwierigkeiten zu erfüllen.

Sehen wir uns doch die Ausgangslage an, Herr Verteidigungsminister! Wie sieht denn die Situation bei den Hubschraubern aus? – Wir haben als "neuestes" Gerät 22 Stück des Typs Agusta Bell 212 seit 1980, also seit 18 Jahren, im österreichischen Bundesheer eingeführt – zwei dieser Hubschrauber sind bereits abgestürzt. Weiters gibt es zwölf Stück vom Typ Bell Kiowa, eingeführt im österreichischen Bundesheer 1976, also seit 22 Jahren im Dienste der österreichischen Armee, zwölf Stück des Typs Agusta Bell 206, eingeführt im österreichischen Bundesheer 1969, also seit 29 Jahren im Dienst des österreichischen Bundesheeres, 23 Stück Alouette III, eingeführt im österreichischen Bundesheer 1967, also schon 31 Jahre lang im Dienste der österreichischen Armee – ein Hubschrauber dieses Typs ist bereits abgestürzt –, und – als "Krönung" der Hubschrauberflotte – acht Stück des Typs Agusta Bell 204, die einen Hauptanteil der Transportkapazität im Bundesheer, vor allem was die Luftbeweglichkeit von Einheiten anbelangt, ausmacht, eingeführt im österreichischen Bundesheer 1965 – Herr Bundesminister, 1965! – und somit seit 33 Jahren im Dienst der österreichischen Landesverteidigung; sie muß vielleicht noch heuer, jedenfalls zwischen 1998 und 2000, außer Dienst gestellt werden.

Wir haben Sie nun in dieser parlamentarischen Anfrage gefragt, welche Einsatzmöglichkeiten die Luftlandetruppen der verschiedenen Waffengattungen mit diesem Gerät noch haben. In Ihrer lapidaren Antwort reden Sie allgemein vom Sicherungseinsatz, beantworten aber nicht konkret das, was wir gefragt haben. – Welche luftbeweglichen Einheiten können denn mit ***diesen*** Luftstreitkräften, mit dieser Kapazität noch ihre Aufträge und ihren Einsatz erfüllen?

In Punkt 4 geht es um die Frage, wie schnell diese Verlegung gehe, wie Sie die Lufttransportkapazität – das nennt man in der Fachsprache "Lifts" – bewerkstelligen können. Wir haben gefragt, wie hoch genau die Anzahl der Lifts sei, um die notwendige Transportkapazität bei Luftverlegungen erreichen zu können. – Sie haben nur lapidar geantwortet, das sei vom Klarstand der Hubschrauber abhängig, also, wie viele Hubschrauber gerade einsatzbereit beziehungsweise vorhanden seien.

Herr Verteidigungsminister und Herr Klubobmann Khol! Schauen wir uns doch Ihre eigenen Konzepte an: Sie gehen im Einsatzkonzept von ***einem*** Jägerbataillon, also etwa 600 bis 700 Mann, aus, die luftbeweglich organisiert werden

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sollen. In der Heeresgliederung ist aber vorgesehen, daß man drei oder vier Bataillone luftbeweglich einsetzen können soll – die Gebirgsjäger-Bataillone noch gar nicht miteinbezogen. Das wären aber insgesamt 23 Kompanien, also bis zu 4 000 Mann!

Wie schaut der Ist-Stand aus? – Sie können mit einem Lift gerade eine Kompanie, eine verstärkte Kompanie, 220 Mann, bewegen!

Was heißt das für jene, die sich nicht so intensiv mit der Landesverteidigung beschäftigen? Was ist denn der Sinn dieser luftbeweglichen Bataillone? – Sie sollen sehr rasch und vor allem sicher von einem bestimmten Punkt in den Einsatz geschickt werden können, dort einen Überraschungseffekt erzielen und damit im Gefecht einen Vorteil bewirken. Aber dieser Überraschungseffekt für – nach Ihren Vorgaben – ein Bataillon dauert drei bis vier Stunden, Herr Bundesminister. Es dauert drei bis vier Stunden, obwohl ***alles,*** was an Hubschraubern vorhanden ist – nicht nur, was wirklich sinnvoll einsetzbar ist, sondern alles: vom zweisitzigen bis zum achtsitzigen Hubschrauber –, ***alle*** zur Verfügung stehenden Hubschrauber eingesetzt werden, um dieses eine Bataillon zu verlegen! Das dauert drei bis vier Stunden! – Da brauchen die letzten gar nicht mehr in das Gefecht zu ziehen, denn das ist dann schon längst verloren.

Herr Bundesminister für Landesverteidigung! In der Praxis wird nur mehr simuliert! Wir selbst waren einmal vor, ich glaube, zwei Jahren bei einer Übung einer Panzergrenadierbrigade. Es wurde uns vorgeführt, wie eine Luftlandung von Panzerabwehrtruppen aussieht. Diese Luftlandung sollte theoretisch durch Kampfhubschrauber abgesichert werden. Das österreichische Bundesheer verfügt aber über keine Kampfhubschrauber, sondern nur über zwei mäßig bewaffnete Hubschrauber mit Maschinengewehren. Da man aber so tun mußte als ob, wurden diese beiden armen, mit Maschinengewehren ausgerüsteten Hubschrauber drohend in der Luft stehen gelassen und damit simuliert, was man theoretisch machen sollte. In der Praxis hätte diese ganze Luftlandung nicht stattfinden können, da alle abgeschossen worden wären, bevor sie noch dort angekommen wären, Herr Bundesminister.

Auch das zeigt wieder: Das Bundesheer ist mit diesem unzulänglichen Gerät für einen Einsatz ausgerüstet, den unsere Soldaten im Ernstfall nicht überleben können. Genau das werfen wir Ihnen seit Monaten und Jahren vor, bekommen aber nur lapidare Antworten und hören immer nur, es sei alles in Ordnung. *(Beifall bei den Freiheitlichen.)*

Herr Bundesminister! Sie behaupten, es werde alles nachbeschafft. Ich frage Sie: Wann? Sie haben gesagt, die Hubschrauber kämen erst nach den Luftraumüberwachungsflugzeugen. Diese kommen aber erst in der nächsten Legislaturperiode. Das heißt, daß es vor dem Jahr 2006 keine Erneuerung dieses sowohl für das Bundesheer als auch für den zivilen Bereich so wichtigen Streitkräfteanteils geben wird.

Herr Bundesminister! Das ist unserer Armee und unserem Land gegenüber unverantwortlich! Aber genauso unverantwortlich sind Anfragebeantwortungen, wie Sie sie den Abgeordneten dieses Hauses gegeben haben.

Deshalb stelle ich folgenden Antrag:

Antrag

der Abgeordneten Scheibner und Kollegen

Der Nationalrat wolle beschließen:

Die schriftliche Anfragebeantwortung 4484/AB des Bundesministers für Landesverteidigung auf die schriftliche Anfrage 4823/J der Abgeordneten Scheibner und Kollegen betreffend "Die angespannte Situation bei den Hubschrauberstaffeln der Fliegerdivision" wird nicht zur Kenntnis genommen.

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So können Sie mit uns in diesem Haus nicht umgehen! *(Beifall bei den Freiheitlichen.)*

17.43

Präsident Dr. Heinrich Neisser: Nächster Redner ist Herr Abgeordneter Gaál. Redezeit: 5 Minuten. – Bitte, Herr Abgeordneter.

17.44

Abgeordneter Anton Gaál (SPÖ): Herr Präsident! Herr Bundesminister! Meine sehr geschätzten Damen und Herren! Ich habe mir die sehr detaillierte Anfrage der FPÖ genau durchgelesen, kann aber in der von Herrn Bundesminister Fasslabend – wie ich meine – sehr ausführlich und informativ erfolgten Beantwortung keinen Grund für diese Debatte sehen. Das möchte ich vorausschicken.

Meine Damen und Herren! Die österreichischen Luftstreitkräfte befinden sich sicherlich nicht gerade in einer sehr beneidenswerten Situation, aber von einer dramatischen Zuspitzung, wie Sie, Kollege Scheibner, es heute genannt haben, kann wirklich nicht gesprochen werden. In Ihrem Bericht ist die Situation bewußt negativ dargestellt. Ich verstehe zwar Ihre Aufgeregtheit, die sicher mit anderen Ereignissen zu tun hat, aber Sie haben meiner Ansicht nach in Ihren Ausführungen überzeichnet. *(Abg. **Scheibner:** Was ist los mit dir? Das darf doch nicht wahr sein! Er spricht gegen seine eigene Überzeugung!)*

Ich möchte nur ein paar Bemerkungen zu den angesprochenen Hubschraubern, konkret zu dieser Anfragebeantwortung, machen. Wir haben, was die Analyse der sicherheitspolitischen Gegebenheiten anbelangt, sehr viele Gemeinsamkeiten. Aber diese Anfragebeantwortung ist – gerade was die Hubschrauber betrifft – wirklich nicht zu verstehen, wenn man sich kritisch und objektiv mit den Gegebenheiten des österreichischen Bundesheeres, im besonderen der Luftstreitkräfte, auseinandersetzt.

Zu den Hubschraubern muß ich sagen, daß abgesehen von den seit Jahrzehnten beim Bundesheer verwendeten Hubschraubern des Typs Agusta Bell 204, die ohnehin bis zum Jahr 2000 – das steht auch in der Anfragebeantwortung des Herrn Bundesministers – außer Dienst gestellt werden, ... *(Abg. Dr. **Graf:** Das ist der Preis für die Koalitionstreue!)* Nein, lieber Kollege! Gerade das Thema Bundesheer ist meiner Meinung nach verantwortungsvoll zu diskutieren und eignet sich für parteipolitisches Hickhack im wahrsten Sinne des Wortes nicht. *(Abg. Dr. **Graf:** Richtig!)* Diese Fragen haben wir ernst zu nehmen, und die Bundesregierung, die Koalitionsparteien tun dies auch. Das sage ich Ihnen in aller Deutlichkeit. *(Beifall bei der SPÖ und bei Abgeordneten der ÖVP.)*

Diese Hubschrauber werden bis zum Jahre 2000 außer Dienst gestellt. Man kann also sehr wohl von einer sehr stabilen Einsatzsituation sprechen. Bei allen anderen Hubschraubertypen wurden die notwendigen Modernisierungen genau besehen bereits durchgeführt oder sind im Gange oder zumindest eingeleitet worden. Somit verfügt das Bundesheer sehr wohl über zeitgemäße, den Anforderungen eines modernen Flugbetriebes entsprechende Hubschrauber. Das bestätigen auch die zahlreichen Einsätze im In- und Ausland! Im Gegenteil: Man muß unseren Fliegern für die im Rahmen der Katastrophenhilfe, des Grenzeinsatzes, der Grenzüberwachung oder der Rettungseinsätze erbrachten, auch international anerkannten Leistungen meiner Ansicht nach Dank und Anerkennung aussprechen. *(Abg. **Jung:** Das hat ja mit dem nichts zu tun!)*

Die in der Anfrage aufgestellte Behauptung, die Strukturanpassung der Luftstreitkräfte sei gescheitert, stimmt nicht, denn die Luftstreitkräfte sind von dieser Bundesheerreform bis jetzt unberücksichtigt geblieben. – Herr Bundesminister! Es wäre daher zu prüfen, ob die Führungsstruktur, die vorhandene Infrastruktur und die Organisation des Betriebes den Kriterien der Effizienz und der Wirtschaftlichkeit entsprechen. *(Abg. **Scheibner:** Das hat sogar der Kostelka gefordert, daß wir neue Heeresstrukturen brauchen!)* Bei den Luftstreitkräften werden wohl eine Straffung der Führung und eine Reduzierung der Infrastruktur erforderlich sein.

Es geht uns um die Weiterführung der beim Bundesheer eingeleiteten Strukturreform unter Einbeziehung der Luftstreitkräfte. Dazu wird die von dir geforderte Neubeschaffung bei den Hubschrauberstaffeln sicher notwendig sein. Sie ist ohnehin in einigen Bereichen vorgesehen. Es sind zwar noch viele Fragen im Detail zu klären, insgesamt jedoch kann nicht von einer dramatischen Zuspitzung der Situation im Bereich der Hubschrauber gesprochen werden.

Wir wollen auf der Grundlage der derzeitigen Gegebenheiten und der nun laufenden Strukturanpassung eine weitere Modernisierung der österreichischen Luftstreitkräfte. In den nächsten Monaten werden einige Fragen diesbezüglich zu klären sein. Es muß unser gemeinsames Anliegen sein, daß auch in diesem Bereich Glaubwürdigkeit und

Effizienz gegeben sind. Ich glaube, wir können gemeinsam den richtigen Weg gehen! *(Beifall bei der SPÖ.)*

17.48

Präsident Dr. Heinrich Neisser: Nächster Redner ist Herr Abgeordneter Dr. Maitz. 5 Minuten Redezeit. – Bitte, Herr Abgeordneter.

17.48

Abgeordneter Dr. Karl Maitz (ÖVP): Verehrter Herr Präsident! Herr Bundesminister! Meine sehr geehrten Damen und Herren! Bei aller berechtigten Sorge um die künftigen Entwicklungen im Bereich unserer Hubschrauberstaffeln ist die folgende Klarstellung von vornherein wichtig:

Die Hubschrauberstaffeln des Bundesheeres leisten in drei Bereichen ausgezeichnete Arbeit: in der Einsatzfähigkeit und -bereitschaft für militärische Aufgaben, bei Rettungseinsätzen nach Verkehrs- und Bergunfällen sowie bei Katastropheneinsätzen im In- und Ausland und bei Assistenzeinsätzen an der burgenländischen Grenze beziehungsweise an anderen Grenzabschnitten zum Schutz vor illegaler Einwanderung und dem Import organisierter Kriminalität. Diese Leistungen werden von besonders engagierten Soldaten mit den nach heutigem Stand 76 vorhandenen Hubschraubern des Bundesheeres erbracht. *(Abg. **Jung:** Sie sind aber schlecht informiert!)*

Jene Behauptung in der FPÖ-Anfrage, daß das Bundesheer keine den Anforderungen entsprechenden Hubschrauber habe, ist mit Entschiedenheit zurückzuweisen. Solche Ansagen können dazu führen, daß in der Bevölkerung Unsicherheit entsteht, und sind nicht dazu angetan, dem Bundesheer, seinem Ansehen und seinen Aufgaben zu nützen. *(Beifall bei der ÖVP.)*

Meine sehr geehrten Damen und Herren! Richtig ist, daß in den kommenden Jahren bei den Luftstreitkräften in drei Bereichen Erneuerungsinvestitionen notwendig sind: die Draken-Nachfolge zum Schutz des österreichischen Luftraumes und zur Abwehr von möglichen Angriffen, Erpressungen oder terroristischen Aktionen aus der Luft, die Nachschaffung von Flächenflugzeugen als Transportmittel und selbstverständlich die Hubschrauber, die – wie vom Kollegen Scheibner bereits gesagt – in Teilen an der Grenze ihrer Leistungsfähigkeit, aber bei weitem noch nicht für einen Einsatz ungeeignet sind.

Das sind Investitionen für Jahrzehnte für die Sicherheit Österreichs. Dem Text des gestrigen Berichtes des Bundesministers im Landesverteidigungsrat zufolge, der dort zur Kenntnis genommen wurde, werden diese Beschaffungen, diese großen Investitionen für den Luftbereich Ende des Jahres 1999 zur Entscheidung anstehen.

Meine Damen und Herren! Ein leistungsfähiges Bundesheer ist ein wertvolles Instrument zur Erhaltung von Freiheit, Frieden und Sicherheit. Wir sollten, trotz des Wahlkampfklimas, das allenthalben erzeugt wird – Kollege Haider ist ja derzeit in Kärnten, um dort Werbung zu machen –, versuchen, sachlich damit umzugehen und gemeinsam eine gute Ausstattung des Heeres, auch bei knappen Finanzmitteln, zu erreichen. *(Abg. **Scheibner:** Wo ist bei euch die Gemeinsamkeit?)* Unterstellungen und Aggressionen wie zum Beispiel das Wort von den "Museumsfliegern" dienen diesem Ziel sicher nicht!

Kollegen Gaál möchte ich noch einen Satz sagen: Bei den Luftstreitkräften werden wir sicher nicht reduzieren, sondern eher ausbauen müssen, denn die wesentlichsten Bedrohungspotentiale, die es heute überhaupt gibt, kommen aus der Luft, und dort müssen wir daher zur Abwehr bereit sein. *(Beifall bei der ÖVP. – Abg. **Gaál:** Wer bedroht uns aus der Luft? – Abg. **Jung:** Die Mythen vom Neusiedler See!)*

17.53

Präsident Dr. Heinrich Neisser: Nächster Redner ist Herr Abgeordneter Jung. 5 Minuten Redezeit. – Bitte.

17.53

Abgeordneter Wolfgang Jung (Freiheitliche): Herr Präsident! Herr Bundesminister! Meine Damen und Herren! Kollege Gaál hat anscheinend soeben sein Damaskus erlebt. Sie sind doch vor nicht allzu langer Zeit mit uns hinausgefahren, um die Grenzsicherung zu beobachten, und haben den verantwortlichen Offizier auf die Schaufel genommen, weil wir nicht wie geplant mit Hubschraubern hinausfliegen konnten, weil schlechtes Wetter war, Herr

Kollege.

Die Hubschrauber sind nicht tauglich für dieses Wetter. Glauben Sie denn, der Krieg oder ein Einsatz findet nur bei Schönwetter oder im Saal statt, Herr Kollege Gaál? Sie haben sich doch heute selber widersprochen! Oder ist das vielleicht das Heer, das Kanzler Klima, der heute in einer Presseaussendung sagt, er lege ein Bekenntnis zu einem einsatz- und leistungsfähigen Bundesheer ab, meint? Bis dorthin ist es noch ein weiter Weg, Herr Kollege Gaál. Und Ihre Partei verhindert am maßgeblichsten, weil sie das Geld nicht zur Verfügung stellt. So sieht die Realität aus, Herr Kollege! *(Beifall bei den Freiheitlichen.)*

Nun zur Anfragebesprechung, Herr Bundesminister. Ihr Ministerium, vor allem Ihr Kabinett, ist leider für schnoddrige Anfragebeantwortungen bekannt. Wir haben in der Hubschrauberfrage ehrliche Besorgnis, es gab ja schließlich einen Toten. Unsere Anfrage dazu wurde in der üblichen Art beantwortet. Ich erinnere nur daran, daß beim LEOPARD vier Anfragen nötig waren, um die wahre Antwort zu bekommen.

Wir haben also nachgefragt, wie es wirklich ausschaut, und wieder die gleichen schnoddrigen Antworten bekommen. Schließlich sieht Ihre Heeresgliederung-Neu-Neu, die Supernova, wie es im Bundesheer heißt, manche sprechen auch vom Supergau, vor, daß es eine entsprechende Lufttransportkapazität gibt. Sie ist aber nicht vorhanden. Dann bekommen wir eine Antwort, die so ungefähr "schmeck´s" lautet und in der steht – wie haben die Herren sich auszudrücken geruht? –:

"Die Anzahl der Lifts ist grundsätzlich vom jeweiligen Klarstand der Hubschrauber, von der militärischen Lage und dem Einsatzraum (...) abhängig." – Natürlich!

Daß Ihre Herren das aber nicht immer so falsch verstehen, zeigt ein Papier Ihres Ministeriums über die Luftraumüberwachungsflugzeuge, in dem über die Transporthubschrauberbeschaffung steht: Die Lufttransportkapazität des Bundesheeres beträgt derzeit ***eine*** verstärkte Kompanie! – Von den Bataillonen ist keine Rede. – Nach dem Konzept wären mindestens drei vorgesehen. Für eine Aufstockung fehlt jedoch nicht nur das Gerät beziehungsweise dessen Finanzierung, sondern auch die Organisationsstrukturen und das Personal. – Zitatende.

Kollege Maitz meint, man solle gemeinsam eine gute Ausstattung des Heeres erreichen. – Herr Kollege, was tun Sie denn dazu, außer daß Sie immer schönfärben? Sie sind der klassische Schönfärber. Was ist denn beschafft worden, was ist denn gekauft worden? *(Abg. Dr. **Maitz:** Eine lange Liste!)* Teile dieser Hubschrauber! Ich bin zwar nicht gerade der Jüngste, in meinem Zweitberuf als Nebenerwerbsbrigadier habe ich Haare gelassen – ich bin zwar nicht ergraut, habe aber Haare gelassen –, aber diese Hubschrauber sind länger im Dienst als ich, Herr Kollege Maitz. Das ist die Realität auf diesem Sektor. Und wenn man nachfragt, wird zugedeckt und schöngefärbt! *(Abg. Dr. **Maitz:** Sie müssen halt miesmachen!)*

Sie wissen selbst – oder Sie sollten es zumindest wissen –, wie die Realität dort ausschaut. Man weiß nicht, was man mit dem Kaderpersonal der stillgelegten Staffel machen wird, da noch kein neues Gerät ins Haus steht, auf dem sie der Herr Minister angeblich beschäftigen will. Es wird wahrscheinlich eine Scheinbeschäftigung wie bei den Panzern sein, wo heute immer noch die Simulatoren für die Ausbildung fehlen. Aber das Bataillon ist in Ordnung, sagt der Herr Minister.

Gleichzeitig werden mindestens 3000 neue Flugstunden für den Grenzsicherungseinsatz abgegeben. Woher, glauben Sie, kommt denn das alles? Das Gerät ist am Ende, es ist veraltet und nicht mehr ausreichend, ja zum Teil schon nahe des Gefahrenbereiches. Dadurch gefährden Sie Menschenleben, und damit darf man nicht mehr spielen. So schaut die Situation aus!

Sie könnten die Transportkapazität vielleicht erhöhen. Ich entnehme dem heutigen Monitordienst: Osteuropa, russische Interfax, Bau von MIG-Flugzeugen in Österreich geplant – Rußland und Österreich wollen in einem österreichischen Werk russische Mehrzweckflugzeuge vom Typ MIG 110 A bauen. Während des Besuches der russischen Delegation wurde ein Protokoll dazu unterzeichnet.

Es wäre ganz interessant, zu wissen, ob Sie, da Sie in der gestrigen Sitzung des Landesverteidigungsrates darüber gesprochen haben, die Herren dort auch über diese Absichten informiert haben! Oder ist das auch wieder nur ein Scheingeschäft?

Herr Bundesminister, Sie werden demnächst den neuen Kommandanten der Fliegerdivision in den Dienst stellen. Es ist erstmals kein Flieger. Der Kommandant der Fliegerdivision ist also kein Flieger! Er hat aber einen unbeschreiblichen Vorteil: Er ist CVer. Ich weiß nicht, ob das genügt, um die fehlende Qualifikation in diesem Bereich zu ersetzen. Er ist vom Radar, und die Zukunft der Fliegerei im österreichischen Bundesheer scheint wirklich am Boden zu liegen. Dann kann er von unten beobachten, wie NATO-Maschinen, die es angeblich nicht gibt und von denen die SPÖ nichts wissen will oder darf, zu Hunderten über unser Land fliegen.

Das wird er tun können! Denn wenn Sie so weitermachen wie bisher, Herr Bundesminister, dann wird die Fliegertruppe des österreichischen Bundesheeres bald wirklich nur noch eine ***Luft***flotte sein. *(Beifall bei den Freiheitlichen.)*

17.58

Präsident Dr. Heinrich Neisser: Zu Wort gelangt nun Herr Abgeordneter Hans Helmut Moser. – Bitte, Herr Abgeordneter.

17.58

Abgeordneter Hans Helmut Moser (Liberales Forum): Sehr geehrter Herr Präsident! Herr Bundesminister! Wir diskutieren heute wiederum eine Anfragebeantwortung zum Thema Zustand des Bundesheeres. Ich halte auf der einen Seite die Anfrage über die Einsatzbereitschaft der Fliegerkräfte für sicherlich berechtigt und glaube, daß gerade wir, die politisch Verantwortlichen, uns über den Zustand und die Einsatzbereitschaft des Bundesheeres, im besonderen aber über die Einsatzbereitschaft der Luftstreitkräfte, Sorgen machen müssen.

Die Beantwortung dieser parlamentarischen Anfrage war bedauerlicherweise auch typisch. Seitens des verantwortlichen Ressortministers wurde wieder einmal die – ich möchte fast sagen – Chance vertan, dem Parlament reinen Wein einzuschenken, die Situation so darzustellen, wie sie wirklich ist, und damit die Bereitschaft zu erhöhen, daß für die Landesverteidigung und für die Fliegerkräfte auch die notwendigen Mittel bereitgestellt werden.

Meine Damen und Herren! Herr Bundesminister! Die Beantwortung dieser parlamentarischen Anfrage geht, wie gesagt, nicht auf die tatsächliche Situation der Luftstreitkräfte ein, und eine ganz wichtige Frage wurde nicht wirklich beantwortet, nämlich jene hinsichtlich des Standes der Erfüllbarkeit der Friedensaufgabe, im besonderen, inwieweit unsere Luftstreitkräfte, vor allem die Hubschrauber, wirklich in der Lage sind, die Aufgaben, die sich aus einer Assistenzleistung ergeben, zu erfüllen.

Wenn es hier "Assistenzleistung" heißt, dann ist damit auf der einen Seite beispielsweise der Assistenzeinsatz zur Grenzraumüberwachung an der burgenländischen Grenze gemeint. Aber auch dort kennen wir die Probleme. Die andere Assistenzleistung ist beispielsweise die Hilfeleistung in einem Katastrophenfall. Dafür fehlt es an ausreichender Lufttransportkapazität, Herr Bundesminister. Mit unseren derzeitigen Einsatzmitteln sind wir nicht in der Lage, den Auftrag im erforderlichen Ausmaß zu erfüllen.

Dabei wirkt sich auch die Situation aus, daß die Fliegerkräfte veraltetes Gerät haben. Meine Damen und Herren! Wenn man sich das anschaut – einige meiner Vorredner sind bereits darauf eingegangen –, sieht man, daß wir Hubschrauber haben, die im Jahre 1965 eingeführt wurden. Wir haben Hubschrauber wie die Bell 206, eingeführt im Jahr 1969. Wir haben solche, die 1967 eingeführt wurden, wie die Alouette III. Wir haben die "OH-58", eingeführt 1976. Wir haben also veraltetes Gerät!

Herr Bundesminister! Auch aus Ihrer Beantwortung geht klar hervor, daß weit und breit keine Chance besteht, zu einer Modernisierung der Luftstreitkräfte zu kommen. Ich darf aus Ihrer Beantwortung zitieren. Sie antworten beispielsweise auf die Fragen 1 und 2, daß die Finanzierung "noch auszuverhandeln" sein wird. Zur Frage 5 heißt es, daß es "entsprechenden Ersatz" vielleicht "in naher Zukunft" geben wird. Zu den Fragen 9 bis 13 antworten Sie: "Im Hinblick auf die noch zu verhandelnde Finanzierung sind Aussagen über den Zeitpunkt der Entscheidung beziehungsweise die konkrete Nachfolgetype derzeit noch verfrüht".

Herr Bundesminister! Wie lange wollen wir mit der Modernisierung unseres Bundesheeres noch warten? *(Abg. **Wabl:** Nur Geduld!)* Wie lange wollen wir noch darauf warten, daß die Luftstreitkräfte jene Einsatzmittel bekommen,

die sie zu einer ordnungsgemäßen Auftragserfüllung tatsächlich brauchen? *(Abg. **Wabl:** Mit großer Geduld!)*

Meine Damen und Herren! Ich meine, daß die Beantwortung dieser parlamentarischen Anfrage nicht so war, wie es dem Hohen Haus gegenüber notwendig gewesen wäre. Ich bedauere, daß seitens des Ministeriums wieder nicht die Chance wahrgenommen worden ist, bewußtseinsbildend zu wirken, und auch, daß keine Hinweise darauf gegeben worden sind, wie man sich vorstellt, daß es in Zukunft mit den Luftstreitkräften weitergehen soll.

Wir meinen – da bin ich mit Kollegen Gaál einer Meinung –, daß eine umfassende Reform der Luftstreitkräfte ein Gebot der Stunde ist. Es wird vor allem darauf ankommen, die Strukturen zu straffen, die Führung zu straffen, und es wird auch darauf ankommen, den Betrieb an den Umfang der Luftstreitkräfte anzupassen.

Herr Bundesminister! Das österreichische Bundesheer hat weniger Flugzeuge, als beispielsweise auf einem einzigen amerikanischen Flugzeugträger stationiert sind. Wir betreiben fünf Flugplätze, bei anderen Luftstreitkräften hingegen ist der Betrieb der gleichen Anzahl von Flugzeugen von ***einer*** Basis aus möglich. Daher wird es notwendig sein, auch im Bereich des Betriebes zu einer Anpassung zu kommen. *(Präsident Dr. **Neisser** gibt das Glockenzeichen.)*

Ich komme zum Schluß. Ich denke, das ist ein Gebot der Stunde: Die Notwendigkeit zur Modernisierung ist absolut gegeben! – Danke. *(Beifall beim Liberalen Forum.)*

18.03

Präsident Dr. Heinrich Neisser: Zu Wort gelangt Herr Abgeordneter Wabl. – Bitte.

18.03

Abgeordneter Andreas Wabl (Grüne): Herr Präsident! Herr Bundesminister! Meine Damen und Herren! Ich gebe unumwunden zu, daß ich beim Thema Kampfhubschrauber überfragt bin. Ich bin kein Spezialist. Auch bei Transporthubschraubern kenne ich mich nicht aus. Aber eines kann ich dieser Anfragebeantwortung entnehmen: Sie ist so vage und so unbestimmt wie viele davor.

Eine solche Beantwortung erinnert mich an sehr viele Beantwortungen im Landesverteidigungsausschuß auf Anfragen im Landesverteidigungsrat. Sämtliche Entscheidungen, die anstehen und die notwendig wären – ganz gleich, in welche Richtung –, werden möglichst lange hinausgezögert, möglichst bis nach der Wahl 1999.

Herr Bundesminister! Ich hoffe, diese Rechnung geht nicht auf. *(Zwischenruf der Abg. Dr. **Fekter.**)* Frau Fekter, Sie werden Farbe bekennen müssen *(Abg. Dr. **Fekter:** Schwarz!)*, ob Sie Geld ausgeben für Abfangjäger oder für andere Maßnahmen, die in der Republik notwendig sind. Sie werden sich um diese Frage nicht herumschwindeln können.

Herr Bundesminister! Aus diesem Grund werden auch wir diese Anfragebeantwortung zurückweisen. *(Beifall bei den Grünen.)*

18.04

Präsident Dr. Heinrich Neisser: Jetzt hat sich Herr Bundesminister Dr. Fasslabend zu Wort gemeldet. – Bitte.

18.04

Bundesminister für Landesverteidigung Dr. Werner Fasslabend: Sehr geehrter Herr Präsident! Hohes Haus! Es wurde von der Opposition vorgebracht, daß eine Anfragebeantwortung von mir, was ihre Präzision anlangt, der Frage nicht gerecht geworden sein soll.

Ich habe auf die Frage, wie viele sogenannte "Lifts" – unter Anführungszeichen; das heißt, es ging dabei offensichtlich um einen unklaren Begriff *(Abg. **Scheibner:** Der ist aber nur für Sie unklar!)* – die Fliegerdivision benötigt, um mit allen zur Verfügung stehenden Hubschraubern eine Luftlandung der Kampfteile eines Jägerbataillons – drei Jägerkompanien, eine S-Kompanie und Teile der Stabskompanie – durchzuführen, geantwortet. Ich möchte dazu sagen, daß bereits aus der Art der Anfragestellung hervorgeht, daß damit

offensichtlich bewußt versucht wird, einen bestimmten Eindruck hervorzurufen. *(Abg. **Scheibner:** Sie haben das nicht zu beurteilen! Sie haben Fragen zu beantworten und sonst nichts!)*

Das österreichische Bundesheer verfügt im Vergleich zu Armeen anderer Länder ähnlicher Größe über eine überdurchschnittlich große Hubschrauberflotte. Selbstverständlich muß man davon ausgehen, daß die Anzahl der Hubschrauber für eine bestimmte Aufgabenstellung noch nicht alles aussagt, sondern es ist auch zu beachten, daß wir darunter Hubschrauber haben, die schwerpunktmäßig für den Transport geeignet sind, und andere, die sich besser für Verbindungsflüge oder andere Tätigkeiten eignen.

Tatsache ist, daß es daher, schon allein aufgrund der Fragestellung, wenn man so vorgeht, wie Sie es tun – daß man alle Typen aufzählt und dann fragt, was man damit sozusagen in bezug auf den Transport eigentlich erfüllen kann –, selbstverständlich keine eindeutige Antwort geben kann, wenn nicht gleichzeitig bestimmte Bedingungen formuliert werden. Darauf habe ich hingewiesen. *(Abg. **Jung:** Warum beantworten Sie nicht genau die Frage, wie ich sie vorgelesen habe?)*

Selbstverständlich wäre darauf hinzuweisen, ob ein bestimmter Klarstand gegeben ist, ob eine bestimmte Feindlage gegeben ist oder ob es sich um einen ganz normalen Transport handelt. *(Abg. **Jung:** Sie vernebeln ja schon wieder!)* Ich möchte Ihnen dazu ein Beispiel sagen. *(Abg. **Scheibner:** Interpretieren Sie nicht herum!)*

Nach internationalen Maßstäben ist es im Durchschnitt so, daß der Klarstand einer Hubschrauberflotte zwischen 60 und 80 Prozent anzusetzen ist. Das gilt auch bei uns. Wenn man jetzt nur die zwei Transporttypen heranzieht – von der einen Type haben wir 23, von der anderen 8, also insgesamt 31 Stück –, dann ergibt sich selbstverständlich bereits je nach dem Klarstand entweder der Einsatz von 18 oder von 25 Hubschraubern.

Selbstverständlich kommt es weiters darauf an, ob man gefechtsmäßig in einen Einsatzraum hineingehen muß oder ob man ein Bataillon nur friedensmäßig dorthin verlegen und transportieren möchte. Der Unterschied besteht darin, daß man einmal nach Kampfgruppen gliedern muß – das heißt etwa, daß genau zwölf Hubschrauber mit Besatzung da sein werden – und daß man im anderen Fall durchaus auch andere Hubschrauber hinzuziehen kann, sodaß man daher unter Umständen mit einer wesentlich geringeren Anzahl von "Lifts" sein Auslangen finden kann. *(Abg. **Jung:** Herr Minister! Wir haben nicht nach Plänen gefragt, wir haben nach den Transportmöglichkeiten gefragt! Lesen Sie Ihre eigenen Schriftstücke!)*

Ersichtlich ist, daß es Ihnen offensichtlich nicht darum geht, eine Antwort auf diese technische Frage zu bekommen – diese gebe ich Ihnen sehr gerne –, sondern daß Sie damit politisch etwas stimulieren wollen. Dazu – das muß ich sagen – haben Sie gar keinen Anlaß. *(Beifall bei der ÖVP. – Abg. **Jung:** Da muß ich Sie fragen, worin der Unterschied liegt!)*

Wir können absolut stolz auf das sein, was unsere Hubschrauberstaffeln an Einsatzbereitschaft aufbringen, im täglichen Einsatz an der Grenze und auch international bei Katastrophenfällen. Fragen Sie die Bevölkerung! Sie kann Ihnen ein Beispiel dafür geben. *(Beifall bei der ÖVP. – Abg. **Jung:** Das bestreitet keiner!)*

Wenn Sie dann noch mit absolut unfairen Mitteln versuchen, zwischen dem Alter der Hubschrauber und dem Ausfall innerhalb von Jahrzehnten eine Relation herzustellen *(Abg. **Jung:** Das ist es ja!)*, dann muß ich Ihnen sagen: Das ist nicht nur unfair, sondern das geht sogar weit darüber hinaus. *(Abg. **Jung:** Unfair ist es, wenn man es so macht, daß man eine Unwahrheit nicht mehr aufdecken kann!)* Denn man muß sagen, daß die Unfallhäufigkeit im Luftbereich gerade bei uns weit unter dem internationalen Standard liegt, sodaß diese Frage von Ihnen in unverantwortlicher Weise in einen Konnex gebracht wird. *(Beifall bei der ÖVP. – Abg. **Scheibner:** Die ÖVP beschönigt!)*

Ich verurteile, daß Sie den Verantwortlichen im Bundesheer mehr oder weniger unterstellen, daß sie in leichtfertiger Art und Weise ihr Okay für das In-den-Dienst-Stellen einer Maschine geben. Für diese Aussage sind Sie verantwortlich! *(Beifall bei der ÖVP und bei Abgeordneten der SPÖ. – Abg. **Scheibner:** Sie sind der Verantwortliche! Ihnen machen wir den Vorwurf! Sie sind der Schuldige! – Weitere Zwischenrufe bei den Freiheitlichen. – Ruf bei der ÖVP: Brigadier Jung degradieren! Sie verstehen nichts!)*

Zum Schluß noch eines: Wenn es notwendig sein sollte, auf ein Problem hinzuweisen, dann können Sie sicher sein, sehr geehrter Herr Abgeordneter, daß meine Leute das in aller Form und auch rechtzeitig tun. *(Neuerliche*

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Rufe und Gegenrufe zwischen der ÖVP und den Freiheitlichen.) Außerdem habe ich selbst den Landesverteidigungsrat nicht nur einmal, sondern erst gestern wieder damit befaßt, daß es im Laufe des nächsten Jahrzehnts beziehungsweise während der nächsten Jahre selbstverständlich entsprechende Anschaffungen geben muß. *(Abg. **Jung:** Dann sind sie wirklich pensionsfähig, die Hubschrauber!)*

Ich bin davon ausgegangen, daß es nicht nur im Bereich des Luftraumüberwachungsflugzeuges, der Fläche, sondern auch im Bereich der Hubschrauber einen Ersatzbedarf gibt. Der Ersatzbedarf ist wie folgt zu definieren: Wir werden im Verlauf der nächsten zwei Jahre eine dieser Hubschraubertypen außer Dienst stellen, weil sie altersmäßig ausläuft. Wir werden einen Ersatzbedarf für die gesamte Flotte im Verlauf des nächsten Jahrzehntes haben – ich betone: des nächsten Jahrzehntes, darauf möchte ich Wert legen! Wir werden das in der Abfolge tun, in der wir es auch bei den anderen Gerätschaften getan haben, nämlich indem wir nicht nur versuchen, das aus einer Ho-ruck-Situation heraus – deshalb, weil es der Opposition einfällt – zu tun, sondern indem wir es plangemäß durchführen. Erste Priorität hat die Luftraumüberwachung. Zweite Priorität hat die Hubschrauber-Transportkapazität. Genauso werden wir dabei vorgehen und so weit vorsorgen, daß auch der Ersatz der außer Dienst zu stellenden Staffel – also der betroffenen Flugzeuge – so rechtzeitig erfolgt, daß die Staffel selbstverständlich unmittelbar von einem Gerät auf das andere umgestellt werden kann. Dafür stehe ich, und dafür sollten auch Sie sich einsetzen! *(Beifall bei der ÖVP.)*

Zum Schluß eine weitere Bemerkung. Ich habe schon des öfteren darauf hingewiesen, daß es das österreichische Heer in den letzten Jahren und Jahrzehnten nicht einfach gehabt hat: aufgrund der strategischen Situation und insbesondere auch aufgrund der Tatsache, daß es von allem Anfang an im Vergleich zu den hochgerüsteten Armeen des Ostens, aber auch damals des Westens, einen Aufholbedarf gegeben hat. *(Abg. Dr. **Graf:** Bei einer Anfragebeantwortung sich als letzter zu Wort zu melden und dann so zu sprechen, ist wirklich ...!)* Wir haben gerade in den letzten Jahren sehr viel im Sinne dieses Aufholbedarfs getan. Wir haben sehr viel dafür getan, daß wesentliche Verbesserungen erreicht werden konnten. Ich habe erst gestern die konkreten Ziele dafür genannt und gesagt, wann wir soweit sein sollten – nämlich innerhalb oder bis zum Ende des nächsten Jahres –, um diesen Entscheidungsprozeß entsprechend durchführen zu können.

Sie sollten die Truppe nicht verunsichern, sondern Sie sollten aus staatspolitischer Verantwortung mit dazu beitragen, daß man den Menschen Sicherheit geben kann, aber nicht das Gegenteil. *(Beifall bei der ÖVP. – Abg. **Scheibner:** Das ist ungeheuerlich, wenn Sie **uns** daran erinnern!)*

18.13

Präsident Dr. Heinrich Neisser: Es liegt dazu keine Wortmeldung mehr vor. Die Debatte ist geschlossen. *(Abg. **Scheibner:** Zur Geschäftsordnung!)*

Herr Abgeordneter Scheibner, zur Geschäftsordnung. – Bitte.

18.13

Abgeordneter Herbert Scheibner (Freiheitliche) *(zur Geschäftsbehandlung):* Herr Präsident! Wir haben hier den Fall, daß sich der Herr Bundesminister entgegen den Usancen nicht nach dem Antragsteller zu Wort gemeldet hat, sondern erst am Schluß der Debatte, also dann, wenn es den Abgeordneten nicht mehr möglich ist, auf gewisse Dinge zu replizieren.

Ich beantrage daher, daß in der nächsten Präsidiale Richtlinien bestimmt werden, um derartige Dinge, wie sie heute passiert sind, in Zukunft zu verhindern. *(Beifall bei den Freiheitlichen. – Rufe und Gegenrufe zwischen den Freiheitlichen und der ÖVP.)*

18.14

Präsident Dr. Heinrich Neisser: Herr Abgeordneter Scheibner, es bleibt Ihnen selbstverständlich unbenommen, daß Ihre Fraktion dieses Thema in der nächsten Präsidiale zur Diskussion stellt.

Allerdings bitte ich, zu beachten, daß eine Usance, die bindend vorsieht, daß sich der Minister nach dem Erstredner zu Wort meldet, im allgemeinen Sinne nicht existiert, vor allem auch nicht in Debatten im Sinne des § 92 der Geschäftsordnung, die die Diskussion über die Antwort von schriftlichen Anfragen zum Gegenstand haben.

Das möchte ich hier deponieren. Aber wir werden, wenn Sie es wollen, in der Präsidiale selbstverständlich darüber reden.

Meine Damen und Herren! Ich habe die Debatte geschlossen. Sie haben gehört, daß der Abgeordnete Scheibner im Rahmen seines Debattenbeitrages den ***Antrag*** gestellt hat, die Anfragebeantwortung 4484/AB nicht zur Kenntnis zu nehmen. Dieser Antrag ist auch schriftlich überreicht worden.

Ich lasse jetzt darüber ***abstimmen.***

Von Herrn Abgeordneten Scheibner wurde, wie gesagt, der Antrag gestellt, die Anfragebeantwortung 4484/AB ***nicht*** zur Kenntnis zu nehmen.

Ich bitte jene Damen und Herren, die für diesen Antrag auf Nicht-Kenntnisnahme sind, um ein Zeichen der Zustimmung. – Das ist die ***Minderheit.*** Der Antrag ist ***abgelehnt.***

Fortsetzung der Tagesordnung

Präsident Dr. Heinrich Neisser: Meine Damen und Herren! Wir setzen jetzt mit der Debatte über die Tagesordnungspunkte 5 bis 10 fort.

Zu Wort gemeldet hat sich Herr Abgeordneter Dr. Van der Bellen. Insgesamt hätten Sie noch fast 14 Minuten Redezeit. Freiwillige Redezeitbeschränkung: 10 Minuten. – Bitte, Herr Abgeordneter.

18.15

Abgeordneter Dr. Alexander Van der Bellen (Grüne): Es lichten sich die Reihen. *(Abg. Dr. **Khol:** Weitermachen!)* Weitermachen – wo wollen wir weitermachen? *(Abg. Dr. **Khol:** Beim Vorkaufsrecht der Sparkassen!)*

Wir haben vor der Dringlichen Anfrage mit dem Thema Sparkassengesetz, AVZ und so weiter aufgehört. Ich wiederhole ganz kurz: Erstens habe ich die "Feudalisierung" der Gemeindesparkassen, insbesondere der AVZ, kritisiert.

Zweitens habe ich aufgezeigt, daß die Gemeinden keinerlei Möglichkeit haben, den Beschluß der Gemeindesparkasse darüber, ob die Umwandlung in eine Privatstiftung erfolgen soll oder nicht, zu beeinflussen. Das ist einzig und allein Sache der Gemeindesparkasse – in diesem Fall der AVZ – selbst.

Ich habe drittens kritisiert, daß zwar nach dem Gesetz eine Stiftung selbstverständlich einen Zweck haben muß und daß deswegen die Stiftungserklärung zu klären hat, wofür die Erträge des Stiftungsvermögens einzusetzen sind, daß aber wir im Hohen Haus nichts darüber wissen, wie diese Stiftungserklärung aussehen wird, wer die Begünstigten sein werden, wer die begünstigten Bevölkerungskreise sein werden, und so weiter.

Viertens habe ich kritisiert, daß das alte Problem der Haftung der Gemeinden für die Verbindlichkeiten der Gemeindesparkassen – in diesem Fall der Bank Austria – nicht gelöst ist, sondern daß nach wie vor die Gemeinde für die Verbindlichkeiten haftet, allerdings auslaufend, das heißt, für die sogenannten Altschulden. Das zieht sich dann mindestens 10 Jahre lang hin.

Fünftens habe ich kritisiert, daß das sogenannte Aufgriffsrecht des Zentralinstituts – das heißt in diesem Fall, das Aufgriffsrecht der Ersten Österreichischen – im Zweifel nicht EU-kompatibel ist und daß eine Merkwürdigkeit darin besteht, daß die Erste einerseits ein Aufgriffsrecht gegenüber einem Verkauf von Anteilen durch die AVZ hätte, andererseits angeblich durch eine privatrechtliche Vereinbarung zwischen diesen Banken genau das ausgeschlossen ist.

Sechstens – das ist fast schon der unwichtigste Punkt – steht das, was heute im Nationalrat beschlossen wird, in diametralem Widerspruch zu dem, was der Gemeinderat in Wien vor rund einem Jahr, am 27. Mai 1997, beschlossen hat. Damals wurde nämlich folgendes beschlossen: erstens die vollständige Privatisierung, zweitens, daß die Haftung erlischt, und drittens, daß das Kapital aus dem Verkauf dann der Gemeinde zur Verfügung stehen

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soll.

All das wird nicht erreicht. Es ist keine Zustimmung zur Umwandlung erforderlich. Es wird keinen offiziellen Einfluß des Gemeinderates auf die Organe der Privatstiftung geben. Es wird aber selbstverständlich einen Einfluß der SPÖ geben, das ist schon klar. Es wird ferner keinen Einfluß auf die Ausschüttungspolitik der Privatstiftung geben – wiederum keinen ***offiziellen*** Einfluß, aber daß es einen inoffiziellen Einfluß der SPÖ geben wird, ist auch klar. Quasi als Lohn dafür bleibt die Haftung der Gemeinde aufrecht.

Ob das verfassungsrechtlich einwandfrei ist, ist wieder eine ganz andere Frage. Der Nationalrat beschließt darüber, daß die Gemeinde auf verschiedene Rechte verzichtet, aber alle Pflichten bis auf weiteres behält. Aber darüber sollen die Juristen entscheiden.

Abschließend: Meines und unseres Erachtens liegt da eine "Feudalisierung" der Gemeindesparkassen vor, insbesondere der AVZ als wichtigstem Teil dieses Gesetzes. Das andere ist im Vergleich dazu Kleinkram. Die SPÖ immunisiert ihre Macht in diesen Institutionen – wiederum vor allem im Rahmen der AVZ, das heißt, der Bank Austria. Sie immunisiert ihre Macht gegen "demokratische Kleinigkeiten" wie künftige Wahlergebnisse, Zusammensetzung des Gemeinderates, Beschlüsse des Gemeinderates und so weiter. Das alles ist irrelevant.

Warum die ÖVP dem zustimmt, das werde ich heute mit Sicherheit nicht erfahren. Die ganze Materie wird seit mindestens einem Jahr verhandelt. Es ist denkunmöglich – wie die Juristen sagen –, daß die ÖVP dem nur zustimmt, weil es die SPÖ eben gerne möchte. Welche Art von Gegengeschäft auf politischer Ebene in diesem Fall vorliegt, bleibt vorläufig das Geheimnis der ÖVP.

Warum allerdings das Liberale Forum dem Ganzen zustimmt und warum es plötzlich seine Liebe zum Feudalstaat entdeckt hat, bleibt mir rätselhaft. Herr Kollege Peter! Ein Schritt in die richtige Richtung ist das wirklich nicht. Das ist ein Sprung – aber in die falsche Richtung! – Danke schön. *(Beifall bei den Grünen.)*

18.20

Präsident Dr. Heinrich Neisser: Zu Wort gelangt jetzt Herr Abgeordneter Lackner. 4 Minuten freiwillige Redezeitbeschränkung. – Bitte, Herr Abgeordneter.

18.21

Abgeordneter Manfred Lackner (SPÖ): Sehr geehrter Herr Präsident! Sehr geehrter Herr Minister! Geschätzte Damen und Herren! Wenn wir heute über die tiefgreifende Novelle des Sparkassengesetzes sprechen, dann kann man das, wie ich glaube, in einer sinnvollen Art und Weise nicht ohne entsprechenden Rekurs auf die Vergangenheit tun.

Das Sparkassengesetz ging und geht in seiner derzeitigen Fassung noch davon aus, daß die einzelnen Gemeinden solche Kassen – untechnisch gesprochen – gründen, um damit sich und ihren Bürgern eine verläßliche, vertrauenerweckende und vor allem auch gemeinnützige Form von Finanzanlagen zu gewähren. Wesentliche Faktoren dieser vertrauensbildenden Form waren einerseits die beinahe eigentümerlose Stellung der Sparkassen auf der einen und die dennoch vorhandene Ausfallshaftung der Gemeinden auf der anderen Seite.

Dies alles hat den Bürgerinnen und Bürgern – zu Recht, wie ich meine – den Eindruck vermittelt, daß sie ihr Geld sicher angelegt haben und gleichzeitig ihre Gemeinde stützen. Dieser Urgedanke der Sparkassen wurde aber in den letzten Jahren immer weiter zurückgedrängt. Durch den internationalen Trend verstärkt, wurden größere Verbände und Zusammenschlüsse immer wichtiger, und die reale Bindung dieser Geldinstitute zu den tragenden Gemeinden wurde immer geringer.

Damit trat aber auch der Gedanke der Gemeinnützigkeit immer mehr in den Hintergrund. Außerdem hat das Sparkassengesetz dieser Entwicklung zumindest nicht in vollem Umfang, so wie es sein sollte, Rechnung getragen. Die Folge war ein oftmaliges Agieren im rechtsfreien Raum, insbesondere, was die Zusammenarbeit mit anderen Instituten oder aber der tragenden Gemeinde betraf, etwa im Bereich des – wie es so schön modern heißt – social sponsorings.

Oftmals kam es als direkte Folge dieser nicht mehr zeitgerechten gesetzlichen Regelung auch zu – ich möchte das

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jetzt sehr vornehm ausdrücken – suboptimalen Veräußerungen so mancher Institute. *(Zwischenrufe der Abgeordneten Dr. **Graf** und Ing. **Meischberger.**)* Um solche suboptimalen Geschehnisse in Zukunft hintanhalten zu können, war es nötig, das Sparkassengesetz aus seiner historischen Befangenheit herauszulösen und die Sparkassen unter Wahrung ihres öffentlichen Auftrages und ihrer grundsätzlich kleinen, bürgernahen Struktur ... *(Abg. **Aumayr** – auf leere Sitzreihen der SPÖ weisend –: Wo sind die Sozialdemokraten? Was haben Sie mit Ihren Kollegen gemacht? Schauen Sie sich das an!)* Ja, ich weiß, sie können mich nicht mehr reden hören, daher haben sie fluchtartig das Haus verlassen. Aber Spaß beiseite. *(Heiterkeit. – Abg. Dr. **Graf:** Eine verblüffende Ehrlichkeit! – Abg. **Schwarzenberger:** Wie schön, daß der Hunger so groß ist!)* – Das kann auch sein, ja genau. *(Abg. **Gaugg:** Die haben Sie schön allein gelassen!)* – Das macht nichts. Ich komme jetzt wieder auf meine Rede zurück, Kollege Gaugg.

Es war nötig, den bürgernahen Strukturen, die die Sparkassen nach wie vor haben, eine neue gesetzliche Grundlage zu gewähren. *(Abg. **Aumayr:** Die Rede ergeht schriftlich!)* – Das macht nichts. *(Zwischenruf des Abg. Dr. **Graf.**)* Nein, sicher nicht, Herr Kollege. – Meine Damen und Herren! Das ist uns mit diesem Gesetzentwurf meines Erachtens auch sehr gut gelungen. Denn es wurde auf der einen Seite die Idee der Gemeinnützigkeit, die hinter diesen Instituten steckt, konsequent weiterentwickelt, aber andererseits durch die neugeschaffene Möglichkeit der Stiftung ein mangelhaftes und nur kurzfristigen Interessen dienendes Verhalten der Eigentümer hintangehalten. *(Neuerliche Zwischenrufe bei den Freiheitlichen.)*

Dies führt nämlich auch dazu, daß erstmals klar definiert wird ... *(Abg. **Aumayr:** Es wäre eine gute Rede, aber wo sind Ihre Kollegen?!)* – Sehen Sie: Jetzt halte ich einmal eine wirklich gute Rede, und dann verlassen alle fluchtartig den Saal! Aber das ist das Schicksal so mancher Redner. Das macht nichts. *(Abg. Dr. **Graf:** Aber wir bemühen uns! Wir zeigen die konstruktive Opposition und übernehmen das Klatschen!)* – Das freut mich! Wenigstens einmal, daß Sie etwas Konstruktives beitragen! Das findet man sonst sehr selten, aber ich schätze es, daß wenigstens einmal etwas Positives von Ihnen kommt. *(Demonstrativer Beifall bei den Freiheitlichen. – Heiterkeit.)*

Dies führt nämlich auch dazu, meine Damen und Herren, daß erstmals klar definiert werden wird, wie, in welcher Höhe und zu welchen Zwecken Erträge der Sparkassen an die Gemeinden fließen können. Dies wurde mir auch von Vertretern der Sparkassen, aber auch von Eigentümervertretern in vielen Gesprächen immer wieder bestätigt, weshalb ich zutiefst davon überzeugt bin, daß mit dem vorliegenden Entwurf das alte Sparkassengesetz in einer hervorragenden Art und Weise an die Herausforderungen der Zukunft angepaßt wird.

Ich danke speziell auch der FPÖ für ihre Aufmerksamkeit. *(Beifall bei der SPÖ und bei den Freiheitlichen. – Abg. Ing. **Tychtl:** Gute Rede! Applaus von allen Seiten!)*

18.26

Präsident Dr. Heinrich Neisser: Danke, Herr Abgeordneter.

Herr Abgeordneter Dr. Graf! Um Ihre Frage zu beantworten: Es sind derzeit 29 Abgeordnete im Saal. *(Heiterkeit und Zwischenrufe bei den Freiheitlichen.)*

Zu Wort gelangt nun Herr Abgeordneter Mag. Trattner. Freiwillige Redezeitbeschränkung: 4 Minuten. – Bitte. *(Rufe und Gegenrufe zwischen Abgeordneten der Freiheitlichen und der ÖVP.)*

18.26

Abgeordneter Mag. Gilbert Trattner (Freiheitliche): Herr Präsident! Herr Finanzminister! Sehr geehrte Damen und Herren! Über das Sparkassengesetz hat ja gerade eine "Lesung" des Herrn Kollegen Lackner stattgefunden. Herr Kollege Van der Bellen! Ich stimme mit Ihrer kritischen Auseinandersetzung voll überein, denn es gibt gravierende Ungerechtigkeiten in diesem Novellierungsvorschlag für das Sparkassengesetz. Es entspricht einfach nicht dem Grundsatz der Kapitalfreiheit.

Ein Beispiel: Es gibt bei einer Sparkasse drei Gesellschafter, die je 30 Prozent der Anteile halten. Der erste Gesellschafter kann seine 30 Prozent am Kapitalmarkt frei verkaufen, wem immer er das anbieten will. Der zweite Gesellschafter hat schon ein Problem. Er kann maximal nur mehr 19 Prozent frei verkaufen, denn für die restlichen 11 Prozent hat der Sektor ein Aufgriffsrecht.

Ich finde, daß das gegen den Gleichheitsgrundsatz verstößt, denn derjenige, der als Erster verkauft, kommt in die Begünstigung, an Dritte verkaufen zu können, während den Zweiten das Aufgriffsrecht seitens des Sektors trifft und er nicht so frei verkaufen kann.

Ich meine, man hätte das Gesetz mit dem Aufgriffsrecht nicht so stark einschränken sollen, weil es sicherlich gerade angesichts der derzeitigen Fusionswelle, einer Zeit, in der laufend Bankenanteile und Stimmrechte veräußert oder verkauft werden, zu einer Klagswelle kommen wird. Diese Klagen werden wahrscheinlich bis zum Europäischen Gerichtshof gehen. Meiner Schätzung nach werden die Verfahren jeweils vier, fünf Jahre dauern. Das kann für die freie Marktwirtschaft sicherlich nicht von Interesse sein!

Der zweite Punkt, den ich ansprechen wollte, betrifft Punkt 8 der Tagesordnung. Es geht dabei um eine zusätzliche Kapitalaufstockung für die MIGA. Ich möchte mich mit dieser Sache kritisch auseinandersetzen, und zwar aus dem einfachen Grund, weil es mittlerweile zahlreiche Kritiker beim Internationalen Währungsfonds gibt, die die Verwendung der Mittel aus Kapitalerhöhungen kritisieren. Die MIGA gehört zwar zur Weltbank und nicht zum IWF, ist aber in diesem Zusammenhang doch unter einem zu sehen.

Der IWF sagt – er kritisiert das sehr stark –, daß die Gelder in Länder kommen, in denen es praktisch keine Strukturen gibt, und daß diese Mittel der Bevölkerung, die dort in Not geraten ist, ***nicht*** zugute kommen, und daß sie den Unternehmen, die dort in Not geraten sind, ***nicht*** zugute kommen. Die Entwicklung in den letzten Jahren zeigt ganz eindeutig, daß die Mittel nicht in diesen Ländern bleiben. Thailand hat zum Beispiel 18 Milliarden Dollar erhalten, Indonesien 43 Milliarden Dollar, Südkorea 57 Milliarden Dollar und Rußland 23 Milliarden Dollar. *(Bundesminister* ***Edlinger:*** *Aber nicht von der MIGA!)* – Nicht von der MIGA, sondern vom Währungsfonds; das habe ich schon gesagt.

Das Problem ist – und das wissen auch Sie ganz genau, Herr Finanzminister –, daß diese Beträge nicht im Land bleiben. Diese Mittel fließen wieder ins Ausland zurück und dienen nur dazu, Banken, die sich dort engagiert haben, schadlos zu halten. Aber der Bevölkerung kommt das nicht zugute.

Bei der MIGA ist folgende Situation gegeben: Die Kapitalaufstockung beträgt derzeit wieder 1 Milliarde Dollar. Und auch bei der MIGA gibt es keine entsprechenden Richtlinien, etwa in der Art, daß man sagt: Zuerst müssen die Strukturen in dem betreffenden Land geändert werden, bevor wir dort Garantien für sozusagen nicht kommerzielle Risken abgeben. – Da kann praktisch jeder daherkommen und sagen: Ich habe ein nicht kommerzielles Risiko. Es ist ganz gleich, in welches Projekt ich investiere, wohin ich mein Geld verschiebe – es ist egal, es wird ohnedies dafür garantiert.

Das ist der falsche Weg! Zuerst müssen dort die Strukturen geändert werden, damit gesicherte Rahmenbedingungen gegeben sind, um Investitionsvorhaben finanzieren zu können. Erst dann sollten wir bereit sein, über Entwicklungshilfe für das betreffende Land zu reden. Aber bevor die Strukturen dort nicht geändert werden, Herr Finanzminister, werden Sie bei uns keine Zustimmung dafür finden, daß wir Geld dorthin überweisen und nicht wissen, was damit passiert. *(Beifall bei den Freiheitlichen.)*

18.30

Präsident Dr. Heinrich Neisser: Nächster Redner ist Herr Abgeordneter Dr. Höchtl. Freiwillige Redezeitbeschränkung: 3 Minuten. – Bitte.

18.30

Abgeordneter Mag. Dr. Josef Höchtl (ÖVP): Herr Präsident! Herr Bundesminister! Meine sehr verehrten Damen und Herren! Ich möchte noch einige Bemerkungen zum Sparkassengesetz machen.

Zweifellos war gerade der Geld- und Kreditsektor in den vergangenen Jahren einer sehr starken Entwicklung unterworfen. Wir haben das nicht nur international gesehen, sondern auch in Österreich. Und sicherlich ist der Sparkassensektor in Österreich einer der ganz großen und bedeutenden Sektoren.

Wenn diese Entwicklungen so rasch und so kräftig vor sich gehen, ist es notwendig, auch die entsprechenden gesetzlichen Anpassungen und Voraussetzungen zu schaffen.

Ich weiß, es hat einige Zeit in Anspruch genommen, bis es zu diesem Ergebnis, zu diesem Gesetzentwurf gekommen ist. Man kann nun damit zufrieden sein oder auch nicht. Ich glaube, eine vollkommene Zufriedenheit ist in diesem Ergebnis nicht reflektierbar, aber es ist eine neue Schiene geschaffen worden: Es ist nun die Möglichkeit einer Stiftung gegeben.

Es ist zum zweiten von den Betroffenen sehr stark der Erhalt des Sektorverbundes gewünscht worden. Wir haben dieser Möglichkeit die Chance eröffnet, allerdings das Aufgriffsrecht auf fünf Jahre limitiert.

Insgesamt glaube ich, sagen zu können, daß wir zumindest die Möglichkeiten für eine gedeihliche Fortentwicklung dieses wichtigen Sektors mit fast 25 000 Beschäftigten und rund einem Drittel des gesamten Kreditvolumens geschaffen haben. Ich hoffe, daß die Sparkassen das auch nützen werden und nicht, wie manche andere Institute in den vergangenen Jahren, in Schwierigkeiten geraten. Wenn das der Erfolg ist, dann hat dieses Gesetz auch eine wichtige Basis dafür geschaffen und unserer Intention Rechnung getragen. *(Beifall bei der ÖVP.)*

18.33

Präsident Dr. Heinrich Neisser: Nächster Redner ist Herr Abgeordneter Ing. Nußbaumer. Freiwillige Redezeitbeschränkung: 4 Minuten. – Bitte.

18.33

Abgeordneter Ing. Wolfgang Nußbaumer (Freiheitliche): Herr Präsident! Herr Bundesminister! Hohes Haus! Die Aussagen meines Kollegen Trattner zum Sparkassengesetz unterstütze ich vehement und teile auch die Analyse von Professor Van der Bellen. Ich möchte mich daher in meinem kurzen Redebeitrag auf den Antrag zur Schaffung eines Privatisierungsgesetzes beziehen.

Die in den heutigen Redebeiträgen geäußerten Bedenken hinsichtlich der Regierungsvorlage zum Sparkassengesetz bestärken mich eigentlich in der Ansicht, daß ein Privatisierungsgesetz für den Bankensektor nötig ist. Ein solches Gesetz wird von uns Freiheitlichen schon seit langem gefordert, denn alle Schritte, die die Regierung in Richtung Privatisierung unternimmt, sind geprägt vom Wunsch nach Erhalt des politischen Einflusses. Wie sonst kann ich die Umwandlung der Anteilsverwaltungen in Stiftungen verstehen, wenn als Konsequenz – ich möchte nur als Beispiel hervorheben, was mit den Organen geschieht – der Vorstand und Sparkassenrat dann den Vorstand und Stiftungsrat bilden?

Durch die Möglichkeit der personellen Erneuerung, die unabhängig von Wahlen vor sich geht, wird die Macht der SPÖ – die im Augenblick möglicherweise andere Sorgen hat *(der Redner deutet auf die leeren Sitzreihen der SPÖ)* – eigentlich unabänderlich verankert. Irgendwo habe ich gelesen, daß es sich dabei um die Schaffung von sozialistischem Sondervermögen handelt. Ich denke, das wird schon so sein.

Es ist nur erstaunlich – und dabei denke ich an die AVZ –, daß die ÖVP das so einfach hinnimmt. Meine Damen und Herren von der ÖVP! Sie werden auch mit diesem neuen Sparkassengesetz von der SPÖ, und zwar mehrfach, über den Tisch gezogen und aufpoliert!

Umso wichtiger ist es, Privatisierungen so vorzunehmen, daß die unternehmerischen Entscheidungen nicht nur bei Unternehmensübernahmen, sondern auch im Bankenbereich nach betriebswirtschaftlichen Kriterien getroffen werden, und nicht nach dem parteipolitischen Machterhalt, den ich bereits angeschnitten habe. Ich sehe sonst für den österreichischen Bankenbereich keine Chance, im internationalen Wettbewerb zu bestehen – auch wenn das Ihr Ziel ist, Herr Finanzminister, wie Sie heute im Rahmen der Dringlichen Anfrage ausgeführt haben –, geschweige denn, daß der österreichische Bankenbereich mit diesem Gesetz in die erste Reihe der Finanzwelt zu bringen ist.

Was dies bedeutet, ist wohl klar: Nicht wettbewerbsfähig zu sein, heißt für eine Bank, zur verlängerten Werkbank oder zum Filialbetrieb ausländischer Bankkonzerne zu werden. Die Frage, ob dann in Österreich noch immer so viele gutbezahlte Bankdirektoren wie jetzt notwendig sein werden, können Sie natürlich selbst beantworten.

Aber die Reduktion der Zahl der Bankdirektoren wäre ja noch zu verkraften. Die damit verbundene viel geringere Anzahl von Beschäftigten im Bankwesen wird wesentlich schmerzlicher sein! Und über die Sicherheit der Kunden wird hier überhaupt nicht gesprochen, genauso wenig wie über die Rechte der Kleinanleger. *(Beifall bei den Freiheitlichen.)*

Deshalb ist die alte Forderung der Freiheitlichen – die heute in besagtem Antrag des Abgeordneten Peter zum Ausdruck gekommen ist – nach einer echten Privatisierung des Bankensektors zu unterstützen beziehungsweise ist der diesbezügliche Bericht des Finanzausschusses abzulehnen.

Zum Schluß möchte ich noch ein Wort zu Herrn Abgeordnetem Peter sagen, aber er ist im Augenblick nicht da. Die Liberalen und mit ihnen Herr Abgeordneter Peter stimmen diesem Sparkassengesetz zu – das verstehe ich überhaupt nicht –, obwohl ihren Forderungen, ausgedrückt im vorliegenden Entschließungsantrag zur Novellierung des Sparkassengesetzes, in allen wesentlichen Punkten ***nicht*** Rechnung getragen wird. – Also das ist ein Punkt, den ich überhaupt nicht verstehe! *(Abg. Dr.* ***Gredler:*** *Er wird es Ihnen persönlich noch erklären! – Abg.* ***Böhacker:*** *Ein Sprung in die falsche Richtung!)*

Das ist wirklich ein Sprung in die falsche Richtung und wird das Problem überhaupt nicht lösen helfen! Es ist höchstens so, daß Sie, meine Damen und Herren vom Liberalen Forum, von den Sozialdemokraten dafür ausgelacht werden. – Danke schön. *(Beifall bei den Freiheitlichen.)*

18.37

Präsident Dr. Heinrich Neisser: Nächster Redner ist Herr Abgeordneter Dr. Gusenbauer. Freiwillige Redezeitbeschränkung: 5 Minuten. – Bitte.

18.38

Abgeordneter Dr. Alfred Gusenbauer (SPÖ): Herr Präsident! Herr Bundesminister! Meine sehr verehrten Damen und Herren! Herr Kollege Trattner ist gerade nicht im Saal. Ich hätte ihm nämlich gern die Lektüre des MIGA-Jahresberichtes 1998 anempfohlen, denn diese Lektüre hätte vielleicht dazu beigetragen, daß die Einschätzung des nun vorliegenden Antrages auf eine Aufstockung der Kapitalanteile eine andere Art von Bewertung erfahren hätte, als die, die er hier vorgebracht hat.

Erstens handelt es sich bei dieser Agentur bekanntlich um ein Mitglied der Weltbankgruppe und nicht um einen Teil des Internationalen Währungsfonds. Zweitens geht es darum, daß dort Investitionsgarantien gegeben werden, die die wesentliche Grundlage für Investitionen in der südlichen Hemisphäre, in Entwicklungsländern und in den Reformländern Osteuropas darstellen.

Österreich ist ja erst sehr spät Mitglied der MIGA geworden – ich glaube, im Jahre 1997 –, und zwar aus dem wohlverstandenen eigenen Interesse heraus, daß nur mit einer Mitgliedschaft bei der MIGA auch österreichische Unternehmungen die Chance bekommen, diese Investitionsgarantien in Anspruch zu nehmen. Es ist ja bekannt, daß österreichische Firmen sehr stark auch im osteuropäischen Raum exponiert sind. Österreichs Mitgliedschaft bei der MIGA gibt diesen Firmen nun die Möglichkeit, diese MIGA-Garantien in Anspruch zu nehmen, die ein Beitrag dazu sind, die österreichische Exportwirtschaft und auch die Internationalisierung der österreichischen Wirtschaft zu unterstützen.

Der zweite Punkt betrifft die Perspektive der Entwicklungsländer. Es gibt eine aktuelle Debatte darüber, daß die offizielle Entwicklungshilfe in den OECD-Staaten im Sinken begriffen ist. Eine These besagt, daß die sinkende Entwicklungshilfe durch steigende Investitionen in der Dritten Welt kompensiert wird.

Diese These ist nicht zu 100 Prozent haltbar. Auch wenn es zu einer enormen Ausweitung der Direktinvestitionen in der Dritten Welt gekommen ist, konzentrieren sich 75 Prozent all dieser Direktinvestitionen doch auf nur 15 Staaten, und 50 Prozent aller Direktinvestitionen auf ein einziges Land, nämlich auf China.

Das heißt, es gibt keine sehr große Diversifikation dieser Direktinvestitionen, und es gibt rund 85 Länder der Dritten Welt, die diese Investitionen viel stärker in Anspruch nehmen sollten und möchten, als das bisher der Fall ist.

Ich gebe Herrn Kollegen Trattner in einem Punkt recht: Natürlich haben auch die Entwicklungsländer durch Veränderungen der Rahmenbedingungen einen essentiellen Beitrag dazu zu leisten, daß Investitionen dort in einer vernünftigen Form stattfinden können.

Aber gleichzeitig bietet gerade ein solches Garantieinstrument wie die MIGA erst wirklich die Möglichkeit, in einer

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Startphase internationale Investoren dazu zu motivieren, in einzelnen Ländern zu investieren. Ich finde, gerade dann, wenn man eine relativ kritische Haltung zur Entwicklungshilfe hat, wie das bei der FPÖ der Fall ist, sollte man sich eigentlich dazu herablassen, privatwirtschaftliche Unterstützungsinstrumente, die teilweise an die Stelle der Entwicklungshilfe getreten sind, zu unterstützen.

Insofern meine ich, daß die Position der FPÖ oder zumindest des Kollegen Trattner in diesem Punkt keine sehr konsistente ist, denn entweder entschließt man sich dazu, daß man sagt: Wir wollen eine große Ausweitung der traditionellen Entwicklungshilfe, um diesen Staaten zu helfen!, oder man entschließt sich dazu, komplementär zur Entwicklungshilfe Schutzgarantien zu geben, die privates Investment entsprechend vorantreiben. Wenn man das will, dann muß man dieser Aufstockung der MIGA auch in dieser sehr bescheidenen Form zustimmen, weil es eigentlich im Rahmen der gesamten internationalen Finanzinstitutionen eines der erfolgreichsten Instrumente ist. – Danke. *(Beifall bei der SPÖ und bei Abgeordneten der ÖVP.)*

18.42

Präsident Dr. Heinrich Neisser: Zu Wort gemeldet ist als nächster Herr Abgeordneter Gaugg. Herr Abgeordneter, Sie haben eine freiwillige Redezeitbeschränkung von 4 Minuten. – Bitte.

18.42

Abgeordneter Reinhart Gaugg (Freiheitliche): Sehr geehrter Herr Präsident! Herr Bundesminister! Geschätzte Damen und Herren! Wenn Banken ins Gerede kommen, dann ist das schlecht, aber wenn der staatliche Einfluß bei Banken zu groß ist, dann ist das schädlich. Es ist auch schlecht, wenn die Besetzung von Vorstandspositionen in Banken und Sparkassen in den Parteizentralen erfolgt.

Für die Kunden ist eine Unterscheidbarkeit zwischen Sparkassen, Raiffeisenbanken, CA, Bank Austria und ähnlichem mehr kaum mehr nachvollziehbar, weil alle Universalbanken geworden sind. Ob das besonders vernünftig ist, darf bezweifelt werden, und ob nicht die seinerzeitigen, eher restriktiven Maßnahmen zur Errichtung von Filialen und ähnlichem zu einer vernünftigeren Entwicklung geführt hätten, läßt sich heute nicht mehr überprüfen.

Faktum ist, daß durch diesen Wildwuchs eine Situation entstanden ist, die letztlich zu Lasten der Mitarbeiter geht. Die Leidtragenden bei Fusionierungen sind nicht die Vorstandsdirektoren, denn für diese bleiben dann schon irgendwo Posten übrig, und auch nicht die Aufsichtsräte, denn auch für diese wird gesorgt, auch sie dürfen auf einem guten Posten bleiben. Die Leidtragenden sind vor allem die Mitarbeiter.

So sehe ich die Situation auch im Zusammenhang mit den Sparkassengesetz. Wenn schon von Beginn an von anerkannten Professoren die Verfassungswidrigkeit aufgezeigt wird, dann würde ich doch meinen, daß man den Gesetzentwurf, noch bevor er zur Beschlußfassung ins Parlament gelangt, noch einmal überarbeitet und überlegt, ob es nicht doch besser wäre, einen freien Wettbewerb zuzulassen. Ich will damit noch gar nicht sagen, daß das ein "Parken" – wie hat das jemand in seiner Aussendung genannt? – eines gebundenen Vermögens der SPÖ ist.

In Wirklichkeit gibt es keine Wettbewerbsgleichheit, und ich meine, daß nur dann, wenn wir den Einfluß des Staates aus den Banken zurücknehmen, auch eine freiere Entwicklung im Rahmen der Privatisierung möglich wäre. Eine Erhaltung und ein Ausbau des Wettbewerbs wären im Interesse der Mitarbeiter und der Kunden notwendig.

Ich glaube, daß es kein vergleichbares zivilisiertes Land gibt, in dem es möglich ist, daß Bankvorstandsdirektoren einander immer gegenseitig in die jeweiligen Aufsichtsräte setzen. Man sollte dafür eine bessere Lösung finden, weil auch das Gefahren in sich birgt. Wenn der Herr Direktor von einem Aufsichtsrat und Vorstandsmitglied einer anderen Bank kontrolliert wird, in deren Aufsichtsrat er selber sitzt, dann ***kann*** die Kontrolle nicht funktionieren! Ich möchte Sie, Herr Finanzminister, daher bitten, Ihre Beamten einmal prüfen zu lassen, ob das rechtlich in Ordnung ist und ob es sehr sinnvoll ist, damit in die Zukunft zu gehen. Ich halte das für eine massive Bedrohung. *(Bundesminister **Edlinger:** Eine private Firma?!)*

Das ist eben die große Frage bei den privaten Firmen! Wenn Sie mir sagen, daß die Bank Austria eine private Firma ist *(Bundesminister **Edlinger:** Selbstverständlich!)*, dann muß ich Ihnen sagen: Das mag legistisch wohl stimmen, aber Sie wissen genau, wie intensiv dort die Parteieinflüsse bis zum heutigen Tage noch sind. *(Beifall bei den Freiheitlichen.)*

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Heutzutage werden Sie in den Vorstandsetagen der Großbanken niemanden finden, den Sie parteipolitisch nicht zuordnen können. Dort fängt das Dilemma oder Desaster bereits an. Die Sorge seinerzeit bei der Fusionierung der CA mit der Bank Austria war ja keine Sorge um die Mitarbeiter oder eine solche um die Geschäftsentwicklung, sondern besorgt war man vielmehr darum, den parteipolitischen Einfluß der ÖVP zurückzudrängen, und deshalb hat man das Ganze gemacht.

Daher sage ich: Wenn einmal der Beweis angetreten würde, daß in unserem schönen Österreich auch in den Vorstandsetagen die Entscheidungen parteifrei und parteilos getroffen werden, dann würde das einen Schub der Privatisierung und der Motivation für die Mitarbeiter und der Wettbewerbsfähigkeit für die Kunden bewirken. *(Beifall bei den Freiheitlichen.)*

Dieser Gesetzentwurf, der uns heute vorliegt, ist ein gescheiterter Reformversuch. Es hätte die Chance gegeben, daß sich die Politik endlich reduziert auf das, wofür sie zuständig ist, nämlich die Rahmenbedingungen zu schaffen. Die Banken und die Sparkassen sollte man aber frei arbeiten lassen. *(Beifall bei den Freiheitlichen.)*

18.47

Präsident Dr. Heinrich Neisser: Zu Wort gemeldet ist als nächster Herr Abgeordneter Stampler. Freiwillige Redezeitbeschränkung: 5 Minuten. – Bitte, Herr Abgeordneter.

18.47

Abgeordneter Franz Stampler (ÖVP): Sehr geehrter Herr Präsident! Herr Bundesminister! Meine Damen und Herren! Die Welle an Fusionen und Übernahmen ebbt nicht ab. Der damit verbundene Konzentrationsprozeß in Industrie und Geldwirtschaft geht weiter. Die Turbulenzen auf den Finanzmärkten haben etwas in den Hintergrund treten lassen: daß dieser Tage gleich drei Fusionen historischen Zuschnitts in der amerikanischen Kreditwirtschaft vollzogen wurden.

Die neue Bank of America wird rund 5 000 Filialen in den USA und Geschäftsbeziehungen mit über 30 Millionen Haushalten haben. Die Aktiva werden sich auf zirka 6 650 Milliarden Schilling belaufen, auf mehr, als die Bilanzsumme aller unserer heimischen Banken ausmacht.

Auch in unserer unmittelbaren Nachbarschaft vollziehen sich derzeit beachtliche Konzentrationsprozesse im Bankensektor. Mit dieser Gesetzesvorlage läßt sich ideal demonstrieren, welche Aufgaben die Wirtschaftspolitik im System der sozialen Marktwirtschaft übernehmen soll und kann. Wirtschaftspolitik bedeutet unserer Meinung nach, die geeigneten Rahmenbedingungen zu schaffen und die richtigen Anreize zu geben, damit die heimische Wirtschaft im allgemeinen und im speziellen Fall die österreichischen Sparkassen für die Herausforderungen entsprechend gewappnet sind.

Der heute zum Beschluß vorliegende Gesetzentwurf ermöglicht es dem traditionsreichsten, bereits seit 190 Jahren bestehenden Sektor der heimischen Kreditwirtschaft, sich an die neuen Gegebenheiten anzupassen und eine für das moderne Bankgeschäft zeitgemäße Form zu wählen.

Besonders betonen möchte ich, daß unserer Überzeugung nach der berühmte, ursprünglich rein an der Gemeinnützigkeit orientierte Sparkassengedanke und die Stiftungsphilosophie weitestgehend übereinstimmen. Um mit dieser Entwicklung im Bankenbereich Schritt zu halten, wurde durch die Novelle zum Kreditwesengesetz und die nunmehr geltenden Bestimmungen des Bankwesengesetzes den Sparkassen die Möglichkeit eröffnet, ihr Unternehmen in eine Aktiengesellschaft umzuwandeln und durch das mobilere und flexiblere Instrument der Aktie neue Eigentümer und Kapitalgeber zu suchen.

Die rechtliche Umwandlung in eine Stiftung ist auch eine notwendige Voraussetzung, um den Sparkassen eine Rechtsform zu geben, die den internationalen Standards entspricht und somit unabdingbar für eine Internationalisierung des Sparkassensektors ist. "Stiftung" ist ein international gebräuchlicher und vor allem transparenter Begriff. Die Stiftungsebene und die Ebene der Sparkassenaktiengesellschaft sind damit klar getrennt. Für jeden dieser beiden Bereiche gelten eigene Organisationsvorschriften.

Die ÖVP geht davon aus, daß durch sehr gezielte, überlegte Organbesetzungen klare Verantwortungsstrukturen geschaffen werden.

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Aufgrund der eingangs skizzierten Entwicklungen brauchen wir in Österreich leistungsfähige, international konkurrenzfähige Geldinstitute. Es muß in unser aller Interesse liegen, daß dieser für die Volkswirtschaft so wichtige Bereich über einen starken österreichischen Kern verfügt. Die Entscheidungen in diesem strategisch so wichtigen Wirtschaftszweig sollen auch in Zukunft in Österreich fallen. *(Beifall bei der ÖVP.)*

Meine Damen und Herren! Es wird mit dem heutigen Gesetzesbeschluß vom österreichischen Gesetzgeber ein deutliches Signal in Richtung Vermögenserhaltung gesetzt. Was dies für die österreichische Volkswirtschaft bedeutet, wird sich mittel- bis langfristig zeigen, wenn die Stiftungen Mittel angesammelt haben, um in österreichische Unternehmen zu investieren und den Stiftungszweck auch für die Allgemeinheit in Österreich zu erfüllen. *(Neuerlicher Beifall bei der ÖVP.)*

18.51

Präsident Dr. Heinrich Neisser: Nächster Redner ist Herr Abgeordneter Böhacker. Freiwillige Redezeitbeschränkung: 4 Minuten. – Bitte, Herr Abgeordneter.

18.51

Abgeordneter Hermann Böhacker (Freiheitliche): Sehr geehrter Herr Präsident! Herr Bundesminister! Ich möchte in meinem Redebeitrag ein paar kurze Worte zum Tabakmonopolgesetz sagen. Aber zunächst, replizierend auf die Ausführungen des Kollegen Peter, der leider nicht mehr da ist, möchte ich feststellen: Wir haben zur Kenntnis genommen, daß Kollege Peter fordert, daß das Vertriebsmonopol der Tabaktrafiken ersatzlos aufgehoben wird.

Es ist grundsätzlich so, daß Monopole in Zeiten der Globalisierung zu hinterfragen sind. Selbstverständlich! Nur: Das Vertriebsmonopol im Bereich der Trafikanten hat wohl eine ganz andere Aufgabe als die üblichen Monopole. Auch wenn es nur mehr rund 1 300 Behinderte oder Invalide sind *(Bundesminister **Edlinger:** Steigend!)* – die Zahl ist steigend –, die Trafikanten sind, so zeugt es von einer unglaublichen sozialen Kälte, wenn Herr Kollege Peter dieses Vertriebsmonopol sozusagen auf dem Altar der freien Marktwirtschaft opfern will.

Es stimmt schon, daß da einiges danebenläuft, daß sich ein grauer Markt, ein Ablösemarkt entwickelt hat, aber das muß man von einer anderen Seite her lösen und nicht mit einer Aufhebung dieses Vertriebsmonopols.

Selbstverständlich fordern auch wir, daß bei der Vergabe von Trafikberechtigungen Invalide, Behinderte verstärkt zu bevorzugen sind, und man muß dafür eintreten, daß da sehr wohl strenge Maßstäbe angelegt werden. Es kann wirklich nicht so sein, daß ehemalige Fußballprofis, nur deswegen, weil sie einen Meniskusschaden haben, als Invalide in diesem Sinne gelten.

Nun zum Gesetz selbst: Diese Novelle zum Tabakmonopolgesetz ist ein signifikantes Beispiel dafür, wie ein Gesetz in der Theorie ausschaut und sich dann in der Praxis darstellt: sinnvoll oder unsinnig.

Es ist doch so, daß der Anlaß für diese Novelle eine Mahnung der Europäischen Kommission war, daß die gesetzlichen Auflagen für die Zulassung als Großhändler für Tabakerzeugnisse in keinem Verhältnis zu dem verfolgten Zweck stehen und dieser Zweck auch durch gelindere Maßnahmen erreicht werden kann. Ich verweise in diesem Zusammenhang auf ein Urteil des Europäischen Gerichtshofes, daß die Verpflichtung zur Haltung von Lagerräumlichkeiten im Inland eine nach Artikel 30 EG-Vertrag verbotene Maßnahme darstellt. So weit, so gut – oder so weit, so schlecht.

Jetzt komme ich zur Praxis, Herr Bundesminister. Da nach tabaksteuerrechtlichen Vorschriften die Verbringung von Tabakerzeugnissen aus anderen EU-Mitgliedstaaten geregelt ist, wird in der Praxis ein Großhändler schon allein aus steuerlichen Gründen in Österreich über Lagerräumlichkeiten verfügen ***müssen.*** Sie beschließen also ein Gesetz, das etwas aufhebt, ohne das es in der Praxis überhaupt nicht geht. Ich finde da den vorauseilenden Gehorsam gegenüber der EU etwas überzogen. *(Beifall bei den Freiheitlichen.)*

18.54

Präsident Dr. Heinrich Neisser: Als nächster zu Wort gelangt nun Herr Abgeordneter Marizzi. Freiwillige Redezeitbeschränkung: 4 Minuten. – Bitte, Herr Abgeordneter.

18.54

Abgeordneter Peter Marizzi (SPÖ): Herr Präsident! Sehr geschätzter Herr Bundesminister! Meine Damen und Herren! Herr Kollege Böhacker, natürlich haben Sie in einigen Punkten recht, aber Sie wissen ganz genau, daß von der Europäischen Union eine Punktation vorliegt, wonach wir diese Gesetze, also das Tabakmonopolgesetz und das Tabaksteuergesetz, anpassen müssen. Das entspricht den Erfordernissen der Europäischen Union, und es hat ja auch einen Sinn, daß sich die Europäischen Union in bestimmte Bereiche vertieft. Daher ist es notwendig, diese Anpassungen zu machen.

Bei dieser Gelegenheit möchte ich, meine sehr geehrten Damen und Herren, weil das mit Austria Tabak zusammenhängt, auch über die positiven Initiativen, die Herr Bundesfinanzminister Edlinger im Bereich der Privatisierung gesetzt hat, sprechen.

Meine sehr geehrten Damen und Herren! Wenn man die Privatisierungen der Jahre 1997 bis 1999 Revue passieren läßt, dann kann man feststellen, daß wir sehr große Brocken auf den Markt gebracht haben – zwar manchmal mit medialen Auswirkungen, die nicht angenehm waren, aber immerhin wurden dabei vom Herrn Bundesminister große Dinge gemeistert.

So hat allein die Privatisierung der Austria Tabak einen Erlös in Höhe von 5,2 Milliarden Schilling gebracht. Vom Jahre 1997 bis 1999 sind letztendlich ungefähr 53 Milliarden Schilling aus Privatisierungen erlöst worden. Es ist also erfolgreich privatisiert worden – und nicht populistisch!

Damit bin ich beim Thema "Populismus" angelangt. Gestern haben die Liberalen dem Herrn Bundesminister vorgeworfen, er sei ein Populist, weil er nicht zugestimmt hat beziehungsweise weil er nicht der Meinung ist, daß der 13. und der 14. Monatsgehalt ... *(Abg. Dr. **Gredler:** Das ist eine verkürzte Darstellung!)* – Ich habe auch nur vier Minuten Redezeit. Ich kann Ihnen die Einzelheiten später erzählen. *(Abg. Dr. **Gredler:** Stellen Sie es richtig dar!)* Daher sind die Liberalen böse und haben gesagt, der Herr Bundesminister sei ein Populist. *(Abg. Dr. **Gredler:** Sie dürfen keine verkürzten Darstellungen geben!)*

Wenn ich mir vergegenwärtige, was die Redner vom Liberalen Forum zur Frage des Tabakmonopols gesagt haben, wie sie einfach mit der Methode der Neoliberalisierung über alles drüberfahren wollen und was sie in diesem Zusammenhang in bezug auf die Behinderten ausgeführt haben, dann muß ich sagen: Da reden Sie vom Liberalen Forum mit zwei Zungen! Das hat Herr Kollege Böhacker auch richtig erkannt. Jedenfalls verstehe ich Sie vom Liberalen Forum in dieser Hinsicht nicht mehr.

Meine sehr geehrten Damen und Herren! Ich meine, daß diese Novelle eine gute ist, und wir werden daher dem Entwurf unsere Zustimmung geben. *(Beifall bei der SPÖ.)*

18.57

Präsident Dr. Heinrich Neisser: Zu Wort gelangt nun Herr Abgeordneter Auer. Freiwillige Redezeitbeschränkung: 5 Minuten. – Bitte, Herr Abgeordneter.

18.57

Abgeordneter Jakob Auer (ÖVP): Herr Präsident! Herr Bundesminister! Meine sehr verehrten Damen und Herren! Eigentlich finde ich es schade, daß das Sparkassengesetz ausgerechnet nach einer Debatte über die Dringliche Anfrage betreffend die Malversationen der Riegerbank debattiert und beschlossen wird. Ich finde das deshalb schade, weil es notwendig wäre, gerade auch mit diesem Gesetz nach außen hin zu signalisieren, daß Banken vertrauensbildende Maßnahmen zu setzen haben und daß derartige Einzelfälle – ich sage ausdrücklich "***Einzel***fälle" – von kriminellen Machenschaften, wie sie bei der Riegerbank passiert sind, ***nicht*** zur Tagesordnung in der Bankenlandschaft Österreichs gehören! *(Präsident Dr. **Brauneder** übernimmt den Vorsitz.)*

Meine Damen und Herren! Dieses Sparkassengesetz, das nach monatelangen intensiven Verhandlungen heute beschlossen wird, ist ein erster, richtiger Schritt, wenngleich ich zugebe, daß die eine oder andere kritische Bemerkung der Opposition durchaus ihre Berechtigung hat. Dennoch darf ich festhalten: Daß dieser Schritt heute möglich ist, ist auf jene Initiative zurückzuführen, die die ÖVP 1993 mit dem Privatstiftungsgesetz gesetzt hat, das

dann in der Folge auch zur Beschlußfassung gelangt ist. Damit ist uns etwas sehr Positives gelungen, nämlich die Kapitalflucht aus Österreich zu minimieren. Das sollten wir durchaus positiv festhalten, meine Damen und Herren. *(Beifall bei der ÖVP.)*

Wie gesagt: Dieses Gesetz ist ein erster, richtiger Schritt im Sparkassenbereich, und ich meine, daß dies ein positiver Schritt ist. *(Beifall bei der ÖVP.)*

18.59

Präsident MMag. Dr. Willi Brauneder: Als nächster zu Wort gemeldet ist Herr Abgeordneter Müller. 5 Minuten freiwillige Redezeitbeschränkung. – Bitte, Herr Abgeordneter.

19.00

Abgeordneter Karl Gerfried Müller (SPÖ): Sehr geehrter Herr Präsident! Herr Finanzminister! Geschätzte Damen und Herren! Ich beziehe mich in meinen Ausführungen auf den Antrag des LIF zur Schaffung eines Privatisierungsgesetzes im Bankenbereich und möchte dazu folgendes anmerken:

Das Thema "Struktur des österreichischen Bankensektors" ist ja in den letzten Jahren wiederholt hier im Hohen Hause diskutiert worden; ich darf in diesem Zusammenhang etwa an die Fragen betreffend Bank Austria oder CA erinnern. Ich warne allerdings davor, Privatisierung als Allheilmittel anzusehen und damit angesehene Geld- und Kreditinstitute in das tagespolitische Hickhack einzubeziehen.

Für politisches Kleingeld wird die Seriosität unserer Geld- und Kreditapparate in Frage gestellt. Es ist für die österreichische Wirtschaft schlecht, wenn die österreichische Kreditwirtschaft und damit auch der österreichische Kapitalmarkt in relativ kurzen Abständen immer wieder ins tagespolitische Rampenlicht gezerrt werden.

Meine sehr geehrten Damen und Herren vom Liberalen Forum! Ihrer Forderung nach Schaffung eines Privatisierungsgesetzes im Bankenbereich möchte ich auch die aktuellen Geschehnisse im Dunstkreis des rein privaten Bankhauses Rieger entgegenstellen. Daraus ist nämlich folgender Schluß zu ziehen: Ein privater Besitzer bedeutet noch lange nicht unternehmerischen Erfolg und Seriosität.

Im Fall Rieger wird es Untersuchungen geben, um zu klären, wie derartige Bilanzschwindeleien am Aufsichtsrat, an der Nationalbank und an der Bankenaufsicht vorbei überhaupt möglich waren. Es müssen – und ich bin sicher, daß das der Fall sein wird – auch die Schuldigen ermittelt werden, und es wird Konsequenzen geben müssen. Unsere Pflicht wird es aber auch sein, der Bevölkerung verstärkt zu sagen, daß das Versprechen hoher Zinsen natürlich auch mit einem wesentlich höheren Risiko verbunden ist, wie uns das die derzeitigen Bankpleiten leider wieder vor Augen führen.

Es ist derzeit offensichtlich modern, ja geradezu opportun, für eine rasche und bedingungslose Abgabe von öffentlichem Eigentum sowohl bei Kreditunternehmen als auch bei anderen staatlichen Unternehmungen einzutreten. Es gibt aber Unternehmen, die man im Interesse Österreichs auch weiterhin im staatlichen Eigentum belassen sollte.

Hohes Haus! Ich glaube, daß im Hinblick auf Privatisierungen der Plafond bereits erreicht wurde. Mit jeder weiteren Privatisierung verliert der Staat meiner Meinung nach auch Regelungs- und Lenkungsmechanismen, die sich auch auf die Angebots- und Arbeitsmarktsituation auswirken.

In manchen Bereichen sind staatliche Betriebe durchaus sinnvoll und wichtig. Wir werden daher vor weiteren Privatisierungen auch mit Rücksicht auf die Mitarbeiter sehr genau prüfen müssen, welche Auswirkungen, welche Konsequenzen zu erwarten sind. Ich betone neuerlich: Für eine Gewinnmaximierung auf Kosten der Arbeitnehmer, um die Brieftaschen der Aktionäre zu füllen, stehe ich nicht zur Verfügung. *(Beifall bei der SPÖ.)*

Hohes Haus! Zur Veräußerung zweier Grundstücke in Tirol und Wien möchte ich folgende kurze Anmerkung machen: Der Bund hat mangels eines zukünftigen Bedarfs und nach längeren Verhandlungen einen guten Erlös für die beiden Liegenschaften erzielt. Neben den erfreulichen Einnahmen von 207,5 Millionen Schilling ist meiner Ansicht nach auch der Hinweis auf die längerfristige Sicherung von Arbeitsplätzen besonders erfreulich. Daher werde ich dem vorliegenden Bericht des Finanzausschusses vollinhaltlich zustimmen. *(Beifall bei der SPÖ.)*

19.04

Präsident MMag. Dr. Willi Brauneder: Weiters zu Wort gemeldet ist Frau Abgeordnete Mag. Frieser. 5 Minuten freiwillige Redezeitbeschränkung. – Bitte, Frau Abgeordnete.

19.04

Abgeordnete Mag. Cordula Frieser (ÖVP): Herr Präsident! Herr Bundesminister! Meine Damen und Herren! Ich möchte so wie mein Vorredner kurz zum Antrag des LIF Stellung nehmen. Vorweg aber, Herr Kollege Müller, möchte ich feststellen, daß ich Ihnen in einigen Punkten leider nicht folgen kann. *(Abg. Dr. **Mertel:** Wer macht jetzt den Intelligenztest: Der Müller oder Sie?)*

Erstens: Den Bankendeal Bank Austria/CA als einen Akt der Privatisierung zu betrachten, ist doch etwas sehr weit hergeholt :

Zweitens: Den Skandal in der Riegerbank jetzt sozusagen als Argument dafür zu verwenden, für weitere Privatisierungen nicht zur Verfügung zu stehen, weil Privatunternehmer sozusagen automatisch eine Bank in die Pleite führen, ist vielleicht auch etwas kurz gegriffen. *(Abg. **Müller:** Das habe ich nicht gesagt! – Abg. **Marizzi:** Da haben Sie wieder nicht aufgepaßt!)*

Und schlußendlich bin ich nicht der Meinung, daß der Plafond an Privatisierungen bereits erreicht wurde.

Zurück zum Antrag des LIF. – Kurz die Genesis: Nachdem der Mega-Deal Bank Austria/CA stattgefunden hat, dem ja auch das LIF – darf ich es vielleicht so formulieren: freudig erregt – zugestimmt hat, hat dann Ihre Fraktion dieses Gesetz zur Bankenprivatisierung vorgeschlagen. Ich verstehe den Zusammenhang nicht, Herr Kollege Peter. Ich räume aber ein, daß das nicht Ihr Vorschlag war, sondern es war damals der Vorschlag des Kollegen Haselsteiner.

Wir werden, wie sich das ja auch schon bis zu Ihnen herumgesprochen hat, diesem Antrag nicht zustimmen. Wir sind zwar grundsätzlich für Privatisierungen, aber ich mag nicht einsehen, warum kleine Gemeindesparkassen, Hypothekenbanken et cetera zwangsprivatisiert werden sollen. Ganz im Gegenteil: Sie haben regional gesehen eine sehr wichtige Funktion. *(Abg. Mag. **Peter:** Eigentumsverluste der ÖVP, das gebe ich gerne zu!)* Abgesehen davon ist ein Privatisierungsgesetz gerade im Bankensektor absolut überflüssig, denn Sie sehen täglich die Fusionen und Beteiligungsvorgänge, die über unsere Grenzen hinausgehen, durchaus mit Hypothekenbanken der verschiedenen Länder.

Abschließend betone ich noch einmal: Wir werden Ihren Antrag ablehnen. – Danke schön. *(Beifall bei der ÖVP.)*

19.07

Präsident MMag. Dr. Willi Brauneder: Zu Wort ist dazu niemand mehr gemeldet. Die Debatte ist geschlossen.

Der Herr Berichterstatter wünscht kein Schlußwort.

Wir treten daher in das Abstimmungsverfahren ein, und ich bitte daher, die Plätze einzunehmen.

Wir kommen nun zur ***Abstimmung,*** die ich über jeden Ausschußantrag getrennt vornehme.

Zunächst gelangen wir zur Abstimmung über den Entwurf betreffend ein Bundesgesetz, mit dem das Sparkassengesetz und das Körperschaftssteuergesetz 1988 geändert werden, samt Titel und Eingang in 1392 der Beilagen.

Für den Fall Ihrer Zustimmung bitte ich um ein entsprechendes Zeichen. – Dies ist die Mehrheit. Der Antrag ist angenommen.

Wir kommen sogleich zur dritten Lesung.

So Sie dem Gesetzentwurf auch in dritter Lesung zustimmen wollen, bitte ich um ein entsprechendes Zeichen. –

Dies geschieht durch die ***Mehrheit.*** Der Gesetzentwurf ist somit in dritter Lesung ***angenommen.***

Wir kommen weiters zur Abstimmung über den Antrag des Finanzausschusses, seinen Bericht 1444 zur Kenntnis zu nehmen.

So Sie den Bericht zur Kenntnis nehmen wollen, bitte ich um ein entsprechendes Zeichen. – Dies geschieht durch die ***Mehrheit.*** Der Bericht ist damit ***zur Kenntnis genommen.***

Weiters gelangen wir zur Abstimmung über den Antrag des Finanzausschusses, seinen Bericht 1445 zur Kenntnis zu nehmen.

So Sie den Bericht zur Kenntnis nehmen wollen, bitte ich um ein entsprechendes Zeichen. – Dies ist die ***Mehrheit.*** Der Bericht ist ***zur Kenntnis genommen.***

Nun kommen wir zur Abstimmung über den Entwurf betreffend ein Bundesgesetz über die Zeichnung von zusätzlichen Kapitalanteilen bei der Multilateralen Investitions-Garantie Agentur samt Titel und Eingang in 1383 der Beilagen.

Für den Fall Ihrer Zustimmung bitte ich um ein entsprechendes Zeichen. – Dies erfolgt durch die Mehrheit. Angenommen.

Wir kommen daher sogleich zur dritten Lesung.

So Sie dem Entwurf auch in dritter Lesung zustimmen wollen, bitte ich um ein entsprechendes Zeichen. – Dies ist die ***Mehrheit.*** Ich stelle fest, der Gesetzentwurf ist somit in dritter Lesung ***angenommen.***

Wir kommen nun zur Abstimmung über den Entwurf betreffend ein Bundesgesetz, mit dem das Tabakmonopolgesetz 1996 und das Tabaksteuergesetz 1995 geändert werden, samt Titel und Eingang in 1447 der Beilagen.

Für den Fall Ihrer Zustimmung bitte ich um ein entsprechendes Zeichen. – Dieses Zeichen erfolgt durch die Mehrheit. Angenommen.

Wir kommen sogleich zur dritten Lesung.

So Sie dem Gesetzentwurf auch in dritter Lesung zustimmen wollen, bitte ich um ein entsprechendes Zeichen. – Dies ist gleichfalls die ***Mehrheit.*** Der Gesetzentwurf ist somit auch in dritter Lesung ***angenommen.***

Ich lasse nun über den Entwurf betreffend ein Bundesgesetz über die Veräußerung von unbeweglichem Bundesvermögen samt Titel und Eingang in 1412 der Beilagen abstimmen.

Für den Fall Ihrer Zustimmung bitte ich um ein entsprechendes Zeichen. – Dieses Zeichen erfolgt mit Stimmeneinhelligkeit, daher angenommen.

Wir kommen sogleich zur dritten Lesung.

So Sie dem Gesetzentwurf in dritter Lesung zustimmen wollen, bitte ich um ein entsprechendes Zeichen. – Dies ist gleichfalls ***stimmeneinhellig.*** Der Gesetzentwurf ist daher in dritter Lesung ***angenommen.***

11. Punkt

Bericht des Außenpolitischen Ausschusses über den Antrag 784/A (E) der Abgeordneten Peter Schieder, Werner Amon, Dr. Martin Graf, Dr. Martina Gredler, Mag. Terezija Stoisits und Genossen betreffend Menschenrechtsjahr 1998 (1434 der Beilagen)

12. Punkt

Bericht des Außenpolitischen Ausschusses über den Antrag 253/A (E) der Abgeordneten Mag. Dr. Heide Schmidt und Genossen betreffend die Menschenrechtssituation in Tibet (1435 der Beilagen)

Präsident MMag. Dr. Willi Brauneder: Wir gelangen nun zu den Punkten 11 und 12 der Tagesordnung, über welche die Debatte unter einem durchgeführt wird.

Ich sehe jetzt einmal nach, ob der Herr Berichterstatter im Saal ist. – Er ist nicht anwesend. *(Abg. **Schieder:** Aber der Ausschußvorsitzende ist hier!)* – Bitte. Gibt es einen Bericht des Ausschußvorsitzenden? – Keinen Bericht.

Wir treten sofort in die Debatte ein.

Zu Wort gemeldet ist Herr Abgeordneter Dr. Graf. 7 Minuten freiwillige Redezeitbeschränkung. – Bitte, Herr Abgeordneter.

19.11

Abgeordneter Dr. Martin Graf (Freiheitliche): Sehr geehrter Herr Präsident! Sehr geehrter Herr Minister! Es kommt nicht allzu oft vor, daß wir hier im Hause einen Fünf-Parteien-Antrag verhandeln, aber es ist in diesem Falle gelungen. Ich möchte auf der einen Seite mit einer gewissen Freude auf diese Entwicklung hinweisen, auf der anderen Seite möchte ich aber doch auch einen gewissen Beigeschmack nicht unerwähnt lassen. Mir ist schon klar: Die Genesis dieser Antragswerdung war natürlich so, daß man im "Jahr der Menschenrechte" und insbesondere auch im Jahr der österreichischen EU-Präsidentschaft eine gemeinsame parlamentarische Erklärung abgeben wollte, um auch gewisse Richtlinien hinsichtlich Außen- und Entwicklungspolitik des österreichischen Parlaments und damit auch eine Bindung des zuständigen Regierungsmitglieds zu erreichen.

Aber es gab auch einen zweiten Zugang zu dieser Problematik, und der hat sich im Februar dieses Jahres anläßlich einer Sitzung des Heimatpolitischen Beirates der Vertriebenenverbände ergeben, als sich Kollege Dietachmayr, Kollege Mühlbachler und meine Wenigkeit anläßlich dieser Sitzung gegenüber den Vertriebenenverbänden verpflichtet haben, zu versuchen, im Jahr unseres Vorsitzes in der EU beziehungsweise im "Jahr der Menschenrechte" und insbesondere auch im Hinblick auf die Vorsitztätigkeit einen gemeinsamen Menschenrechts-Antrag ins Parlament zu bekommen, der die Problematik der Vertriebenenverbände darzustellen beziehungsweise zu beleuchten versucht, um auch in dieser Frage eine Debatte hier im Hause durchzuführen und letztendlich auch einen weiteren Schritt setzen zu können.

In weiterer Folge – und das ist das Traurige an dieser Sache – ist aus dem Vertriebenen-Antrag – so möchte ich das nennen – leider nichts geworden, weil es außer diesem allgemeinen Menschenrechts-Antrag, den wir für gut halten und den wir selbstverständlich auch mittragen, letztendlich nichts gegeben hat. Leider Gottes stellt dieser Antrag den kleinsten gemeinsamen Nenner dar; mehr ist es nicht geworden.

Das Liberale Forum hat insofern reagiert – es war bei den Verhandlungen zu diesem Antrag auch vereinbart, daß es im Ausschuß Zusatzanträge gibt, aber auch im Plenum entsprechende Zusatzanträge verhandelt werden, um die Vielzahl der Menschenrechtsverletzungen, die in jüngster Vergangenheit, aber auch bereits länger zurück passiert sind, darzustellen und zu beleuchten –, das LIF hat also insofern reagiert, als es für ihre Zielgruppe, die Tibetaner – das ist gut und richtig, und das kann man durchaus auch unterstützen – einen Antrag eingebracht hat, und wir selbst haben uns natürlich stark gemacht für die Vertriebenenproblematik. Das ist ja auch in diesem Haus keine Neuigkeit mehr, und ich glaube, es überrascht Sie alle nicht, wenn wir auch heute einen Zusatzantrag einbringen, den ich gleich vorlesen möchte:

Zusatzantrag

der Abgeordneten Dr. Graf und Kollegen zum Bericht des Außenpolitischen Ausschusses (1434 der Beilagen) über den Antrag 784/A(E) der Abgeordneten Schieder, Amon, Dr. Graf, Dr. Gredler, Mag. Stoisits und Genossen betreffend Menschenrechtsjahr 1998

Der Nationalrat wolle beschließen:

"Der dem Ausschußbericht 1434 der Beilagen beigedruckten Entschließung wird im fünften Absatz der

Entschließung mit dem Wortlaut: 'Die Bundesregierung wird ersucht, sowohl auf multilateraler wie auch auf bilateraler Ebene konsequent für den Schutz der Minderheiten einzutreten und insbesondere auf die Umsetzung der europäischen Charta der Regional- und Minderheitensprachen sowie der Rahmenkonvention des Europarates zum Minderheitenschutz zu drängen', folgender Satz angefügt:

"Die Bundesregierung wird weiters ersucht, im Rahmen der EU-Beitrittsverhandlungen mit den Beitrittskandidatenländern sicherzustellen, daß bestehende menschen- und völkerrechtswidrige Bestimmungen beziehungsweise Dekrete aufgehoben werden."

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Hohes Haus! Wir haben hier im Hause diese Dekrete schon des öfteren diskutiert. Insbesondere vertreten ja das Außenministerium und der Außenminister die Linie, daß man alles auf bilateraler Ebene abzuhandeln habe. Es freut mich, daß in diesem Menschenrechts-Antrag immerhin bereits feststeht, daß auf ***multilateraler*** Ebene etwas geschehen soll in diese Richtung; es ist zwar allgemein gehalten, aber die Zielrichtung ist klar.

Herr Minister! Wir werden das heute beschließen, auch wenn es vielleicht ohne unseren Zusatzantrag angenommen wird. Es wird nämlich doch deutlich gemacht, daß auch Sie aufgefordert sind, in Zukunft auf ***multilateraler*** Ebene für die vertriebenen Volksdeutschen, im Sudetenland und so weiter, einzutreten. *(Beifall bei den Freiheitlichen.)*

In diesem Punkt möchte ich nur die Begründung des Berichtes hernehmen, in der es heißt:

"Der Vertrag von Amsterdam bestätigte dann ausdrücklich, daß die Europäische Union auf die Grundsätze der Freiheit, Demokratie, Achtung der Menschenrechte und Grundfreiheiten sowie Rechtstaatlichkeit gegründet ist. Die Achtung dieser Grundsätze wurde auch als Bedingung für jeden Beitritt zur Europäischen Union festgeschrieben. Dies entspricht auch den entsprechenden Forderungen in den österreichischen Grundsatzpositionen zur Regierungskonferenz. Mit diesen vertraglichen Grundlagen ergeben sich somit hinsichtlich der Menschenrechte auch Leitlinien für die gemeinsame Außen- und Entwicklungspolitik, die Österreich als EU-Präsidentschaft umzusetzen haben wird."

Herr Minister! Ich stelle fest: In Fragen der vertriebenen Sudetendeutschen, aber auch Slowenen sind Sie in diesem Punkt bis dato untätig gewesen, und jetzt erhalten Sie in Ihrer Amtsführung aufgrund dieses Antrages mehr oder weniger noch einen Stoß, jetzt, in den letzten verbleibenden Wochen und Monaten endlich Tätigkeiten zu entwickeln, so wie wir sie uns letztlich auch vorstellen.

Ich glaube, man muß aber noch einen zweiten Aspekt betrachten, weil ja auch hier der Internationale Strafgerichtshof angeführt ist. Herr Minister! Wir haben eine Anfrage an Sie gestellt, die Sie ganz klar und deutlich beantwortet haben: Die Gerichtsbarkeit des Internationalen Strafgerichtshofs erstreckt sich ausschließlich auf Delikte, die nach dem Inkrafttreten des Statuts begangen werden. – Wir wissen nicht, wann dieses Statut in Kraft treten wird – darin sind wir uns einig –, aber mit dieser Formulierung werden wir uns nicht auf Dauer anfreunden. Wir meinen, daß Verbrechen wider die Menschheit, aber auch Kriegsverbrechen niemals verjähren und dadurch auch einer gerechten Strafe zugeführt werden müssen.

Insbesondere auch im Zusammenhang mit Beitrittsländern muß man feststellen: Wenn Tschechien zum Beispiel der Europäischen Union beitreten wird und die Amnestiegesetze gefallen sein werden, müssen wir dann selbstverständlich immer und überall auch die verantwortlichen Verbrecher für die Unrechtstaten wider die Sudetendeutschen zur Verantwortung ziehen, denn Unrecht – und darin sind wir uns alle einig – verjährt nicht, und es muß letztendlich eine gerechte Strafe auch für diese Leute geben.

Folgendes möchte ich Ihnen abschließend ausdrücklich als Botschaft mitgeben: daß wir uns in diesem Punkt von Ihnen letztlich erwarten, daß Sie sich stark machen für die Interessen der vertriebenen Sudetendeutschen und endlich im Sinne unserer Bevölkerung handeln. – Danke schön. *(Beifall bei den Freiheitlichen.)*

19.19

Präsident MMag. Dr. Willi Brauneder: Der soeben verlesene Zusatzantrag ist ordnungsgemäß eingebracht, entsprechend unterstützt und steht daher mit in Verhandlung.

Zu Wort gemeldet ist Herr Abgeordneter Dr. Spindelegger. 8 Minuten freiwillige Redezeitbeschränkung. – Bitte, Herr Abgeordneter.

19.19

Abgeordneter Dr. Michael Spindelegger (ÖVP): Herr Präsident! Herr Vizekanzler! Meine Damen und Herren! Ich möchte mich kurz mit diesen beiden Tagesordnungspunkten auseinandersetzen und darf gleich zum ersten sagen: Auch ich schätze es, daß alle fünf Fraktionen einen solchen Antrag eingebracht haben, aber ich schätze es ***nicht,*** wenn man glaubt, daß wir damit nur die Frage der Vertriebenen in der Vergangenheit gemeint haben, sondern wir wollten damit natürlich die Menschenrechte in umfassendem Sinn behandeln. Ich glaube, diesbezüglich sind wir der gleichen Meinung. *(Beifall bei der ÖVP. – Abg. Dr.* ***Graf:*** *Das steht ja im Antrag!)*

Meiner Überzeugung nach ist entscheidend, was man auf dem Menschenrechtssektor auch in Zukunft tun kann, was wir verbessern können – denn jedes Jubiläum soll nicht Anlaß dafür sein, lediglich vergangene Erfolge zu feiern, die zweifellos da waren, sondern zu überlegen, was man tatsächlich für die nächsten Jahre einbringen kann.

Und da scheinen mir zwei Fragen von großer Bedeutung zu sein. Die eine betrifft das, was sich gerade bei uns in Europa in Richtung Menschenrechtssektor tut: Wir konnten vor zwei Tagen erleben, daß in Straßburg ein neuer Gerichtshof für Menschenrechte eröffnet wurde, der nunmehr ein anderes Verfahren vorsieht, das vor allem darin gipfelt, daß sich jeder Bürger unmittelbar an den Gerichtshof wenden kann und nicht mehr vorweg in einer Kommission eine Art Vorausscheidung erfolgt, wodurch das alles ja oft viele Jahre lang dauert.

Das halte ich für eine qualitätsmäßige Steigerung, wobei dabei aber sicherlich auch zu berücksichtigen ist, daß wir mit sehr vielen Fällen zu kämpfen haben und daher auch eine Art Regulativ geschaffen werden muß. – Wenn man vergleicht: 1985 gab es 2 800 und im letzten Jahr 12 500 Beschwerden, so erkennt man die ungeheure quantitative Mehrbelastung. Es können vielleicht nicht alle in ihrer Beschwerde beim Gerichtshof unmittelbar recht bekommen, und es werden sicherlich viele darunter sein, die, weil die nationalen Instanzen ausgeschöpft sind, jetzt noch in eine internationale Instanz gehen.

Dennoch halte ich es qualitativ für ganz wichtig, daß sich jeder Bürger, der sich in seinen Menschenrechten, die in der EMRK verankert sind, bedroht sieht, unmittelbar an einen internationalen Gerichtshof wenden kann.

Die zweite Frage, die damit in Zusammenhang steht, ist, daß wir Österreicher auch dazu verpflichtet sind, etwas Entscheidendes in Richtung Schutz des Kindes zu tun. Deshalb bin ich sehr dankbar dafür, daß die Bundesregierung jetzt in der Zeit der EU-Präsidentschaft diesem Schutz des Kindes auch international zu einem Durchbruch verhelfen wird. *(Beifall bei der ÖVP.)*

Meine Damen und Herren! Wenn wir uns ansehen, daß zwar beinahe alle Staaten der Welt die Kinderrechtskonvention ratifiziert haben, aber dennoch der Mißbrauch des Kindes in Form von sexueller Ausbeutung, in Form von Kinderarbeit oder Mißbräuchen und auch in Form von Gewalt in Familien heute ein Ausmaß annimmt, das unbeschreiblich ist, dann ist es – würde ich wirklich sagen – auch eine ***Verpflichtung*** der Präsidentschaft Österreichs im Rahmen der Europäischen Union, diesbezüglich Maßnahmen zu setzen. Und diese Maßnahmen sind gesetzt worden. Ich bin zuversichtlich, daß die beiden Zusatzprotokolle zu dieser Kinderrechtskonvention jetzt wirklich auch wieder betrieben werden. Sie stecken fest in Verhandlungen, aber es wird gelingen, daß dieser Karren wieder flott wird. Das sind wir allen Kindern, die derzeit weltweit bedroht, ausgebeutet und mißbraucht werden, schuldig. Das halte ich für einen wesentlichen qualitativen Fortschritt. *(Beifall bei der ÖVP.)*

Meine Damen und Herren! Ich möchte jetzt noch auf einen weiteren Punkt eingehen, der ebenfalls heute auf der Tagesordnung steht und der einen Antrag betreffend Tibet beinhaltet. Für mich ist auch klar, daß die österreichische Außenpolitik es als Interesse angesehen hat, Tibet im Rahmen der Menschenrechtssituation in China zu behandeln und zu versuchen, die Menschenrechte dort wieder zu verbessern: in Richtung einer gewissen Autonomie für Tibet, in Richtung einer Möglichkeit, daß Religion, Kunst und Kultur in Tibet erhalten bleiben.

Ich meine, daß der Herr Außenminister in diesem Jahr ganz entscheidende Schritte dazu gesetzt hat, die möglicherweise auch zu einem wirklich historischen Durchbruch in den nächsten Jahren beitragen können. Ich darf daran erinnern: Im März 1998 hat Dr. Schüssel als erster westlicher Außenminister nicht nur China, sondern auch

Tibet besucht und ist dort in einen Dialog eingetreten, bei dem er die Frage Tibet ganz ernsthaft verhandelt hat.

Zum zweiten: Im Mai 1998 war auf Initiative Österreichs in der Präsidentschaft die EU-Troika in Tibet zu einer Mission und hat wichtige Ergebnisse, auch im Sinn eines Dialogs, mitgebracht.

Zum dritten: Als der Dalai Lama im Juni dieses Jahres in Wien war, hat ihn der Herr Außenminister nicht nur empfangen, sondern mit ihm auch Gespräche darüber geführt, wie man einen Dialog Chinas mit dem Dalai Lama vorantreiben kann. Nunmehr ist dieser Menschenrechtsdialog zwischen China und der EU mit diesem Rechtsseminar ein Stück weiter vorwärtsgekommen. Wie man nun hört – und ich bin sehr zuversichtlich, daß das nicht nur Gerüchte sind, sondern daß das tatsächlich eine Möglichkeit ist –, gibt es so etwas wie einen Dialog zwischen dem Dalai Lama und der chinesischen Führung, der in die Richtung einer gewissen Autonomie vorangetrieben wird, der in die Richtung einer Erhaltung der Identität der Kultur und der Religion in Tibet seine Auswirkungen haben wird.

Wenn diese Signale stimmen – und davon gehe ich aus –, möchte ich wirklich sagen, daß es eine österreichische Initiative unter unserer EU-Präsidentschaft war und auch ein Verdienst unseres Außenministers, daß in so einer Frage zu einem Ergebnis führen kann, das wir alle nicht vorhergesehen hätten. Dafür, Herr Bundesminister, darf ich Ihnen wirklich Anerkennung aussprechen. *(Beifall bei der ÖVP.)*

Meine Damen und Herren! Da wir im Außenpolitischen Ausschuß diskutiert haben, ob es sinnvoll wäre, künftig stärker auf Einzelfragen einzugehen: Ich meine, daß da ein Beispiel gesetzt wurde, das beweist, daß nicht eine Resolution, daß nicht eine große Diskussion in einem nationalen Parlament zu einem Durchbruch verhelfen kann, sondern daß diese Werke und Taten, die dabei gesetzt wurden, ein viel wirksameres Mittel sind als alle großen Beschlüsse und große Worte. Ich glaube, wir sollten in dieser Richtung weitergehen. – Danke. *(Beifall bei der ÖVP)*

19.27

Präsident MMag. Dr. Willi Brauneder: Weiters zu Wort gemeldet ist Frau Abgeordnete Dr. Gredler. – Bitte, Frau Abgeordnete.

19.27

Abgeordnete Dr. Martina Gredler (Liberales Forum): Herr Präsident! Herr Vizekanzler! Meine Damen und Herren! Ich möchte den letzten Punkt der Ausführungen meines Vorredners aufgreifen. Er hat in bezug auf die Resolution von Tibet gesagt, daß Werke und Taten viel wirksamer sind. Ich möchte auch gleich den Erstredner, Herrn Graf, korrigieren: Wir sind nicht erst aus Anlaß des "Jahres der Menschenrechte" aktiv geworden, sondern der Antrag, um den es geht, ist von den Abgeordneten Dr. Schmidt, Dr. Frischenschlager und Motter eingebracht worden. Dr. Frischenschlager ist seit zwei Jahren nicht mehr hier im Hause, und das ist der Nachweis dafür, daß dieser Antrag seit über zwei Jahren im Plenum nicht behandelt wurde. Und das ist etwas, das uns schon sehr irritiert hat. Man hat es zwar geschafft, den Antrag einmal auf der Tagesordnung zu haben, aber eine Debatte, die eine Behandlung im Plenum zu einem früheren Zeitpunkt ermöglicht hätte, war nicht möglich. Und das halte ich für sehr bedauerlich. *(Beifall beim Liberalen Forum. – Abg. Dr. **Graf:** Frau Kollegin, wissen Sie, wann das mit Tibet war? Das war 1946 bis 1948!)*

Tibet ist ein Gebiet, an dem man wirklich festmachen kann, wo es Entwicklungen gibt. Es hat in der letzten Zeit bestimmte Entwicklungen gegeben, das gebe ich zu. Es hat Herr Jospin Herrn Jiang Zemin einen Brief des Dalai Lama übermittelt, in dem der Dalai Lama selbst sagt, daß er Gespräche mit Peking ohne Vorbedingungen anstrebt und daß er ausdrücklich nach Selbstverwaltung und nicht nach Unabhängigkeit strebt. *(Abg. Dr. **Graf:** Sie haben von den Sudetendeutschen gelernt!)*

Ich bin sehr froh darüber, daß es jetzt einen Dialog gegeben hat. Gleichzeitig muß man aber auch sagen, daß in den letzten neun Monaten 2 300 Flüchtlinge aus Tibet gezählt wurden, die aufgrund politischer Repression geflüchtet sind.

Man muß doch sehen, was dort passiert: Geburtenkontrolle, forcierte Ansiedlung von Chinesen, Diskriminierungen auf dem Bildungssektor, der Schutz der Umwelt wird mißachtet, es werden Wälder in großem Maße vernichtet, die Lagerung von toxischen und radioaktiven Substanzen erfolgt in Tibet, und die Mißachtung von Menschenrechten ist erst recht ein Thema.

Ich habe heute erfahren, daß ein Student der Ethnomusik verhaftet und zu 18 Jahren Gefängnis verurteilt wurde, und zwar deswegen, weil er sich erlaubt hat, in Tibet Tänze und musikalische Darbietungen von Tibetanerinnen und Tibetern zu filmen. Ich frage mich wirklich, auf welcher Grundlage man jemanden verhaftet, der Filme dreht, weil er das aus einem wissenschaftlichen Interesse heraus macht. – Das sind Dinge, die man in diesem Zusammenhang wirklich auch besprechen muß.

Ich bin sehr froh darüber, daß der Herr Vizekanzler im Rahmen seiner Möglichkeiten Initiativen ergriffen hat, aber es ist uns völlig klar, daß dieses Volk seit langem darauf hofft und bangt, daß es Unterstützung seitens der westlichen Welt bekommt. In diesem Zusammenhang möchte ich dem Plenum zur Kenntnis bringen, daß in den USA, und zwar sowohl im Senat als auch im Abgeordnetenhaus, zig Resolutionen in bezug auf Tibet verabschiedet wurden, daß in Deutschland, in Liechtenstein, in Italien, in Belgien, in Kanada, in nordischen europäischen Staaten mehrfach entsprechende Resolutionen eingebracht wurden, daß natürlich die Vereinten Nationen vieles auf diesem Sektor verabschiedet haben und daß das Europäische Parlament dem mit ungefähr zehn Resolutionen sicherlich nicht nachsteht.

Angesichts dessen kann ich den Äußerungen des Herrn Kollegen Spindelegger wirklich nicht folgen, wenn er meint, Werke und Taten seien viel wirksamer. Ich glaube, daß diese multiplen Resolutionen, die in Parlamenten verfaßt wurden, dazu gedient haben, daß es eine Öffnung gibt, daß daraus eine Dialogbereitschaft seitens Chinas resultiert. Und das halte ich für das Wichtige. Ich schäme mich eigentlich dafür, daß das österreichische Parlament erst 1998, und zwar Ende 1998, überhaupt eine solche Resolution auf der Tagesordnung hat.

Ich möchte nicht glauben, daß Sie diese Resolution ablehnen werden, aber ich fürchte es. Und das wäre wirklich sehr bedauerlich, da wir uns doch auf eine gute Resolution zum "Jahr der Menschenrechte" verständigt haben. Es ist das wirklich ein Bemühen über alle Grenzen hinweg gewesen, eine gemeinsame Resolution zu verfassen.

Meine Kritik geht in die Richtung, daß man es nicht geschafft hat, einzelne Länder tatsächlich beim Namen zu nennen. Wenn man über Mißachtung von Menschenrechten spricht, dann muß man auch bereit sein, Länder, Regionen, Bewegungen zu benennen, die auf Menschenrechten mit Füßen herumtrampeln. Und das fehlt mir eindeutig in dieser Resolution. Ich hätte mir gewünscht, daß wir über Fraktionsgrenzen hinweg Bereitschaft zeigen, uns zu trauen, solche Dinge beim Namen zu nennen. *(Beifall beim Liberalen Forum sowie der Abg. Dr.* ***Petrovic.****)*

Es ist sozusagen eine Softversion der Menschenrechte und der Kritik an der Verletzung derselben, die wir haben. Es ist das homöopathisch verdünnt, und ich hoffe nur, daß es irgendeine Wirksamkeit bringen wird. Es ist vieles nicht vorhanden: Die "Kindersoldaten", ein gemeinsames Anliegen, das wir vielleicht demnächst behandeln werden können, sind explizit nicht in der Form enthalten, wie wir uns das wünschen würden. Es ist das Problem der Beschneidung überhaupt nicht berücksichtigt; ein Thema, das wir hoffentlich bald in Angriff nehmen werden. Es müßte dazu kommen, daß Frauen mit ihren Töchtern nach Österreich flüchten können und hier Asyl bekommen, weil die Mädchen oder die Frauen selbst von Beschneidungen bedroht sind. Ich hoffe, daß wir uns zumindest zu diesem Minimalkonsens hier im Hause finden können. Es ist doch wirklich nicht zuviel verlangt, daß wir einer Handvoll Frauen, die überhaupt die Möglichkeit hat zu flüchten, eine Heimat in Österreich bieten. Das ist wirklich nicht zuviel verlangt! *(Beifall beim Liberalen Forum sowie der Abg. Dr.* ***Petrovic.****)*

Folgendes möchte ich im Zusammenhang mit den Menschenrechten auch noch ventilieren: Wir brauchen so schnell wie möglich die Ratifikation des Gründungsstatutes des internationales Gerichtshofes. Ich glaube und hoffe, daß Sie, Herr Schieder, als Vorsitzender das so schnell wie möglich hier im Nationalrat behandeln lassen, damit es zur Ratifikation kommt und dieser internationale Strafgerichtshof wirklich in jenem Maße arbeiten kann, wie das vorgesehen ist.

In diesem Zusammenhang, Herr Bundesminister, würde ich mir wünschen, daß Sie auch in jenen Ländern, die für uns sehr wichtig sind, nämlich USA, China und Indien, einen Druck dahin gehend ausüben, daß auch diese das ratifizieren. Ich glaube nämlich, daß ein internationaler Strafgerichtshof nicht ohne diese populationsreichen Länder auskommen kann. Die muß man mit an Bord nehmen, und ich hoffe, daß Sie alles tun werden, um das zu erreichen.

Ein Wort noch zur Initiative H 8, also Humanitarian Eight. Das ist eine sehr gute Initiative, und ich bin froh darüber, daß Österreich Mitglied dieser Initiative ist. Diese Initiative resultiert aus einer Überlegung zwischen Kanada und

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Norwegen heraus, und zwar aus der Lysœn declaration, die am 11. Mai 1998 proklamiert wurde. Damals wurde zwischen diesen zwei Ländern eine Vereinbarung getroffen, daß es in puncto Menschenrechten, in puncto Beachtung der Sicherheitsstrukturen, die man für Menschen braucht – also etwa Konfliktprävention und ähnliches – Zusammenarbeit geben soll.

Ich glaube, daß das eine sehr wichtige Initiative ist. Ich würde mir nur wünschen, daß es nicht bei den H 8 bliebe, sondern daß alle Länder der Europäischen Union mittun, und zwar deswegen, weil derzeit unklar ist, ob diese H-8-Positionen, die eingenommen werden, den Beschlüssen, die in der Europäischen Union gefaßt werden, vorgeschaltet oder nachgeschaltet werden. Da würde ich mir wünschen, daß es während der österreichischen EU-Präsidentschaft zu einer Klärung käme, daß diese Gruppe erweitert werden kann.

Letztes Wort: Ich bin froh darüber, daß wir über die Menschenrechte in der letzten Periode des "Jahres der Menschenrechte" reden. Ich bedauere, daß wir das nicht im Jänner zustande gebracht haben, obwohl wir uns damals alle darauf geeinigt hatten. Immerhin haben wir es jetzt geschafft. Wenn Sie nun auch noch die Tibet-Resolution unterstützten, zeigten Sie damit, daß Sie wirklich auch bereit sind, dafür zu kämpfen. – Danke. *(Beifall beim Liberalen Forum sowie der Abgeordneten Dr.* ***Petrovic*** *und Mag.* ***Posch.****)*

19.36

Präsident MMag. Dr. Willi Brauneder: Zu Wort gemeldet ist Herr Abgeordneter Schieder. 6 Minuten freiwillige Redezeitbeschränkung. – Bitte, Herr Abgeordneter.

19.36

Abgeordneter Peter Schieder (SPÖ): Herr Präsident! Herr Vizekanzler! Meine sehr geschätzten Damen und Herren! Als Vorsitzender des Außenpolitischen Ausschusses möchte ich bestätigen, daß tatsächlich alle Fraktionen ernsthaft an dieser Resolution interessiert waren, daß in dieser Frage eine gemeinsame Auffassung gegeben war. Es stimmt auch, daß der Impuls, es in diesem Jahr zu machen, von Kollegin Gredler ausgegangen ist. Ich stehe nicht an, hier auch öffentlich zu sagen, daß der Druck von ihr gekommen ist, daß aber die Bereitschaft von allen gegeben war, das gemeinsam zu machen. Und es stimmt auch, daß es noch darüber hinausgehende einzelne Wünsche gegeben hat, die eingebracht, behandelt, angenommen oder abgelehnt werden.

Ich glaube, es ist das eine gute Tradition, die wir in Menschenrechtsfragen auch hier im Hause pflegen. Es ist das eine Frage, hinsichtlich der es auch in der österreichischen Bundesregierung immer ein gemeinsames Auftreten gab. Es gab in wesentlichen Fragen ein sehr starkes Auftreten des Außenamtes, es gab gemeinsam mit dem Justizressort ein starkes Auftreten auch in den Europaratsfragen, und ich glaube, es ist gut, wenn unser Land deutlich sagt, wofür es steht und was es für richtig hält.

Ich möchte zweitens, da ich vorgestern ebenfalls beim Europarat bei der Einrichtung und beim Inkrafttreten des Ständigen Europäischen Gerichtshofes für Menschenrechte anwesend war, sagen, daß ich sehr froh darüber bin, daß es dazu gekommen ist. Das zeigt nämlich, daß die Worte, die in einer Entschließung enthalten sind, immer auch durch Taten umgesetzt werden müssen, und durch diesen einheitlichen Gerichtshof, durch den Monitoring-Prozeß und durch andere Maßnahmen ist im Europarat etwas geschaffen worden, womit er konkret und mit Druck Länder und Regierungen dazu anhält, sich analog den Grundsätzen, die wir aufgestellt haben, zu verhalten. *(Beifall bei der SPÖ.)*

Ich glaube, das ist gut, und ich bin sehr froh darüber, daß der Europarat in diesem Bemühen immer sehr deutlich unterstützt worden ist.

Ein bißchen traurig bin ich, Herr Minister – das möchte ich auch sagen –, daß es gerade unter den Augen der österreichischen Präsidentschaft passiert ist, daß in zwei wichtigen Bereichen, nämlich beim Agieren im Kosovo und bei der Frage "Friends of Albania", der Europarat ein bißchen vergessen wurde, indem er einmal ganz draußen gelassen und einmal in die zweite Reihe abgedrängt wurde. Ich weiß schon, man hat da sehr auf die Legionen geschaut, und der Europarat hat keine traditionellen Legionen. Aber genau Menschenrechte, Monitoring, das Verfahren, die Grundsätze – all das sind doch gerade auf diesem Gebiet auch Legionen, auf die es ankommt. Ich wäre daher sehr dankbar dafür, wenn das noch ausgebügelt, in Ordnung gebracht werden könnte, indem man auch den Europarat mit seiner Menschenrechtstradition in diesen Fragen entscheidend einbindet. *(Beifall bei der SPÖ.)*

Das Dritte, was ich erwähnen möchte, meine sehr geschätzten Damen und Herren, ist folgendes: Ich glaube, die Erklärung ist gut und abgerundet. Daher bin ich der Meinung, sie sollte jetzt nicht mit einzelnen Punkten Schwerpunkte setzen, die dann dazu führen, daß man sagt, andere Fragen würden nicht als gleich wichtig angesehen.

Ich glaube auch, daß Kollege Spindelegger sehr recht gehabt hat, nämlich erstens in der Darstellung, wie gut das ist, was in China hinter den Kulissen geschieht, und zweitens auch mit dem Hinweis, daß es gerade in den Menschenrechtsfragen bestimmte Momente gibt, da man Transparente tragen muß, und manchmal Momente, da man die Transparente bewußt nicht trägt, weil man gerade Verhandlungserfolge erzielen kann. Darum ist es, so glaube ich, richtig, Frau Kollegin Gredler, wenn wir hier nicht jene Maßnahmen setzen, die Sie zur Beschlußfassung vorschlagen, sondern wenn wir bei der Resolution in der vorbereiteten Form bleiben.

Kollege Ofner! Zu den Vorschlägen, die von Ihnen kommen, möchte ich sagen: Sie werden in der letzten Debatte schon bemerkt haben, daß in dieser Frage mit mir durchaus zu reden ist und ich auch bereit bin, hier Maßnahmen zu setzen. Ich glaube jedoch nicht, daß dieser Schwerpunkt heute gesetzt werden soll. Aber das soll keine Ausrede, kein Verschieben auf den Sankt-Nimmerleins-Tag sein. Ich bin dafür, daß wir in dieser Angelegenheit etwas machen. *(Beifall bei der SPÖ.)*

In der Frage der furchtbaren Beschneidung von Frauen werden noch Initiativen gesetzt, und ich glaube, da können wir uns finden.

Ich bin auch sehr froh darüber, daß nun der Versuch läuft, zu einer Allparteienentschließung in der Frage der wirtschaftlichen Hilfe für Mittelamerika zu kommen. Die Menschenrechte sind ganz, ganz wichtig, es ist aber auch wichtig, daß die Menschen nicht der Chance beraubt werden, ihr Leben zu retten. – Ich danke sehr herzlich. *(Beifall bei der SPÖ.)*

19.40

Präsident MMag. Dr. Willi Brauneder: Zu Wort gemeldet ist Herr Abgeordneter Dr. Ofner. Freiwillige Redezeitbeschränkung: 4 Minuten. – Bitte, Herr Abgeordneter.

19.41

Abgeordneter Dr. Harald Ofner (Freiheitliche): Herr Präsident! Herr Vizekanzler! Meine Damen und Herren! Vier Minuten für die Menschenrechte – das ist symbolhaft wenig.

Es drängen sich mir einige Gedanken auf. Ich habe das Gefühl, daß zwar vielen Österreichern und allen hier im Saale Anwesenden, überhaupt allen Abgeordneten, die Menschenrechte mit allem, was dazugehört, sehr wichtig sind, daß man aber dazu neigt, sich eher um Menschenrechte am anderen Ende der Welt zu kümmern als unmittelbar vor der Haustür, zumal im eigenen Land. Da ist man ja überhaupt vorsichtig.

Wir werden – ich schicke es voraus – der Tibet-Resolution, dem Entschließungsantrag der Liberalen, zustimmen. Trotzdem scheint es mir symptomatisch zu sein, daß auch den Liberalen als Schwerpunkt ihrer diesbezüglichen Tätigkeit nichts in der Umgebung Österreichs einfällt, nichts in Europa überhaupt, sondern *(Abg. Dr. **Gredler:** Das ist ein alter Antrag! Der ist drei Jahre alt, bitte!)* – ich weiß es schon, und ich habe ja schon gesagt, wir stimmen dafür – Tibet fällt uns ein! Es gäbe sehr viele parallele Sachen in unserer Nähe *(Abg. Dr. **Gredler:** Mir fällt vieles ein!)*, die wir auch zu Fahnenfragen machen sollten.

Ähnlich ist es mit den USA und mit Kanada. Bis vor ungefähr 100 Jahren haben sie dort mit von der Regierung ausgesetzten Kopfquoten pro Indianerskalp – und zwar 165 Dollar für jeden Männerskalp und 90 Dollar für jeden Frauen- und Kinderskalp – binnen weniger Jahrzehnte 13 Millionen Indianer ausgerottet. Aber um die noch verbliebenen Indianer kümmern sie sich nur im negativen Sinne: Die werden von einem Winkerl einer Reservation in die andere gejagt, wenn man irgendwo einen Bodenschatz zu finden glaubt, den man unbedingt brauchen muß, wie die Leute annehmen.

Aber an Tibet, da sind die US-Amerikaner und die Kanadier auch sehr interessiert. Das ist weit weg. Da kann man für alles sein. Man wird nie zur Nagelprobe gebeten, ob man wirklich etwas umsetzt. *(Abg. **Smolle:** Es ist doch nichts Falsches, sich für die Menschenrechte einzusetzen!)* Das ist viel besser, als in den USA selbst solche

Dinge zu machen. *(Beifall bei den Freiheitlichen.)*

Damit bin ich bei den Problemen in Europa selbst. Ich glaube, daß die Chancen, auf dem Sektor der Menschenrechte weiterzukommen, so günstig sind wie kaum jemals zuvor und daß sie in Relation dazu nur recht bescheiden genützt werden. Denn noch immer ist es so, daß wir beobachten müssen, daß etwa Volksgruppenrechte keine wirklich populäre Sache sind. Noch immer ist das so, wir haben es vor etlichen Monaten hier im Hause erlebt, daß erfreulicherweise ein erstes gesamteuropäisches Volksgruppenpapier – ich weiß nicht, ob "ratifiziert" der richtige Ausdruck war – beschlossen werden konnte, aber es war der wirklich kleinste gemeinsame Nenner, den man sich vorstellen kann. Denn es gab hier ein paar Nationen, die überhaupt nichts von Volksgruppen wissen wollten. Die Negativliste ist rasch aufgezählt – sie soll es sein –: die Franzosen, die Bulgaren und die Türken.

Es gab andere, die sehr selektive Wahrnehmungsmöglichkeiten auf diesem Sektor zeigen, etwa die Slowenen. Bei denen gibt es nach wie vor nur die Italiener, die Roma und Sinti und die Ungarn, aber an die Altösterreicher erinnert man sich lieber nicht, denen läßt man nichts zukommen.

Und wir schauen da zu. Wir engagieren uns für alle möglichen Leute – zu Recht – in anderen Erdteilen, aber vor der eigenen Haustüre sind wir zu vornehm, um uns wirklich zu engagieren.

Bevor das rote Licht hier auf dauerndes Leuchten übergeht, möchte ich noch folgendes sagen: Wir Freiheitlichen sehen es als eines unserer vornehmsten Anliegen, mit dazu beizutragen, daß ein umfassendes Volksgruppenrecht für ganz Europa endlich Wirklichkeit wird, ein verbindliches Volksgruppenrecht und ein durchsetzbares Volksgruppenrecht *(Beifall bei den Freiheitlichen),* und nicht ein Wischiwaschi-Recht, das man zwar, weil nichts Besseres da ist, auch zur Kenntnis nimmt, das aber eigentlich nichts wirklich Substantielles enthält. Das muß uns ein Anliegen sein, meine Damen und Herren! *(Beifall bei den Freiheitlichen.)*

19.44

Präsident MMag. Dr. Willi Brauneder: Zu Wort gemeldet ist Frau Abgeordnete Dr. Petrovic. Freiwillige Redezeitbeschränkung: 5 Minuten. – Bitte, Frau Abgeordnete.

19.45

Abgeordnete MMag. Dr. Madeleine Petrovic (Grüne): Herr Präsident! Herr Bundesminister! Hohes Haus! Das "Jahr der Menschenrechte" macht irgendwie darauf aufmerksam, daß auch die Menschenrechte keine Selbstverständlichkeit sind und daß es daher eines eigenen Gedenkjahres bedarf, obwohl so viele Jahre nach dem Ende des Zweiten Weltkrieges und nach der Gründung der Vereinten Nationen doch große Hoffnung bestand, daß zumindest die Einhaltung zentraler Freiheitsrechte, des Rechtes auf körperliche Unversehrtheit eine Selbstverständlichkeit sein sollte. – Es ist das aber keine Selbstverständlichkeit, und deshalb sind auch solche Gedenkjahre und Resolutionen von Parlamenten notwendig, obwohl dort immer wieder Selbstverständlichkeiten, die in der Praxis dann eben doch keine sind, festgehalten werden.

Was ich für wichtig halte, ist, daß dieses Parlament offenbar – und ich teile diese Absicht – mit dieser Beschlußfassung auch klarstellt, daß Menschenrechtsverletzungen keine inneren Angelegenheiten sind. Sie können es nicht sein.

Ich finde es auch wichtig, hervorzuheben – und das soll man betonen, denn das ist nicht immer so klar –, daß ein Anprangern von Menschenrechtsverletzungen, eine Parteinahme für die Verletzten und deren Rechte sehr wohl und problemlos mit der österreichischen Neutralität in ihrer historischen Konzeption und in einem ganz aktuellen Verständnis vereinbar ist, ja vielleicht nicht nur vereinbar: Ich glaube sogar, daß die Neutralität eine ***Voraussetzung*** dafür ist, die Einhaltung der Menschenrechte besonders eindringlich zu monieren. *(Abg. Dr. **Mock:** Das ist **Ihre** Interpretation!)* Ich halte es auch für richtig, über internationale Strafsanktionen, über Gerichtsbarkeit zu reden, denn es soll den Tätern von heute und morgen klar sein, daß sie irgendwann einmal zur Verantwortung gezogen werden – oder zumindest gezogen werden können.

Freilich ist und wäre es besser, präventiv zu verhindern, daß diese Gerichte überhaupt tätig werden müssen. Ich glaube, daß es da sehr verschiedene Rollen im internationalen Kontext geben kann. Ich meine, daß die österreichische Rolle die eines Frühwarnsystems im Falle von Konflikten und Krisen sein und auch im Bereich der

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humanitären Hilfe liegen sollte.

Es wäre, glaube ich, zur Ausfüllung von Entschließungen des Parlamentes auch notwendig, daß wir im eigenen Lande kritischer beurteilen, wie es hier mit den Menschenrechten steht. Es ist nicht so, Herr Abgeordneter Ofner, daß die Situationen im eigenen Land nicht gesehen werden. Es ist nur leider oftmals kein politischer Konsens vorhanden, auch weil der Eindruck entsteht, die Administrationen handelten ohnedies korrekt. *(Abg. Dr.* ***Graf:*** *Das hat aber Kollege Ofner gesagt!)* Es ist aber nicht in allen Fällen so.

Ich weiß nicht, wie die österreichische Bevölkerung den folgenden Fall beurteilen würde: Es geht um ein Ehepaar aus Kosova. Der Mann ist seit 1991 in Österreich, arbeitet hier legal, hat eine durchaus ansprechende Wohnung. Er hat seit langem für seine Ehefrau ein Visum beantragt, damit sie nachkommen kann, aber die Antwort lautet: Die Quoten sind voll. Seit Jahren sind die Quoten voll für die Ehegattin eines seit 1991 hier arbeitenden Kosovo-Albaners. Pech gehabt!

Jetzt ist das Dorf dieser Frau dem Erdboden gleichgemacht worden. Sie ist natürlich in dieser Situation zu ihrem Mann nach Reichenau an der Rax gekommen. Überhaupt kein Problem! Sie wurde in dieser Gesellschaft von den Mitbürgerinnen und Mitbürgern mit der größten Selbstverständlichkeit aufgenommen. Nur die österreichischen Behörden haben kein Einsehen. Es gibt eben auch für den Familiennachzug derzeit keine freien Plätze. So hat man am 10. Oktober diese Kosovo-Albanerin, deren Dorf dem Erdboden gleichgemacht ist, mit Befehls- und Zwangsgewalt von ihrem Mann weggeholt. Man hat gesagt, sie hätte ja in Kroatien um Asyl ansuchen können, sie hätte ja nicht nach Österreich kommen müssen, obwohl ihr Mann hier seit sieben Jahren arbeitet, Geld verdient und Steuern zahlt.

Die Frau hat dann gesagt, daß sie schwanger sei. Man hat ihr nicht geglaubt, man hat sie zwangsweise im Spital untersucht: Und sie ***ist*** schwanger. Das hat sie einstweilen vor der Abschiebung bewahrt – "einstweilen", wie die Behörde hinzugefügt hat, denn, wenn das Kind geboren ist, dann werden sie wohl gehen müssen.

Ich denke, wenn man so mit Menschenrechten umgeht, dann ist es zwar immer noch legitim, selbstverständlich die Situation überall, wo Menschenrechte dramatisch und notorisch verletzt werden, mit noch härteren Worten anzugreifen. Aber ich denke, auch solche kleinen und größeren Grausamkeiten sind ***gegen*** die Menschenrechte. Niemand, keine öffentliche Meinung zwingt das Land Österreich, so zu handeln. Sie hätten breiteste Akzeptanz für Fälle wie diesen, nur: Die Normen sind eben anders.

Herr Bundesminister! Ich weiß, daß Sie etwa im ehemaligen Jugoslawien etliche Entscheidungen getroffen haben, die ich persönlich für richtig halte und bei denen ich glaube, daß es wichtig war, diplomatische Vertretungen aufrechtzuerhalten oder auch sich für Beobachter in Kosova einzusetzen. Ich ersuche Sie wirklich, auch im Rahmen der Bundesregierung mit mehr Nachdruck zu verlangen, daß in Österreich auch seitens der Exekutive, seitens der Polizeibehörden nicht derartige Menschenrechtsverletzungen passieren.

Gerade an die Adresse der ÖVP gerichtet: Ich denke, in Krisen wie etwa der Krise in Kosova sollte man bei den Quoten für den Familiennachzug, so dieser überhaupt Quoten haben muß – ich glaube, Familie zu haben, ist ein Menschenrecht und darf nicht an Quoten gebunden sein –, Vorziehungen erlauben. Man sollte erlauben, daß Menschen aus diesen unmittelbaren Kriegs- und Kampfgebieten selbstverständlich zu ihren nächsten Angehörigen kommen, die dann ja auch für sie sorgen wollen und können. Ich denke, da passieren auch in unserem Land völlig unbillige Härten.

Wie gesagt: Ja zum Engagement in Tibet, ja zum Engagement für die indigenen Völker, wo immer sie in ihren Existenzrechten und ihrem ganz ureigensten Lebensstil bedroht sind, aber bitte auch etwas mehr Aufmerksamkeit im eigenen Land. Denn ich glaube, gerade in Zeiten des Wohlstandes, eines Wohlstandes, der in Österreich nicht zuletzt auch durch Migrationsbewegungen und durch internationalen Austausch miterwirtschaftet werden konnte, wäre es auch ein Gebot der Stunde, sich gerade in solchen Krisensituationen bei den betroffenen Menschen durch eine übergenaue Einhaltung der Menschenrechte zu bedanken. – Danke. *(Beifall bei den Grünen und beim Liberalen Forum.)*

19.52

Präsident MMag. Dr. Willi Brauneder: Zu Wort gemeldet ist Herr Abgeordneter Dr. Kurzmann. Freiwillige

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Redezeitbeschränkung: 4 Minuten. – Bitte, Herr Abgeordneter.

19.53

Abgeordneter Dr. Gerhard Kurzmann (Freiheitliche): Herr Präsident! Herr Bundesminister! Meine sehr geehrten Damen und Herren! Zu den grundlegenden Menschenrechten gehört ohne Zweifel das Recht auf die Bewahrung und Erhaltung der ethnischen Identität und die Erhaltung der unterschiedlichen Kulturen der einzelnen Völker in aller Welt.

Was in Tibet seit Jahrzehnten vor sich geht, ist die systematische Verdrängung der Tibeter durch chinesische Zuwanderer. Das Recht auf nationale Selbstbestimmung wird dem tibetischen Volk seit der chinesischen Okkupation vorenthalten. Wir Freiheitlichen unterstützen deshalb alle Bestrebungen, die dem einzelnen mehr Individualrechte und den Völkern mehr Freiheit, sei es in diesem Fall auch im Rahmen einer Autonomie, sichern. *(Beifall bei den Freiheitlichen.)*

Meine Damen und Herren! Mit großer Sympathie haben wir deshalb auch vor einigen Jahren den Zusammenbruch der Sowjetunion und Jugoslawiens beobachtet, die mit Sicherheit größere Völkerkerker waren als etwa die alte österreichisch-ungarische Monarchie. Mit großem Unmut haben wir aber auch die jahrzehntelange Unterdrückung der Ungarn, nämlich der ungarischen Minderheit im Rumänien Ceaus¸escus oder auch in der Slowakei mitverfolgt.

Während sich Österreich aber häufig für die Menschenrechte anderer Völker sehr nachdrücklich eingesetzt hat, haben die österreichischen Bundesregierungen unsere Minderheiten in den Nachfolgestaaten der alten Monarchie eigentlich vergessen. Bei Hilfsfahrten in das rumänische Banat wurde ich immer wieder gefragt: Warum müssen Menschen aus Steierdorf,, dem rumänischen Anina, nach Deutschland auswandern, obwohl ihre Vorfahren doch aus dem alten Herzogtum Steiermark ausgewandert sind?

Die rassistischen und unmenschlichen Benes˘-Dekrete der Tschechen und die AVNOJ-Gesetze Sloweniens, die in unserer Gegenwart noch immer fatale Folgen haben, wurden von meinen Vorrednern bereits erwähnt.

Im Gegensatz zu Italien, das die Interessen seiner Heimatvertriebenen massiv unterstützt hat, hat die österreichische Außenpolitik da ziemlich versagt. Um die völkerrechtlichen Konsequenzen einer Anerkennung einer deutschen Minderheit, die auch durch Stefan Karner und auch durch slowenische Professoren heute anerkannt ist, zu umgehen, wird seit einiger Zeit ein sogenanntes Kulturabkommen verhandelt. Dieses Abkommen kann aber natürlich kein Ersatz für die verfassungsrechtliche Absicherung unserer Minderheit als nationale Minderheit in Slowenien sein. *(Beifall bei den Freiheitlichen.)*

Wenn Sie uns, Herr Außenminister, wie eine tibetanische Gebetsmühle ständig erklären, daß dies bloß ein bilaterales Problem zwischen Laibach und Wien ist, dann müssen Sie sich den Vorwurf gefallen lassen, daß Sie zwar manchmal starke Sprüche wie den gegen Herrn Milos˘evic´ von sich geben *(Abg. **Steibl: Sie** machen starke Sprüche in den Zeitungen ...!)*, daß Sie sich aber gegen Slowenien nicht durchsetzen konnten, nämlich in der Beseitigung der Folgen der alten AVNOJ-Gesetze. *(Zwischenbemerkung von Vizekanzler Dr. **Schüssel.**)*

Herr Bundesminister! Die Italiener haben dagegen die Auseinandersetzung, etwa den Erwerb *(Zwischenruf des Abg. **Smolle**)* – man spricht eigentlich "aunoj" – von Immobilien für heimatvertriebene Landsleute in Slowenien, auf die Ebene der EU gebracht. Sie erklären uns immer: Das geht nicht, wir können das nicht zum Thema der EU-Verhandlungen machen. Ich habe aber hier einen Bericht, nämlich den sogenannten spanischen Kompromiß zwischen der EU und Slowenien. *(Abg. **Smolle:** Herr Kollege, das heißt "Avnoj", gesprochen mit "w"!)* – Ich hoffe, daß Sie auch den Weg dieser italienisch-slowenischen Verhandlung gehen und nicht diesen Sonderweg eines Kulturabkommens, dessen Inhalt wir heute noch immer nicht kennen, weiterverfolgen. *(Neuerlicher Zwischenrufe des Abg. **Smolle.** – Abg. Mag. **Schweitzer** – auf die neben Abg. Smolle sitzende Abg. Dr. Gredler weisend –: Martina halten den Mund!)*

Ein Beitritt Sloweniens zur Europäischen Union, Herr Smolle, kommt für uns Freiheitliche nur dann in Frage, wenn die sogenannten bilateralen Probleme, also die Folgen der AVNOJ-Gesetze zwischen Österreich und Slowenien befriedigend gelöst sind. *(Zwischenrufe der Abgeordneten **Smolle,** Mag. **Schweitzer** und Dr. **Gredler.**)* Alles andere – das darf ich Ihnen wirklich sagen – wäre in unseren Augen ein Ausverkauf der österreichischen Interessen, für den wir nicht zur Verfügung stehen. *(Beifall bei den Freiheitlichen. – Abg. Mag. **Schweitzer** – in Richtung des*

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Abg. Smolle –: Wer sagt denn "Avnoj"? Du hörst schlecht! Du! – Weitere Zwischenrufe der Abgeordneten ***Smolle*** *und Mag.* ***Schweitzer.)***

19.57

Präsident MMag. Dr. Willi Brauneder: Weiters ist Herr Abgeordneter Amon zu Wort gemeldet. Freiwillige Redezeitbeschränkung: 5 Minuten. – Bitte, Herr Abgeordneter.

19.58

Abgeordneter Werner Amon (ÖVP): Sehr geehrter Herr Präsident! Herr Vizekanzler und Außenminister! Meine Damen und Herren! Wenn wir heute aus Anlaß des 50jährigen "Geburtstags" der Allgemeinen Erklärung der Menschenrechte, die von der Generalversammlung der Vereinten Nationen am 10. Dezember 1948 verabschiedet wurde, die Gelegenheit haben, eine Menschenrechtsdiskussion zu führen, so bietet das natürlich die Gelegenheit, auf der einen Seite ein wenig zurückzuschauen auf das, was gelungen ist. Hier kann ich nur sagen, ich bin froh darüber, daß nicht Herr Kurzmann für die österreichische Außenpolitik verantwortlich ist. Offensichtlich tun Erfolge in der Außenpolitik den Freiheitlichen ganz besonders weh, und jene Erfolge gibt es in der Tat zu verzeichnen. Ich werde noch darauf eingehen. *(Abg. Mag.* ***Schweitzer:*** *Warum?)* – Nun, weil es notwendig ist, weil Sie, Herr Schweitzer, es offensichtlich nicht wahrhaben wollen, daß es diese Erfolge gibt. Darum werde ich Ihnen auch nachweisen, daß es sie gibt. *(Beifall bei der ÖVP. – Abg. Dr.* ***Graf:*** *Herr Kollege Amon, bei den Vorgesprächen waren Sie nie dabei!)*

Natürlich ist es so, daß gerade in diesem Jubiläumsjahr ganz besondere Erwartungen an die Politik und an die Menschenrechtspolitik gestellt werden, nur glaube ich, daß Menschenrechtsarbeit nicht in einer Art "Hochamtspolitik" betrieben werden kann, nämlich in der Art und Weise, daß man sagt: Heuer sind sie ganz besonders wichtig und ansonsten eben weniger. Ganz im Gegenteil: Menschenrechtsarbeit ist eine permanente Arbeit, die man nicht nur in einem Jubiläumsjahr wie dem heurigen in besonderer Weise betreiben soll.

In den vergangenen 50 Jahren ist es sicherlich gelungen, die rechtliche und praktische Grundlage für den Menschenrechtsschutz zu schaffen. Jetzt geht es verstärkt darum, auf nationaler und lokaler Ebene diese Menschenrechte auch tatsächlich zu realisieren.

In diesem Zusammenhang möchte ich eine Bemerkung zu den Ausführungen von Frau Abgeordneter Dr. Petrovic anbringen, die hier versucht hat, daraus wieder eine innenpolitische Debatte zu machen. Ich glaube, daß man die Kirche im Dorf lassen soll. Wenn wir von Menschenrechtsverletzungen in Österreich sprechen, die es da und dort auch geben mag – ich will das gar nicht bestreiten: natürlich passieren, wo Menschen agieren, auch Fehler und auch inkorrekte Verhaltensweisen –, dann sage ich Ihnen aber auch, daß Österreich gerade in der Flüchtlingsfrage und in der Asylfrage einen derart gravierenden Anteil in Europa geleistet hat und daß wir verstärkt darauf hinarbeiten sollten – und Sie gerade bei Ihren grünen Kollegen in anderen Staaten Europas –, daß sich alle Länder in dieser Art und Weise solidarisch verhalten, wie die Österreicher es getan haben. *(Beifall bei der ÖVP. – Abg. Dr.* ***Graf*** *– die aktuelle Abendausgabe des "Kurier" in die Höhe haltend –: Der Koalitionspartner sagt, daß der Vizekanzler scheinaktiv ist!)*

Ich freue mich aber trotzdem, daß es gelungen ist, einen gemeinsamen Fünf-Parteien-Entschließungsantrag zustande zu bringen, der eine Reihe von sehr wesentlichen Forderungen enthält, wie etwa die Schaffung eines internationalen Strafgerichtshofes, um Kriegsverbrechen und Verbrechen gegen die Menschlichkeit auch völkerrechtlich systematisch ahnden zu können.

Ich möchte aber auch auf einige Punkte eingehen, die zum Teil schon von Vorrednern angesprochen wurden. Ich glaube sehr wohl, daß es Bereiche gibt, wo Handlungsbedarf besteht. *(Abg.* ***Jung:*** *Erfolge aufzählen! Erfolge aufzählen!)* Ich denke etwa – Kollegin Gredler hat es bereits angesprochen – an die Frage von Kindersoldaten. Ich glaube, daß da wirklich Handlungsbedarf gegeben ist, daß man auch international eine entsprechende Altersgrenze durchsetzen sollte.

Einer der sehr wesentlichen Erfolge, die gerade unserem Außenminister gelungen sind, war etwa der internationale Kampf gegen die Landminen. Ich erinnere an die Schaffung des Verbotsgesetzes für Landminen in Österreich, das weltweit das strengste Verbotsgesetz ist und das nunmehr die Grundlage für sämtliche internationale Vertragswerke bildet. *(Abg. Dr.* ***Ofner:*** *Nur für die USA, Rußland und China nicht – die ganz "kleinen" Staaten!)*

Weiters denke ich an die erfolgreiche China-Politik. Denn – und ich sage das bewußt sehr vorsichtig – es gelingt hier, tatsächlich Fortschritte in der Menschenrechtsfrage sicherzustellen. *(Abg. **Jung:** Wo denn?)* Es gelingt sehr wohl, in der Tibet-Frage Fortschritte zu erzielen. Sie wollen das ganz einfach nicht wahrhaben *(Abg. **Jung:** Sagen Sie etwas Konkretes! Sagen Sie es!),* Sie wollen das nicht anerkennen: Es ist ein Erfolg der österreichischen Außenpolitik und der österreichischen Präsidentschaft. *(Beifall bei der ÖVP. – Abg. Dr. **Graf:** Kollege Amon, das trifft auf Sie auch zu: scheinaktiv!)*

Als letzten Punkt möchte ich ein Problem ansprechen, bei dem es sich um ein besonderes Verbrechen an Frauen handelt – Kollege Posch und ich bringen hiezu heute einen Selbständigen Entschließungsantrag ein, der dem Ausschuß zugewiesen wird –: Es ist die Frage der Genitalbeschneidungen von Frauen. Wir haben das sehr ausführlich auch in der Vorbereitung zur SADC-Parlamentarierkonferenz diskutiert. Ich bin froh, daß es diese Initiative gibt.

Der 50. Jahrestag der Menschenrechte zeigt natürlich auf, daß es in Sachen Menschenrechte noch unendlich viel zu tun gibt. Aber dieser 50. Jahrestag soll auch Gelegenheit bieten, auf die Erfolge, die es gegeben hat, zu verweisen *(Abg. Dr. **Graf:** Scheinaktiv!)* und den Idealisten zu signalisieren, daß es sich auf jeden Fall lohnt, sich für Menschenrechte einzusetzen. *(Beifall bei der ÖVP.)*

20.03

Präsident MMag. Dr. Willi Brauneder: Zu Wort gemeldet ist Herr Abgeordneter Mag. Posch. Freiwillige Redezeitbeschränkung: 6 Minuten. – Bitte, Herr Abgeordneter.

20.03

Abgeordneter Mag. Walter Posch (SPÖ): Herr Präsident! Herr Vizekanzler! *(Abg. Dr. **Graf:** Kollege Posch, sind Sie auch der Meinung, daß der Herr Vizekanzler scheinaktiv ist?)* Ich begrüße, daß es diesen Entschließungsantrag im "Jahr der Menschenrechte" 1998 anläßlich des 50. Jahrestages der Allgemeinen Erklärung der Menschenrechte gibt, weil diese für die Entwicklung der internationalen Staatengemeinschaft sehr wichtig war, weil zum ersten Mal ein System von grundlegenden Prinzipien des menschlichen Zusammenlebens in freier Entscheidung angenommen wurde, weil zum ersten Mal in der Geschichte ein Wertesystem faktisch formuliert wurde, wonach die Menschheit einige Werte teilt, und zwar universell teilt. Die Universalität der Menschenrechte ist nicht nur ein objektiver Tatbestand, sondern auch subjektiv von der Menschheit akzeptiert.

Am Ende dieses Prozesses sollten allerdings nicht nur anerkannte Menschenrechtsideale stehen, sondern vor allem wirkungsvolle Garantien gegen Staaten, die sie verletzen. Nur die Ausweitung des Schutzes der Menschenrechte auf alle Staaten bei gleichzeitiger Absicherung durch eine den Staaten übergeordnete Instanz, nämlich die Staatengemeinschaft, wird Besserungen bringen.

Noch gibt es leider auf internationaler Ebene kein Gewaltmonopol, wie es die Entstehung der modernen Staaten kennzeichnet. Trotzdem stellt die Allgemeine Erklärung der Menschenrechte einen positiven Ausgangspunkt für den Schutz der Menschenrechte auf der ganzen Welt, der Grundrechte des Menschen, wie sie eben den Unterzeichnern nach der Tragödie des Zweiten Weltkrieges vorgeschwebt sind, dar.

Trotzdem gibt es noch gewaltige Unterschiede – das wurde heute schon vielfach angesprochen – zwischen Theorie und Praxis, wie auch der gegenständliche Antrag zeigt. Viele der Forderungen sind nicht verwirklicht. Viele der Forderungen sind bis dato bloß Ideal.

Daher würde ich auch in diesem Zusammenhang anregen, im österreichischen Parlament einen Menschenrechtsausschuß einzusetzen, der quasi als Schnittstelle zwischen Regierung, Parlament und NGOs fungiert und wichtige Fragen nicht nur thematisiert, sondern auch Kontrollfunktionen ausübt, wenn es um internationale Menschenrechtsberichte et cetera geht. *(Beifall bei der SPÖ sowie der Abg. Dr. **Petrovic.**)*

Meine Damen und Herren! Ich möchte einige Punkte anführen, die teilweise auch schon angesprochen wurden, nämlich ein paar Dinge, die in der zivilisierten Welt völlig indiskutabel sind. Ich meine zum Beispiel die Todesstrafe. In China sind Amnesty International zufolge im vergangenen Jahr 3 152 Menschen zum Tode verurteilt und 1 876 auch tatsächlich hingerichtet worden. Es wurden damit zwar deutlich weniger Menschen hingerichtet als im Vorjahr,

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trotzdem hat China mehr Menschen hingerichtet als die gesamte zivilisierte Welt zusammen. *(Abg. Dr. **Ofner:** Aber in Relation angeblich weniger als die USA!)*

Aber auch in den USA hat die Zahl der Hinrichtungen seit der Wiedereinführung der Todesstrafe mit 74 im Jahr 1997 einen Höchststand erreicht, wobei man hinzufügen muß, daß fast überall, wo die Todesstrafe angewandt wird, dies in sozial oder rassisch diskriminierender Weise passiert.

Ein weiterer Punkt ist die Folter. Nach Angaben der Menschenrechtsorganisation Amnesty International werden in 152 Staaten Personen gefoltert oder ermordet. In 87 Staaten gibt es politische Gefangene, die nicht wegen Gewalttaten inhaftiert sind. Staatliche Morde durch Militärs, Polizei und Paramilitärs werden in 55 Staaten beklagt, und in 31 Staaten verschwinden Menschen – eine lateinamerikanische Spezialität. Einer der Spezialisten auf diesem Gebiet, der Diktator Pinochet, der derzeit noch in London festsitzt und für diese Spezialität bekannt ist, sollte einem Gericht zugeführt werden. Ich bitte Sie, Herr Vizekanzler, Ihren Einfluß auf die britische Regierung dahin gehend geltend zu machen, daß es zu einer Auslieferung an die spanische Justiz kommt. *(Zwischenruf des Abg. **Jung.**)*

Ein weiterer Punkt, den ich noch ansprechen möchte, ist die Kinderarbeit, wobei sich der Vorwurf hier vor allem gegen asiatische Staaten wie China, Indien, Pakistan und die Philippinen richtet, aber auch gegen afrikanische Länder sowie gegen nahezu alle Staaten Süd- und Mittelamerikas. Es hat seitens vieler Länder bereits Boykotte von Produkten gegeben, sodaß diese Staaten ihre Produkte nicht mehr absetzen können. Ein Beispiel dafür ist etwa das Abkommen, welches die Internationale Arbeitsorganisation ILO mit dem Verband pakistanischer Teppichhersteller geschlossen hat und worin sich diese verpflichten, daß insgesamt 8 000 Kinder nicht mehr ihrer Arbeit nachgehen müssen und statt dessen in die Schule gehen können.

Das ist nur ein erster Schritt in einem Programm, das alle 30 000 Kinder in der pakistanischen Teppichbranche – immerhin ein Fünftel der Angestellten in dieser Branche – umfaßt. Gerade diese Konsumentenboykotte bewirken, daß Kinderarbeit eingeschränkt oder verhindert werden kann.

Bei meinem letzten Punkt, der schon angesprochen wurde, geht es um die Gewalt gegen Frauen. Mein Kollege Amon hat schon gesagt, daß wir einen gemeinsamen Selbständigen Antrag gegen die genitale Verstümmelung von Frauen, der etwa zwei Millionen Mädchen pro Jahr zum Opfer fallen, wobei viele der Betroffenen aufgrund der unhygienischen Bedingungen auch das Leben verlieren, eingebracht haben. Diese Praxis ist in Ländern Ostafrikas und in einigen asiatischen Staaten üblich, wobei die Spitzenreiter Nigeria, Ägypten, Sierra Leone, Äthiopien, Somalia und Eritrea sind, wo etwa 90 Prozent der Frauen betroffen sind.

So hat es auch von der Organisation für Afrikanische Einheit OAU bereits eine Initiative gegeben, die diese Verstümmelung unter Strafe stellen soll. Trotzdem glaube ich, daß hier auch der Druck der zivilisierten Staaten der westlichen Welt notwendig ist, ein Druck, der auch in Richtung Weltbank und Währungsfonds geht. Ich hoffe, daß dieser gemeinsame Antrag im Außenpolitischen Ausschuß von Erfolg gekrönt sein wird, um diese Perversion endgültig der Vergangenheit angehören zu lassen. – Danke. *(Beifall bei SPÖ und ÖVP. – Zwischenruf bei den Freiheitlichen.)*

20.10

Präsident MMag. Dr. Willi Brauneder: Zu Wort gemeldet ist nunmehr Herr Abgeordneter Mag. Schweitzer. Freiwillige Redezeitbeschränkung: 3 Minuten. – Bitte, Herr Abgeordneter.

20.10

Abgeordneter Mag. Karl Schweitzer (Freiheitliche): Herr Vizekanzler! Herr Außenminister! Der morgigen Ausgabe des "Kurier" kann ich zweimal entnehmen, daß Ihnen vom Kanzler der Republik Attribute wie "eigenartig" – das will ich nicht beurteilen –, "unmodern" – auch das will ich nicht beurteilen – und "scheinaktiv" zugeordnet werden. Herr Vizekanzler! Ich habe mir jetzt die Rednerliste angesehen und habe festgestellt, daß Sie es bis jetzt vorgezogen haben, sich nicht an der Debatte zu beteiligen, was darauf schließen läßt, daß zumindest das dritte Attribut "scheinaktiv" in dieser Frage zutreffend ist. *(Beifall bei den Freiheitlichen.)*

Herr Vizekanzler! Wir Freiheitlichen haben schon mehrfach Themen wie Benes̆-Dekrete und AVNOJ-Bestimmungen angesprochen. Sie haben das immer wieder damit abgetan, daß man bilateral schon irgendwann

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irgend etwas machen werde. Wir haben Sie mehrfach ersucht, diese auch menschenrechtswidrigen Bestimmungen zum Thema zu machen, wenn es um Beitrittsverhandlungen geht. Herr Bundesminister! Ich ersuche Sie im Rahmen dieser Debatte, die eben diese Thematik zum Gegenstand hat, einmal ganz klar und deutlich zu sagen, wie die weitere Vorgangsweise Österreichs in diesen Fragen sein wird! *(Beifall bei den Freiheitlichen.)*

Ich ersuche Sie, mitzuteilen, was Österreich tun wird, um diese menschenrechtswidrigen Bestimmungen, die in Tschechien nach wie vor Gültigkeit haben, zu beseitigen! Stellen Sie uns dar, welche Argumente Österreich auf den Tisch legen wird! Es wäre zu hinterfragen, ob die Tatsache der Vorsitzführung durch Österreich nicht besonders dazu geeignet wäre. Das gilt natürlich nicht nur für die Benes̆-Dekrete, sondern auch für die AVNOJ-Bestimmungen. – Herr Bundesminister! Ich glaube, dazu sollten Sie sich erklären, denn hiebei handelt es sich wahrlich um kein Pimperlthema! *(Beifall bei den Freiheitlichen. – Abg. Dr.* ***Graf:*** *Setzen Sie Aktivitäten, nicht Scheinaktivitäten!)*

20.13

Präsident MMag. Dr. Willi Brauneder: Nächster Redner ist Herr Abgeordneter Dr. Höchtl. 5 Minuten freiwillige Redezeitbeschränkung. – Bitte.

20.14

Abgeordneter Mag. Dr. Josef Höchtl (ÖVP): Herr Präsident! Herr Vizekanzler! Meine sehr verehrten Damen und Herren! Wenn Herr Kollege Schweitzer glaubt, hier den Herrn Außenminister in einer Art kritisieren zu müssen, die typisch ist für jemanden, der schnell gemeldet worden ist, damit er auch noch etwas vorlesen darf *(Abg.* ***Aumayr:*** *So macht es Herr Klima immer!),* dann darf ich ihm sagen: Herr Kollege Schweitzer! In der Zeit, in der der Vizekanzler als Außenminister die Außenpolitik Österreichs vertreten hat, kann sich die Menschenrechtspolitik Österreichs sehen lassen! Das muß bei einer Menschenrechtsdebatte auch gesagt werden. *(Beifall bei der ÖVP und bei Abgeordneten der SPÖ. – Zwischenruf des Abg. Dr.* ***Ofner.)***

Sie von der FPÖ betreiben eine Menschenrechtspolitik mit Worten, Resolutionen und Anträgen, und diese Bundesregierung setzt Taten. *(Abg.* ***Aumayr:*** *Welche?)* Es wurde jegliche Möglichkeit genutzt, um sowohl mit den Slowenen als auch mit den Tschechen diese Probleme anzusprechen, während Sie nur laut schreien, aber nichts tun! *(Beifall bei der ÖVP und bei Abgeordneten der SPÖ. – Abg.* ***Aumayr:*** *Blablabla! – Weitere Zwischenrufe bei den Freiheitlichen.)*

Meine sehr verehrten Damen und Herren von den Freiheitlichen! Die Menschenrechtspolitik ist gerade für diese österreichische Zweite Republik ein Bereich der Politik, der immer hohe Priorität hatte, und zwar in dem Sinn, daß wir nicht nur Menschenrechtsverletzungen, wo immer sie vorgekommen sind, angeprangert haben, sondern auch initiativ unterwegs waren, nicht zuletzt beispielsweise der Außenminister in der UNO, erst in den vergangenen Wochen. *(Zwischenrufe bei den Freiheitlichen.)* Meine sehr verehrten Damen und Herren! Sie wollen das nicht wahrhaben, weil es Ihnen nicht paßt. Das ist die richtige Antwort! *(Beifall bei der ÖVP und bei Abgeordneten der SPÖ.)*

Menschenrechtspolitik ist eine Politik, bei der man nicht schweigen darf, wenn Verletzungen vorkommen. Aber man muß auch die nötige Ausdauer und das nötige Engagement haben, denn von heute auf morgen läßt sich eine Diktatur nicht beseitigen und nicht jegliche Verletzung tatsächlich wegbringen. Aber es ist in den letzten Jahren schon vieles erreicht worden! *(Abg. Dr.* ***Ofner:*** *Was?)*

Meine sehr verehrten Damen und Herren! Kollege Ofner! Es bedeutet, auf einem Auge blind zu sein, wenn Sie hier herausgehen und sagen: Menschenrechtspolitik betreiben wir nur in fernen Ländern. Was war der Einsatz für Ungarn? Was war der Einsatz für Kroatien? Was war der Einsatz für Bosnien-Herzegowina? Was war der Einsatz für viele andere ehemalige kommunistische Staaten? – Das war jeweils praktischer Einsatz für die Verwirklichung von Menschenrechten, Herr Kollege Ofner! *(Beifall bei der ÖVP und bei Abgeordneten der SPÖ.)* Da Sie das aber nicht wollen, stellen Sie das Gegenteil davon fest. Daher sage ich: Sie sind einseitig und auf einem Auge blind. Das ist die politische Realität! *(Beifall bei der ÖVP.)*

Meine sehr verehrten Damen und Herren von den Freiheitlichen! Zu der Frage, die ihr hier releviert habt, möchte ich feststellen: Wir von der Österreichischen Volkspartei teilen das Anliegen, das von euch eingebracht wurde. Wir sind ebenso wie Gott sei Dank viele andere in Österreich dafür, daß ein Unrecht, das 1945 und 1946 3,5 Millionen

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Sudetendeutschen zugefügt wurde, niemals Recht werden darf. *(Abg. Dr. **Ofner:** Dann tut endlich etwas!)* Aber: Wir tun etwas. Wir verhandeln, Sie schreien. Das ist die Tatsache! 241 000 Tote und 3,5 Millionen Vertriebene klagen an. Das ist eine dauernde Herausforderung! *(Abg. Dr. **Ofner:** Reden Sie nicht nur, tun Sie etwas!)*

Herr Kollege Ofner! Wir vertreten die Auffassung, daß diese Methode des lauten Schreiens nichts bringt, sondern nur konsequente Bemühungen und beharrliches Drängen. *(Zwischenruf des Abg. Dr. **Ofner.**)* Sie können noch so viel schreien, es wird nicht besser! Ich sage Ihnen: Menschenrechtspolitik heißt, daß man Überzeugungen hat, nie über Unrecht hinwegsieht und mit andauernden Bemühungen Zug um Zug versucht, Unrecht aus der Welt zu schaffen. *(Abg. Dr. **Ofner:** Nichts tut ihr! Würden wir nicht schreien, würdet ihr gar nichts tun!)* Wir wollen Unrecht aus der Welt schaffen: Das ist ein Grundsatz, den wir beibehalten werden, und wir lassen uns nicht von so manchen Schreiern in irgendein Eck drängen! *(Beifall bei der ÖVP. – Abg. Dr. **Ofner:** Wir haben kein Mikrophon, wir müssen schreien!)*

Meine sehr verehrten Damen und Herren! Es ist auch notwendig, unterschiedliche Methoden anzuwenden. Menschenrechtspolitik besteht nicht nur darin, zu verhandeln, in der Öffentlichkeit Erklärungen abzugeben, sondern sehr häufig auch darin, daß man den diplomatischen Weg einschlägt und jeweils die beste Methode wählt, die zum Ziel führt. Das ist die Form, wie Menschenrechtspolitik in Österreich gemacht wird. Und wir werden uns auch von jenen Bereichen nicht abwenden, die wir leider noch nicht erreichen konnten, in denen wir aber nicht allein die Möglichkeit haben zu verhandeln!

Meine sehr verehrten Damen und Herren! Als ***Berichterstatter*** habe ich noch die Aufgabe, zwei kurze Druckfehlerberichtigungen vorzunehmen:

Druckfehlerberichtigung

Im Bericht des Außenpolitischen Ausschusses über den Antrag 784/A(E) der Abgeordneten Peter Schieder, Werner Amon, Dr. Martin Graf, Dr. Martina Gredler, Mag. Terezija Stoisits und Genossen betreffend Menschenrechtsjahr 1998 ist die folgende Berichtigung festzuhalten:

Das am Ende des Berichtes ausgedruckte Datum "1998 06 30" ist durch das Datum "1998 10 20" zu ersetzen.

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Druckfehlerberichtigung

Im Bericht des Außenpolitischen Ausschusses über den Antrag 253/A(E) der Abgeordneten Mag. Dr. Heide Schmidt und Genossen betreffend Menschenrechtssituation im Tibet ist die folgende Berichtigung festzuhalten:

Das am Ende des Berichtes ausgedruckte Datum "1998 06 30" ist durch das Datum "1998 10 20" zu ersetzen.

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Meine sehr verehrten Damen und Herren! Wir freuen uns, daß wir in diesem 50. Jahr der Allgemeinen Erklärung der Menschenrechte eine positive Bilanz Österreichs hier darlegen können. Unsere gemeinsame Absicht ist es, die Entwicklung der Menschenrechte auf keinen Fall ruhend zu sehen, sondern überall dort, wo wir die Chance dazu haben, weitere große Schritte für die Verwirklichung der Menschenrechte in allen Teilen der Welt, gemeinsam mit vielen anderen Staaten, zu setzen. Das ist der Auftrag freigewählter Abgeordneter. Das ist der Auftrag des österreichischen Parlaments, das sich der Menschenrechtspolitik aus Überzeugung verpflichtet fühlt! *(Beifall bei der ÖVP.)*

20.20

Präsident MMag. Dr. Willi Brauneder: Herr Abgeordneter Höchtl! Einen Teil Ihrer Wortmeldung interpretiere ich dahin gehend, daß Sie als Berichterstatter diese Druckfehlerberichtigung sozusagen vorgezogen vorgenommen haben, um am Schluß nicht noch einmal als Berichterstatter diese Druckfehlerberichtigung vortragen zu müssen.

Zu Wort gemeldet ist Herr Abgeordneter Scheibner. 3 Minuten freiwillige Redezeitbeschränkung. – Bitte Herr

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Abgeordneter.

20.21

Abgeordneter Herbert Scheibner (Freiheitliche): Herr Präsident! Herr Bundesminister! Kollege Höchtl, Sie sind heute irgendwie auf dem falschen Dampfer! *(Abg. Dr. **Graf:** Nicht nur heute!)* Oder haben Sie den morgigen "Kurier" noch nicht gelesen? – Dort steht nämlich über den Herrn Außenminister und Vizekanzler Schüssel, er sei "eigenartig", "unmodern" und "scheinaktiv". Herr Kollege Höchtl! Das hat aber nicht ein freiheitlicher Abgeordneter gesagt, wiewohl wir dem wenig entgegenzusetzen haben! *(Abg. Dr. **Höchtl:** Soll ich Ihnen jeden Tag den "Kurier" vorlesen? – Zwischenruf des Abg. **Schwarzenberger.**)*

Herr Kollege Höchtl! Herr Bauernvertreter! Kanzler Klima sagt über seinen Koalitionspartner Schüssel, daß er "eigenartig", "unmodern" und vor allem "scheinaktiv" ist. Du hättest lesen sollen, lieber Kollege Höchtl, was ihr für ein Dilemma in der Koalition und in der Regierung habt! Und ich sage dir jetzt, lieber Kollege Höchtl, warum ich mich zu diesem Punkt zu Wort gemeldet habe: Um diese Doppelbödigkeit und Scheinheiligkeit, die gerade du hier an den Tag legst, aufzuzeigen! Denn uns vorzuwerfen, daß wir hier bezüglich der Rechte der Sudetendeutschen nur schreien und Forderungen stellen, ihr hingegen Taten setzt, ist wirklich der Gipfel der Ungeheuerlichkeit! *(Abg. Dr. **Höchtl:** Das ist die Wahrheit: Wir setzen Taten!)* Lieber Kollege Höchtl! Ich war dabei, als du am letzten Sudetendeutschen Tag in Klosterneuburg eine Brandrede für die Rechte der Sudetendeutschen gehalten hast, für die Aufhebung der Benes̆-Dekrete, für die Aufhebung der Amnestie-Gesetze und dafür, daß diese Unrechtstatbestände aufgelöst werden. *(Abg. Dr. **Höchtl:** Ich bekenne mich dazu!)* Und selbstverständlich hast du auch für eine Verbindung im Rahmen der EU-Verhandlungen plädiert. *(Abg. Dr. **Höchtl:** Nein!)* Du hast eine Brandrede gehalten. Und du hast zugesichert, daß sich die Bundesregierung dafür einsetzen wird und daß auch du dich dafür einsetzen wirst. Das waren deine Worte! Wir haben alle gesagt: Großartig! Endlich ein ÖVP-Abgeordneter, der dafür klare Worte findet!

Dann waren wir im Parlament, und wie so oft hier im Hohen Hause hätten auf diese Worte die Taten eines Abgeordneten folgen sollen. Jetzt lassen wir einmal den Außenminister aus dem Spiel. Daß er nichts zusammengebracht hat, wissen wir. *(Abg. Mag. **Stadler:** Das sagt auch sein Koalitionspartner!)* Daß er auch nicht will, wissen wir zumindest seit der letzten Debatte, in der er die Vertreibung von 3 Millionen Menschen als "Denationalisierung" abgetan hat. Wir wissen, was wir von ihm zu erwarten haben. Aber wir Abgeordnete, wir zwei und wir 183, die wir hier sitzen, hätten den Worten Taten folgen lassen können. Wir können nicht direkte Verhandlungen mit der Tschechischen Republik aufnehmen. Aber wir können hier Anträge stellen und Beschlüsse fassen, daß auch nach außen klargelegt wird, daß sich das österreichische Parlament mit allen Mitteln dafür einsetzen wird, daß diese Unrechtstatbestände, die auch du in Klosterneuburg vor den Sudetendeutschen kritisiert hast, abgeschafft werden! *(Beifall bei den Freiheitlichen.)*

Wo war deine Stimme? Wo war die Stimme der ÖVP, als es darum ging, Taten zu setzen und zumindest eine eindeutige Meinung dieses Parlaments zum Ausdruck zu bringen? *(Abg. Dr. **Höchtl:** Was hilft da ein Antrag?)* Durch einen Antrag beziehungsweise Beschluß bringen wir zum Ausdruck, daß die Volksvertreter des österreichischen Hohen Hauses nicht mehr zuschauen werden, wie man hier die lange Nase gezeigt bekommt und wie nach wie vor Unrechtstatbestände Teil der tschechischen Rechtsordnung sind. Das wären die Taten gewesen, anstatt draußen, wo man sich Wählerstimmen erhofft, Brandreden zu halten und hier jedes Mal bei den Abstimmungen umzufallen! *(Beifall bei den Freiheitlichen.)*

20.24

Präsident MMag. Dr. Willi Brauneder: Zu Wort gemeldet ist Frau Abgeordnete Jäger. 6 Minuten freiwillige Redezeitbeschränkung. – Bitte, Frau Abgeordnete.

20.24

Abgeordnete Inge Jäger (SPÖ): Herr Präsident! Herr Vizekanzler! Sehr geehrte Damen und Herren! Es ist heute schon zum zweiten Mal bei einer Debatte so, daß die Freiheitlichen versuchen, mit polemischen Äußerungen den Ernst der Angelegenheit zu überspielen. Mir sind Menschenrechtsthemen zu ernst, um auf solch einer Ebene miteinander zu reden!

Ich begrüße grundsätzlich diesen Menschenrechtsantrag, weil ich meine, daß es anläßlich des 50-Jahr-Jubiläums

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der Menschenrechtserklärung der Vereinten Nationen Zeit wird, daß wir dieses Bekenntnis zu den Menschenrechten wieder einmal erneuern und daß wir Politiker und die Regierung außerdem die Aufgaben wahrnehmen, in all unseren Beziehungen zu anderen Ländern, seien es wirtschaftliche Beziehungen, seien es politische Beziehungen, wirklich darauf zu achten, wie diese Länder mit Menschenrechtsfragen umgehen, und uns auch entsprechend zu äußern und zu handeln.

Gerade jetzt gibt es Entwicklungen, die sehr besorgniserregend sind. Aufgrund der Krise in den asiatischen Ländern fallen täglich eine Million Menschen unter die Armutsgrenze. Die Bekämpfung der Armut ist auch ein ganz wesentliches Ziel der Menschenrechtsdeklaration. Und wenn wir sehen, daß Menschen in zerfallenden Staaten Gewalt ausgesetzt sind wie zum Beispiel im Kosovo, dann möchte ich Kollegin Petrovic recht geben. Auch ich glaube, daß es ein Minimalkonsens ist, wenn wir jenen Menschen in Österreich Aufnahme gewähren, die schon Anträge auf Familienzusammenführung gestellt haben und deren Ehegatten schon seit vielen Jahren in Österreich ihren Wohnsitz haben. Das wäre nur recht und billig. *(Beifall bei der SPÖ.)*

Ich möchte nun aber ein positives Beispiel in bezug auf die Menschenrechtsdebatte anführen: Erst vor einigen Wochen hat in Südafrika die "Truth Commission", die Wahrheitskommission, Ergebnisse vorgelegt, die sich darum bemüht hat, die Vergangenheit des Apartheidsystems aufzuarbeiten. Ich erinnere weiters an die Debatte, die wir heute in bezug auf unsere eigene Vergangenheitsbewältigung der Zeiten des Faschismus geführt haben. Dazu muß ich sagen: In diesem Zusammenhang werden neue Qualitäten der Versöhnung gesetzt. In Südafrika bemüht man sich, einerseits die Wahrheit nicht zu verschweigen, andererseits aber nicht auf Rache zu sinnen, sondern tatsächlich zu versuchen, das Volk miteinander zu versöhnen. Ich möchte der südafrikanischen Regierung wirklich große Reife zusprechen. Das ist, so glaube ich, einmalig in der Menschheitsgeschichte! *(Beifall bei der SPÖ und bei Abgeordneten des Liberalen Forums.)*

Ich begrüße grundsätzlich auch die Forderung nach einem Internationalen Gerichtshof in diesem Antrag. Ich glaube, bei der Inhaftierung des Exgenerals Pinochet in England zeigt sich jetzt ganz genau, wie notwendig ein Internationaler Gerichtshof wäre, damit dieser General für die Verbrechen, die er begangen hat, auch vor Gericht gestellt wird, im Interesse der Gerechtigkeit und auch der Rechtfertigung der vielen Opfer, die zum Teil auch in Europa leben. Ich meine, die Menschen erwarten es von uns, daß wir auch diese Sache unterstützen, und ich möchte meiner Kollegin Bruni Fuchs gratulieren, denn sie hat im Haus 99 Unterschriften dafür zustande gebracht. Ich finde, das ist eine tolle Sache! *(Beifall bei der SPÖ und bei Abgeordneten des Liberalen Forums.)*

Ich meine, es geht in unseren Beziehungen zu den anderen Staaten darum, daß wir die diesbezüglichen Probleme wirklich immer wieder ansprechen, etwa – wie heute schon erwähnt wurde – in der Beziehung zu China die Menschenrechtsverfehlungen, seien es die Todesstrafe oder auch der Umgang mit den Minderheiten, die in China leben. Ich möchte grundsätzlich die Initiative des Vizekanzlers in Tibet begrüßen, daß er diese Menschenrechtsverletzung angesprochen hat.

Ich muß leider schon zum Schluß kommen und noch schnell einen Antrag einbringen. In den letzten Tagen hat es verheerende Unwetterkatastrophen in Mittelamerika gegeben. Aus diesem Grund möchte ich folgenden Antrag einbringen:

Entschließungsantrag

der Abgeordneten Dr. Gusenbauer, Dr. Spindelegger, Dr. Ofner, Dr. Gredler, Mag. Kammerlander und Genossen betreffend Katastrophenhilfe für Nicaragua und Honduras

Der Nationalrat wolle beschließen:

"Die Bundesregierung wird ersucht, über den Katastrophenhilfsfonds der Bundesregierung rasche Hilfsmaßnahmen für Nicaragua und Honduras einzuleiten. Im Sinne einer effizienten Hilfe vor Ort sollen dabei nach Möglichkeit die bewährten Kooperationsstrukturen im Rahmen der österreichischen Katastrophenhilfe zur Anwendung kommen.

Die Bundesregierung wird ferner ersucht, sich im Rahmen der Europäischen Union für finanzielle Unterstützung und Hilfsmaßnahmen für die am stärksten von der Unwetterkatastrophe betroffenen Staaten Mittelamerikas einzusetzen."

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Zuletzt möchte ich mich noch bei allen Menschenrechtsorganisationen bedanken. Ich glaube, wir können nicht oft genug betonen, wie wichtig deren Aufgabe ist, wie wichtig es ist, daß sie uns immer wieder vor Augen führen, wie weit entfernt wir noch von einer Welt sind, in der Menschen tatsächlich leben können und die Möglichkeit haben, in einem Staat Arbeit, Wohnung, Nahrung und all das zu haben, was man für ein menschenwürdiges Leben braucht. Ich denke, daß die Menschenrechtsorganisationen dazu einen wirklich wichtigen Beitrag leisten. – Danke. *(Beifall bei der SPÖ.)*

20.31

Präsident MMag. Dr. Willi Brauneder: Der soeben verlesene Entschließungsantrag wurde ordnungsgemäß eingebracht, ist entsprechend unterstützt und steht daher mit in Verhandlung.

Zu Wort gemeldet ist Herr Abgeordneter Mag. Stadler. 3 Minuten freiwillige Redezeitbeschränkung. – Bitte, Herr Abgeordneter.

20.31

Abgeordneter Mag. Johann Ewald Stadler (Freiheitliche): Meine Damen und Herren! Hohes Haus! Herr Vizekanzler, ich möchte meine 3 Minuten Redezeit jetzt nicht dazu nutzen, Ihnen vorzuwerfen, Sie seien in der Frage der Benes˘-Dekrete und der Situation der Sudetendeutschen "scheinaktiv", so wie das Ihr Koalitionspartner tut. *(Abg. Dr. **Fekter:** Erlauben Sie dem Kanzler doch auch einmal ein Fehlurteil!)* Ich meine, diese Scheinaktivität haben Sie auch hier ein wenig zur Schau getragen, indem Sie demonstrativ ein Buch in das Parlament mitnehmen, um diese langweiligen und für Sie unangenehmen Debatten im Haus sozusagen mit Lektüre zu überbrücken.

Herr Vizekanzler! Mich interessiert auch etwas anderes im Zusammenhang mit der Situation der Politik in Österreich insgesamt, nämlich wie diese Koalition jetzt weiter vorgehen wird. Denn es wurde Ihnen heute nicht nur vom Bundeskanzler vorgeworfen, "eigenartig", "unmodern" und "scheinaktiv" zu sein – was bezüglich Menschenrechtssituation in dieser Debatte schon mehrfach betont wurde –, sondern im "Kurier" steht auch: "Mit Vollgas in die Sackgasse. Nichts geht derzeit in der Koalition".

Es werden da die Steuerreform, der Karenzgeld-Zwist, das Polizeigesetz und der Tatausgleich erwähnt, und es wird davon gesprochen, daß es sich hiebei möglicherweise um eine Gegenwehr der ÖVP handelt, weil sie weiß, daß die SPÖ es auf vorzeitige Neuwahlen anlegt. – Das stimmt, das wissen wir auch, daß Sie sich nicht provozieren lassen wollen! *(Zwischenrufe der Abgeordneten Mag. **Kukacka** und Dr. **Fekter.**)*

Meine Damen und Herren! Wir fragen uns auch, warum der Herr Vizekanzler nicht nur nicht scheinaktiv ist, sondern inaktiv geworden ist. *(Beifall bei den Freiheitlichen.)* Offenbar ist er paralysiert durch die vorzeitigen Neuwahldebatten. Herr Vizekanzler! Legen Sie also klar, was sich hier in der Regierung abspielt, wieso Sie lahmgelegt werden und sich durch nichts mehr provozieren lassen wollen. *(Zwischenruf des Abg. Mag. **Kukacka.**)* Herr Kukacka! Ihr Kollege Stummvoll verhandelt draußen bereits darüber, ob der 17. Jänner der geeignete Wahltermin ist. Meine Damen und Herren! Kollege Stummvoll philosophiert bereits darüber, ob der 17. Jänner ein geeigneter Wahltermin ist. Die SPÖ beauftragt einen Mitarbeiter im Kabinett des Innenministers damit, bis Jänner des nächsten Jahres belastendes Material über die FPÖ-Spitze zu sammeln. *(Abg. Dr. **Fekter:** Herr Präsident! Zur Sache!)*

Meine Damen und Herren! Erklären Sie sich einmal, was sich hier abspielt! Warum macht das die SPÖ? Warum verhandelt Stummvoll? Warum sind Sie paralysiert? Warum bringen Sie nichts mehr zustande, auch in der Menschenrechtssituation, meine Damen und Herren? *(Beifall bei den Freiheitlichen. – Zwischenrufe bei SPÖ und ÖVP.)*

Sie bringen nichts mehr zustande, weil Sie die Koalition in die Sackgasse geführt haben. Das sagt Ihr Koalitionspartner: Sie bringen nichts mehr zustande, weil Sie scheinaktiv sind. Wir sagen: Was die Menschenrechtssituation betrifft, sind Sie sogar inaktiv. Da bringen Sie überhaupt nichts mehr zustande. Warum, Herr Vizekanzler, lassen Sie sich paralysieren? Warum lassen Sie das zu? Was spielt sich in der Koalition in bezug auf vorgezogene Neuwahlen ab? *(Abg. Mag. **Kukacka:** Kümmern Sie sich lieber um Ihre eigene Partei!)* Das würde uns auch interessieren, weil wir den Sudetendeutschen gerne erklären wollen, warum Sie nichts für die

Menschenrechtssituation der Sudetendeutschen in diesem Lande tun, meine Damen und Herren! *(Beifall bei den Freiheitlichen.)*

Erklären Sie das! Auch die Sudetendeutschen haben einen Anspruch darauf, zu erfahren, wann Ihre Koalition platzt und wann in der Regierung vielleicht wieder einmal jemand sitzt, der etwas für sie tut! Die SPÖ plant einen vorgezogenen Nationalratswahlkampf. Das wissen wir! Das ist nicht neu! Dazu dient ja der EU-Ratsvorsitz. Das ist sozusagen der Auftakt zum Wahlkampf. Daß Sie sich deswegen aber in der Koalition fesseln lassen, meine Damen und Herren, das haben sich etwa die Sudetendeutschen nicht verdient! Daher erklären Sie heute, wie Sie gedenken, aus dieser politisch verfahren Sackgassensituation herauszukommen! Jetzt haben Sie Gelegenheit dazu, Herr Vizekanzler! *(Beifall bei den Freiheitlichen.)*

20.35

Präsident MMag. Dr. Willi Brauneder: Zu Wort gemeldet ist Herr Abgeordneter Dr. König. 5 Minuten freiwillige Redezeitbeschränkung. – Bitte, Herr Abgeordneter.

20.36

Abgeordneter Dkfm. DDr. Friedrich König (ÖVP): Hohes Haus! Herr Abgeordneter Stadler, wenn Sie zum Thema gesprochen hätten *(Abg. Mag. **Stadler:** Das habe ich!)*, hätten Sie wahrscheinlich einen anderen Ton angeschlagen. Das Theater, das Sie hier zu der ernsten Frage der Menschenrechte aufgeführt haben, muß für jedermann, dem die Menschenrechte ein Anliegen sind, eine beschämende Sache sein! *(Beifall bei ÖVP und SPÖ. – Abg. Mag. **Stadler:** War das alles? Ich habe geglaubt, es kommt noch etwas! Er ist auch scheinaktiv!)*

Zum Antrag der Kollegin Gredler möchte ich folgendes sagen: Kollegin Gredler hat hier ein Anliegen vertreten, das wir eigentlich alle vertreten. Aber der Weg, den sie mit diesem Antrag vorschlägt, ist das Gegenteil dessen, was man sinnvollerweise zur jetzigen Zeit zur Förderung und Erreichung dieses Zieles tun kann. Kollege Schieder hat völlig recht, wenn er sagt: Es gibt Zeiten, in denen man diese Frage massiv und dynamisch in den Vordergrund rücken muß, und es gibt Zeiten, in denen man verhandeln kann, weil die Chance besteht, etwas zu erreichen.

Ich komme von einer Parlamentarierdelegation, die ich jetzt zwei Wochen lang nach China geführt habe. Ich muß Ihnen sagen: Was die EU und vor allem der Vorsitzende, Außenminister Dr. Schüssel, in China erreicht haben, ist ungeheuerlich. Das ist ja nicht zu glauben! *(Zwischenrufe, ironische Heiterkeit und Beifall bei den Freiheitlichen.)* Lachen Sie nicht! Sie haben ja keine Ahnung von den Dingen!

In China hat die Regierung bereits die Deklaration über bürgerliche und politische, zivile, kulturelle und soziale Rechte, über die UNO-Menschenrechte, unterzeichnet und jetzt dem Ratifikationsprozeß zugeleitet. Bekanntlich ist das keine revolutionäre Entwicklung, die von selbst kommt, sondern diese wurde mühsam eingeleitet. Das kann man doch wohl als Erfolg bezeichnen! *(Beifall bei der ÖVP und bei Abgeordneten der SPÖ.)*

Im heurigen Jahr wird ein EU-Seminar über Menschenrechte in Wuhan mit internationaler Beteiligung durchgeführt. So etwas war früher undenkbar! Im Jahre 1976 gab es überhaupt keine ausgebildeten Juristen in China. Heute ist der Justizminister ein promovierter Jurist, und die Regierung selbst mit Staatspräsidenten Jiang Zemin an der Spitze hat ganz offen, wie am 21. Oktober in "China Daily" zu lesen ist, gesagt, daß sich China bei der UNO dafür einsetzen wird, daß die Menschenrechte progressiv weltweit weiterentwickelt werden. So etwas war früher nicht denkbar! In einer solchen Situation eine Verurteilung Chinas zu verlangen, wie es im Antrag steht, ist bei aller Gleichheit der Ziele wirklich der falsche Weg! Das ist kontraproduktiv und wird deshalb von uns abgelehnt! *(Beifall bei der ÖVP und bei Abgeordneten der SPÖ.)*

Lassen Sie mich nun ein ernstes Wort an die Freiheitliche Partei in der Frage der Benes̆-Dekrete und der AVNOJ-Bestimmungen richten. Darin sind menschenrechtswidrige Passagen enthalten, die keinen Bestand haben können. Auch in diesem Zusammenhang kommt es darauf an, daß man in der Sache etwas erreicht. Es bringt jedoch nichts, wenn man lautstark protestiert, in der Sache aber nichts bewirken kann.

Wir müssen feststellen, daß die Osterweiterung mit der Annahme des Acquis Communautaire der EU verbunden wäre. Diese bricht nationales Recht, auch Verfassungsrecht, sodaß all diese Bestimmungen jedenfalls ab diesem Zeitpunkt pro futuro nicht mehr gelten. Und wenn sie nicht mehr gelten, besteht die Chance, daß man sie auch für die Vergangenheit beseitigen kann, weil sie dann nicht mehr jene Bedeutung haben, die sie jetzt noch für diese

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Länder haben. Aber das ist eine mühevolle Sache. Daher ist die Politik, die Außenminister Schüssel mit persönlichen Gesprächen und unter Bedachtnahme auf die dort herrschende Situation verfolgt, meiner Meinung nach viel zielführender, als lautstark eine Situation zu schaffen, bei der sich die Fronten so verhärten, daß letzten Endes nichts, aber auch gar nichts für die Betroffenen erreicht wird. *(Beifall bei der ÖVP.)*

Präsident MMag. Dr. Willi Brauneder: Zu Wort gemeldet ist nun Herr Vizekanzler Dr. Schüssel. – Bitte, Herr Vizekanzler.

20.40

Bundesminister für auswärtige Angelegenheiten Vizekanzler Dr. Wolfgang Schüssel: Hohes Haus! Ich wollte am Beginn meiner Ausführungen eigentlich allen Fraktionen danken, weil es ja ungewöhnlich ist, daß bei einer so wichtigen Entschließung ein Fünf-Parteien-Beschluß zustande gekommen ist, und ich habe eigentlich auch gehofft, daß sich dieser Geist, der die Debatte und die Arbeit im Ausschuß geprägt hat, in der Plenardiskussion fortsetzen wird. Ich habe daher nicht die Absicht, jetzt auf Polemiken, die hier gegen mich oder gegen meine Politik gestartet wurden, oder auf Zeitungsmeldungen, die mit der Sache nichts zu tun haben, einzugehen. *(Beifall bei ÖVP und SPÖ.)*

Ich tue das deshalb – und ich sage das auch ganz offen –, weil ich weiß, daß in Österreich Zehntausende Menschen freiwillig, ehrenamtlich Menschenrechtsbasisarbeit leisten und es auch verdienen, daß alle fünf Fraktionen plus Regierung ihrer Arbeit auch durch die Qualität ihrer Diskussion hier Achtung und Wertschätzung zollen. *(Beifall bei ÖVP und SPÖ.)*

Ich akzeptiere absolut, daß einzelne Fraktionen oder Parlamentarier in der einen oder anderen Frage der Meinung sind, die Bundesregierung oder im speziellen der verantwortliche Außenminister, der ja in Österreich koordinierend auch für die Menschenrechte zuständig ist, kann mehr machen oder hätte in dieser oder jener Frage aggressiver, aktiver auftreten können. Das akzeptiere ich alles, und das kann man ruhig auch sachlich austragen.

Nur eines sollte man doch außer Streit stellen: daß gerade die Menschenrechtsfrage eine der zentralen Prioritäten unserer Präsidentschaft darstellt, und in diesem Jahr – ich rechne es jetzt zusammen, denn im Rahmen der Troika spielen wir ja auch von Anfang an eine gewisse Rolle – ist wirklich etwas weitergegangen. Man muß blind sein, wenn man das nicht auch begreift und feststellt – bei aller kritischen Würdigung. Wenn hier das Wort "scheinaktiv" gebraucht worden ist, so darf ich einmal aufzählen, was alleine in diesem Bereich, im Bereich der Menschenrechte von der Bundesregierung, von der Staatssekretärin oder von mir ganz konkret gearbeitet wurde.

Zu China haben sowohl Peter Schieder als auch andere Redner und vor allem mein Vorredner Fritz König einiges gesagt. Ich war im März – das ist ein halbes Jahr her – in Peking und habe dort neben vielen anderen Gesprächen das erste wirklich offene Gespräch mit Qian Qichen, dem damaligen Vizepremierminister – das ist er noch immer – und Außenminister – das ist er heute nicht mehr – geführt. Zum ersten Mal war ein echter Dialog möglich, und es ist etwas weitergegangen. Damals hat er zum ersten Mal angekündigt, daß sie diese zwei wichtigen UNO-Konventionen ratifizieren beziehungsweise unterzeichnen werden.

Sie haben Taten verlangt, hier sind sie: China hat Wort gehalten. Ich bin der letzte, der sagt, die Situation ist deswegen schon perfekt, aber in diesen Tagen, in diesen Wochen – und da sprechen Sie von Scheinaktivität! – sind Strafrechtsjuristen aus ganz Europa in China. *(Abg. Mag. **Stadler:** Weiß das der Bundeskanzler auch?)* Herr Kollege, seien Sie doch ein bißchen ... *(Abg. Mag. **Stadler:** Ich frage ja nur!)* Nicht immer alles auf diese Primitivebene bringen! *(Beifall bei ÖVP, SPÖ und beim Liberalen Forum. – Abg. Mag. **Stadler:** Weiß das der Bundeskanzler?)*

Wichtiger ist doch, daß man weiß, was sich abspielt. Es sind jetzt Dutzende europäische Strafrechtler nach China eingeladen worden, um mit ihren chinesischen Widerparts darüber nachzudenken, wie man das chinesische Strafrecht auf einen internationalen Standard bringen kann. Es sind Experten da, die sich ansehen, wie man die Situation in den Gefängnissen, in Anstalten untersuchen kann. Es sind, gerade als Jacques Santer, der Präsident der Europäischen Kommission, in China war, Frauenorganisationen aus der ganzen Welt unter der Federführung der Union zusammengekommen, um die Rechte der Frau in China zu diskutieren. Das ist etwas!

Zweiter Punkt: Vor zwei Tagen fand die SADC-Konferenz statt, an der 14 Länder aus dem südlichen Afrika

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teilnahmen. Auch sie sind nicht alle Heilige – das ist überhaupt keine Frage. Aber daß jetzt die Mehrheit dieser Länder bereit ist, mit uns völlig offen über die Menschenrechtssituation in ganz Afrika zu diskutieren, uns um Rat fragt, wie wir unsere Konflikte und unsere Probleme gelöst haben, und wir eigentlich eine bewegende Dialogsitzung gehabt haben, das ist etwas wert!

Einen weiteren Erfolg haben wir mit Algerien zustande gebracht. Vielleicht erinnern sich noch einige an diesen sehr schwierigen Besuch der Staatssekretärin zu Anfang dieses Jahres, der in einem enorm aggressiven Klima stattfand und auf den dann auch noch ein Besuch der europäischen Parlamentarier folgte. Wir haben Angst gehabt, daß dort überhaupt nichts weitergeht. – Vor 14 Tagen war der algerische Außenminister in Österreich: Wir haben ein um 180 Grad verbessertes Gesprächsklima gehabt. Die Regierung war bereit, mit uns zu reden.

Wir haben es im Bereich der Golfstaaten – mit Ausnahme von Saudi-Arabien, das in einer Sondersituation ist – zum ersten Mal erlebt, daß völlig offen geredet wird, auch über ihre eigenen Defizite.

Wir haben auch in der Europakonferenz mit den mittel- und osteuropäischen Ländern offen darüber geredet, wie wir die Rechte der Kinder, den Kampf gegen das organisierte Verbrechertum, gerade gegen die Ausbeutung der Kinder, auf eine neue Qualitätsstufe heben können.

Ich lasse mir, und nicht nur mir, sondern all jenen, die sich tagaus, tagein einsetzen, den Beamten, die diesbezüglich wirklich unter unheimlicher Anstrengung etwas weitergebracht haben, nicht Scheinaktivität oder falsche Prioritäten vorwerfen. Das ist unfair und unverdient! *(Beifall bei ÖVP und SPÖ.)*

Wir haben es fertiggebracht – auch das war unter Schmerzen geboren, und ich weiß, daß das natürlich auch hier manche vielleicht kritischer sehen –, daß mit dem Iran erstmals wieder ein politischer Dialog, der offen und direkt die Probleme anspricht, stattfindet.

Nicht weitergekommen sind wir im Fall Myanmar. Aber es waren die Vertreter des kleinen Österreich, die weltweit die Aufmerksamkeit auch auf die Verletzungen der Menschenrechte in Burma, in Myanmar fokussiert haben. Und ich werde mich ganz einfach nicht davon abhalten lassen, dies weiter zu tun.

Ich verschließe aber auch nicht die Augen vor den Defiziten in den Nachbarstaaten. Gerade wir waren es, die die Letten bedrängt haben, das Referendum durchzuführen und der Bevölkerung russischen Ursprungs zu helfen. Diese Menschen haben genauso das Recht, ihre Bürgerrechte in Anspruch zu nehmen, wie die anderen. Gott sei Dank hat die Europäische Union dort etwas bewegt.

Ich sage Ihnen auch hier – ich habe dies ja schon mehrere Male wiederholt, es ist ja nichts Neues –: Auch unsere Nachbarstaaten werden ihre Geschichte aufarbeiten müssen, genauso wie wir unsere schmerzlichen Kapitel – bitter, aber ernst gemeint – aufgearbeitet haben. Das nimmt ihnen niemand ab. *(Beifall bei ÖVP und SPÖ. – Abg.* ***Smolle:*** *Wir arbeiten noch immer!)* Aber – es ist mir wichtig, dies auch zu sagen – es soll in einem Geist der Versöhnung geschehen und nicht in einem Geist der Anklage.

Ich habe ein bißchen das Gefühl, daß hier manchmal mit Tremolo oder auch mit berechtigtem Pathos der Ton so gewählt wird, daß er genau den gegenteiligen Effekt hat. Natürlich, ich hätte auch lieber jetzt schon das Kulturabkommen mit Slowenien. Freund Smolle weiß das, er weiß aber auch – und viele, die sich wirklich mit der Sache beschäftigen, wissen –, daß es auch dort schmerzliche Berührungspunkte gibt und es eben nicht so einfach ist. Daher plädiere ich auch für Geduld und den Geist der Versöhnung, um Nachbarschaftsprobleme, Minderheitenfragen, Sprachprobleme, Vergangenheitsbewältigung zu sehen. *(Beifall bei ÖVP und SPÖ.)*

Sie können sicher sein, daß wir diesbezüglich nicht matt oder müde werden!

Ich danke allen, die die Initiative unterstützt haben, die wir – einige Länder, zumal kleine Länder – gemeinsam im Rahmen der Vereinten Nationen gesetzt haben, indem wir eine Art "Gruppe der Humanitären" – bestehend aus acht, mittlerweile schon 13 Ländern – ins Leben gerufen haben. Natürlich ist die Tür offen. Jeder kann und soll sich anschließen, ob es um die Kindersoldaten oder die Genitalverstümmelung geht. All das sind Themen, die meiner Überzeugung nach von der großen Politik oft übersehen werden und für die vielleicht gerade die Initiative und das Engagement der Kleinen – der Politiker, aber natürlich auch der vielen NGOs – absolut wichtig ist.

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Ich danke auch für den Entschließungsantrag zu "Mitch", zu den Folgeschäden des Hurrikans in Nicaragua, Honduras und anderswo. Wir haben heute auch schon im Kabinett darüber gesprochen. Wir werden da bilateral etwas tun, und ich verspreche Ihnen, daß wir am Montag dieses Thema auf die Tagesordnung des Allgemeinen Rates setzen werden, mit der Bitte – aber auch mit der Zusicherung –, daß die Union dort humanitär helfen wird. *(Beifall bei ÖVP und SPÖ.)*

20.49

Präsident MMag. Willi Brauneder: Vielen Dank, Herr Vizekanzler.

Zu Wort gemeldet ist nun noch Herr Abgeordneter Dr. Ofner. Freiwillige Redezeitbeschränkung: 2 Minuten. – Bitte.

20.49

Abgeordneter Dr. Harald Ofner (Freiheitliche): Herr Präsident! Herr Vizekanzler! Meine Damen und Herren! Ich habe mich noch nachträglich gemeldet, um ein sehr ernstgemeintes Anliegen vorzubringen.

Vor 12 bis 15 Jahren, zur Zeit der Koalition mit Ihnen, ist jedem Regierungsmitglied noch von denen, die sich ausgekannt haben, beigebracht worden, was eine der Grundregeln hier im Haus zu sein gehabt hat: Du bist hier Gast! Paß darauf auf, daß du nicht das letzte Wort hast! Schau genau auf die Rednerliste, bevor du Regierungsmitglied dich meldest! Es muß hinter dir noch ein Abgeordneter gemeldet sein, noch wichtiger: ein Abgeordneter der Opposition! – Das ist ganz in Vergessenheit geraten! Heute hat man den Eindruck – und ich kreide das gar nicht Vizekanzler Schüssel an, ich beobachte das an jedem Plenartag, von früh bis abends –, daß das hier oben auf der Regierungsbank sitzende Regierungsmitglied wartet, bis ja niemand mehr hinter ihm ist, und dann meldet es sich, um nur ja das letzte Wort zu haben. *(Lebhafte Zwischenrufe bei SPÖ und ÖVP. – Gegenrufe bei den Freiheitlichen.)*

Man sollte wieder zu dieser Courtoisie zurückkehren. Das ist das Haus der Volksvertretung. Das Regierungsmitglied oder der Staatssekretär kommt hierher, um seinen Standpunkt zu vertreten, um Rede und Antwort zu stehen, aber nicht, um das letzte Wort zu haben. Das letzte Wort hat jemand aus dem Haus zu haben, und besonders vornehm ist es, wenn es jemand von der Opposition hat. – Das ist mir ein echtes Anliegen! *(Beifall bei den Freiheitlichen.)*

20.50

Präsident MMag. Dr. Willi Brauneder: Zu Wort ist dazu nun niemand mehr gemeldet. Die Debatte ist geschlossen.

Der Herr Berichterstatter hat sein Schlußwort mit seiner Wortmeldung verbunden und hat dort zwei Druckfehlerberichtigungen vorgetragen.

Wir treten nun in das Abstimmungsverfahren ein, und ich bitte daher, die Plätze einzunehmen, und ersuche die Mitarbeiter, die Räume zwischen den Sitzreihen zu verlassen.

Wir gelangen nun zur ***Abstimmung,*** die ich über jeden Ausschußantrag getrennt vornehme.

Wir kommen zunächst zur Abstimmung über die dem Ausschußbericht 1434 der Beilagen beigedruckte Entschließung.

Hierzu haben die Abgeordneten Dr. Graf und Genossen einen Zusatzantrag eingebracht.

Ich werde daher zunächst über den erwähnten Zusatzantrag und schließlich über die dem Ausschußbericht beigedruckte Entschließung abstimmen lassen.

Die Abgeordneten Dr. Graf und Genossen haben einen Zusatzantrag eingebracht, der sich auf den fünften Absatz der genannten Entschließung bezieht.

Wer diesem Antrag beitreten möchte, den bitte ich um ein entsprechendes Zeichen. – Dies ist die Minderheit. Der

Antrag ist damit abgelehnt.

Wir kommen nun zur Abstimmung über die dem Ausschußbericht 1434 der Beilagen beigedruckte ***Entschließung.***

Für den Fall Ihrer Zustimmung bitte ich um ein entsprechendes Zeichen. *(Unruhe im Saal. – Abg.* ***Schieder:*** *Das habe ich jetzt nicht verstanden, bitte!)* Es ist dies jetzt die Abstimmung über die dem Ausschußbericht 1434 der Beilagen beigedruckte Entschließung. – Die Zustimmung erfolgt ***stimmeneinhellig.*** *(E 144.)*

Wir gelangen nunmehr zur Abstimmung über den ***Entschließungsantrag*** der Abgeordneten Dr. Gusenbauer, Dr. Spindelegger, Dr. Ofner, Dr. Gredler, Mag. Kammerlander und Genossen betreffend Katastrophenhilfe für Nicaragua und Honduras.

Für den Fall Ihrer Zustimmung bitte ich um ein entsprechendes Zeichen. – Dies ist ***stimmeneinhellig angenommen.*** *(E 145.)*

Wir gelangen nun zur Abstimmung über den Antrag des Außenpolitischen Ausschusses, seinen Bericht 1435 der Beilagen zur Kenntnis zu nehmen.

So Sie den Bericht zur Kenntnis nehmen wollen, bitte ich um ein entsprechendes Zeichen. – Dieses Zeichen erfolgt durch die ***Mehrheit.*** Er ist damit ***angenommen.***

13. Punkt

Bericht des Außenpolitischen Ausschusses über die Regierungsvorlage (1190 der Beilagen): Abkommen zwischen der Republik Österreich und der Russischen Föderation über wissenschaftlich-technische Zusammenarbeit (1436 der Beilagen)

14. Punkt

Bericht des Außenpolitischen Ausschusses über die Regierungsvorlage (1387 der Beilagen): Zusatzabkommen zum Abkommen zwischen der Republik Österreich und der Internationalen Atomenergie-Organisation über den Amtssitz der Internationalen Atomenergie-Organisation (1437 der Beilagen)

15. Punkt

Bericht des Außenpolitischen Ausschusses über die Regierungsvorlage (1382 der Beilagen): Abkommen zwischen der Regierung der Republik Österreich und der Regierung von Dänemark über den Status des Planungselementes der Multinationalen Brigade der Vereinten Nationen aus Eingreiftruppen hoher Bereitschaft (SHIRBRIG) in Dänemark (1438 der Beilagen)

16. Punkt

Bericht des Außenpolitischen Ausschusses über die Regierungsvorlage (1144 der Beilagen): Kündigung des Vertrages zwischen der Republik Österreich und der Republik Südafrika über die gebührenfreie Erteilung von Sichtvermerken (1439 der Beilagen)

Präsident MMag. Dr. Willi Brauneder: Ich rufe nun die Punkte 13 bis 16 der Tagesordnung auf, über welche die Debatte unter einem durchgeführt wird.

Auf eine mündliche Berichterstattung wurde verzichtet.

Wir treten in die Debatte ein.

Als erster Redner ist Herr Abgeordneter Dipl.-Ing. Hofmann zu Wort gemeldet. Freiwillige Redezeitbeschränkung: 7 Minuten. – Bitte, Herr Abgeordneter.

20.55

Abgeordneter Dipl.-Ing. Maximilian Hofmann (Freiheitliche): Hohes Haus! Herr Vizekanzler! Ihre Arbeit ist ungeheuerlich – so hat es zumindest Ihr Fraktionskollege Dr. König gesagt.

Die Auflistung Ihrer Aktivitäten im Zusammenhang mit Menschenrechten in Afrika und China hat uns nicht überzeugt. Ich komme jetzt wieder nach Österreich zurück und befasse mich mit der Regierungsvorlage, mit dem Zusatzabkommen zum Abkommen zwischen der Republik Österreich und der Internationalen Atomenergie-Organisation über den Amtssitz der Internationalen Atomenergie-Organisation. Ein großer Wurf ist hier wohl nicht gelungen.

Worum geht es hierbei? – Es geht um das Einräumen einer Bevorzugung von Familienmitgliedern und Verwandten von Bediensteten der IAEO.

Herr Vizekanzler! Wir sehen keine Notwendigkeit für das Einräumen dieser Privilegien, und wir haben eine solche ja auch nicht im Zusammenhang mit der UNIDO, mit Joint Vienna und auch mit dem Europäischen Zentrum für lebende Sprachen gesehen. Hier wird, wie ich meine – ich beziehe mich hier auf eine Aussage des Herrn Bundeskanzlers, der Ihnen Scheinaktivität vorwirft –, mit Ihrer Scheinaktivität trotzdem eine Lawine losgetreten.

Welchen Grund, Herr Vizekanzler, gibt es für diese Bevorzugung, welchen Grund – in einer Situation, in der wir am Arbeitsmarkt einen Höchststand von über 300 000 Arbeitslosen in diesem Jahr vorfinden, wissend, daß die Tendenz steigend ist, wissend, daß im Monatsvergleich mit dem Vorjahr ebenfalls höhere Zahlen am Arbeitsmarkt, Arbeitslose betreffend, zu verzeichnen sind *(Abg. Dr. **Lukesch:** Beschäftigte!)* – Nichtbeschäftigte! *(Abg. Dr. **Lukesch:** Beschäftigte! Das stimmt aber!)* –, und wissend, daß diese Zahlen auch noch geschönt sind durch die Tatsache, daß es eine entsprechende Anzahl von Teilzeitbeschäftigten und geringfügig Beschäftigten gibt? Welchen Grund, Herr Vizekanzler, gibt es für das Einräumen von Privilegien für eine internationale Organisation, von der wir wissen – es ist bekannt, wir wissen es –, daß sie atomenergiefreundlich ist?

Ich verweise in diesem Zusammenhang auf einen "Presse"-Artikel, ein Interview mit dem Generaldirektor der IAEO vom Oktober 1997, aus dem das ganz klar hervorgeht, in dem er positive Stellungnahmen zur Atomenergie abgibt, in dem er wörtlich zwar einerseits äußert: "Wir sind eine Prüfbehörde." Auf der anderen Seite meint er aber: "Meines Erachtens muß die Atomenergie in Zukunft eine größere Rolle spielen, wegen der Energieunabhängigkeit und aus Umweltgründen – Stichwort: Treibhauseffekt." – Und letztlich kommt er zum Schluß, daß "die Atomenergie die Wahl für die nächsten 50 Jahre sein wird". *(Präsident Dr. **Fischer** übernimmt den Vorsitz.)*

Die IAEO ist jene internationale Organisation mit Sitz in Wien, die eine positive Stellungnahme zu Mochovce abgegeben hat, jene internationale Organisation, die quasi die Versprödung des Kernreaktors – also jenes wesentlichen Elements, das zur Besorgnis Anlaß gibt – in Abrede stellt, die sich klar dazu äußert, indem sie sagt, es bestünden keine Sicherheitsbedenken trotz eines fehlenden Containments. Ich weiß nicht, welche Ursache es tatsächlich geben kann, dieser Organisation solche Privilegien einzuräumen.

Herr Vizekanzler! Ich habe es eingangs erwähnt – und wahrscheinlich hat der Herr Bundeskanzler nicht so unrecht, wenn er Ihnen in der morgigen Ausgabe des "Kurier" Eigenart, Unmodernität und Scheinaktivität vorwirft –: Mit dieser Scheinaktivität sollten Sie diese Lawine, nämlich die des Einräumens von Privilegien, nicht lostreten. *(Beifall bei den Freiheitlichen.)*

21.00

Präsident Dr. Heinz Fischer: Zu Wort gemeldet ist Herr Abgeordneter Dr. Maitz. – Bitte, Herr Abgeordneter.

21.00

Abgeordneter Dr. Karl Maitz (ÖVP): Verehrter Herr Präsident! Sehr geehrter Herr Vizekanzler! Meine Damen und Herren! Die Abgeordneten der Volkspartei unterstützen alle Initiativen, die die Arbeit des österreichischen Bundesheeres im Bereich der internationalen Friedensvorsorge wirksam werden lassen. In diesem Zusammenhang ist das Abkommen zwischen Österreich und Dänemark über den Status der Multinationalen Brigade der Vereinten Nationen aus Eingreiftruppen hoher Bereitschaft, über das wir heute hier verhandeln und das wir beschließen werden, zu nennen.

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Es geht dabei um die rechtliche Stellung, die Ausstattung und die Formen der Zusammenarbeit für jene Österreicher – künftig auch Österreicherinnen –, die zurzeit oder in der Zukunft an dieser Brigade mitarbeiten. Ziel ist es, für künftige friedenserhaltende Einsätze die Vorlaufzeit von acht Wochen auf etwa vier Wochen zu halbieren. Die Anregung dazu kam 1995 von dem damaligen Generalsekretär der Vereinten Nationen, Boutros Boutros-Ghali. Der dänische Verteidigungsminister Haekkerup hat diese Initiative aufgegriffen und sich für die Aufstellung der multinationalen schnellen Eingreiftruppe für friedensstiftende und -erhaltende Maßnahmen eingesetzt. Deshalb ist auch der Sitz des Brigadestabes in Dänemark, in Kopenhagen.

Österreich nimmt gemeinsam mit sieben weiteren Staaten an den Planungsarbeiten teil und wurde mit maßgeblichen Funktionen betraut, die ich nennen möchte.

Erstens: Oberstleutnant Gerald Hatzenbichler ist Verbindungsoffizier zwischen Militär, den zivilen Behörden und den nichtstaatlichen Organisationen – also eine diplomatisch hochwertige Aufgabe für einen begabten österreichischen Offizier.

Zweitens: Major Adolf Brückler ist für die Einsatzplanung verantwortlich. Er kommt aus dem Pionierbereich und ist daher ein besonders geeigneter Kandidat für diese Aufgabe. Ab Mitte des Jahres 2000 wird Österreich im Rahmen dieser SHIRBRIG, dieser Brigade, die rasch in friedenserhaltenden, friedensstiftenden, friedenssichernden Einsätzen zur Arbeit gerufen werden wird, den Leiter der Planungsabteilung stellen.

Angehörige des Bundesheeres stellen sich dieser Aufgabe, weil wir Erfahrungen aus 38 Jahren UN-Einsätzen für Frieden und Sicherheit in Europa und in der Welt einbringen können und weil unsere Positionen im internationalen Vergleich überprüft werden können. Wie stehen wir bei Ausbildung, Ausrüstung, Ablaufplanung und Organisation bei diesen Einsätzen? Bisher wurden die Leistungen des österreichischen Bundesheeres und seiner Soldaten in den Auslandseinsätzen stets positiv beurteilt. Das heißt aber nicht, daß wir nicht auch noch dazulernen sollen und können.

Meine Damen und Herren! Seit dem Jahre 1960 sind in 38 Jahren 38 000 Angehörige des Heeres in Friedensmissionen im Rahmen internationaler Organisationen tätig gewesen. Wir sind überzeugt davon, daß die Teilnahme an diesen friedensunterstützenden Einsätzen auch im ureigensten Interesse der österreichischen Bevölkerung liegt, und werden deshalb dem gegenständlichen Abkommen zustimmen. *(Beifall bei der ÖVP.)*

21.04

Präsident Dr. Heinz Fischer: Nächster Redner ist Herr Abgeordneter Wolfgang Jung. – Bitte, Herr Abgeordneter. *(Abg. Dr. **Khol:** Er wird mich auch nicht überraschen! Er wird nicht zustimmen! Aber Jung hat ein gutes Niveau! – Abg. **Auer:** Teilweise! – Abg. Dr. **Khol:** Der Stadler-Effekt spielt auch bei ihm eine gewisse Rolle!)*

21.04

Abgeordneter Wolfgang Jung (Freiheitliche): Herr Präsident! Herr Bundesminister! Kollege Maitz hat bereits erklärt, was SHIRBRIG darstellt. Es ist eine an sich gute Sache. Die Frage ist eben wie immer die der Umsetzung. Hier hapert es leider, denn der gegenwärtige Verteidigungsminister neigt, wie auch sein Generaltruppeninspektor kürzlich festgestellt hat, dazu, sich und die Möglichkeiten des Bundesheeres zu überschätzen. Das ist auch leicht nachweisbar.

Wo machen wir überall mit? – Grenzsicherung: 2 000 Mann; österreichisches Kontingent in Zypern; Golan; zahlreichere kleinere UN-Einsätze – es sind, glaube ich, noch mehr als zehn –; SFOR in Bosnien und Herzegowina; demnächst einzelne Leute im Kosovo; FOREIGN; "PfP"; MINURSO – wenn es zustande kommt, obwohl wir ja schon seit einem Jahr darauf warten – und jetzt dann auch noch SHIRBRIG.

Meine Damen und Herren! Was sollen wir denn da noch alles machen? Wir haben ständig 3 000 Leute im Auslandseinsatz beziehungsweise an der Grenze. Das wäre auf die Bundeswehr umgerechnet so viel, als würden 30 000 Mann draußen stehen. Am Balkan haben die USA ungefähr 8 000 Mann im Einsatz. Wir übernehmen uns bei der ganzen Sache. Das ist das Problem.

Und übrigens, weil Kollege Maitz vorhin von der schnellen Eingreiftruppe gesprochen hat und davon, daß die Zeiten

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auf vier Wochen heruntergekürzt werden: In den vier Wochen wären alle Bosnier schon längst ausgerottet, wenn die Serben zuschlagen. Das ist ja das Problem bei all diesen Einsätzen, daß so organisierte Truppen nicht funktionieren können. Vier Wochen sind zu lang, und in der Praxis wird es noch länger dauern. Denn wenn Sie sich die Nachrichten anhören, dann hören Sie, daß die OSZE mit ihren Beobachtern im Frühjahr wirksam werden wird. *(Abg. Mag. **Kammerlander:** Das ist blanker Unsinn!)* Das ist doch lächerlich! Mit so etwas kann man einem Herrn Milos˘evic´ nicht imponieren!

Aber wir tanzen auf jedem Kirtag und verkaufen das wenige, das wir haben, gleich mehrfach. Die Salzburger Stierwascher waren geradezu harmlos im Vergleich zu dem, was unser Verteidigungsminister mit dem Bundesheer betreibt. *(Beifall bei den Freiheitlichen.)*

Zu Hause fehlt uns dann das Gerät, und wir müssen die Busse mieten – das wissen Sie genauso gut wie ich –, damit die Einheiten zum Schießen fahren können. Es fehlen aber auch die Leute, und wenn sich die Bataillonskommandanten trauen, sich negativ darüber zu äußern, dann werden sie zum Ministerrapport oder – noch mehr – zu seinem Diabolus im Kabinett, zu seinem Kabinettschef, befohlen und abgekanzelt. So schaut die Realität in unserem Bundesheer aus.

Der Herr Minister weiß genauso wie ich und wie viele hier – ich nehme an, Herr Kollege Maitz, Sie haben sich auch schon einmal informiert *(Abg. Hans Helmut **Moser:** Das weiß ich nicht, ob Kollege Maitz sich schon umfassend informiert hat!)* –, daß für diese sogenannten schnell abrufbaren Einheiten viel zuwenig Leute gemeldet sind und daß, wenn Sie die gemeldeten Leute anrufen, von zehn höchstens zwei übrigbleiben. Das ist eine Tristesse, aber sie entspricht der Realität!

Man wollte das einmal ändern; auch der Verteidigungsminister wollte das tun. Er wollte eine andere gesetzliche Lage, die vorsieht, daß sich zumindest neueintretende Kaderleute verpflichten müssen oder daß Leute, die eine Verpflichtung abgegeben haben, es sich dann nicht zwei Tage vorher oder noch am Flugplatz vor dem Abflug überlegen können. – Dazu ist es nicht gekommen. Hier hat sich der Herr Minister nicht durchgesetzt. Heute hat er am Schluß große Sprüche geklopft, aber gegenüber dem Koalitionspartner ist er so klein, daß er in der Praxis unterm Tisch durchgeht. Und unser Bundesheer leidet darunter, Herr Kollege Maitz! *(Beifall bei den Freiheitlichen. – Abg. Dr. **Maitz:** Ungeheuer "sachlich", Ihre Bemerkungen!)* Das ist die Realität! Auch bei MINURSO haben Sie die gleichen Probleme. *(Zwischenrufe der Abgeordneten Dr. **Maitz** und **Schwarzenberger.**)*

Truppen hoher Bereitschaft für eine internationale Brigade sollten es sein, Herr Kollege Maitz. Wie wollen Sie denn das machen mit der hohen Bereitschaft, wenn die Leute sich am Flugplatz abmelden? Diese Verbände sollten aufeinander eingespielt sein, sie sollten sich kennen, sie sollten sich aufeinander verlassen können. Mit der gesetzlichen Konstruktion, die wir haben, kann es nicht funktionieren. Aber unser Minister zeigt überall auf und spielt den Vorzugsschüler. Daheim hat er hingegen nichts zu reden und kann sich nicht durchsetzen. Dieser Minister agiert zu Lasten unseres Bundesheeres und vor allem zu Lasten seiner Soldaten. Wir haben das auch heute beim Hubschrauberproblem daran gesehen, wie die Gefährdung für die Piloten geringgeachtet wird. Es tut Ihnen weh, meine Damen und Herren gerade von der ÖVP, denn Sie wissen genau, wie die Realität ist. *(Beifall bei den Freiheitlichen.)*

Auch für SHIRBRIG besteht für den Einsatzfall die Gefahr, daß wir uns international blamieren, denn das Bundesheer ist längst schon bis an seine Grenzen gefordert. Aber das, meine Damen und Herren, hat Ihr Minister zu verantworten! *(Beifall bei den Freiheitlichen.)*

21.08

Präsident Dr. Heinz Fischer: Zum Wort gelangt Frau Abgeordnete Dr. Konrad. – Bitte, Frau Abgeordnete.

21.09

Abgeordnete Dr. Helga Konrad (SPÖ): Herr Präsident! Herr Bundesminister! Meine Damen und Herren! In den Abkommen, die heute zur Beschlußfassung vorliegen, geht es vorwiegend um Abkommen zur Intensivierung und zur Verbesserung der internationalen Zusammenarbeit. Mit dem Abkommen zwischen Österreich und der Russischen Föderation soll die wissenschaftlich-technische Zusammenarbeit, die es ja zwischen Hochschulen, Instituten und anderen Forschungseinrichtungen schon gibt, substantiell verstärkt und gefördert werden.

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Besonderes Gewicht wird dabei unter anderem auf den Austausch von WissenschaftlerInnen und ExpertInnen gelegt.

Ein besonderes Merkmal der neuen Vereinbarung ist einerseits die Gegenseitigkeit. Das heißt, die Beiträge der Vertragsstaaten sollen in Zukunft finanziell und inhaltlich ausgewogen sein. Wichtig und neu ist andererseits der ausdrücklich gewünschte Bezug zu EU-Forschungsprojekten und multilateralen Programmen. Das, was uns in der österreichischen Außenpolitik wichtig ist, wird in und mit diesem scheinbar unspektakulären Abkommen verwirklicht: Stabile, tragfähige Beziehungen zu anderen Staaten werden ganz wesentlich durch kulturelle und wissenschaftliche Zusammenarbeit, durch gemeinsame Projekte und durch die Entwicklung gemeinsamer Interessen aufgebaut und gefördert. Diese Zusammenarbeit ist auch Ausdruck der Überzeugung, daß wir das internationale Zusammenleben nur in gleichberechtigter Kooperation auf allen Ebenen des Lebens gestalten können.

Dieser Bereitschaft zur gleichberechtigten Kooperation entspricht auch das Zusatzabkommen über den Amtssitz der Internationalen Atomenergie-Organisation, mit dem die Chancen von Angehörigen der Bediensteten erhöht werden, einen besseren Zugang zum österreichischen Arbeitsmarkt zu erhalten. Was mittlerweile für die meisten internationalen Organisationen gilt, soll ab nun auch für die Internationale Atomenergie-Organisation gelten. Aus meiner Sicht ist die vorliegende Ergänzung des Abkommens besonders im Interesse von Frauen begrüßenswert: Erstens sind mit dem scheinbar neutralen Begriff "Angehörige" vorwiegend Frauen gemeint, deren berufliche Mobilität, Karriere und wirtschaftliche Selbständigkeit durch die bislang geltenden Regeln doch eingeschränkt waren, und zweitens erleichtern gute Arbeitsbedingungen für Angehörige auch die Karrieren von Frauen in internationalen Organisationen, weil angehörige Männer nur ungern auf ihre eigenständige Berufstätigkeit zugunsten der Auslandskarriere ihrer Partnerinnen verzichten. – Auch so gesehen halte ich dieses Abkommen für wichtig.

Auf das Abkommen zwischen Österreich und Dänemark gehe ich jetzt nicht näher ein, denn es ist ohnedies schon intensiv besprochen worden.

Während bei den zuvor genannten Abkommen besonders die Intensivierung der Beziehung und die Verbesserung des Status von Menschen in einem fremden Land im Mittelpunkt steht, geht es bei der Vertragskündigung mit Südafrika um eine Vertragsänderung, die dem Schengen-Abkommen Rechnung trägt. Das heißt, für Österreich ergibt sich die Notwendigkeit, die Visums- und Einreisebestimmungen mit den Schengen-Partnern zu akkordieren beziehungsweise zu harmonisieren.

Aus meiner Sicht ist diese schematische Vorgangsweise quer über alle Staaten nicht ganz unproblematisch, und deshalb wird meine Kollegin Irmtraut Karlsson einen Entschließungsantrag einbringen, der eine differenzierte politische Behandlung der Frage der Visa anregt.

Mit dieser Ergänzung, also mit diesem Entschließungsantrag, stimmt meine Fraktion den gegenständlichen Regierungsvorlagen zu. – Danke schön. *(Beifall bei der SPÖ und bei Abgeordneten der ÖVP.)*

21.14

Präsident Dr. Heinz Fischer: Nächster Redner ist Herr Abgeordneter Scheibner. – Bitte.

21.14

Abgeordneter Herbert Scheibner (Freiheitliche): Herr Präsident! Herr Bundesminister! Auch ich möchte mich kurz mit der Aufstellung der SHIRBRIG, dieser angeblich schnellen Eingreiftruppe beschäftigen.

Wie schon mein Kollege Jung gesagt hat, ist es grundsätzlich von der Idee her eine positive Sache, daß vor allem auch der Zeitraum bis zum Eingreifen im Rahmen eines UNO-Einsatzes verkürzt werden soll. Nur, Herr Bundesminister – auch das hat mein Kollege Jung schon angeführt –, Sie haben jetzt schon eine ganze Reihe derartiger Aktivitäten in der Bundesregierung aktualisiert und beschlossen. Daher stellt sich mir jetzt langsam die Frage: Was ist das sicherheitspolitische Ziel Österreichs hinter all diesen Aktivitäten?

Wir nehmen an allen derartigen Dingen teil, bis hin zur sogenannten CENCOOP, der Zentraleuropäischen Initiative, die auf einer Idee des Herrn Verteidigungsministers beruht und von der Bundesregierung gutgeheißen wurde, im Rahmen welcher man mit der Slowakei in Kampfeinsätze zur Friedensschaffung gehen möchte. Ich frage Sie, Herr

Außenminister, der Sie für die Außenpolitik und damit auch für die Außensicherheitspolitik zuständig sind: Welches sicherheitspolitische Konzept steht hinter diesen Beteiligungen? Denn andererseits haben Sie in Fragen, bei denen es wirklich darum geht, konkrete Vorteile für die österreichische Sicherheit zu lukrieren, etwa hinsichtlich Bündnismitgliedschaft im Rahmen der NATO, wenig anzubieten. Daher weiß man eigentlich nicht, was jetzt die Linie der Regierung, aber auch Ihrer Partei ist. Jüngst haben wir gehört, wie Klubobmann Khol plötzlich wieder von der bisher so hochgelobten Pro-NATO-Linie abgewichen ist. *(Abg. Dr. **Khol:** Das ist nicht richtig! Ich habe klargestellt: Die NATO hat Priorität!)* Offenbar kann man sich betreffend eine klare Ausrichtung der österreichischen Sicherheitspolitik nicht einigen, und man ist auch nicht bereit, das österreichische Bundesheer den Aufträgen entsprechend zu organisieren, Kollege Khol. *(Abg. Dr. **Khol:** Nur Präsident Fischer hat mich mißverstanden!)* Andererseits beteiligen sich die Österreicher an all diesen internationalen Initiativen, ohne daß man sich einmal überlegt, welchen Nutzen das für Österreich hat.

Herr Außenminister! Als Verantwortlicher in der Bundesregierung schaffen Sie damit eine Zweiklassen-Armee. Nach außen wird alles organisiert, und man versucht, das Beste zu geben. Man versucht, modernes Gerät anzuschaffen und das Gerät in Österreich so zu adaptieren, daß es international entsprechend verwendet werden kann. In Österreich selbst bricht jedoch alles zusammen. Höchste Militärs sagen, daß die Soldaten hier in Österreich für einen Einsatz ausgebildet werden, den sie im Ernstfall nicht überleben können.

Herr Außenminister! Von Ihnen als Regierungsmitglied, als Obmann der Österreichischen Volkspartei, die sich angeblich immer für die Sicherheitspolitik und die Landesverteidigung ausgesprochen hat, und als Vizekanzler würden wir uns erwarten, daß Sie nicht kommentarlos derartige internationale Initiativen – und zwar eine nach der anderen – beschließen, für die das österreichische Bundesheer auch noch Geldmittel freimachen muß, die dann im Inland fehlen, auf der anderen Seite aber nichts dagegen tun, daß das österreichische Bundesheer Schritt für Schritt dem Abgrund entgegengeht, sodaß Tausende und Abertausende Menschen beim Bundesheer die Motivation verlieren, obwohl sie es als ihre Berufung gewählt und sich zum Ziel gesetzt haben, für die Sicherheit und die Unabhängigkeit des Landes mit ihrer Gesundheit und ihrem Leben einzustehen.

Diese Menschen hätten es sich verdient, daß sie auch die Unterstützung dieser Bundesregierung haben. Leider bekommen sie sie nicht! Aber ich kann Ihnen sagen, dieses Parlament wird sich noch öfter mit diesen Fragen zu beschäftigen haben, denn es ist unsere Verantwortung als Volksvertreter und vor allem auch als Oppositionsabgeordnete, wenn schon die Bundesregierung, der Außenminister und der Verteidigungsminister nichts für diese Menschen und damit auch für die Sicherheit dieses Landes tun, hier im Parlament immer wieder darauf zu sprechen zu kommen und Maßnahmen zu verlangen, damit diese mißliche Situation verbessert wird! *(Beifall bei den Freiheitlichen.)*

21.18

Präsident Dr. Heinz Fischer: Zu Wort gelangt Frau Abgeordnete Dr. Gredler. Freiwillige Redezeitbeschränkung: 3 Minuten. – Bitte.

21.18

Abgeordnete Dr. Martina Gredler (Liberales Forum): Herr Präsident! Herr Vizekanzler! Meine Damen und Herren! Ich möchte mich zu zwei Bereichen äußern.

Erstens zum Zusatzabkommen mit der Atomenergie-Organisation. Natürlich kann man das als Privileg betrachten und die Frage stellen: Ist es gerechtfertigt, daß Familienangehörige von Personen, die bei uns in internationalen Organisationen tätig sind, einen besonderen Zugang zum Arbeitsmarkt haben und bevorzugt werden? – Es handelt sich hiebei um Lebenspartner beziehungsweise die Kinder. Alle anderen Personen sind ausgeschlossen.

Ich bin der Meinung, man sollte über Privilegien und Immunitäten im allgemeinen einmal eine Diskussion führen, und zwar nicht nur in Österreich, denn wir würden uns damit einen Standortnachteil erwirtschaften, sondern mit allen betroffenen Ländern. Man sollte sich die Frage stellen, ob die Immunitäten, die wir gewähren, in der heutigen Zeit überhaupt noch notwendig sind. Früher einmal war das die richtige Vorgangsweise, um Diplomaten und anderes ähnliches Personal zu schützen. Ich wage jedoch zu bezweifeln, daß dieser Schutz heutzutage wirklich in diesem Ausmaß notwendig ist.

In diesem Zusammenhang denke ich im speziellen an die Angehörigen. Die meisten sind Frauen, die ihre Karrieren

aufgeben müssen, damit sie ein Familienleben überhaupt noch zustande bringen, wenn der Gatte, wie es oftmals ist, in einer internationalen Organisation tätig ist und sie das Heimatland verlassen müssen. Ich hätte diese Bevorzugung sehr gerne auch für Ehegattinnen und Ehegatten von Diplomaten aus Österreich, die in anderen Ländern Arbeit suchen, damit sie nicht am Ende der Kette einsteigen müssen und erst nach vier Jahren eine Arbeitserlaubnis bekommen, sondern daß die schwierige Situation, in der sie sich befinden, wenn sie in ein anderes Land übersiedeln, gleich berücksichtigt wird.

Das halte ich nicht für unredlich. Aber noch einmal: Die gesamte Privilegien- und Immunitätendebatte sollte einmal weltweit geführt werden und insbesondere in den europäischen Ländern. Das wäre ein guter Ansatz.

Zu den Sichtvermerken und Südafrika: Ich bedaure es, daß die Interpretation des Schengener Vertrages in die Richtung geht, daß es notwendig ist, auf diese Weise Gelder zu lukrieren, das heißt, eine Gebühr einzuheben.

Der Artikel 9 im Schengener Vertrag lautet:

"Die Vertragsparteien verpflichten sich, eine gemeinsame Politik hinsichtlich des Personenverkehrs, insbesondere in bezug auf die Sichtvermerksregelung zu verfolgen. ... Die Vertragsparteien verpflichten sich, ihre Sichtvermerkspolitik im Einvernehmen weiter zu harmonisieren."

Ich würde meinen, daß dieser Textteil nicht Gebühren anspricht. Ich würde mir überhaupt wünschen, daß wir uns einmal den Kopf darüber zerbrechen, wie wir gebührenfrei in der ganzen Welt Visa erteilen können. Das wäre meiner Meinung nach in einer mobilen Welt der Kommunikation der richtige Ansatz! *(Beifall beim Liberalen Forum.)*

21.22

Präsident Dr. Heinz Fischer: Nächste Rednerin ist Frau Abgeordnete Mag. Kammerlander. – Bitte, Frau Abgeordnete.

21.22

Abgeordnete Mag. Doris Kammerlander (Grüne): Herr Präsident! Herr Bundesminister! Kolleginnen und Kollegen! Zunächst möchte auch ich auf die Aufkündigung des Abkommens zwischen Österreich und Südafrika beziehungsweise auf die Einführung von Visumgebühren zu sprechen kommen. Das ist heute schon öfters angesprochen worden, und auch ich möchte mit ein paar Worten noch darauf eingehen.

Wir haben im Ausschuß bereits darüber diskutiert, daß es natürlich kein gutes Bild macht, wenn das bilaterale Abkommen, das zwischen der Republik Südafrika und Österreich bestanden und eine gebührenfreie Bewegung zwischen diesen beiden Ländern gewährt hat, gerade jetzt aufgekündigt wird und wir gerade jetzt, da das Apartheidregime abgeschafft wurde und sich das Land auf einem demokratischen Weg befindet, die Bedingungen verschärfen.

Ich sehe das ähnlich wie meine Vorrednerin, Frau Kollegin Gredler. Auch ich kann beim besten Willen aus dem Schengener Abkommen nicht herauslesen, daß der Gleichschritt bei der Visaerteilung auch unbedingt der Gleichschritt bei den Gebühren sein muß.

Nun gibt es diesen gemeinsamen Antrag, der noch vorgestellt werden wird, dem wir uns anschließen. Ich meine, es ist ein gangbarer Weg, diese Frage im Schengener Exekutivausschuß zu diskutieren. Ich möchte nur soviel dazusagen: Ich würde mir wünschen, daß wir uns selbst eine Frist setzen, bis zu welcher der Bundesminister darüber Bericht erstatten möge, ob dieser Vorschlag eingebracht wurde, wie er aufgenommen wurde, wie die anderen darauf reagiert haben. Das fände ich im Hinblick auf diesen Antrag sinnvoll.

Ich freue mich, daß offensichtlich das, was wir im Ausschuß in bezug auf diesen Tagesordnungspunkt andiskutiert haben, insofern Gehör gefunden hat, daß es jetzt diesen gemeinsamen Antrag gibt. Daß es dann doch zu einem Antrag kommt, bestätigt mir, daß die eine oder andere Diskussion im Ausschuß doch nicht ganz umsonst ist.

Im zweiten Teil meiner Wortmeldung beziehe ich auf das SHIRBRIG-Abkommen, das auch schon angesprochen wurde. Dazu muß ich sagen, daß ich mich, als ich meinen Vorrednern, vor allem Maitz und Jung, gelauscht habe, gefragt habe, ob ich richtig liege mit meiner Meinung. Ich stimme selten mit diesen beiden Kollegen bezüglich

Annahme eines Tagesordnungspunktes überein; in der Argumentation stimme ich ohnedies nicht mit ihnen überein, was mich wieder beruhigt. Trotzdem möchte ich einiges dazu sagen, weil ich das eben anders sehe und auch anders begründen möchte als meine beiden Vorredner.

Wir begrüßen und unterstützen es, daß es zu diesem Abkommen kommt. Das mag den einen oder anderen hier wundern, denn Sie haben, wie ich meine, nie wirklich erfaßt, was unsere friedenspolitischen Optionen für Europa beziehungsweise unsere globalen friedenspolitischen Optionen insgesamt sind. Wenn wir einerseits eindeutig für eine Abrüstung auch des österreichischen Bundesheeres sind und nach wie vor die Meinung vertreten, daß auch da noch eine Reduzierung verträglich und sogar notwendig ist, dann bedeutet das nicht, daß wir es andererseits nicht für notwendig erachten, zu solchen multinationalen Einsatztruppen und Brigaden zu kommen. Der wesentliche Unterschied zu all dem, was bisher in diesem Haus diskutiert wurde, besteht allerdings darin, daß das ganz klar im Rahmen der Vereinten Nationen zu erfolgen hat.

Das war immer unser Bestreben und unser Bemühen, klarzumachen: Wir brauchen so etwas, aber wir brauchen es im Rahmen der Vereinten Nationen. Dann schaut das nämlich ganz anders aus, und zwar nicht nur, weil es dann klare Beschlüsse und Aufträge – davon gehe ich zumindest aus – durch die Vereinten Nationen gibt, sondern weil die UNO unserer Meinung nach die einzige legitime internationale Einrichtung ist, die dafür zuständig ist.

Das, was wir bisher immer kritisiert haben, war, daß es oft zu einem Wildwuchs gekommen ist: Die NATO hat beschlossen, irgendwo zu intervenieren, teilweise gab es dann sehr wenig begründbare, ja teilweise gar keine Beschlüsse des Sicherheitsrates, zum Teil ist es dann nicht einmal zu NATO-Interventionen, sondern zu irgendwelchen länderübergreifenden Aktionen gekommen. Das, finden wir, ist kein guter Weg, vor allem dann nicht – und wir befinden uns ja jetzt in einer außenpolitischen Debatte –, wenn es um eine friedenserhaltende außenpolitische Perspektive geht. Wenn die Friedenserhaltung im Rahmen eines außenpolitischen Konzepts, einer außenpolitischen Vorgangsweise stattfindet, dann stellt das unserer Meinung nach eine wirklich grundsätzlich andere Herangehensweise dar. Insofern möchte ich mich da ganz klar von dem distanzieren, was meine schon zitierten Vorredner gesagt haben. *(Beifall bei den Grünen.)*

Es geht mir überhaupt nicht darum, die Arbeit des Bundesheeres zu erleichtern. Vielmehr ginge es mir darum, das Bundesheer durchaus in Frage zu stellen unter dem Aspekt, was international tatsächlich zu leisten ist und was wir tun oder nicht tun können. Ich weiß nicht, ob Österreich unbedingt das Bundesheer, so wie es jetzt ist, wie es sein könnte oder wie es nicht ist, einbringen müßte – das lassen wir einmal dahingestellt –, oder ob Österreich nicht eine ganz andere Leistung, eine ganz andere Logistik der Friedenserhaltung einbringen könnte, die sehr, sehr wesentlich wäre.

Ich kann Ihnen sagen, daß ich bei den verschiedensten internationalen Treffen, Seminaren oder Konferenzen immer wieder auf den Beitrag angeredet werde, den Österreich mit der Friedensuniversität in Schlaining und der dort stattfindenden Ausbildung leistet. Da spielen wir eine hervorragende Rolle – international betrachtet, international beachtet. Möglicherweise sind es also – und ich bin dieser Anschauung – ganz andere logistische Bereiche, die wir in solche internationale friedenserhaltende Operationen einbringen sollten.

Zur Friedenserhaltung möchte ich abschließend noch zwei, drei Worte sagen: Ich denke mir, daß wir keinesfalls aus den Augen verlieren dürfen, daß die klassischen Einsätze der Vereinten Nationen, wie sie in Zypern, auf den Golanhöhen und in anderen Bereichen stattfinden, nach wie vor ihre Wichtigkeit und ihre Bedeutung haben. Ich möchte hier und bei dieser Debatte sagen, daß ich alle Überlegungen, die im Landesverteidigungsministerium angestellt werden, dort die Kräfte abzuziehen und sich verstärkt an schnellen Interventionseingreiftruppen zu beteiligen, nicht unterstütze. Ich meine, wir haben gerade auch in diesem Bereich der Friedenserhaltung sehr gute Erfahrungen gemacht und gute Arbeit geleistet. Diese sollte jetzt nicht in Frage gestellt oder gar annulliert werden.

Zweitens möchte ich zur Friedenserhaltung noch sagen: Ich würde mir wünschen, daß wir mehr präventive Arbeit in diesem Bereich leisten könnten. Bezüglich der Bedeutung von präventiver Arbeit für mich möchte ich an einem konkreten Beispiel anknüpfen: Wenn wir heute, mit allen berechtigten Bedenken, darüber diskutieren, daß 2 000 OSZE-Beobachter demnächst im Kosovo stationiert sein werden, dann sollten wir heute meiner Meinung nach auch bereit sein, zu diskutieren und zu überlegen, ob es nicht dringend notwendig sein wird, in allernächster Zeit solche Beobachter zum Beispiel auch in Mazedonien zu stationieren, um Verständnis dafür zu werben, eine dort bestehende Mission sowohl der OSZE als auch der UNO entsprechend auszuweiten, um einer Situation, wie sie sich meiner Einschätzung nach nach den Wahlen in Mazedonien abzeichnet, vorweg präventiv zu begegnen.

Denn die Situation, auf die ich noch ganz kurz eingehen möchte, geht meiner Meinung nach in eine Richtung, die sehr, sehr bedenklich ist. *(Zwischenbemerkung von Vizekanzler Dr. **Schüssel.**)*

Ich weiß, daß dort sowohl die UNO als auch die OSZE sind. Die Frage ist nur, ob das ausreichen wird. Denn ich teile nicht Ihre Ansicht, Herr Bundesminister, und auch nicht die Ansicht der bürgerlichen Zeitung "Die Presse", daß das Wahlergebnis in Mazedonien eine Beruhigung der Lage mit sich bringen wird. Ich befürchte vielmehr, daß es zu einer sehr starken Beunruhigung der Lage kommen wird. Es haben dort zwei sehr radikale nationale Parteien einen Wahlsieg errungen, und es zeichnet sich eine Koalition zwischen der VRMO und der DPA ab. Aus meiner Erfahrung kann ich nur sagen: Wenn sich zwei radikale, sehr nationalistische Parteien zusammentun, dann ist die Option, daß jede der beiden Parteien vermutlich ihren Weg verfolgen wird, der nicht unbedingt zur Einheit Mazedoniens führen wird, wie wir aus der Vergangenheit wissen, sehr groß. *(Abg. **Smolle:** Der Bericht in der "Wiener Zeitung", auf den Sie sich stützen, stellt das nicht richtig dar!)* Das stimmt nicht! Ich kenne die Situation in Mazedonien und kann sie durchaus beurteilen! Und das in einem Gebiet, in dem ohnedies gerade eine sehr große Instabilität zu verzeichnen ist beziehungsweise ein sehr fragiler Waffenstillstand herrscht.

Um noch einmal auf das eigentliche Anliegen zurückzukommen: Für mich geht es im Bereich der Friedenserhaltung vielmehr darum, verstärkt auf diese präventiven Möglichkeiten oder Optionen zu setzen, um Schritt für Schritt von der Notwendigkeit schneller Eingreiftruppen wegzukommen, die ja dann immer nur das Schlimmste oder Allerschlimmste verhindern können, keinesfalls aber wirklich zu einer mittelfristigen oder längerfristigen Friedenslösung beitragen können. – Danke. *(Beifall bei den Grünen.)*

21.35

Präsident Dr. Heinz Fischer: Nächster Redner ist Herr Abgeordneter Platter. – Bitte.

21.35

Abgeordneter Günther Platter (ÖVP): Herr Vizekanzler! Herr Präsident! Geschätzte Damen und Herren! Ich möchte ebenfalls ganz kurz auf die Regierungsvorlage betreffend Kündigung des Vertrages zwischen Österreich und Südafrika und die gebührenfreie Erteilung der Sichtvermerke eingehen.

Die Kündigung dieses Vertrages, geschätzte Frau Abgeordnete Kammerlander, ist deshalb notwendig, weil einerseits Österreich durch den Schengen-Vollbeitritt dazu verpflichtet ist und andererseits eine einvernehmliche Aufhebung dieses Vertrages mit Südafrika nicht möglich war.

Meine Damen und Herren! Wenn wir heute mit der Beschlußfassung unserer Verpflichtung zur Vertragskündigung nachkommen müssen, dann möchte ich, wenn wir schon über Schengen reden, die Gelegenheit wahrnehmen und ganz klar zum Ausdruck bringen, daß der Beitritt Österreichs zum Schengener Übereinkommen eine gewaltige sicherheitspolitische Errungenschaft war. Wenn Herr Innenminister Schlögl auch da oder dort noch seine Hausaufgaben im Bereich des Personals und der Ausrüstung der Exekutive zu erledigen hat, so hat sich doch seit unserem Vollbeitritt gezeigt, daß die rigorosen polizeilichen Maßnahmen entlang der 1 460 Kilometer langen Außengrenze und die Öffnung der Binnengrenze in Verbindung mit der Schleierfahndung die richtige sicherheitspolitische Entscheidung, die richtige sicherheitspolitische Antwort war.

Ich erinnere in diesem Zusammenhang an die ständig steigende Zahl der Aufgriffe im Bereich der illegalen Grenzgänger, und ich erinnere an die Sicherstellung von 1,5 Tonnen Marihuana beim Karawanken-Tunnel. Ich erinnere weiters an die jüngsten Aussagen des bayrischen Innenministers Beckstein, der gesagt hat, daß die Schleierfahndung ein Erfolgsmodell ist. Und ich erinnere darüber hinaus, wenn ich über Schengen rede, an die Aussage unseres Vizekanzlers vor dem Beitritt: Wir von der Österreichische Volkspartei drängen auf Schengen. *(Beifall bei der ÖVP.)*

Meine Damen und Herren! Von diesem Ausflug komme ich wieder zurück zu der in Verhandlung stehenden Regierungsvorlage. Es bestand nicht nur mit Südafrika, sondern mit 16 anderen Ländern die gegenseitige Praxis, daß gebührenfreie Sichtvermerke ausgegeben werden, aber lediglich mit Südafrika wurde ein Vertrag geschlossen, den es nun zu kündigen gilt. Freilich ist die Optik derzeit nicht gerade gut, daß Südafrika früher keine Gebühren bezahlen mußte und heute, da Südafrika eine demokratische Republik ist, diese Gebühreneinhebung notwendig ist. Daher bin ich froh darüber, daß Kolleginnen und Kollegen von SPÖ und ÖVP diesen Fall zum Anlaß genommen und einen Entschließungsantrag eingebracht haben, daß der Schengener Exekutivausschuß die Politik im Bereich

der gemeinsamen Sichtvermerksregelungen überprüfen soll.

Meine Damen und Herren! Ich ersuche Sie daher, diesem Entschließungsantrag und selbstverständlich auch der Regierungsvorlage die Zustimmung zu erteilen. – Danke. *(Beifall bei der ÖVP.)*

21.37

Präsident Dr. Heinz Fischer: Nächste Rednerin ist Frau Abgeordnete Karlsson. – Bitte.

21.37

Abgeordnete Dr. Irmtraut Karlsson (SPÖ): Sehr geehrter Herr Präsident! Sehr geehrter Herr Vizekanzler! Hohes Haus! Manchmal kommt es vor, daß im Getriebe der Politik eine gute Idee oder eine gute Maßnahme in der administrativen Geschäftigkeit nicht ganz im beabsichtigten Sinne umgesetzt wird. Das betrifft auch jene Regierungsvorlage zur Kündigung des bilateralen Abkommens mit Südafrika bezüglich der Gebührenfreiheit.

So gut – das hat mein Vorredner gesagt – die Idee eines großen Raums in Europa aufgrund des Abkommens von Schengen ist, in dem es keine Grenzen und keine Grenzkontrollen mehr gibt, so vorsichtig muß das Ganze gehandhabt werden, damit es nicht zu einer Festung Schengen kommt und wir einfach administrativ – und das dürfte hier der Fall gewesen sein – alles zumachen, aus, Schluß, der Exekutivrat hat beschlossen, sondern vielmehr eine politische, aber auch eine kulturelle – darauf möchte ich bestehen – Diskussion darüber stattfindet, welche Beziehungen zu manchen Ländern bestehen.

Ich möchte ein Beispiel aus der bilateralen Visageschichte Österreichs nennen: Österreich hatte mit dem kleinen Karibikstaat St. Lucia mit 200 000 Einwohnern Visafreiheit und Gebührenfreiheit. Warum? – Das Archäologische Institut der Universität Wien hat dort interessante ethnologische und archäologische Ausgrabungen durchgeführt, und es gab in gewissem Ausmaß auch Tourismus mit diesem Staat. Deshalb hat man zur gegenseitigen Erleichterung dieses Abkommen getroffen. Das war kein Vertrag – deshalb mußten wir ihn nicht kündigen –, sondern nur ein Notenwechsel, der Visafreiheit und Gebührenfreiheit vorsah.

Ähnliche Dinge sollten in diesem größeren Europa der Schengen-Staaten auch möglich sein, etwa – wie der Herr Vizekanzler im Ausschuß gesagt hat – betreffend die Beitrittswerber Estland oder die anderen zwei baltischen Staaten, die noch nicht Beitrittswerber sind. Auch diesbezüglich ist zu überlegen, ob wir die Schotten dichtmachen müssen. Deshalb ist es so wichtig, daß dieser Entschließungsantrag, den ich nun, nachdem er schon dreimal erwähnt wurde, einbringe, auch beschlossen wird. Er lautet:

Entschließungsantrag

der Abgeordneten Dr. Karlsson, Platter, Leikam, Dr. Gredler, Mag. Kammerlander und Genossen betreffend die Überprüfung der Politik im Bereich der gemeinsamen Sichtvermerksregelung im Rahmen des Schengener Exekutivausschusses

Der Nationalrat wolle beschließen:

Entschließung

Der Nationalrat hat beschlossen:

Die Bundesregierung/der zuständige Bundesminister wird ersucht, sich im Rahmen des Schengener Exekutivausschusses für eine Überprüfung der Politik im Bereich der gemeinsamen Sichtvermerksregelung und der Einhebung entsprechender Gebühren einzusetzen und insbesondere eine Diskussion über die Kriterien, auch unter politischen und kulturellen Aspekten, die den diesbezüglichen Entscheidungen des Exekutivausschusses zugrunde liegen, zu initiieren.

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Aber ich möchte diesen Tagesordnungspunkt nicht vorübergehen lassen – mein Vorredner hat gesagt, daß die Sicherheit Europas mit diesen polizeilichen Maßnahmen des Schengen-Abkommens gewährleistet ist –, ohne

darauf hinzuweisen, daß die Polizei allein die Sicherheit nicht garantiert. Es mehren sich die Berichte und Gutachten, aus denen klar wird, daß sich in Europa Sicherheitsrisiken ganz anderer Art aufbauen, nämlich dadurch, daß die Atomwaffen teilweise vor sich hin rotten und das ganze System noch immer so aufgebaut ist, als hätten wir zwei Blöcke und den Kalten Krieg.

Nächste Woche wird bei der UNO ein Vertrag für eine atomwaffenfreie Welt und für die Aufstellung einer neuen Abrüstungsagenda im Hinblick darauf vorgelegt. Aus Europa sind Irland und Schweden federführend, weiters sind Neuseeland, die Republik Südafrika und mehrere lateinamerikanische Staaten daran beteiligt. Ich hoffe, da es uns um die Sicherheit dieser Welt geht, daß Österreich bei dieser Resolution nicht nur zustimmend tätig wird, sondern aktiv mittut. – Danke. *(Beifall bei der SPÖ sowie der Abgeordneten Dr.* ***Gredler*** *und Mag.* ***Stoisits.)***

21.42

Präsident Dr. Heinz Fischer: Der Entschließungsantrag Karlsson, Platter, Leikam, Gredler, Kammerlander ist ordnungsgemäß eingebracht und steht daher mit in Verhandlung.

Nächster Redner ist Herr Abgeordneter Moser. Freiwillige Redezeitbeschränkung: 3 Minuten. – Bitte, Herr Abgeordneter.

21.42

Abgeordneter Hans Helmut Moser (Liberales Forum): Sehr geehrter Herr Präsident! Herr Vizekanzler! Drei kurze Anmerkungen zum Abkommen über die Teilnahme an SHIRBRIG:

Zunächst meine ich, daß es wichtig ist, daß Österreich sich an der Maßnahme der Vereinten Nationen, eine schnelle Eingreiftruppe aufzustellen, beteiligt und auch mit entsprechenden Kapazitäten, mit Personal im Planungsstab der SHIRBRIG in Dänemark vertreten ist. Daher werden wir diesem Abkommen unsere Zustimmung erteilen.

Ich glaube, daß diese aktive Mitarbeit im Rahmen der friedenserhaltenden Operationen der Vereinten Nationen ganz wichtig ist. Frau Kollegin Kammerlander, dieser Beitrag ist auch deshalb wichtig, weil er als eine Ergänzung zu den präventiven Maßnahmen zu sehen ist. Notwendig sind präventive Maßnahmen, eine präventive Diplomatie, um den Ausbruch von Krisen zu verhindern. Wenn dies bedauerlicherweise nicht möglich ist, dann ist es andererseits aber auch wichtig, daß es ein Element gibt, das die Beschlüsse der Vereinten Nationen entsprechend umsetzen und durchsetzen kann. Und zu diesem Zweck soll diese Eingreiftruppe aufgestellt werden.

Ich glaube aber, daß damit auch eine gewisse Gefahr verbunden ist, nämlich erstens, daß wir damit die eigentlichen Aufgaben des österreichischen Bundesheeres in Österreich aus den Augen verlieren, und zweitens, daß dies eine Überforderung des Heeres als solchem zur Folge hat. Es wurde von einigen Vorrednern ja schon angesprochen: Wir sind bereits an der Grenze der Leistungsfähigkeit des Bundesheeres angelangt.

Damit bin ich beim zweiten Punkt, nämlich bei der Frage, mit welchen Einheiten sich Österreich an dieser internationalen Eingreiftruppe beteiligen soll.

Herr Vizekanzler! Es ist ja vorgesehen, daß es die sogenannten vorbereitenden Einheiten gibt, und ich darf Sie auf einen Aspekt aufmerksam machen, nämlich auf die Tatsache, daß gerade der Generaltruppeninspektor darauf hingewiesen hat, daß wir in dieser Richtung nicht wirklich einsatzbereit sind. Ich darf zitieren, weil es mir wichtig erscheint, daß das Hohe Haus auch davon Kenntnis bekommt.

Er sagt, daß wir aufgrund der finanziellen Unterdotierung des Bundesheeres eingeschränkte Handlungs- und Entscheidungsmöglichkeiten haben, und bezieht sich als Beispiel auf die Auslandseinsätze: Die Politik kann sich auf den Kopf stellen. Wir können nicht innerhalb von vier bis acht Wochen eine respektable Anzahl auf die Beine stellen. Wir können Beobachter als Einzelfiguren rekrutieren, aber nicht Einheiten oder gar Verbände bereitstellen.

Das, meine Damen und Herren, ist im Prinzip eine Bankrotterklärung der bisherigen Politik des Verteidigungsministers, der einen klaren Auftrag bekommen hat, die entsprechenden vorbereitenden Einheiten aufzustellen. *(Beifall beim Liberalen Forum.)*

Mein dritter und letzter Punkt, Herr Vizekanzler – er ist leider nicht da *(Abg. Dr. **Schmidt** – auf den neben dem Präsidium mit den Abgeordneten Dr. Mock und Mag. Mühlbachler sprechenden Vizekanzler Dr. Schüssel weisend –: Dort! Er schwätzt!);* oder doch; ich werde es ihm nachher auch noch sagen –, ist der Hinweis auf die Tatsache, daß all diese internationalen Abkommen leider Gottes am Parlament vorbei abgeschlossen werden und daß immer wieder gesagt wird, das wäre kein Staatsvertrag nach Artikel 50 der österreichischen Bundesverfassung. Im nachhinein stellt sich dann heraus, weil ein gesetzesergänzender Beschluß im Nationalrat gefaßt werden muß, daß sehr wohl die Notwendigkeit bestanden hätte, die entsprechenden Abkommen dem Parlament zur Beschlußfassung vorzulegen. Das ist in diesem Fall verabsäumt worden.

Ich darf den Herrn Außenminister daher darauf hinweisen, daß dies in Zukunft unterlassen werden möge und daß all die internationalen Abkommen im Parlament einer Beschlußfassung zu unterziehen sind. – Danke. *(Beifall beim Liberalen Forum.)*

21.46

Präsident Dr. Heinz Fischer: Zu Wort gemeldet ist Frau Abgeordnete Gabriela Moser. – Bitte, Frau Abgeordnete.

21.46

Abgeordnete Dr. Gabriela Moser (Grüne): Sehr geehrter Herr Präsident! Sehr geehrter Herr Außenminister! Lassen Sie mich die Gelegenheit – jetzt sind es nur mehr zwei Stunden, bis es Mitternacht ist und sich diese 20 Jahre Temelin dann sozusagen abgespult haben *(Abg. **Rauch-Kallat:** Zwentendorf!)* – wahrnehmen, doch noch im Zusammenhang mit dem Tagesordnungspunkt IAEO *(Abg. **Schwarzenberger:** 20 Jahre Zwentendorf, nicht Temelin!)* – ja, Zwentendorf, danke schön – auf die Dringlichkeit hinzuweisen, die ich Ihnen in der Früh mit diesem gelben Blatt signalisiert habe. *(Die Rednerin hält ein Blatt in die Höhe.)*

Herr Außenminister! Sie wissen genau, daß Sie jetzt noch die Möglichkeit haben – darf ich vieleicht doch um Aufmerksamkeit bitten –, im Rahmen eines Berichtes, einer Stellungnahme gegenüber der Tschechischen Republik deutlich zu signalisieren, daß wir Österreicherinnen und Österreicher massiv tangiert sind, wenn Temelin in Betrieb geht.

Bitte nehmen Sie diese Gelegenheit wahr, schreiben Sie einen Brief, schreiben Sie eine Note, legen Sie in einer Protestaktion klar, daß wir in Österreich mit der Inbetriebnahme nicht einverstanden sind! Jetzt ist die Chance gegeben. Bitte ergreifen Sie diese Gelegenheit!

Eine zweite Chance ist gegeben: Sie wissen seit heute, daß die EU keine Experten entsendet, daß aber wir als Nachbarstaat die Möglichkeit haben, Experten in eine Kommission zu nominieren. Bitte nehmen Sie auch diese Gelegenheit wahr und nominieren Sie einen Experten, der wirklich die Interessen der Österreicherinnen und Österreicher vertritt!

Nehmen Sie heute abschließend noch die Möglichkeit wahr, hier überparteilich diesen Vertrag zu unterschreiben, der darauf abzielt, daß das Kraftwerk Temelin nicht in Betrieb gehen soll, daß die Punkte "Nichtnuklearer Einsatz des AKW Temelin" beachtet werden, daß die Punkte des Defizits klar werden, daß andere Alternativprojekte vorangetrieben werden, und vor allem, daß im Rahmen der Erweiterungsgespräche auch Temelin thematisiert wird. Ich bin gegen ein Junktim, aber ich bin dafür, daß die Atomkraftwerkspolitik unseres Nachbarlandes auch bei den Beitrittsverhandlungen unbedingt angesprochen werden muß.

Ich appelliere in diesem Sinn an Sie, Herr Außenminister, und an Sie, werte Kolleginnen und Kollegen, daß Sie sich doch diese drei Sekunden Zeit nehmen, dieses gelbe Blatt, so Sie es noch haben, zu unterschreiben. – Danke schön. *(Beifall bei den Grünen.)*

21.49

Präsident Dr. Heinz Fischer: Weitere Wortmeldungen dazu liegen nicht vor. Daher ist die Debatte geschlossen.

Wir kommen zu den ***Abstimmungen,*** und ich darf Sie bitten, die Plätze einzunehmen.

Wir stimmen zunächst ab über den Antrag des Außenpolitischen Ausschusses, dem Abschluß des

gegenständlichen Staatsvertrages mit der Russischen Föderation über wissenschaftlich-technische Zusammenarbeit in 1190 der Beilagen die Genehmigung zu erteilen.

Ich bitte jene Damen und Herren, die bereit sind, diese Genehmigung zu erteilen, um ein Zeichen. – Ich stelle fest, die Beschlußfassung über dieses Abkommen ist ***einstimmig*** erfolgt.

Wir gelangen weiters zur Abstimmung über den Antrag des Außenpolitischen Ausschusses, dem Abschluß des gegenständlichen Staatsvertrages betreffend ein Zusatzabkommen zum Abkommen zwischen der Republik Österreich und der Internationalen Atomenergie-Organisation über den Amtssitz der Internationalen Atomenergie-Organisation in 1387 der Beilagen die Genehmigung zu erteilen.

Auch hier darf ich im Falle der Genehmigung um ein Zeichen der Zustimmung bitten. – Das Abkommen ist mit ***Mehrheit genehmigt*** worden.

Weiters kommen wir zur Abstimmung über den Antrag des Außenpolitischen Ausschusses, dem Abschluß des Staatsvertrages mit der Regierung von Dänemark über den Status des Planungselementes der Multinationalen Brigade der Vereinten Nationen aus Eingreiftruppen hoher Bereitschaft in Dänemark in 1382 der Beilagen die Genehmigung zu erteilen.

Ich bitte jene Damen und Herren, die damit einverstanden sind, um ein Zeichen. – Ich stelle fest, daß dieser Staatsvertrag ***einstimmig genehmigt*** wurde.

Schließlich kommen wir zur Abstimmung über den Antrag des Außenpolitischen Ausschusses, der Kündigung des Vertrages zwischen der Republik Österreich und der Republik Südafrika über die gebührenfreie Erteilung von Sichtvermerken die Genehmigung zu erteilen.

Auch hier darf ich für den Fall Ihrer Zustimmung um ein Zeichen bitten. – Auch hier kann ich feststellen, daß dieser Antrag ***einstimmig angenommen*** wurde.

Schließlich gelangen wir zur Abstimmung über den ***Entschließungsantrag*** der Abgeordneten Karlsson, Platter, Gredler, Kammerlander betreffend die Überprüfung der Politik im Bereich der gemeinsamen Sichtvermerksregelung im Rahmen des Schengener Exekutivausschusses.

Ich darf bitten, daß jene Damen und Herren, die diesem Antrag zustimmen, ein Zeichen geben. – Ich stelle fest, dieser Entschließungsantrag ist mit ***Stimmenmehrheit angenommen.*** *(E 146.)*

17. Punkt

Bericht des Außenpolitischen Ausschusses über den Antrag 719/A (E) der Abgeordneten Dr. Martina Gredler und Genossen betreffend gründliche Vorbereitung der EU-Erweiterung (1440 der Beilagen)

Präsident Dr. Heinz Fischer: Ich rufe den 17. Punkt der Tagesordnung auf.

Zum Wort gemeldet ist Herr Abgeordneter Ing. Nußbaumer. – Bitte.

21.52

Abgeordneter Ing. Wolfgang Nußbaumer (Freiheitliche): Herr Präsident! Herr Vizekanzler! Hohes Haus! Ein wichtiger Punkt zu später Stunde – wichtig deshalb, weil eine ungenügende Vorbereitung, verbunden mit einer viel zu frühen Osterweiterung, ungeahnte, kaum bewältigbare Strukturprobleme, auch in Österreich, auslösen wird.

Ich weiß nicht, Herr Vizekanzler, ob Sie zu dieser Stunde und nach den Anschuldigungen oder Angriffen oder Untergriffen Ihres Koalitionspartners nicht andere Gedanken im Kopf haben, aber ich bitte Sie doch, diesen Ausführungen einigermaßen zu folgen.

Der Bericht des Außenpolitischen Ausschusses ist so mager, daß ich mich über die Zustimmung durch die Koalitionsabgeordneten nur wundern werde. Das ist kein Ergebnis einer intensiven Diskussion. Das muß

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festgehalten werden! *(Beifall bei den Freiheitlichen.)*

Zunächst einmal hat die EU-Kommission auf eine freiheitliche Anfrage über die durch die Osterweiterung zu erwartenden Veränderungen in bezug auf die Lohnentwicklung, die Arbeitsmarktsituation, die Migrationsströme, den Einfluß auf Grenzregionen, innere Sicherheit und so weiter pro Staat und innerhalb der EU und je Beitrittswerber wirklich sehr lapidar mitgeteilt – ich zitiere –:

"Bezüglich der Auswirkungen der Erweiterung auf die sich dicht an der gegenwärtigen Ostgrenze der Gemeinschaft befindenden Regionen (...) hat die Kommission keine Analyse der in der Anfrage enthaltenen einzelnen Punkte vorgenommen. Es scheint äußerst schwierig, ernsthafte Vorausschätzungen über das Lohnniveau in den neuen Mitgliedstaaten vorzunehmen (...) oder über die Migrationsströme in den Grenzgebieten. (...) Auch (...) Voraussagen bezüglich der kriminellen Handlungen sind nicht mit annehmbarer Genauigkeit möglich." – Soweit die EU-Kommission.

Daß sich diese um die Interessen der Bürger keinen Dreck mehr schert, ist bekannt und mit dieser Aussage mehr als bewiesen. Bewiesen ist dies auch dadurch, daß sich Herr Kommissar Fischler mit seiner Agrarpolitik in einen echten Gegensatz zu Österreichs Interessen gestellt hat. *(Abg. Dr. **Graf:** Das ist unglaublich! Unglaublich!)*

Daß aber auch Österreichs Regierung keine Bereitschaft zeigt, darüber nachzudenken, welche Vorbereitungen zur Osterweiterung im Interesse der Bevölkerung notwendig sind, macht doch eher betroffen. Denn der Versuch der Regierung, dieses Problem durch ein EU-Grenzlandförderungsprogramm zu lösen, war falsch, das hat sich ja herausgestellt, und dieser Versuch ist auch von der Kommission kläglich abgeschmettert worden. *(Zwischenbemerkung von Vizekanzler Dr. **Schüssel.)*** Sie können das ja dann berichtigen. Die EU-Kommission hat Ihnen jedenfalls mitgeteilt, daß hier keine Grenzlandförderung möglich ist.

Ich frage Sie daher: Wann, Herr Vizekanzler, werden Sie Studien vorlegen, die die Auswirkungen der Osterweiterung je Beitrittswerberland auf Österreich darstellen? Wann, Herr Vizekanzler, werden Sie jenes Maßnahmenpaket vorlegen, das aufzeigt, mit welchen Mitteln bei einer Osterweiterung ein Verlust des Wohlstandes, ein Ansteigen der Arbeitslosigkeit, ein Abfall der Wettbewerbsfähigkeit der österreichischen Wirtschaft verhindert wird?

Herr Vizekanzler, geben Sie doch Antwort auf die Frage: Welche Maßnahmen werden ergriffen, um die Zerstörung der Grenzlandstrukturen zu verhindern? Welche Maßnahmen werden ergriffen, um die Arbeitsmarktsituation stabil zu halten?

Geben Sie, Herr Vizekanzler, bitte auch Antwort auf die Fragen: Welche Maßnahmen werden ergriffen, um bei freiem Personenverkehr den zu erwartenden Migrationsstrom zu verhindern? Welche Maßnahmen werden ergriffen, um den zu erwartenden Verkehr zu bewältigen? Gibt es verkehrstechnische Planungen? Wenn ja, wie sehen sie aus? Oder wie sonst lösen Sie die auch im sehr mageren Bericht erwähnten großen Probleme im Verkehrs- und Umweltbereich?

Ich habe gar keine Zeit, alle Fragen hiezu zu stellen. Glauben Sie, Herr Vizekanzler, wenn Sie keine Antworten haben, die Heinzelmännchen werden diese Fragen klären und gleich auch die Arbeiten dazu erledigen? Ich glaube es nicht, Herr Vizekanzler! Ich sage Ihnen eindringlich: Treffen Sie Ihre Vorbereitungen, denn unsere Ablehnung zur Osterweiterung kommt doch nicht von ungefähr! Unterschätzen Sie nicht die Auswirkungen, die diese Osterweiterung für die österreichische Bevölkerung, für die österreichische Wirtschaft, für die Beschäftigung der Österreicher haben wird! – Danke schön. *(Beifall bei den Freiheitlichen.)*

21.58

Präsident Dr. Heinz Fischer: Nächster Redner ist Herr Abgeordneter Dr. Mock. – Bitte, Herr Abgeordneter.

21.58

Abgeordneter Dr. Alois Mock (ÖVP): Herr Präsident! Meine Damen und Herren! Man könnte zur Erweiterung sagen: nichts Neues. Es gab immerhin schon dreimal Erweiterungsrunden. Das erste Mal um England, Dänemark und Irland, das zweite Mal um Spanien, Portugal und Griechenland, das dritte Mal um Österreich, Schweden und Finnland. Und doch ist viel Neues und auch Schwieriges dabei.

Zum ersten Mal sind Verhandlungen mit postkommunistischen Ländern zu führen. Warum ist das so schwierig? Hier geht es nicht nur um den Acquis communautaire, um den Rechtsbestand, den jeder übernehmen muß – vor allem auch in den Grundrechtsfragen, denn wenn wir hier keine Gemeinschaft sind, dann ist das nicht sehr sinnvoll –, sondern auch um die Wirtschaftsfragen und in viele andere Probleme.

Aber es kommt bei diesen Ländern noch die ideologische Gehirnwäsche hinzu. Jahre und Jahrzehnte hindurch wurden sie entwöhnt, den Freiheitsraum zu schätzen, um auch Entscheidungen fällen zu können. Es gibt doch immer wieder jene Beispiele aus der Praxis, daß jemand etwa sagt: Ich möchte haben, daß das Exportministerium meine Exportquote festlegt, nicht ich als Manager. Das kann man nicht von heute auf morgen ändern. Die Bewußtseinsfrage ist eine langfristige Frage, und sie wird uns innerhalb der Europäischen Union lange belasten.

Wir haben die Schwierigkeit, das kommunistische Erbe überhaupt zu übernehmen, sei dies nun Tschernobyl, seien es die katastrophalen ökologischen Zustände in gewissen Bereichen der postkommunistischen Länder oder die vielen anderen Probleme, wie etwa die geringe Wettbewerbsfähigkeit der Wirtschaft. All das macht die Frage noch viel schwieriger. Man kann hier nicht sagen: Auch Portugal lag weit unter dem Durchschnitt der wirtschaftlichen Leistungsfähigkeit der Europäischen Union.

Es wäre aber falsch, immer nur die Schwierigkeiten zu sehen. Man muß sie jedoch realistisch sehen, man muß sie bewältigen.

Meine Damen und Herren! Warum sind wir dafür? – Weil wir Interesse haben an einem Europa, das keine Bruchlinien hat, und daran, daß wir Grenzen haben mit Nachbarn, die ebenso stabil sind wie wir. Die Stabilität der Ungarn, der Slowenen und der anderen Nachbarn ist teilweise auch unsere Stabilität. Frieden verlangt Stabilität, und daher wollen wir, daß auch diese Länder dabei sind. *(Beifall bei der ÖVP.)*

Sie müssen genau die gleichen strukturellen Änderungen durchführen, die wir durchführen mußten, und aufgrund ihrer Vorgeschichte noch viele weitere. Nur dann werden sie wirtschaftlich und sozial leistungsfähige Einheiten bilden. Dann wird es zwischen uns zwar diese schärfere Konkurrenz geben, aber auch die Stabilität, von der ich vorhin gesprochen habe.

Meine Damen und Herren, ich glaube, das muß unser Ziel sein, vor allem Österreichs Ziel.

Es bestand immer schon eine unserer Funktionen darin, eine Brücke zu bilden. Man braucht hier gar nicht erst über die Neutralität zu streiten, denn ich glaube, unsere geographische Position verlangt, daß wir auch eine Brücke zu diesen Ländern bilden. Nicht zuletzt ist die Erwartungshaltung bei diesen Ländern sehr groß. Es war nicht nur aus besonderer Freundlichkeit, daß die Europäische Union beziehungsweise die Europäische Kommission als das damals maßgebliche Organ im Gutachten zu unserem Ansuchen festgestellt hat, daß es eine andere Europapolitik im Südosten Europas gäbe, wenn ein Land wie Österreich Mitglied wäre, das immerhin Erfahrung im Zusammenleben mit diesen Menschen, mit diesen Völkern hat, das sie gut kennt, das dort gut bekannt ist – trotz aller Schwierigkeiten, die auch die Geschichte aufgezeigt hat. Ich glaube, wir sollten diesen Weg in unserem Interesse gehen, auch wenn die Voraussetzungen – ich betone dies nochmals – sehr schwierig sein können.

Da wäre etwa die Änderung der gemeinsamen Agrarpolitik – es gibt wenige Dinge, die schwieriger sind als die Lösung dieser Frage –, die Steuerpolitik, die Institutionenreform. Es kann nicht nur ein "widening" geben. Das quantitative Denken allein führt nie zu Qualität in der Gesellschaft. Wir brauchen auch das "deepening", die verstärkte politische Integration, um sie leistungsfähig zu erhalten.

Offen gesagt, das einzige Argument, das für mich dagegen sprechen würde, wäre eine Ausrichtung nur auf "widening", nur auf Vermehren, ohne eine Verbesserung der Leistungs- und Entscheidungsfähigkeit. Das kann nicht unser Ziel sein, die wir ein gemeinsames Europa ernst nehmen. Das kann auch und wird hier auch zu Diskussionen führen. Aber denken wir doch ein bißchen zurück: Das alles gab es auch in den letzten Jahren. Es wird eine Katastrophe, wenn wir Mitglied werden, hat es geheißen. Es wird eine Katastrophe für unsere Goldreserven. Es wird eine Katastrophe, wenn wir der Währungsunion beitreten. – Wir alle haben es gemeistert, wenn es auch gelegentlich Schwierigkeiten gab.

Ich bleibe bei meiner Überzeugung: Die Österreicher sind besser, als sie dies gelegentlich von sich aus annehmen.

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Man braucht nur die Geschichte zu betrachten. Das ist, glaube ich, der einzige Weg, wo wir auch in der Erweiterungsfrage einen glaubwürdigen Beitrag leisten können, der unseren Interessen entspricht, der den Nachbarn und ihren Interessen entspricht und der dem europäischen Frieden dient, den wir alle anstreben. *(Beifall bei der ÖVP.)*

22.03

Präsident Dr. Heinz Fischer: Nächste Rednerin ist Frau Abgeordnete Gredler. – Bitte.

22.04

Abgeordnete Dr. Martina Gredler (Liberales Forum): Herr Präsident! Herr Vizekanzler! Hohes Haus! Mit diesem Entschließungsantrag möchte ich eigentlich bewirken, daß uns im Hohen Haus alle Unterlagen, alle wissenschaftlichen Arbeiten, die sich mit der Erweiterungsproblematik oder mit der Erweiterungsdiskussion befassen, zur Verfügung gestellt werden.

Es gab von Kollegen Schieder die Anregung, daß diese Unterlagen dem Rat für Integration zur Verfügung gestellt werden. Wir sind der Meinung, daß diese Diskussion im Hohen Haus stattzufinden hat, und zwar mit einer möglichst breiten Öffentlichkeit. Herr Kollege Nußbaumer, ich kann Ihre Argumentation hier überhaupt nicht verstehen. Ich habe den Eindruck, Sie sind wirklich mit Scheuklappen durch Europa gegangen. Ich habe Sie damals, als Sie mit mir im Europäischen Parlament waren, völlig anders gesehen. Was jetzt passiert ist, kann ich mir nicht erklären. Offensichtlich haben Sie ein gewisses Shampoo verwenden müssen, das Tiefenwirkung gehabt hat. *(Beifall beim Liberalen Forum sowie bei Abgeordneten von SPÖ und ÖVP. – Abg. Dr. **Mertel:** Anpassen muß er sich!)*

Ich möchte hier in aller Kürze nur einmal die anderen Aspekte der Erweiterung beleuchten. Es ist die beste Politik zur Verringerung des Auswanderungsdruckes, wenn Reformländer im Aufbau ihrer Wirtschaft unterstützt werden. Es macht ja Sinn, daß die Wirtschaft in diesen Ländern aufgebaut wird, damit kein Immigrationsdruck entsteht. *(Abg. Dr. **Graf:** Sie könnten sich auch ein bißchen mit der Regierung auseinandersetzen, nicht nur immer mit uns!)* Wenn man Grenzlandförderungen verlangt, dann ist es völlig klar, daß diese dorthin gehen müssen, wo die Situation schlechter ist als bei uns. *(Abg. Dr. **Graf:** Ihre Europapolitik erschöpft sich im Hinhageln auf die Freiheitlichen!)* Genau das aber wollen Sie gar nicht. Sie wollen das Umgekehrte, nämlich daß die Differenz bestehen bleibt! Das ist völlig unlogisch! *(Beifall beim Liberalen Forum sowie bei Abgeordneten von SPÖ und ÖVP.)*

Wir wollen, daß es keine Differenz gibt. Deshalb wollen wir aus einer Wirtschaftsrandlage, in der wir uns eigentlich befunden haben, heraus, um im Herzen Europas zu sein. Dies ist nur möglich, wenn wir keine Barrieren in Richtung Osten haben, und deshalb wollen wir die Osterweiterung haben. *(Beifall beim Liberalen Forum sowie bei Abgeordneten von SPÖ und ÖVP. – Abg. **Aumayr:** Wenn die Barrieren aber bestehen, Frau Kollegin! Wenn die Barrieren bestehen!)*

Es geht weiter: Wenn man sich auf die Situation der Grenzregionen und darauf, was in dieser Ostöffnungsphase passiert ist, bezieht, dann kann man nur sagen, daß die Beschäftigung in diesen Gebieten *(Abg. Dr. **Graf:** Sie schaffen es noch, daß wir anders abstimmen werden!)* – ich werde Ihre Zwischenrufe nachlesen, ich habe jetzt keine Zeit, mich damit zu befassen – um 12,6 Prozent gestiegen ist, während die Beschäftigung im restlichen Österreich um 6,3 Prozent gestiegen ist. Die Osterweiterung wird die Grenzregionen beleben, die sonst tote Regionen sind!

Die Handelsbilanz mit Mittel- und Osteuropa erreichte 1997 einen Überschuß von 20,3 Milliarden Schilling. Sie werden mir doch zugestehen, daß das Zahlen sind, die Ihnen auch zur Verfügung stehen. *(Zwischenruf des Abg. Ing. **Nußbaumer.**)* Die Exporte nach Ungarn, Tschechien, in die Slowakei und nach Polen sind zwischen 1989 und 1997 von 18,9 auf 77,4 Milliarden Schilling gestiegen. Der Anteil an den gesamten Exporten ist im selben Zeitraum von 4,4 auf 10,9 Prozent gestiegen. Das sind doch Zahlen, die Ihnen als "Wirtschaftsmann" irgendwie zu denken geben müssen. *(Abg. Ing. **Nußbaumer:** Das ist alles ohne Erweiterung geschehen, bitte! Allein durch die bestehenden Verträge!)* Dann lesen Sie die Studien von Breuss, Keuschnigg und Baldwin!

Das Wirtschaftswachstum, das wir zusätzlich durch die Ostöffnung erreicht haben, reicht von 0,9 bis 2,6 Prozent. Sie können doch wohl nicht behaupten, daß das ein Rückschritt wäre, wenn man dann die Osterweiterung erwirken würde. *(Beifall beim Liberalen Forum sowie bei Abgeordneten von SPÖ und ÖVP. – Abg. Ing. **Nußbaumer:** Dazu*

brauchen wir doch die Osterweiterung nicht!)

Weiters gibt es Studien, die sehr interessant sind und die ich Ihnen auch ans Herz legen möchte *(Abg. Dr. **Graf:** Ihre Europapolitik erschöpft sich im Kritisieren der Freiheitlichen!)*, die nämlich die Entwicklung der Arbeitskräfte analysieren und den dramatischen Rückgang des Anteils der erwerbstätigen Bevölkerung aufzeigen *(Abg. Dr. **Graf:** Die ÖVP und die SPÖ lehnen Ihren Antrag ab, und Sie hacken auf uns herum! Das soll noch jemand verstehen! Wir stimmen Ihrem Antrag zu – ich verstehe das nicht!)*, den es in Österreich zwischen dem Jahr 2015 und dem Jahr 2030 geben würde. Dieser Rückgang ist in der Studie von Walterskirchen mit 650 000 beziffert, und deshalb brauchen wir Einwanderer. Wir brauchen Einwanderer, um unser Sozialsystem zu erhalten *(Zwischenrufe bei den Freiheitlichen – Beifall beim Liberalen Forum)*, und wir sind der Meinung, daß unsere osteuropäischen Nachbarn uns dabei helfen werden und daß sie willkommen sind. *(Abg. Mag. **Stadler:** Das ist eine Einwanderungsstrategie!)*

Ich finde, daß die Regierungsparteien eine gute Grundlage zur Diskussion in Österreich erarbeiten sollten. Das ist das Ziel, meine Damen und Herren! *(Beifall beim Liberalen Forum sowie bei Abgeordneten von SPÖ und ÖVP.)*

22.08

Präsident Dr. Heinz Fischer: Nächster Redner ist Herr Abgeordneter Dr. Cap. – Bitte.

22.09

Abgeordneter Dr. Josef Cap (SPÖ): Herr Präsident! Hohes Haus! Ich würde anregen, daß wir diese Diskussion ganz pragmatisch führen. Ich bin der Auffassung, es wird in der gesamteuropäischen Debatte ohnedies eine Fülle an Diskussionen und eine Fülle an Informationen geben. Die Fakten liegen auf dem Tisch. Die Beitrittskandidaten erreichen im Moment einen Schnitt von rund 32 Prozent der gesamtwirtschaftlichen Leistungen der EU. Gefordert sind 70 bis 80 Prozent.

Gibt es eine entsprechende wirtschaftliche Entwicklung, dann ist das positiv, dann wird das natürlich auch zu einem Ausbau der Infrastruktur führen, dann wird das dort zu einem Lohnanstieg führen. Wir alle wollen nicht, daß es durch eine übereilte Öffnung oder Erweiterung zu einem Lohndruck kommt. Wir alle wollen nicht, daß es zu einem Immigrationsdruck und damit zu einem Lohndruck und zu einer verschärften Situation auf dem Wohnungs- und auf dem Arbeitsmarkt kommt. Die Voraussetzung für den Beitritt ist, daß der Acquis communautaire erfüllt wird. *(Zwischenrufe bei den Freiheitlichen.)*

Diese Entwicklung wird in Zeiträumen stattfinden, die wir schwer abschätzen können, denn das hängt unter anderem vom Tempo ab, in dem die Länder dieses EU-Recht übernehmen, vom Tempo und von der Qualität der wirtschaftlichen Entwicklung. Daher brauchen wir hier keine Glaubensdiskussionen zu führen. Was Sie glauben und was ich glaube, das ist unbedeutend, denn wenn die Entwicklung in diese Richtung geht, dann wird es zu dieser Verflechtung und zu dieser ökonomischen Integration kommen. Dann ist das aber auch positiv, denn dann wird das natürlich auch zur Erschließung neuer Märkte führen, dann wird es zusätzliche Wachstumsimpulse und Beschäftigungsimpulse geben, und darauf sollte man sich konzentrieren. *(Abg. Ing. **Nußbaumer:** Die Märkte sind doch schon offen!)*

Herr Abgeordneter! Mich interessieren nur die Fakten, nicht aber Ihr monotones Gesabber von der rechten Seite her! Sie hätten sich nur die Aussendungen der Austria Presse Agentur vom 4. November ausheben lassen sollen. Sie werden wissen, daß es eine Pressekonferenz der Kommission gegeben hat, in welcher dargestellt wurde, daß man keine Kommissionsempfehlung für eine Ausweitung der Beitrittsverhandlungen geben will. Es wurde ein Bericht über die Fortschritte der EU-Beitrittskandidaten gegeben. Man hat Kritik geübt. Diese Kritik sollte man jedoch weder dazu verwenden, um gegen die Osterweiterung zu argumentieren, noch sollte man sonst irgendwie damit polemisieren, sondern man sollte sie simpel als ein Faktum, das auf dem Tisch liegt, betrachten.

Die Kommission sagt beispielsweise, daß es "in Osteuropa in den vergangenen 18 Monaten teilweise zu wenig Fortschritte" gab. – Ich zitiere jetzt aus dieser APA-Aussendung. – Es wird von einer "beängstigenden Verlangsamung bei der Übernahme von EU-Recht" gesprochen. "Tschechien, Polen, Ungarn, Estland und Slowenien hätten weiter funktionierende Marktwirtschaften, die mit dem Wettbewerbsdruck der EU fertig werden könnten. Allerdings hätten Tschechien und Slowenien ihre Anstrengungen verringert, EU-Recht zu übernehmen."

Kommissar Fischler sagt – Sie brauchen sich nur die APA-Aussendung auszuheben! –: "Tschechien und

Slowenien hätten die Erwartungen nicht voll erfüllt. Beide Staaten hätten bei der Privatisierung Nachholbedarf, Tschechien besonders im Bankensektor. Auch die Übernahme der EU-Wettbewerbsregeln sei noch nicht zufriedenstellend. Slowenien tut nichts bei der Abschaffung von Staatsmonopolen. Am weitesten bei der Übernahme der EU-Bestimmungen seien Polen und Ungarn." *(Abg. Ing. **Nußbaumer:** Sie geben meinen Argumenten recht!)* – Überhaupt nicht!

Wissen Sie, warum ich das zitiere? – Um darzustellen, daß es hier Öffentlichkeit gibt und daß Information weitergegeben wird, und um darzustellen, daß die Kommission sehr kritisch ist und daß das Auswirkungen auf den Zeitrahmen haben wird. All das sind jedoch keine Argumente, um gegen die EU-Erweiterung aufzutreten, sondern das zeigt nur, daß hier sehr gründlich gearbeitet wird.

Es wird sogar gesagt, daß die Reformen der "Agenda 2000" bisher kaum vorangekommen sind. Man übt also sogar Selbstkritik! Man ist sich auch der Notwendigkeit bewußt, über Reformen im Agrarbudgetbereich nachzudenken. Und man weiß auch, daß es Institutionenreformen geben muß. – Da muß man sich halt am Riemen reißen und dafür auch etwas tun. Das Herumreden, Herumsabbern oder Ängste zu verbreiten ist hingegen völlig nutzlos, völlig sinnlos, nützt ökonomisch niemandem, nützt sozial niemandem und nützt politisch niemandem! Vielmehr muß man einfach die Informationen, die Statistiken, die Daten, die Entwicklungen, die Fakten zur Kenntnis nehmen und aufgrund dieser Faktenlage den Entwicklungsprozeß, der sich aufgetan hat und den wir mittragen, mitvollziehen und sinnvoll umsetzen und sonst gar nichts! *(Abg. Dr. **Graf:** Eine Debatte ist aber zulässig, oder?)* Nicht glauben, daß daraus populistisches Kleinkapital geschlagen werden kann, mit dem Sie irgendwelche Ängste wecken und irgendwelche Wahlen gewinnen zu können glauben. Auf diese Weise werden Sie mit Sicherheit den kürzeren ziehen! Die Geschichte ist zumindest nicht auf Ihrer Seite! *(Beifall bei der SPÖ.)*

22.14

Präsident Dr. Heinz Fischer: Nächster Redner ist Herr Abgeordneter Smolle. – Bitte.

22.14

Abgeordneter Karl Smolle (Liberales Forum): Gospod predsednik! Visoki Dom! Gospod minister! Herr Minister! Hohes Haus! Herr Präsident! Ich glaube, es sind der Argumente genug gefallen. Danke, Herr Kollege Nußbaumer, daß Sie sich in die erste Reihe gesetzt haben, denn dann können wir uns jetzt vielleicht doch noch verständigen!

Was ist der Sinn der Osterweiterung? – Drei Aspekte sind zentral hervorzuheben: Die Sicherheit in Europa ist zu erhöhen, daher sagen wir zur Südosterweiterung ja. *(Zwischenruf des Abg. Ing. **Nußbaumer.**)* Die wirtschaftliche Entwicklung in Gesamteuropa ist zu stärken, daher sagen wir zur Osterweiterung ja. Die kulturelle Buntheit in Europa ist zu erhalten und zu festigen, daher sagen wir zur Osterweiterung ja. Demokratie bei uns und auch anderswo, auch im Osten und im Südosten, ist zu stärken, daher sagen wir abermals ja. *(Abg. Ing. **Nußbaumer:** All das wird ja gemacht!)*

Ich verstehe die Freiheitliche Partei nicht. Wir wissen ganz genau: Wenn diese Staaten das bestehende europäische Recht annehmen, dann müssen sie manche Veränderungen auch in ihren eigenen Ländern durchführen. Das heißt: Das ist der beste Reformschub, den wir bewirken können! *(Beifall beim Liberalen Forum. – Zwischenruf des Abg. Ing. **Nußbaumer.**)*

Öffnung jetzt! – Opening now! Odprt je zdaj! Das sollte unser Slogan sein. Dann könnten wir vorangehen, und das umso mehr, als wir ja jetzt bereits in einem Ausmaß profitieren ... *(Neuerlicher Zwischenruf des Abg. Ing. **Nußbaumer.**)* Kollege Nußbaumer! Sie sind ein anständiger, redlicher Mensch! Schauen Sie sich die Statistiken an! Schon jetzt leben wir besser, gerade wegen der Osterweiterung, weil es uns gelungen ist, mit dem Osten wirtschaftliche Projekte zu realisieren, und weil wir menschlich gute Beziehungen zu den Menschen dort haben. Deshalb bin ich der Auffassung, daß wir hier rasch vorgehen sollen!

Gerade die Berichte zum Beispiel aus Polen, aus Slowenien und auch aus Tschechien zeigen, daß man dort bereits beginnt, das Reformtempo ein bißchen zurückzunehmen. Daher sind es falsche Signale, die aus Pörtschach gekommen sind, anstatt zu sagen: Ja, wir gehen den raschen Schritt nach Europa, und zwar gemeinsam, wir nehmen euch mit, wir haben Mut, diesen Schritt mit euch zu machen, weil wir wissen, daß ihr mitkommen wollt, daß ihr reformieren wollt, daß ihr manches von dem annehmen wollt, was für uns schon gilt, und

auch zu sagen: Wir brauchen euch in Europa auch als Bereicherung und als starke wirtschaftliche Partner. *(Beifall beim Liberalen Forum.)*

Meine Damen und Herren! Wer heute weiterhin seine Produkte herstellen möchte, braucht kaufkräftige, starke Käufer, und er braucht vor allem auch die starken und gut ausgebildeten Freunde aus unseren Nachbarländern, um auch bei uns Arbeitsplätze zu sichern. Das ist doch die ganz einfache Formel, die man in der ersten Proseminarstunde lernt: Arbeitsplätze im Nachbarstaat bedeuten Wohlstand auch bei uns. *(Abg. Ing. **Nußbaumer:** All das wissen wir!)* Nach dieser Formel handelt die Schweiz täglich, deshalb geht es der Schweiz soviel besser. Die Wirtschaftsdaten stimmen, wenn die Grundhaltungen stimmen. *(Zwischenrufe bei den Freiheitlichen.)*

In der Frühdebatte haben Sie wieder versucht, die Geschichte aufzuwärmen. Ich sage jetzt bewußt "aufwärmen", denn Sie mißbrauchen Fragen der Menschenrechte und auch Fragen der Rechte der Sudetendeutschen für Ihren ganz privaten politischen Wahlkampf, den Sie auch hier im Hause immer führen wollen. *(Beifall beim Liberalen Forum.)* Das ist aber nicht das Thema. Das Thema sind die Menschen in Europa und die Menschen hier bei uns, die die Wirtschaft und die Kultur betreiben, die Menschen, die bereit sind, ein gemeinsames Europa zu schaffen. Schreiben Sie sich das bitte ins Stammbuch! *(Abg. Ing. **Nußbaumer:** Das Thema ist die Vorbereitung Österreichs darauf, nicht die Vorbereitung der anderen!)*

In der Früh gab es einen kleinen Zwischenruf – ich weiß nicht, ob er von Ihnen oder von der ÖVP kam –: "Wie hältst es denn du mit der Nachbarschaftshilfe?" – Da hat wieder einmal einer nicht begriffen, daß es mir nur dann gutgeht, wenn es auch dem Nachbarn gutgeht! Wer das nicht begreift, der ist wirklich nicht reif für dieses Europa! Aber zockeln Sie nur hinterdrein; es wird aber einige geben, die vorne sein werden – Sie sicher nicht! *(Beifall beim Liberalen Forum.)*

22.19

Präsident Dr. Heinz Fischer: Nächste Rednerin ist Frau Abgeordnete Mag. Kammerlander. – Bitte.

22.19

Abgeordnete Mag. Doris Kammerlander (Grüne): Herr Präsident! Herr Bundesminister! Ich bedauere, daß diese Diskussion so spät und – unter Anführungszeichen – "nur" im Zuge eines Antrages stattfindet und daß es sich hiebei nicht um eine wirklich umfangreiche parlamentarische Debatte handelt, die zunächst im Ausschuß und dann im Plenum oder im Hauptausschuß geführt wird, wo sie wahrscheinlich hingehört.

Auch ich bin der Auffassung, daß es die parlamentarische Auseinandersetzung über die Erweiterung der Union eigentlich nicht gibt. – Das einmal vorweg. Die Haltung der FPÖ kenne ich, auf die mag ich mich jetzt gar nicht mehr einlassen! *(Abg. **Böhacker:** Jetzt sind Sie schon wieder bei uns!)* Das, was mich viel mehr interessiert, ist die Haltung der ÖVP und der SPÖ, denn mir kommt vor, daß es da eine allgemeine, vordergründige Zustimmung gibt. *(Abg. Dr. **Graf:** Die haben keine Haltung, die setzen nur Scheinaktivitäten!)* Daher meine ich, daß die Frage erlaubt ist: Wieso stimmen Sie dem Antrag nicht zu, der vorliegt? Das würde niemandem wehtun und kostet sozusagen nicht einmal etwas.

Viel beachtenswerter ist allerdings das, was hinter dieser allgemeinen Zustimmung steht, wenn man auf die Zwischentöne hört und darauf achtet, was zwischen den Zeilen steht.

Kollege Cap hat ausgeführt, was alles ohnehin so gut ist. Er hat gesagt: Die Kommission prüft, es wurde ohnehin alles kritisch festgestellt, und das kann man nachlesen. Etwas ist aber völlig untergegangen: All das ist natürlich viel zuwenig! *(Abg. Ing. **Nußbaumer:** Das ist zuwenig! Da gebe ich Ihnen recht!)*

Es genügt nicht zu sagen: Es ist alles auf den Schienen und läuft, jetzt schauen wir einmal, was die Länder zusammenbringen, die Kommission wird das schon prüfen, und dann sehen wir, in welchem Zeitraum das möglich ist. – So wird es nicht gehen, sage ich, denn es werden ganz bestimmte Maßnahmen notwendig sein, angefangen von der Ermittlung des Spektrums an Förderungen, die möglich sind und die in Erarbeitung sind, bis hin zur klaren Formulierung der Erkenntnis, die mir allgemein noch fehlt, daß die Erweiterung der Union etwas kosten wird. Das traut sich momentan weder die Kommission noch die Bundesregierung, noch sonst irgend jemand auszusprechen. Dabei ist noch gar nicht gesagt, ob sie den einzelnen Steuerzahler wirklich etwas kosten wird beziehungsweise wie

sich diese Kosten dann verteilen werden. Das wäre interessant zu diskutieren, und da gäbe es durchaus noch mehr Möglichkeiten und Optionen. So sehe ich das zumindest.

Tatsache ist, daß es einfach eins zu eins, wie der EU-Haushalt bisher gelaufen ist, nicht gehen wird. Das ist meine Überzeugung. Das sieht man bereits jetzt, wenn man sich anschaut, wie an diesem Förderinstrumentarium herumgebastelt und prognostiziert wird, wie es in Zukunft ausschauen kann. Dabei wird am auffälligsten augenscheinlich, daß man versucht, mit den bisherigen Mitteln halt irgendwie Dinge abzudecken, die bisher nicht abgedeckt wurden. Das wird sich aber nicht ausgehen. Dieser Diskussion müßten wir uns meiner Meinung nach stellen. Es müßte erörtert werden, welche Maßnahmen zusätzlich noch zu setzen sind. Denn sonst wird es, wie ich befürchte, zu folgender Entwicklung kommen: Alle werden sagen, daß sie für die Erweiterung der Union sind. Diese wird aber nicht in den nächsten fünf, sieben oder acht Jahren stattfinden, sondern wahrscheinlich erst in den nächsten zehn bis 15 Jahren, wenn nicht noch später. Das wird jedoch weder für uns noch für die Länder, die beitreten, von Vorteil sein. Denn die verschiedensten Untersuchungen zeigen bereits, daß es wesentlich besser für beide Seiten ist, wenn der Zeitraum der Übernahme insgesamt, nicht nur der Normen und der ganzen Logistik, möglichst kurz ist.

Daher bemerke ich nun an die Adresse der Bundesregierung: Es gibt ein paar Debatten, die kontraproduktiv sind. So ist etwa die Debatte über die Nettozahler im Zusammenhang mit der Erweiterung der Union absolut kontraproduktiv. Weiters ist die Debatte darüber, daß die Länder des Ostens schon Schengen-Mitglieder sein müssen, bevor sie überhaupt beitreten, meiner Meinung nach kontraproduktiv, wenn nicht einmal alle jetzigen Mitgliedsländer der Union Schengen-Mitglieder sind. Selbst die Debatte darüber, ob Länder, die Mitglieder in der Wirtschafts- und Währungsunion sind, weiterhin Mittel aus dem Kohäsionsfonds beziehen sollen, ist kontraproduktiv, weil sie den Blick auf innovative Lösungen für eine Erweiterung verstellt, die über die unmittelbare Osterweiterung hinausgeht und einen Ausgleich der Disparitäten innerhalb der Union schaffen könnte. Wenn man die Diskussion so beginnt, verstellt man sich den Blick für längerfristige Perspektiven.

Ich komme zu meinem letzten Satz: Am meisten bestürzend dabei finde ich, daß Sie heute diesen Antrag nicht annehmen, denn das empfinde ich als eine Überheblichkeit der Koalition. Anstatt darüber zu diskutieren, wie wir diese Erweiterung möglichst positiv unterstützen und politisch begleiten können, legen Sie die Überheblichkeit an den Tag und sagen: Das brauchen wir nicht, das haben wir schon, danke, das wollen wir nicht annehmen! *(Beifall bei den Grünen und beim Liberalen Forum.)*

22.24

Präsident Dr. Heinz Fischer: Nächster Redner ist Herr Abgeordneter Firlinger. Er hat eine Redezeit von einer Minute. – Bitte.

22.25

Abgeordneter Mag. Reinhard Firlinger (Freiheitliche): Herr Präsident! Hohes Haus! Sosehr es begrüßenswert wäre, wenn man über dieses Thema zu einer ordentlichen Tageszeit ausführlich diskutieren könnte, so sehr fällt mir auf, daß diese Diskussion jetzt zu überhaupt nichts mehr führt.

Wir Freiheitlichen tragen den Antrag der Liberalen mit, weil auch wir der Meinung sind, daß eine entsprechende, eine langfristige Vorbereitung für diese Erweiterung notwendig ist. Die Mitglieder dieser Fraktion machen jedoch nichts anderes, als flegelhaft über uns herzufallen und undifferenzierte, niedrige Kritik zu üben. Das ist offenbar Ihr Auftrag, und mehr haben Sie nicht zu sagen. Das ist eine Schande! Schämen Sie sich für diese Vorgangsweise! *(Beifall bei den Freiheitlichen.)*

22.25

Präsident Dr. Heinz Fischer: Ich ersuche Sie, das Wort "flegelhaft" zurückzunehmen. Ich glaube, beim Wort "flegelhaft" haben Sie sich geirrt. Nehmen Sie es zurück? *(Abg. Mag. **Firlinger:** Ich nehme das Wort "flegelhaft" zurück und ersetze es durch das Wort "ungebührlich"!)* – Ich danke Ihnen dafür!

Zu Wort gelangt nun Herr Abgeordneter Dr. König. 5 Minuten freiwillige Redezeitbeschränkung. – Bitte.

22.26

Abgeordneter Dkfm.DDr. Friedrich König (ÖVP): Meine sehr geehrten Damen und Herren! Hohes Haus! Die grüne Fraktion und auch die Liberalen haben die Frage gestellt, warum wir diesem Antrag nicht zustimmen werden. – Die Antwort ist ganz einfach: Die Koalitionsparteien haben bei der gesamten Europapolitik immer eine Politik mit Augenmaß betrieben, sowohl beim Euro wie auch jetzt bei der Osterweiterung.

Übrigens möchte ich gleich klarstellen: Wenn Sie sagen, daß Ihnen die Unterlagen und die Studien darüber fehlen, welche Vorbereitungen getroffen werden, dann kann ich Ihnen mitteilen, daß all das über Internet abrufbar ist. Das wird von der Bundesregierung bereitgestellt, man muß es nur abrufen! *(Beifall bei der ÖVP.)*

Frau Kollegin Gredler! Mit den Aussagen, die Sie und auch die Grünen hier treffen, setzen Sie das falsche Signal im Hinblick auf den erstrebten Zweck. Sie sagen, daß ein rascher Beitritt nur mit Übergangsfristen anzustreben ist und daß ein berechtigter Anspruch auf die rasche Erlangung der Mitgliedschaft besteht. – Das trifft nicht zu! Vielmehr hängt es, wie Sie selbst aus den Kopenhagener Beschlüssen erkennen können, vom Tempo der Verwirklichung des Acquis communautaire ab: nicht nur der Übernahme, sondern der Verwirklichung! Es geht nicht nur um das Beschließen von Gesetzen, sondern es geht darum, daß die entsprechenden Institutionen vorhanden sind, daß die Gesetze ausgeführt werden, daß die Reformen durchgeführt werden und daß der Acquis communautaire, das heißt der Rechtsbestand der Europäischen Union, in diesen Ländern, mit Ausnahme jener Bereiche, für welche man ausdrücklich Übergangslösungen vereinbart hat, umgesetzt wird.

Jede Erwartung, daß man einfach beitreten und erst nachträglich die Anforderungen erfüllen kann, ist falsch. Damit erwecken Sie falsche Hoffnungen, weil das einfach nicht möglich ist. *(Zwischenruf der Abg. Dr.* ***Gredler.)*** In Spanien und Portugal war eine lange Vorbereitungsphase notwendig, obwohl dort marktwirtschaftliche Strukturen bestanden, die es in den Ostländern nicht gibt! In diesen Staaten bedarf es auch eines gewissen Reifungsprozesses, bis die Leute umdenken, daß die soziale Marktwirtschaft andere Anforderungen an sie stellt als die Planwirtschaft. *(Beifall bei der ÖVP.)*

Ein Wort noch zu dem Nein, das Abgeordneter Nußbaumer dankenswerterweise einmal ganz klar formuliert hat. Sie haben gesagt: Das ist der Grund für unsere Ablehnung der Osterweiterung. – Bisher haben wir immer gehört, daß die Freiheitlichen diese eigentlich nicht ablehnen, sondern nur der Meinung sind, daß es so nicht geht. Sie sagen es jedoch ganz klar. Sie waren beim Euro dagegen, und Sie sind jetzt wieder dagegen. Damit nehmen Sie eine Position ein, über die die Geschichte hinweggehen wird. Es wäre doch viel vernünftiger, auch von Ihrer Seite mitzuwirken, daß die Bedingungen erfüllt werden, die wir erfüllen müssen, damit die Osterweiterung durchführbar ist. Dazu gehört gemäß Programm die Vorbereitungshilfe durch die EU, damit ***in*** diesen Ländern das Gefälle abgebaut und eine entsprechende Struktur geschaffen werden kann. *(Abg. Ing.* ***Nußbaumer:*** *Es geht darum, welche Vorbereitungen die österreichische Bundesregierung für diese Osterweiterung trifft!)* Sie finden das im Internet, Sie brauchen nur nachzuschauen! *(Abg. Ing.* ***Nußbaumer:*** *Wir lehnen die Osterweiterung deshalb ab, weil es keine Vorbereitungen gibt!)* Diese Behauptung stimmt nicht! Ich habe Ihnen gesagt: Sie können die entsprechenden Informationen sogar über Internet abrufen!

Diese Vorbereitungsstrategie ist die einzig mögliche, denn man muß das Gefälle senken, damit das Andocken ohne Erschütterungen in den neuen Beitrittsländern vor sich geht, damit ihre Wirtschaft nicht gleich durch die Konkurrenz kaputtgeht und damit alles auch ohne Erschütterungen bei uns bewerkstelligt werden kann.

Kollege Cap hat völlig recht: Wir in der Koalition sind für eine Osterweiterung, weil diese notwendig ist. Diese Wiedervereinigung dieses Kontinents, diese Sicherheitsgemeinschaft und Friedensgemeinschaft von ganz Europa, muß aber mit Augenmaß und mit Verantwortung verwirklicht werden. Sowohl das Wecken von Hoffnungen, daß es sozusagen im Galopp gehen kann, ohne daß die entsprechenden Voraussetzungen geschaffen werden, als auch die grundsätzliche Ablehnung, das Spekulieren mit Ängsten und das Schüren von Ängsten sind hingegen kontraproduktiv. Das ist keine verantwortungsvolle Politik, nicht für Europa, aber auch nicht für Österreich! *(Beifall bei der ÖVP.)*

22.31

Präsident Dr. Heinz Fischer: Zu Wort gelangt Herr Abgeordneter Dr. Gusenbauer. 4 Minuten freiwillige Redezeitbeschränkung. – Bitte.

22.31

Abgeordneter Dr. Alfred Gusenbauer (SPÖ): Herr Präsident! Herr Vizekanzler! Meine sehr verehrten Damen und Herren! Ich glaube, zur Osterweiterung sollte die zentrale politische Zielsetzung außer Streit gestellt werden, daß der beste Beitrag zur Stabilisierung des gesamteuropäischen Kontinents natürlich die Erweiterung der Europäischen Union ist. Ich meine, wenn wir von diesem Bekenntnis ausgehen, können wir darüber diskutieren, unter welchen Bedingungen diese Osterweiterung stattfinden soll. Diesbezüglich hat sich die Europäische Union zu einer realistischen Vorgangsweise entschlossen, die auch darin zum Ausdruck kommt, daß nicht abgewartet wird, bis alle Teile des Acquis-Screenings fertig sind, sondern daß etwa bereits am 10. November in Wien Verhandlungen zu den ersten konkreten Kapiteln unter österreichischer Präsidentschaft begonnen werden. Damit entsteht kein Zeitverlust, und man kann ganz konkret die Probleme diskutieren, die in diesem Zusammenhang auf der Tagesordnung stehen.

Ein weiterer Punkt, der, glaube ich, ganz wesentlich ist: Es wird immer über die Frage globaler Wirtschaftsvergleiche gesprochen. Ich halte diese Herangehensweise, offen gestanden, für zu kurz gegriffen. Denn es ist nicht entscheidend, ob ganz Polen, ganz Ungarn oder ganz Tschechien dieselben oder ähnliche Wirtschaftsdaten wie Österreich oder Deutschland haben. Vielmehr ist entscheidend, ob es an den Grenzen eine regionale Wirtschaftsentwicklung gibt, die den Übergang von einem Land zum anderen harmonischer macht.

Was meine ich zum Beispiel? – Es tut der europäischen Integration keinen Abbruch, daß zum Beispiel in Südspanien die Arbeitslosenrate leider nach wie vor 20 Prozent beträgt. Viel wichtiger war, daß es im Norden Spaniens, in Katalonien, eine Wirtschaftsentwicklung gegeben hat, die dazu geführt hat, daß zwischen Südfrankreich und dem Norden Spaniens heute de facto keine ökonomischen Unterschiede mehr bestehen und damit ein Zusammenwachsen mit all den positiven Konsequenzen möglich war. Es hat keine Wanderungsbewegung beziehungsweise keine Flucht hin an den Platz gegeben, wo es höhere Löhne geben würde oder ähnliches.

Wenn man das differenziert betrachtet, dann sieht man, daß in der Vorbereitung der Osterweiterung bereits heute sehr unterschiedliche Entwicklungen in den osteuropäischen Staaten vor sich gehen. Sehen Sie sich zum Beispiel die ökonomische Lage in Westungarn an: Diese unterscheidet sich bedeutend von der Entwicklung jener Gebiete, die weiter entfernt sind vom bisherigen Bereich der Europäischen Union. Ich glaube daher, daß es notwendig ist, viel mehr darüber nachzudenken, wie die neuen grenzüberschreitenden Räume gestaltet werden können.

In diesem Zusammenhang sage ich auch ganz offen etwas zur Frage der bisherigen Grenzregionen Österreichs. *(Abg. Ing. **Nußbaumer:** Es würde auch zu kurz greifen, wenn Sie die Landwirtschaft nicht einbinden!)* Herr Kollege Nußbaumer! Reden wir ganz offen! Wir haben doch jahrzehntelang argumentiert, daß der Entwicklungsnachteil zum Beispiel des Wald- und des Weinviertels darin besteht, daß es an der toten Grenze, am Eisernen Vorhang liegt und daher kein ökonomisches Hinterland vorhanden ist. Wenn jetzt die Frage der Osterweiterung auf der Tagesordnung steht, dann müssen wir uns dessen bewußt sein, daß erst durch die Osterweiterung die Möglichkeit besteht, daß auch die bisherigen Grenzbereiche Österreichs die Chance bekommen, gemeinsam mit den stärksten Wachstumspolen des Ostens zu Zonen grenzübergreifenden Wirtschaftswachstums zu werden.

Daher bin ich der Meinung, daß manchmal auf Basis falscher Unterstellungen Ängste geschürt werden, die in Wirklichkeit nicht im wohlverstandenen Interesse Österreichs gelegen sind. Denn bei aller politischen Bedeutung der Osterweiterung für Gesamteuropa muß völlig klar sein, daß einer der Hauptprofiteure politisch, ökonomisch und langfristig auch sozial Österreich sein wird. Österreich wird in Zukunft im Herzen eines zusammenwachsenden Europa mit allen ökonomischen Vorteilen liegen, und diesen Kernpunkt sollte man in der politischen Debatte außer Streit stellen! *(Beifall bei der SPÖ.)*

22.36

Präsident Dr. Heinz Fischer: Zu einer ***tatsächlichen Berichtigung*** hat sich Herr Abgeordneter Smolle zu Wort gemeldet.

Ich bitte, den zu berichtigenden Tatbestand zu definieren und diesem den tatsächlichen gegenüberzustellen. – Bitte, Herr Abgeordneter.

22.36

Abgeordneter Karl Smolle (Liberales Forum): Meine Damen und Herren! Herr Abgeordneter König hat behauptet, daß die Liberalen – Frau Gredler oder ich – gesagt hätten, daß wir dafür seien, daß die Osterweiterung ohne Erfüllung der Voraussetzungen erfolgt.

Ich stelle hiermit klar fest: Wir sind der Auffassung, daß die Voraussetzungen, Acquis communautaire und auch die Kopenhagener Erklärung, von diesen Staaten zu erfüllen sind. Daß ich das so gesagt habe, beweist auch die Tatsache, daß die FPÖ nunmehr mitgeht, weil sie verstanden hat, daß auch Menschenrechte und Volksgruppenrechte damit gemeint sind. *(Beifall beim Liberalen Forum.)*

22.37

Präsident Dr. Heinz Fischer: Hiermit ist, da keine weiteren Wortmeldungen vorliegen, die Debatte geschlossen.

Wir gelangen zur ***Abstimmung*** über den Antrag des Ausschusses, seinen Bericht 1440 der Beilagen zur Kenntnis zu nehmen.

Ich darf bitten, daß jene Damen und Herren, die diesem Antrag des Außenpolitischen Ausschusses zustimmen, ein Zeichen der Zustimmung geben. – Dies ist mit ***Mehrheit*** so ***beschlossen.***

Ich danke dem Herrn Außenminister und Vizekanzler.

18. Punkt

Bericht des Immunitätsausschusses über das Ersuchen des Landesgerichtes Wiener Neustadt (40E Vr 1101/98, Hv 200/98) um Zustimmung zur behördlichen Verfolgung des Abgeordneten zum Nationalrat Dr. Jörg Haider (1474 der Beilagen)

Präsident Dr. Heinz Fischer: Wir kommen zum letzten Punkt der Tagesordnung.

Es liegen mir keine Wortmeldungen dazu vor.

Daher kommen wir sogleich zu den beiden ***Abstimmungen,*** und zwar stimmen wir ab über den Antrag des Immunitätsausschusses, folgendes zu beschließen:

Erstens: In Behandlung des Ersuchens des Landesgerichtes Wiener Neustadt vom 28. September um Zustimmung zur behördlichen Verfolgung des Abgeordneten zum Nationalrat Dr. Jörg Haider wird im Sinne des Artikels 57 Abs. 3 Bundes-Verfassungsgesetz festgestellt, daß ein Zusammenhang zwischen der vom Privatankläger behaupteten strafbaren Handlung und der politischen Tätigkeit des Abgeordneten zum Nationalrat Dr. Jörg Haider besteht.

Zweitens: Einer behördlichen Verfolgung des Abgeordneten zum Nationalrat Dr. Jörg Haider wird zugestimmt.

Ich bitte jene Damen und Herren, die diesem Antrag des Immunitätsausschusses zustimmen, ein diesbezügliches Zeichen zu geben. – Dies ist mit ***Mehrheit*** so ***beschlossen.***

Damit ist die Tagesordnung erschöpft.

Antrag auf Einsetzung eines Untersuchungsausschusses

Präsident Dr. Heinz Fischer: Wir gelangen zur Verhandlung über den Antrag der Abgeordneten Mag. Dr. Petrovic auf Einsetzung eines Untersuchungsausschusses zur Aufklärung der Vorgänge um das Gebäude der Salzburger Musikhochschule "Mozarteum", insbesondere zur Klärung der Frage der Schadstoffkonzentrationen und auch zur Klärung der Frage, ob vergleichbare Schadstoffkonzentrationen und damit Gesundheitsgefährdungen auch in anderen Bundesgebäuden gegeben sind.

Dieser Antrag ist schriftlich verteilt worden; eine Verlesung erübrigt sich daher.

Der Antrag hat folgenden Wortlaut:

Antrag

der Abgeordneten Petrovic, Freunde und Freundinnen auf Einsetzung eines Untersuchungsausschusses gemäß § 33 GOG

Der Nationalrat wolle beschließen:

Zur Untersuchung folgender Gegenstände wird ein Untersuchungsausschuß eingesetzt:

1. Aufklärung der Vorgänge um das Gebäude der Salzburger Musikhochschule Mozarteum, insbesondere zur Klärung der Frage, zu welchem Zeitpunkt Organe der Verwaltung des Bundes erstmals von den erhöhten Schadstoffkonzentrationen erfahren haben und warum Gegenmaßnahmen unterlassen wurden.

2. Klärung der Frage, ob vergleichbare Schadstoffkonzentrationen und damit Gesundheitsgefährdungen auch in anderen Bundesgebäuden gegeben sind.

Zusammensetzung: 5 SPÖ, 4 ÖVP, 3 FPÖ, 1 LIF, 1 GRÜNE

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Präsident Dr. Heinz Fischer: Zu Wort gelangt Frau Abgeordnete Dr. Petrovic. – Bitte.

22.40

Abgeordnete MMag. Dr. Madeleine Petrovic (Grüne): Herr Präsident! Hohes Haus! Das Salzburger Mozarteum wurde aufgrund zahlreicher ungeklärter Todesfälle unter den Angehörigen dieser Universität vor wenigen Tagen geschlossen. Die "Salzburger Nachrichten" vom 24./25. Oktober schreiben in einem Artikel unter der Überschrift "Das Mozarteum und die Ähnlichkeiten mit dem Fall Lassing" unter anderem, daß es sehr merkwürdig ist, daß in internationalen Medien das Mozarteum im Mittelpunkt der Betrachtungen steht – hier sei die Rede vom "Todeshaus in Salzburg", von der "Krebshochschule" –, allein das österreichische Parlament hat bisher keine Anstalten gemacht, sich mit der Ernsthaftigkeit dieser Situation in einem offenbar dramatisch belasteten Bundesgebäude zu beschäftigen.

Es gilt mittlerweile als erwiesen, daß der Giftcocktail, der dort in der Luft ist, den die Menschen dort eingeatmet haben, erbgutverändernd und krebserregend ist. Eine statistisch nicht erklärbare Häufung von Todesfällen ist eingetreten, weitere Menschen sind bereits schwer erkrankt. Die "Salzburger Nachrichten" setzen in ihrem Vergleich mit der Causa Lassing fort mit der Feststellung: Es besteht eine ähnliche Desinformationspolitik. Sie kommen dann zu dem Befund: Noch viel schlimmer aber ist die amtliche Nichtbeachtung der Betroffenen. Die Mitarbeiter des Hauses bleiben allein mit ihren Ängsten vor Krankheit und Tod. Die Angehörigen bereits Verstorbener verlangen Aufklärung, bekommen sie aber nirgends.

Der Artikel schließt mit einer wirklich skandalösen Feststellung, nämlich daß das Gebäude wegen Kompetenzstreitereien 18 Jahre lang nicht kollaudiert wurde. Das heißt, es lag niemals eine ordnungsgemäße Benutzungsbewilligung für dieses 600-Millionen-Schilling-Projekt vor. Der Bund, und zwar Bundesgebäudeverwaltung und Hochschulverwaltung, hat es geduldet, daß junge Menschen, daß Studierende, Lehrende sich Tag für Tag in einem Gebäude befinden, von dem wir heute wissen, daß es krank macht, schwer krank macht, daß es sogar das Leben verkürzen kann.

Und was passiert dann politisch? Es ist wieder einmal ein Sittenbild dieser Republik. Der Landtag kann ja gar nicht anders, er befaßt sich damit. Die Bürgerliste, die Salzburger Grünen, stellt einen Antrag auf Untersuchung dieses Vorfalles, auch auf Entschädigung der Opfer, ihrer Angehörigen und auf Überprüfung ähnlicher Gebäude aus dieser Bauepoche. Es gilt ja vor allem auch, weitere Opfer zu vermeiden. Wie viele Gebäude haben denn eine ähnlich belastete Raumluft?

Der Salzburger Landtag beschäftigt sich damit. Es sind alle Fraktionen – alle Fraktionen: lesen Sie es nach in den

Presseaussendungen! – einhellig der Meinung, daß es im Mozarteum Vorfälle gibt, die aufzuklären sind. Andererseits – so der Salzburger Landtag in seiner Mehrheit – dürfe man doch nicht die Verfassung beugen. Das ist ja ein Bundesgebäude, hier ist eine Bundeszuständigkeit gegeben. Der Salzburger Landtag appelliert an die Bundeshauptstadt, an das Parlament: Bitte untersucht doch! Ihr seid zuständig! *(Ruf: Unglaublich!)* Ja, es ist wirklich unglaublich, daß für ein Gebäude über 18 Jahre hinweg keine Genehmigung vorliegt! Es ist noch unglaublicher, daß in den Medien zumindest seit dem Jahr 1990 gewarnt wurde, daß die Raumluft in diesem Gebäude krank macht. Niemand kann sagen: Wir haben es nicht gewußt. "Dicke Luft im Mozarteum", "Die Raumluft macht krank" – das haben die "Salzburger Nachrichten" im Sommer 1990 bereits eindeutig geschrieben.

Spätestens seit 1991 lagen dem Rektorat und auch den zuständigen Bundesbehörden Untersuchungen vor, die diese medialen Vermutungen und Befürchtungen bestätigt haben, schwarz auf weiß bestätigt haben! Zumindest seit 1991 weiß man es! Und was ist passiert? Wer hat die Menschen dort geschützt? Wer hat regelmäßige Untersuchungen der Raumluft einerseits, der Menschen andererseits angeordnet? – Es ist typischerweise nichts, gar nichts passiert!

Es muß doch irgendwo einen Punkt geben, wo Sie bereit sind zu sagen, das wollen wir jetzt wirklich aufklären. Wann hat wer von diesen Umständen gewußt? Was wurde dann gemacht? *(Abg. Dr.* ***Mertel:*** *Wer wird das aufklären? Sie? Wer wird das aufklären?)* Dieses Haus soll es aufklären, nicht ich! Ich gehe davon aus, daß Sie auch ein Interesse daran haben. Es geht um Arbeitnehmerinnen und Arbeitnehmer, es geht um Studierende, es geht wahrscheinlich auch um viele andere Gebäude. Man weiß ja nicht einmal, was die genauen Ursachen sind: Sind es die Bodenbeläge? Sind es die Wandverkleidungen? Ist es die Klimaanlage? Ist es ein Mix aus all diesen Faktoren? – Wir wissen nur, daß die Konzentration absolut gesundheitsschädigend ist.

Jetzt frage ich Sie: Gehen die Behörden in anderen Gebäuden, in denen die Menschen auch klagen, auch so mit den Vermutungen und mit den Befürchtungen um? – 18 Jahre lang keine Baukollaudierung: Finden Sie das korrekt, Frau Abgeordnete? Und vor allem: Was sagen Sie denn Ihren Salzburger Kolleginnen und Kollegen von der sozialdemokratischen Fraktion? Diese sind einhellig der Meinung, es muß aufgeklärt werden: aber bitte nicht in Salzburg, bitte doch in Wien!

Was sagen Sie den Kolleginnen und Kollegen, die sagen, der Bund ist zuständig? Kommen Sie nicht wieder mit der Aussage, das möge der Staatsanwalt untersuchen. Ich glaube, den Betroffenen ist nicht damit geholfen, wenn wir vielleicht in einigen Jahren wissen, daß irgend jemand fahrlässig derartige Berichte nicht ernst genommen, ignoriert, auf die leichte Schulter genommen hat. Es geht uns nicht – nicht primär – um die Klärung der strafrechtlichen Verantwortung, sondern es geht jetzt in erster Linie einmal um die Hilfe für die schon Betroffenen, und es geht mit derselben Brisanz und derselben Dringlichkeit um die Klärung der Frage: Wo gibt es vielleicht noch ähnliche Schlampereien oder Verschleppungen? *(Abg.* ***Schieder:*** *Das werden die Gesundheitsleute und Bautechniker wahrscheinlich besser zusammenbringen als Sie! – Abg.* ***Schwarzenberger:*** *Die Petrovic macht das mit der Nase!)*

Wahrscheinlich werden sie das, nur, Herr Abgeordneter Schieder, wissen Sie, welche Gebäude jetzt untersucht werden? *(Abg.* ***Schieder:*** *Nein!)* Nein! Glauben Sie nicht, daß es einige an Leukämie gestorbene Menschen verdient hätten, daß man die Frage klärt, wer politisch dafür die Verantwortung trägt *(Abg.* ***Schieder:*** *Sicher, sicher! Nur, ob Sie das gut können?)*, daß dort nicht kollaudiert wurde, daß dort nicht untersucht wird? *(Abg.* ***Schieder:*** *Sicher muß das geschehen, ...!)*

Herr Abgeordneter Schieder! In welchem Fall gibt es dann noch politische Verantwortung? Was ***ist*** politische Verantwortung? Sehen Sie nicht die Ähnlichkeiten mit dem Fall Lassing? *(Abg.* ***Schieder:*** *Sie haben davon geredet, daß man in anderen Gebäuden ...!)* Was muß denn noch passieren? Hier haben Sie Menschen, die gestorben sind, und ein eindeutiges Behördenversa-gen! Ich frage Sie wirklich: In welchem Fall wäre Ihrer Ansicht nach noch eine parlamentarische Untersuchung angesagt? Sagen Sie mir irgendeinen Fall! Gibt es das überhaupt noch in dieser Republik? – Wenn nicht, dann sage ich Ihnen eines: Dann schminken Sie sich das Wort "Kontrolle" ab, dann schminken Sie sich das Wort vom "Verfassungsbogen" ab, denn in der Verfassung steht auch etwas davon, daß die Vollziehung zu kontrollieren ist! Wenn das über 18 Jahre hinweg nicht passiert ist und Sie sagen: Was schert uns das?, dann haben Sie in diesem Punkt eindeutig die Verfassung dieser Republik verlassen! *(Beifall bei den Grünen.)*

22.49

Präsident Dr. Heinz Fischer: Nach der Begründung dieses Antrages auf Einsetzung eines Untersuchungsausschusses betragen die Redezeiten in der Debatte jeweils 5 Minuten.

Nächster Redner ist Herr Abgeordneter Maier. – Bitte.

22.49

Abgeordneter Mag. Johann Maier (SPÖ): Herr Präsident! Hohes Haus! Meine sehr verehrten Damen und Herren! Meine Anteilnahme im Falle der Hochschule Mozarteum gilt – und das sage ich als Salzburger Abgeordneter – den Erkrankten sowie den Angehörigen der Verstorbenen. Ich halte ausdrücklich fest, daß alle Betroffenen Anspruch darauf haben, daß es zu einer möglichst raschen Klärung kommt.

Den Antrag der Grünen sehe ich als Vorwahlgeplänkel, ich kann ihn nicht ernst nehmen. *(Abg. **Scheibner:** Wollen Sie vielleicht schon wählen?)* Man braucht sich nur die Begründung des Antrags durchzulesen, in der beispielsweise gesagt wird, daß allein deshalb, weil polychlorierte Biphenyle und Phtalate festgestellt worden sind, eine Schließung erfolgt wäre.

Kollegin Petrovic hat davon gesprochen, daß aufgrund zahlreicher Todesfälle das Mozarteum geschlossen worden wäre. Meine sehr verehrten Damen und Herren, das ist nicht richtig. Das Mozarteum wurde mit Bescheid deswegen geschlossen, weil in der Innenluft erbgutverändernde Stoffe festgestellt wurden. Nicht festgestellt und nicht bewiesen wurde bisher die Kausalität. Man weiß bis heute noch nicht, woher diese Substanzen kommen.

Frau Kollegin Petrovic, ich halte auch den Vergleich mit Lassing für nicht zulässig, weil die Salzburger Landesregierung sofort reagiert hat. Lassen Sie mich ganz kurz den Ablauf erklären:

Das nicht zuständige Ressort, nämlich das Gesundheitsressort, hat am 16. Juli dieses Jahres erstmals von diesen Schadstoffbelastungen erfahren. Einen Tag später wurde dem Rektor ein Kooperationsangebot übermittelt, dem entsprochen wurde. Am 8. Oktober lagen die ersten konkreten Untersuchungen vor. Es wurde nachgewiesen, daß mutagene Stoffe in der Innenraumluft des Mozarteums vorliegen. Daraufhin hat die Salzburger Landesregierung sofort reagiert und in einer Regierungssitzung klare Festlegungen getroffen. Es wurde zum einen ein Steuerungsgremium eingerichtet, bestehend aus Vertretern der Landessanitätsdirektion, der Umweltabteilung, der Universität Mozarteum, des Landespressebüros, des Wirtschaftsministeriums und des Wissenschaftsministeriums, um die Ursachen für die mögliche Gefährdung der Angestellten und der Studierenden in den Räumlichkeiten der Musikuniversität zu klären sowie die Kausalität der festgestellten Schadstoffe im Hinblick auf möglicherweise dadurch ausgelöste Krankheiten zu überprüfen. Darüber hinaus wurde auch noch eine internationale Expertenkommission eingerichtet.

Frau Kollegin Petrovic! Die Fragen, um die es jetzt geht – also Fragen der Haftung –, kann kein Untersuchungsausschuß klären, sondern diese können nur auf einer sachlichen Ebene geklärt werden. Wir meinen daher, daß es keinen Sinn hat, hier und jetzt einen Untersuchungsausschuß zu beschließen.

Es geht darum, daß wir das Mozarteum als ein nationales Anliegen sehen, daß wir uns darum bemühen, daß diese offenen Fragen jetzt geklärt werden, und daß der Bund auch die entsprechenden Unterstützungen dazu leistet. Die sozialdemokratische Fraktion wird also Ihrem Antrag nicht folgen können. Die sozialdemokratische Fraktion wird die weitere Entwicklung verfolgen und gegebenenfalls auch entsprechende Anfragen an die zuständigen Minister stellen. – Danke für Ihre Aufmerksamkeit. *(Beifall bei der SPÖ.)*

22.53

Präsident Dr. Heinz Fischer: Nächster Redner ist Herr Abgeordneter Dr. Puttinger. Redezeitbeschränkung: 5 Minuten. – Bitte.

22.54

Abgeordneter Dkfm. Dr. Günter Puttinger (ÖVP): Sehr geehrter Herr Präsident! Sehr geehrte Damen und Herren! Die renommierte Salzburger Kunstuniversität Mozarteum, eine der Salzburger Institutionen, 1841 gegründet, 1970 zur Kunsthochschule erhoben, steht seit Wochen im Brennpunkt medialen und öffentlichen Interesses. Am 15. Oktober 1998 wurde die Kunsthochschule Mozarteum mit all ihren Abteilungen geschlossen. Die Schließung

war notwendig, nachdem bei einer Reihe von umweltmedizinischen Untersuchungen des Landessanitätsdirektors in der Luft polychlorierte Biphenyle und mutagene, erbgutverändernde Stoffe gefunden worden sind, deren Wirkung in der Kombination bis heute unklar ist. Ich möchte das feststellen, weil hier immer wieder behauptet wird, daß diese Zusammenhänge eindeutig nachgewiesen sind, was nicht der Fall ist.

Schwierig stellt sich die Ursachenforschung deshalb dar, weil es so gut wie keine Aufzeichnungen über die vor 20 Jahren verwendeten Materialien oder Werkstoffe gibt und die eingesetzten Baufirmen meines Wissens heute gar nicht mehr existieren. Bedenklich ist, daß täglich nicht nur neue Gerüchte über die möglichen Ursachen für die Krankheitsgeschichten auftauchen, sondern – was viel trauriger ist – daß täglich neue Gerüchte über mysteriöse Todesfälle auftauchen. Panikmache ist in diesem Fall sicherlich nicht das Gebot der Stunde!

Das Gebot der Stunde ist aber, meine sehr verehrten Damen und Herren, konsequent, schnell und mit der notwendigen Sorgfalt die entsprechenden Aufklärungen durchzuführen *(Beifall bei der ÖVP),* ohne den untadeligen Ruf dieser Weltbildungseinrichtung zu gefährden.

Rechtsstreitigkeiten über die Zuständigkeiten sind wohl am heutigen Tage nicht gefragt. Sinnvoll wäre es, daß sich die hierbei beteiligten Ministerien – das Sozialministerium, das Finanzministerium, das Wirtschaftsministerium und das Wissenschaftsministerium – an einen Tisch setzen und so schnell wie möglich im Interesse der Hochschule, aber vor allem im Interesse der Schüler, der Professoren, der Angehörigen, der Mitarbeiter und letzten Endes auch im Interesse der nächsten Generationen Klarstellungen in medizinischer, technischer und rechtlicher Hinsicht treffen. *(Präsident Dr.* ***Neisser*** *übernimmt den Vorsitz.)*

Meine sehr verehrten Damen und Herren! Der Salzburger Landtag hat am Mittwoch, den 28. Oktober 1998 einstimmig beschlossen, das Mozarteum auf eventuelle gesundheitsschädliche Wirkungen prüfen zu lassen. Die Landesregierung wurde ersucht, nach Vorliegen der endgültigen Prüfungsergebnisse der Universität Mozarteum auch andere landeseigene Gebäude eingehend wegen eventueller schädlicher Wirkungen der dort verwendeten Materialien zu untersuchen. Es ist also unrichtig, daß diese Untersuchungen nur auf ***ein*** Gebäude beschränkt sind. Es sollen alle Gebäude überprüft werden, bei denen sich aufgrund der Ergebnisse des Mozarteums entsprechende Verdachtsmomente ergeben. Landesbaudirektor Axel Wagner und Umweltmediziner Christoph König berichteten, daß der Bauzustand des 1979 errichteten Mozarteums den siebziger Jahren standardmäßig entsprechend und in Salzburg zum Beispiel nur ein einziges Gebäude dementsprechend gebaut worden ist, und zwar das ORF-Landesstudio. *(Abg. Mag.* ***Posch:*** *Oje! Oje!)*

Es wurde zur Überprüfung des Mozarteums auch eine Arbeitsgruppe eingesetzt, die heute vor einer Woche ihre Arbeit aufnahm. Die Ergebnisse der Untersuchungen über das Mozarteum müssen unserer Meinung nach abgewartet werden. Wir haben uns nach den Ergebnissen zu richten und werden dann die entsprechenden Schritte veranlassen. Deshalb werden wir einem Untersuchungsausschuß derzeit nicht zustimmen.

Meine sehr verehrten Damen und Herren! Ich glaube, es ist besser, in Salzburg zu handeln, als hier im Parlament Emotionen hochgehen zu lassen. *(Beifall bei der ÖVP und bei Abgeordneten der SPÖ.)*

22.58

Präsident Dr. Heinrich Neisser: Zu Wort gemeldet ist Herr Abgeordneter Böhacker. – Bitte.

22.59

Abgeordneter Hermann Böhacker (Freiheitliche): Sehr geehrter Herr Präsident! Hohes Haus! Die freiheitliche Parlamentsfraktion wird dem Antrag der Grünen auf Einsetzung eines Untersuchungsausschusses zur Untersuchung der Vorgänge in der Causa Mozarteum sehr wohl die Zustimmung erteilen. *(Beifall bei den Freiheitlichen.)* Ich finde es absolut notwendig, daß ein derartiger Untersuchungsausschuß eingesetzt wird. *(Abg.* ***Oberhaidinger:*** *Das haben wir uns gedacht!)*

Der Neubau des sogenannten Mozarteums war von Anfang an bautechnisch, städtebaulich, funktionell eine Totgeburt. *(Abg. Dr.* ***Leiner:*** *Bist du ein Baumeister?)* Bist ***du*** ein Baumeister? – Du bist ein Arzt! Also bleib bei deinem Leisten!

Tatsache ist – und das hat Frau Kollegin Petrovic schon erklärt –, daß bereits im Jahr 1990 erstmals öffentlich

kundgetan wurde, daß es sich hier um gesundheitliche Problematiken handelt. 1996 gab es die ersten Todesfälle. Wenn Sie heute hier glauben, es gibt nichts zu untersuchen, dann ist das, ich möchte fast sagen, zynisch.

Da gibt es einen Professor Hubertus Boese, der gesagt hat: "Ich bin gesund hineingegangen, und nach zehn Jahren war ich k. o." Vor acht Jahren wurde er schwerkrank pensioniert und so weiter. Heute ist er ein todkrankes Wrack.

Weiters gibt es den Fall von Professor Steinschaden – bitte hören Sie zu, was ich Ihnen jetzt vorlese –:

Gift im Mozarteum, Studenten flüchten. Krebsgefahr war schon seit Jahren bekannt und wurde trotz Todesfällen vertuscht. Professor Georg Steinschaden, der derzeit gerade wieder eine Chemotherapie gegen die Leukämie, den Blutkrebs, durchmacht, ... eigentlich bedarf es hier gar keiner Untersuchungen. Dreimal tief eingeatmet, und man weiß, was los ist. Das ist offensichtlich. – Zitatende.

Und da sehen Sie zu? Da wollen Sie abwarten? Ist das wirklich Ihre Einstellung?

Auch der Umweltmediziner des Landes Salzburg, Dr. König, hat sich damit befaßt: "Neuer Test entlarvt den giftigen Cocktail". – Welche Untersuchungen brauchen Sie denn noch? *(Abg. Dr. **Puttinger:** In Salzburg handeln, und nicht hier reden! Sie reden, wir handeln!)*

Meine Damen und Herren! Es geht hier nicht allein um die medizinischen Untersuchungen *(Abg. Dr. **Puttinger:** In Salzburg handeln!)*, es geht auch um die politische Verantwortung, Herr Kollege Puttinger, um die Klärung der Verantwortung für die Tatsache, daß diese menschenverachtenden Versäumnisse überhaupt eingetreten sind! Wer trägt hiefür die politische Verantwortung? Da wurde das Mozarteum überfallsartig geschlossen, es herrschte ein absolutes "Chaoskrisenmanagement" *(Beifall bei den Freiheitlichen)*, und Sie wollen weiterhin zudecken, Sie wollen die schwerwiegenden Fälle von Untätigkeit der Verantwortlichen einfach unter den Teppich kehren! *(Rufe bei der ÖVP: Handeln! Handeln!)*

Gerade Sie, Herr Kollege Puttinger, sollten das wissen: Jedes private Unternehmen wäre längst geschlossen gewesen, der Unternehmer angezeigt, verurteilt und bestraft worden. Aber nur deshalb, weil es sich um ein öffentliches Gebäude handelt, passiert nichts, wird zugedeckt.

Meine Damen und Herren! Es ist schon richtig, daß durch eine parlamentarische Untersuchung die gesundheitlichen Schäden nicht mehr repariert werden können. Aber – und das sage ich mit allem Nachdruck – die politisch Verantwortlichen sind dingfest zu machen und haben die Konsequenzen zu ziehen. *(Abg. **Schwarzenberger:** Was haben Sie denn für eine Befähigung, daß Sie ...?)* – Geh, Schwarzenberger, sei ruhig! *(Ruf bei der ÖVP: Wer sind Sie denn?)*

Es wird auch darum gehen, die entsprechenden Haftungsfragen zu klären. Ich habe eine Bekannte, die seit Jahren in diesem Haus tätig ist. Seit sie weiß, daß dieser Giftcocktail erbgutverändernd ist, hat sie Angst davor und getraut sich nicht, sich ein Baby "anzuschaffen".

Meine Damen und Herren! Das sollten Sie bedenken, und nicht hier drüberfahren und sagen, wir brauchen nichts zu untersuchen. Herr Kollege Puttinger, die menschliche Gesundheit kann man nicht nach Kostengründen abwägen.

Es geht auch um die Reputation, um das Weltkulturerbe Salzburg. Gerade du als einer, der in der Tourismus- und Freizeitwirtschaft tätig ist *(Abg. Dr. **Puttinger:** Dann sag nicht, daß alles hier schlecht ist!)*, sollte größtes Interesse daran haben, daß dort rasch, unbürokratisch und ohne zuzudecken aufgeklärt wird. *(Beifall bei den Freiheitlichen. – Abg. Dr. **Puttinger:** Du hast nicht zugehört, was ich gesagt habe! Du hast nicht verstanden!)* Nur so, Herr Kollege Puttinger, kann es ermöglicht werden, daß entsprechende bauliche Maßnahmen gesetzt werden. Wollen Sie wirklich zehn Jahre lang warten, bis ein eventueller Neubau errichtet werden kann? Jetzt werden wir zwei Jahre lang untersuchen. Wo aber gehen Sie mit den Studenten hin? – Du müßtest das als Salzburger ja kennen. Aber nein, du schaust weg und wirst diesem Untersuchungsausschuß nicht zustimmen. *(Präsident Dr. **Neisser** gibt das Glockenzeichen.)* – Ich komme schon zum Schlußsatz, Herr Präsident.

Im Salzburger Landtag wurde ein Entschließungsantrag der Bürgerliste eingebracht, in dem die Fraktionen im Nationalrat ersucht werden *(Rufe bei der SPÖ: Den Schlußsatz!)*, alle in den Kompetenzbereich des Bundes fallenden Umstände im Zusammenhang mit dem Gebäude des Salzburger Mozarteums zu untersuchen. ÖVP und

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SPÖ haben diesen Antrag abgelehnt, und das ist eine Schande! *(Beifall bei den Freiheitlichen. – Abg. Dr.* ***Höchtl:*** *Mach dir das mit dem Schnell daheim aus!)*

23.04

Präsident Dr. Heinrich Neisser: Nächster Redner ist Herr Abgeordneter Dr. Kier. – Bitte.

23.05

Abgeordneter Dr. Volker Kier (Liberales Forum): Herr Präsident! Sehr geehrte Damen und Herren! Hohes Haus! Ich kann die Aufgeregtheit der Regierungsparteien schon verstehen, denn es sind mindestens drei Regierungsmitglieder, die wir in diesem Untersuchungsausschuß vorzuladen haben werden:

Zunächst wäre dies der für das Gebäude Verantwortliche – es handelt sich um einen Bundesbau, daher ist es eben nicht Landessache, sondern es dürfte in die Zuständigkeit der Bundesgebäudeverwaltung fallen, habe ich einmal gehört –, und dies könnte vielleicht der wirklich glücklose Bundesminister Farnleitner sein. *(Abg.* ***Schieder:*** *Nein, damals war es der andere!)*

Für den Betrieb in der Sache würde ich gefühlsmäßig gerne den Wissenschaftsminister ins Gespräch nehmen. *(Abg.* ***Schwarzenberger:*** *Das Gebäude wurde 1979 errichtet! – Abg. Dr.* ***Mertel:*** *Damals hat Farnleitner die Baustoffe ausgesucht, nicht?)*

Darüber hinaus wäre noch der Aspekt des Bundesbediensteten-Arbeitsinspektorates zu nennen, der in der Diskussion bisher noch gar nicht erwähnt wurde. Ich frage mich: Wozu haben wir diese wertvolle Einrichtung, die Gebäude und Arbeitsstätten regelmäßig zu begutachten hat, wenn sie nicht bemerkt, daß das Gebäude nicht kollaudiert ist, wenn sie offenbar mit den dort ein- und ausgehenden Menschen keine Gespräche führt und ihr daher die Beschwerden, die ja einige der Vorredner schon erwähnt haben, die Tatsache, daß die Leute sich dort seit den neunziger Jahren über die Luftverhältnisse et cetera beschweren, nicht zur Kenntnis gelangt sind?

Man fragt sich: Was ist hier noch durch Kommissionen zu untersuchen? Die politischen Versagensabläufe liegen bereits in ihrer Struktur vor, und es ist nur noch festzustellen: Welches dieser drei Regierungsmitglieder trägt die politische Letztverantwortung? – Dies zu klären wäre eine exquisite Aufgabe für einen Untersuchungsausschuß.

Ich bin daher der gesicherten Meinung, daß man, da von der Wahrscheinlichkeitsrechnung her eine Treffermöglichkeit von zwei zu eins – zwei rote Minister, ein schwarzer – besteht, durch Münzabwurf die Koalition vielleicht doch dazu gewinnen könnte. *(Abg.* ***Schwarzenberger:*** *Zum Zeitpunkt des Baus war nämlich Steger zuständig!)* Vielleicht stimmen Sie doch zu, Herr Klubobmann Khol. Die Wahrscheinlichkeit, daß es den für das Gebäude Verantwortlichen trifft, ist gering. Sollte dies doch der Fall sein, nun ja, dann hat er eben einen Ausschuß zu gewärtigen. Dann kann man Lassing gleich mit abhandeln. Stimmen Sie doch einfach zu! Machen Sie uns die Freude! – Danke schön. *(Beifall beim Liberalen Forum sowie bei Abgeordneten der Grünen und der Freiheitlichen.)*

23.07

Präsident Dr. Heinrich Neisser: Nächster Redner ist Herr Abgeordneter Öllinger. – Bitte.

23.07

Abgeordneter Karl Öllinger (Grüne): Herr Präsident! Meine sehr geehrten Damen und Herren! Es ist schon spannend, wenn Kollege Puttinger davon spricht, daß jetzt "schnell", "konsequent" Aufklärung betrieben werden soll.

Herr Kollege Puttinger! Sie wissen hoffentlich, daß die Tatsache, daß dieses Gebäude nicht genehmigt wurde, 18 Jahre lang im Raum gestanden ist. 18 Jahre lang hat der Bund, der die Verantwortung trägt, nicht gehandelt! *(Abg. Dr.* ***Puttinger:*** *18 Jahre lang haben Sie nichts gesagt! Jetzt sagen Sie etwas!)* Und Sie getrauen sich hier noch zu sagen: Schnell muß es gehen! – 18 Jahre lang haben die verantwortlichen Behörden – das zuständige Ministerium, die Bundesgebäudeverwaltung, das Zentralarbeitsinspektorat – gewußt, daß eine Genehmigung schon längst erbracht werden hätte müssen. 18 Jahre lang haben die zuständigen Behörden sich gedacht: Nun ja, das kann ja noch kommen, wird ja noch kommen!

Herr Kollege Kier! Der einzige Punkt meiner Anmerkung zu deiner Rede lautet: Das zentrale Arbeitsinspektorat hat geprüft, und zwar Anfang der neunziger Jahre, und hat festgestellt: Die Betriebsgenehmigung fehlt, hier dürften eigentlich keine Studenten unterrichtet werden – dies steht im Prüfbericht! –, die Betriebsgenehmigung ist sofort zu erbringen.

Was macht das Wirtschaftsministerium, was macht das Wissenschaftsministerium? –"Kommt schon! Kommt schon!", so heißt es.

Im Jahre 1997, meine Damen und Herren von der ÖVP, ist genehmigt worden! – Wo bleibt da Ihre politische Verantwortung oder die des Ministers? Zuständig ist in allen diesen Angelegenheiten, nicht nur für die Errichtung, sondern auch für die Überprüfung – und da haben Sie vermutlich ein Problem, würde ich meinen –, derselbe Wirtschaftsminister, der auch andere Belange – leider – unzureichend geprüft hat und sich allzusehr auf seine ihm untergebenen Behörden verlassen hat.

Mich interessiert das gar nicht im besonderen, sondern mich interessiert in diesem Zusammenhang die Frage: Was ist es, das diese Behörden dazu bringt, 18 Jahre lang angesichts der Tatsache, daß nichts genehmigt wird, zuzusehen und sich zu denken, naja, das ist eben einfach so? Da wird einfach weitergebaut: Das Mozarteum ist in den 18 Jahren umgebaut worden, obwohl es nicht einmal errichtet oder betrieben werden hätte dürfen! – Macht nichts, ist ja eine Bundesstelle! Die kann ja tun und lassen, was sie will! – Das ist der erste Punkt.

Zweiter Punkt: Es gibt nicht nur zwei Kategorien von Bauten – die für normale Menschen, und die, bei denen es um Bundesbauten geht –, sondern es gibt auch zwei Kategorien von Menschen: die Bundesbediensteten und die normalen Bediensteten. Für die einen gilt der normale Arbeitnehmerschutz – der prüft, einigermaßen korrekt –, und bei den Bundesbediensteten, da darf dann das zentrale Arbeitsinspektorat Empfehlungen geben: Ja, ist nicht genehmigt worden. Bitte genehmigt – vielleicht in den nächsten fünf Jahren. – Genau so ist es gekommen.

Dritter Punkt: Herr Kollege Maier! Das Kausalitätsprinzip steht auf einmal ganz zentral im Raum: Wir können leider nicht untersuchen, denn es ist ja noch nicht einmal erwiesen, daß der Tod jener Menschen, die im Mozarteum beschäftigt waren und an bestimmten Krebsarten verstorben sind, in einem kausalen Zusammenhang mit ihrer Tätigkeit im Mozarteum stehen, beziehungsweise können wir im anderen Fall – denn es gibt ja nicht nur verstorbene Menschen, sondern auch viele, die Krankheitssymptome gehabt haben und diese auch gemeldet haben, und zwar an die Bundesgebäudeverwaltung und schon Anfang der neunziger Jahre! – nicht sagen, daß diese Krankheitssymptome ursächlich, kausal in einem Zusammenhang mit ihrem Aufenthalt, mit ihrer Arbeit im Mozarteum stehen. Kollege Maier! Bitte entschuldige, aber das ist etwas zu billig! Das Kausalitätsprinzip kann im besonderen bei Krebserkrankungen nicht angewendet werden. Die Kausalität nachzuweisen, das ist unmöglich, auch wenn Sie das hier verlangen. Jede moderne Erkenntnis besagt, daß eher das Finalitätsprinzip anzuwenden ist. Tatsache ist, daß Menschen daran gestorben sind, Tatsache ist, daß soundso viele Menschen Beschwerden haben – ich will mich gar nicht auf die Verstorbenen beziehen –, diese Beschwerden seit Jahren beziehungsweise seit Jahrzehnten geltend gemacht haben, aber niemand gehandelt hat. Alle zucken mit der Schulter und sagen: Es könnte auch etwas anderes sein, vielleicht hat er sich zu Hause verkühlt, das könnte ja auch sein.

Meine Damen und Herren! Zu prüfen ist die Verantwortung des zuständigen Ministeriums. Zu prüfen ist aber auch die Verantwortung der zu prüfenden Behörden und der zugrunde liegenden Gesetze! Und da setzen Sie sich ganz beruhigt hin und sagen: All das geht uns nichts an! – Es sind aber Ihre Gesetze, die Sie erlassen haben, die dazu führen, daß es zwei Kategorien von Bauten und zwei Kategorien von Menschen gibt und daß niemand imstande ist, irgend etwas zu prüfen, weil alles in dieser Republik seine Ordnung und seine Richtigkeit haben muß. Irgendwie wird es schon funktioniert haben, es ist eben Pech, daß irgendwelche Leute verstorben sind.

Meine Damen und Herren! Wenn Sie die Sache ernst nehmen, können Sie es sich nicht so einfach machen! *(Beifall bei den Grünen.)*

23.14

Präsident Dr. Heinrich Neisser: Es liegt keine Wortmeldung mehr vor.

Die Debatte ist geschlossen.

003414

Wir kommen jetzt zur ***Abstimmung*** über den Antrag der Abgeordneten Mag. Dr. Petrovic auf Einsetzung eines Untersuchungsausschusses.

Diejenigen Damen und Herren, die dem Antrag auf Einsetzung eines Untersuchungsausschusses ihre Zustimmung geben, mögen dies durch ein Zeichen bekunden. – Das ist die ***Minderheit.*** Der Antrag ist ***abgelehnt.***

Abstimmung über Fristsetzungsantrag

Präsident Dr. Heinrich Neisser: Wir kommen jetzt zur Abstimmung über den Antrag der Abgeordneten Mag. Dr. Schmidt, dem Justizausschuß zur Berichterstattung über die Petition Nr. 48 betreffend drei Forderungen zur rechtlichen Verankerung von PartnerInnenschaften, überreicht von den Abgeordneten Mag. Stoistis, Dr. Kier und Dr. Karlsson, eine Frist bis 19. Jänner 1999 zu setzen.

Ich bitte jene Damen und Herren, die für diesen Fristsetzungsantrag sind, um ein entsprechendes Zeichen der Zustimmung. – Das ist die ***Minderheit.*** Dieser Antrag ist ***abgelehnt.***

Einlauf

Präsident Dr. Heinrich Neisser: Ich gebe noch bekannt, daß in der heutigen Sitzung die Selbständigen Anträge 925/A bis 941/A eingebracht wurden.

Ferner sind die Anfragen 5129/J bis 5185/J eingelangt.

Die ***nächste*** Sitzung des Nationalrates betreffend geschäftsordnungsmäßige Mitteilungen und Zuweisungen berufe ich für 23.16 Uhr, das heißt gleich im Anschluß an diese Sitzung, ein.

Diese Sitzung ist ***geschlossen.***

Schluß der Sitzung: 23.15 Uhr

5184/AB XX.GP

Die schriftlichen parlamentarischen Anfragen Nr. 4024 - 4263/J - NR/1998 betreffend Kunstwerke im Besitz der Republik Österreich, die die Abgeordneten Mag. Terezija Stoisits und Freundinnen am 15. März 1998 an mich richteten, wird wie folgt beantwortet:

Mein Ministerium hat im Zusammenwirken mit dem Bundesdenkmalamt auch nach der im Jahre 1997 vollzogenen so genannten Mauerbachversteigerung (2. Kunst - und Kulturberei - nigungsgesetz 1986) seine Bemühungen fortgesetzt, Nachforschungen nach fragwürdigen Erwerbungen von Kunstgegenständen, die 1938-1945 sichergestellt bzw. beschlagnahmt wurden, und heute moralisch nicht mehr vertretbaren Perspektiven der seinerzeitigen "Schenkungen" an Museen und Sammlungen im Zusammenhang mit Ausfuhrpraktiken anzustellen und diese kritisch zu überprüfen. Die Thematik war auch - ausgelöst durch eine 1997 in London abgehaltene Konferenz über die Rückerstattung geraubter Goldbestände durch eine so genannte "Tripartite Gold Commission" international in Bewegung geraten, wobei die US Regierung für Ende 1998 eine Washingtoner Konferenz über Holocaust - Vermögen ankündigte, in deren Rahmen auch Fragen im Zusammenhang mit Kunst- und Kulturgütern behandelt werden sollten. Diese Konferenz hat inzwischen stattgefunden und "Principles on Nazi - Confiscated Art" festgelegt, wofür die österreichischen Aktivitäten als dafür vorbildlich hervorgehoben wurden.

Ich habe nun die eingehende Überprüfung der Herkunft aller Kunstgegenstände, die im Zuge oder als Folge der NS - Gewaltherrschaft in das Eigentum des Bundes gelangt sind, veranlasst und im Jahre 1998 eine Arbeitsgruppe für Provenienzforschung im Bundesdenkmalamt und in den Bundesmuseen eingesetzt. Ihr Ziel ist die Aufarbeitung des historischen Materials, das für die Rückgabe der identifizierten Kunstgegenstände an die ursprünglichen Eigentümer oder deren Rechtsnachfolger von Todes wegen Voraussetzung war.

In der Folge wurde auf meine Initiative das Bundesgesetz über die Rückgabe von Kunstgegenständen aus den Österreichischen Bundesmuseen und Sammlungen, BGBl.- Nr. 181/1998, von allen Fraktionen im Nationalrat beschlossen. Dieses Gesetz sieht folgende Kategorien von Kunstgegenständen vor, die von Amts wegen zu restituieren sind:

1. Kunst- und Kulturgegenstände, die im Zuge von Verfahren nach dem Ausfuhrverbotsgesetz zurückbehalten wurden und als "Schenkungen" oder "Widmungen" in den Besitz der Österreichischen Museen und Sammlungen eingegangen sind. Die in diese Kategorie einzureihenden Kunstgegenstände waren bereits Gegenstand von Rückstellungen und wurden auch tatsächlich nach 1945 an die Eigentümer zurückgestellt. Im Gegenzug für die Erteilung einer Ausfuhrbewilligung nach dem Ausfuhrverbotsgesetz ,wurde mit den Ausfuhrwerbern vereinbart, dass einzelne dieser Werke an österreichische Museen gehen sollten. Aus heutiger Sicht und auf Grund der Tatsache, dass bei den beiden Kunst- und Kulturgut - bereinigungsgesetzen die Anwendung der Bestimmungen des Ausfuhrverbotsgesetzes ausdrücklich ausgenommen wurde, ist die damals gewählte Vorgangsweise nicht zu rechtfertigen.

2. Kunst- und Kulturgegenstände, welche zwar rechtmäßig in das Eigentum des Bundes gelangt sind, jedoch zuvor Gegenstand eines Rechtsgeschäftes gewesen sind, das nach den Bestimmungen des so genannten Nichtigkeitsgesetzes aus dem Jahre 1946 nichtig ist. Einige Museumsdirektionen haben in der Nachkriegszeit im guten Glauben Kunstgegenstände am Kunstmarkt bei befugten Händlern erworben, wobei sich erst zu einem späteren Zeitpunkt Zweifel an der Unbedenklichkeit der Herkunft ergeben haben. Im Zuge der Provenienz - forschung sind Fälle dieser Art bekannt geworden.

3. Kunst- und Kulturgegenstände, die trotz Durchführung von Rückstellungen nicht an die ursprünglichen Eigentümer oder deren Rechtsnachfolger von Todes wegen zurückgegeben werden konnten und als herrenloses Gut in das Eigentum des Bundes übergegangen sind.

§ 3 Rückgabegesetz statuiert die Einrichtung eines Beirates, der den Bundesminister für wirtschaftliche Angelegenheiten, den Bundesminister für Landesverteidigung und mich bei der Feststellung jener Personen, denen die obgenannten Kunstgegenstände zu übereignen sind, zu beraten hat. Dieser Beirat hat sich am 9. Dezember 1998 konstituiert und hat in einer weiteren Sitzung am 20. Jänner 1999 seine Arbeit soweit vorangetrieben, dass nach der nächsten Sitzung am

11. Februar 1999 bereits eine Berichterstattung an mich über die Restitution einer bedeutenden Familiensammlung erfolgen konnte. Hinsichtlich anderer Privatsammlungen ist die Arbeit soweit gediehen, dass in den nächsten Monaten weitere Restitutionen erfolgen können.

Das Rückgabegesetz trägt in vieler Hinsicht den Intentionen der vorliegenden parlamentarischen Anfrage bereits Rechnung. Diese Anfrage betrifft allerdings nur einen Teil der von der Provenienzforschungskommission überprüfen mehreren tausend Kunstgegenständen, geht aber andererseits in ihrer inhaltlichen Dimension über den Aufgabenbereich und die Zielsetzung der Provenienzforschung hinaus: Einige Fragen erfordern für die Beantwortung Erkenntnisse, die eine generelle Aufarbeitung des gesamten Archivbestandes über Sicherstellung und Akte der Beschlagnahme 1938 - 1945 zur Voraussetzung haben. Diese Erkenntnisse liegen derzeit noch nicht vor, ihre Erarbeitung wird eine Aufgabe auch der Historikerkommission bilden. Ein Beispiel möge dies verdeutlichen: Wenn etwa ein Gemälde im Jahre 1947 von einem Bundesmuseum erworben wurde, bzw. ihm durch "Widmung" zugekommen ist, dann erfolgte damals keine Prüfung, wer Eigentümer dieses Objektes am 10. März 1938 war. Archivmaterialien darüber in den Bundesmuseen und im Bundesdenkmalamt bedürfen dazu noch einer systematischen Aufarbeitung. Im Bundesdenkmalamt allein sind mehr als 120.000 Dokumente zu diesem Fragenkomplex vorhanden.

Ich möchte auch auf den von § 2 Abs. 3 des Rückgabegesetzes vorgesehenen jährlichen Bericht des Bundesministers für Unterricht und kulturelle Angelegenheiten an den Nationalrat über die erfolgte Übereignung von Kunstgegenständen hinweisen, die eine laufende Information der gesetzgebenden Körperschaft sicherstellt.

In der Anlage sind die zu den einzelnen in der Anfrage enthaltenen Kunstwerken bisher erzielten Erkenntnisse angeführt. Durch die Tätigkeit der Provenienzforschungskommission, deren Tätigkeitsfeld einen viel breiteren Umfang angenommen hat als ursprünglich angenommen wurde, wird dieser Kenntnisstand laufend erweitert.

Angaben zu den 241 Kunstgegenständen

Vorbemerkung

Die Gemälde/Zeichnungen sind nach Sammlungen und im weiteren in alphabetischer Reihenfolge angeführt. Da die Anzahl der in der parlamentarischen Anfrage aufgelisteten Fragen unterschiedlich ist (19,20,21, 22), ergeben sich für die nachstehende Aufstellung vier Gruppen:

1. Katalog mit 19 Fragen:

ad Fragen 1 - 3:
Die nachstehenden Antworten geben den Stand der aktuellen Provenienzforschung wieder und basieren auf der Auswertung der Museumsinventare sowie relevanter Aktenbestände in den Museen, im Bundesdenkmalamt sowie im Staatsarchiv.

ad Fragen 4 - 7:
Wo in den Fragen angesprochene Kontakte in den bisherigen Ergebnissen der Provenienzforschung nachweisbar sind, wurden sie angeführt.

ad Frage 8:
Erlös - Ergebnisse (aus Ausstellungen, Publikationen, Reproduktionen) lassen sich herausgelöst für einzelne Kunstwerke kaum seriös festlegen und den Aufwendungen der Museen für konservatorische Pflege, Präsentationskosten von Ausstellungen etc. gegenrechnen.

ad Frage 9:
Siehe Kunstgegenstände - Rückgabegesetz § 1/3.

ad Fragen 10 - 11:
Für die Kunstgegenstände der ehemaligen Sammlungen Rothschild sind diese Fragen bereits geklärt und in dem für die Rückgabe vorliegenden Dossier der Kommission für Provenienzforschung enthalten.
Für alle anderen Kunstgegenstände sind diese Fragen erst nach vollständiger Aufarbeitung des darauf bezüglichen umfangreichen Archivmaterials beantwortbar.

ad Frage 12:
Siehe den Motivenbericht zum Kunstgegenstände-Rückgabegesetz.

ad Fragen 13-21:
Durch die Einrichtung der Kommission für Provenienzforschung abgedeckt bzw. durch das Kunstgegenstände - Rückgabegestz geregelt.
Die im Rahmen des Kunstrückgabegesetzes vorbereiteten Dossiers zu den einzelnen Kunstgegenständen enthalten ausführliche Quellenhinweise bezüglich der dazu vorhandenen Archivmaterialien.

II. Variante Katalog mit 20 Fragen:

ad Frage 1:
In etlichen Fällen wurden Objekte, die bereits vor 1938 erworben worden waren, erst im Nachhinein inventarisiert.
ad Fragen 2-4:
Die nachstehenden Antworten geben den Stand der aktuellen Provenienzforschung wieder und basieren auf der Auswertung der Museumsinventare sowie relevanter Aktenbestände in den Museen, im Bundesdenkmalamt sowie im Staatsarchiv.
ad Fragen 5-8:
Wo in den Fragen angesprochene Kontakte in den bisherigen Ergebnissen der Provenienzforschung nachweisbar sind, wurden sie angeführt.
ad Frage 9:
Erlös - Ergebnisse (aus Ausstellungen, Publikationen, Reproduktionen) lassen sich herausgelöst für einzelne Kunstwerke kaum seriös festlegen und den Aufwendungen der Museen für konservatorische Pflege, Präsentationskosten von Ausstellungen etc. gegenrechnen.
ad Frage 10:
Siehe Kunstgegenstände - Rückgabegesetz § 113.
ad Fragen 11-12:
Für die Kunstgegenstände der ehemaligen Sammlungen Rothschild sind diese Fragen bereits geklärt und in dem für die Rückgabe vorliegenden Dossier der Kommission für Provenienzforschung enthalten.
Für alle anderen Kunstgegenstände sind diese Fragen erst nach vollständiger Aufarbeitung des darauf bezüglichen umfangreichen Archivmaterials beantwortbar.
ad Frage 13:
Siehe den Motivenbericht zum Kunstgegenstände - Rückgabegesetz.
ad Fragen 14 - 20:
Durch die Einrichtung der Kommission für Provenienzforschung abgedeckt bzw. durch das Kunstgegenstände - Rückgabegestz geregelt.

III. Variante Katalog mit 21 Fragen:

ad Fragen 1 - 3:
Die nachstehenden Antworten geben den Stand der aktuellen Provenienzforschung wieder und basieren auf der Auswertung der Museumsinventare sowie relevanter Aktenbestände in den Museen, im Bundesdenkmalamt sowie im Staatsarchiv.
ad Fragen 4 - 7:
Wo in den Fragen angesprochene Kontakte in den bisherigen Ergebnissen der Provenienzforschung nachweisbar sind, wurden sie angeführt.
ad Frage 8:
Erlös - Ergebnisse (aus Ausstellungen, Publikationen, Reproduktionen) lassen sich herausgelöst für einzelne Kunstwerke kaum seriös festlegen und den Aufwendungen der Museen für konservatorische Pflege, Präsentationskosten von Ausstellungen etc. gegenrechnen.
ad Frage 9:
Siehe Kunstgegenstände - Rückgabegesetz § 1/3.

ad Fragen 10 - 13:
Für die Kunstgegenstände der ehemaligen Sammlungen Rothschild sind diese Fragen bereits geklärt und in dem für die Rückgabe vorliegenden Dossier der Kommission für Provenienzforschung enthalten.
Für alle anderen Kunstgegenstände sind diese Fragen erst nach vollständiger Aufarbeitung des darauf bezüglichen umfangreichen Archivmaterials beantwortbar.
ad Frage 14:
Siehe den Motivenbericht zum Kunstgegenstände - Rückgabegesetz.
ad Fragen 15 - 21:
Durch die Einrichtung der Kommission für Provenienzforschung abgedeckt bzw. durch das Kunstgegenstände - Rückgabegesetz geregelt.

IV. Variante Katalog mit 22 Fragen:

ad Frage 1:
In etlichen Fällen wurden Objekte, die bereits vor 1938 erworben worden waren, erst im Nachhinein inventarisiert.
ad Fragen 2-4:
Die nachstehenden Antworten geben den Stand der aktuellen Provenienzforschung wieder und basieren auf der Auswertung der Museumsinventare sowie relevanter Aktenbestände in den Museen, im Bundesdenkmalamt sowie im Staatsarchiv.
ad Fragen 5-8:
Wo in den Fragen angesprochene Kontakte in den bisherigen Ergebnissen der Provenienzforschung nachweisbar sind, wurden sie angeführt.
ad Frage 9:
Erlös - Ergebnisse (aus Ausstellungen, Publikationen, Reproduktionen) lassen sich herausgelöst für einzelne Kunstwerke kaum seriös festlegen und den Aufwendungen der Museen lür konservatorische Pflege, Präsentationskosten von Ausstellungen etc. gegenrechnen.
ad Frage 10:
Siehe Kunstgegenstände- Rückgabegesetz § 1/3.
ad Fragen 11-14:
Für die Kunstgegenstände der ehemaligen Sammlungen Rothschild sind diese Fragen bereits geklärt und in dem für die Rückgabe vorliegenden Dossier der Kommission für Provenienzforschung enthalten.
Für alle anderen Kunstgegenstände sind diese Fragen erst nach vollständiger Aufarbeitung des darauf bezüglichen umfangreichen Archivmaterials beantwortbar.
ad Frage 15:
Siehe den Motivenbericht zum Kunstgegenstände - Rückgabegesetz.
ad Fragen 16-22:
Durch die Einrichtung der Kommission für Provenienzforschung abgedeckt bzw. durch das Kunstgegenstände - Rückgabegestz geregelt.

ÖSTERREICHISCHE GALERIE

Werk:	**Portrait Kitty Rothschild**
Künstler:	John Quincy ADAMS
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1975 Widmung von Eugène de Rothschild

ad 1 - 3
1975 Widmung von Eugène de Rothschild, Monte Carlo
ad 13
Schenkung stellt in keinem Konnex mit der Erlangung einer Ausfuhrbewilligung (Einfuhr nach Österreich)

Werk:	**Kauernde**
Künstler:	Karl ALBIKER
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1943 Überweisung vom Reichsleiter

ad 1-3
1943 Erwerbung aus der Ausstellung "Junge Kunst im Deutschen Reich" im Wiener Künstlerhaus durch die Reichsstatthalterei
inventarische Zuweisung an die Österreichische Galerie

Werk:	**Die Cholerakapelle bei Baden**
Künstler:	Jakob ALT
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1939 Ankauf im Wiener Kunsthandel

ad 1-3
1939 Ankauf aus Privatbesitz: Marie Wolfrum, Wien (650 RM)
ad 6
nach dem gegenwärtigen Stand der Provenienzforschung keine Restitutionsansprüche nach 1945

Werk:	**Blick von der Traun bei Gmunden auf den Traunsee**
Künstler:	Rudolf von ALT
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1961 Übernahme aus dem Bundesdenkmalamt Salzburg (ehem Besitz Martin Bormann)

ad 1 - 3
Provenienz: ehem. Sammlung Martin Bormann, nach dem gegenwärtigen Stand der Provenienzforschung sind keine weiteren Vorbesitzer bekannt
1951 Sicherstellung von 14 Bildern aus dem ehemaligen Besitz Bormann durch die Polizeidirektion Salzburg in Bad Gastein
1953 vom Bundesdenkmalamt - Depot Residenz Salzburg in Verwahrung genommen: Vermögensverfall an die Republik Österreich

1 Gemälde (Rudolf von Alt, Prager Veitsdom) an Elsa Gall restituiert
November 1961 Übernahme von 13 Bildern aus dein Bundesdenkmalamt: inventarische Zuweisung an die Österreichische Galerie

Werk:	**Das Portal der Stifiskirche Nonnberg**
Künstler:	Rudolf von ALT
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1961 Übernahme aus dem Bundesdenkmalamt Salzburg (ehem. Besitz Martin Bormann)

ad 1-3
Provenienz: ehem. Sammlung Martin Bormann, nach dem gegenwärtigen Stand der Provenienzforschung sind keine weiteren Vorbesitzer bekannt
1951 Sicherstellung von 14 Bildern aus dem ehemaligen Besitz Bormann durch die Polizeidirektion Salzburg in Bad Gastein
1953 vom Bundesdenkmalamt - Depot Residenz Salzburg in Verwahwng genommen: Vermögensverfäll an die Republik Österreich
1 Gemälde (Rudolf von Alt, Prager Veitsdom) an Elsa Gall restituiert
November 1961 Übernahme von 13 Bildern aus dem Bundesdenkmalamt: inventarische Zuweisung an die Österreichische Galerie

Werk:	**Der Vestatempel in Rom**
Künstler:	Rudolf von ALT
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1947 Ankauf aus Londoner Privatbesitz

ad 1-3
Provenienz: Sammlung Leopold Weinstein, Wien
Sicherstellung der Sammlung 1939
Verwertung durch das Finanzamt Wien Innere Stadt wegen "fähiger Steuerschulden"
1941 Erwerbung durch die Österreichische Galerie vom Finanzamt Innere Stadt (gegen Bezahlung des Schätzwertes voll 4.000 RM)
1946 Rückstellung an Leopold Weinstein: Angebot eines Bildertausches
1947 Erwerbung durch Tausch von Leopold Weinstein, London: gegen Abgabe von Pettenkofen "Rendezvous", Tassaert "Junge Frau mit Vogelbauer", Seybold "Mädchenbildnis" (aus dem Bestand der Österreichischen Galerie)
ad 6
1946 Rückstellungsantrag von Leopold Weinstein stattgegeben
ad 10-11
Ausfuhrbewilligung vom 7. November 1946 für Pettenkofen "Rendezvous", Tassaert "Junge Frau mit Vogelbauer", Seybold "Mädchenbildnis"

Werk:	**Der Hafen von Neapel mit Vesuv**
Künstler:	Rudolf von ALT
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1950 Ankauf aus Wiener Privatbesitz

ad 1 - 3
1950 Ankauf aus Privatbesitz: Wilma Günther, Wien (25.000 S)
Ausfuhrsperre durch das Bundesdenkmalamt: Kaufangebot an die Österreichische Galerie

Werk:	**Aus dem Kurpark in Teplitz**
Künstler:	Rudolf von ALT
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1956 Ankauf im Wiener Kunsthandel, ehem. Slg. Zuckerkandl

ad 1-3
Provenienz: ehemals Sammlung Zuckerkandl
1956 Ankauf im Kunsthandel: LT. Neumann, Wien (10.525 5)
1962 als Leihgabe "auf unbestimmte Zeit" an die Albertina übergeben
ad 6
nach dem gegenwärtigen Stand der Provenienzforschung keine Restitutionsansprüche nach 1945.
im Archiv des Bundesdenkmalamtes ist kein Restitutionsakt Zuckerkandl vorhanden

Werk:	**Das alle Rathaus von Korneuburg**
Künstler:	Rudolf von ALT
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1956 Ankauf aus Wiener Privatbesitz, ehem. Slg. Gsell

ad 1-3
Provenienz: ehemals Sammlung Lobmeyr
1956 Ankauf aus Privatbesitz: Therese Sztankovits, Wien, Huschkagasse 20 (12.000 S)
1962 als Leihgabe "auf unbestimmte Zeit" an die Albertina übergeben

Werk:	**Mädchen mit Strohhut**
Künstler:	Friedrich von AMERLING
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1939 Ankauf im Wiener Kunsthandel

ad 1-3
Provenienz: nach dem gegenwärtigen Stand der Provenienzforschung unbekannt
1939 Ankauf im Kunsthandel: Auktionshaus Weinmüller, München (l.989 RM)
Versteigerung vom 15.-17. März: Schätzpreis 1.200 RM
ad 6
nach dem gegenwärtigen Stand der Provenienzforschung keine Restitutionsansprüche nach 1945

Werk:	**Männliches Bildnis (Herr Ephrussi ?)**
Künstler:	Friedrich von AMERLING
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1939 übernommen

ad 1 - 3
Provenienz: nach dein gegenwärtigen Stand der Provenienzforschung unbekannt, Im Verzeichnis zur Beschlagnahmung der Sammlung Ephrussi (Archiv des Kunsthistorischen Museums) scheint das Bild nicht auf
1939 Überweisung vom Amt des Reichsstatthalters
ad 6
nach dem gegenwärtigen Stand der Provenienzforschung keine Restitutionsansprüche nach 1945

Werk:	**Dame mit Kind**
Künstler:	nach Friedrich von AMERLING
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1939 Schenkung von M. Müller und Sohn

ad 1 - 3
Dezember 1939 Widmung Buchgewerbehaus M. Müller & Sohn, Wien
ad 6
nach dem gegenwärtigen Stand der Provenienzforschung keine Restitutionsansprüche nach 1945
ad 10
1939 Widmung Buchgewerbehaus M. Müller & Sohn, Wien an die Österreichische Galerie

Werk:	**Johann Nepomuk Reithoffer**
Künstler:	Friedrich von AMERLING
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1941 Ankauf aus Wiener Privatbesitz

ad 1-3
Provenienz: Familie Reithoffer, Wien
1941 Widmung von Baronin Margarethe von Geysol Wien, Bartensteingasse
Baronin Margarethe von Geyso war die Schwester der Charlotte Reithoffer, bei der sich das Bild früher befand

Werk:	**Amalie Klein**
Künstler:	Friedrich voll AMERLING
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft :	1941 Ankauf im Berliner Kunsthandel

ad 1-3
Provenienz: nach dem gegenwärtigen Stand der Provenienzforschung unbekannt
1941 Ankauf im Kunsthandel: Galerie W. A. Luz, Berlin (12.000 RM)
ad 6
nach dem gegenwärtigen Stand der Provenienzforschung keine Restitutionsansprüche nach 1945

Werk:	**Der Kupferstecher Franz Xaver Stöber** Studie eines Frauenkopfes
Künstler:	Friedrich von AMERLING
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1948 Widmung Clarice Rothschild

siehe dazu den Abschlussbericht der Kommission zu den Sammlungen Alphonse und Louis Rothschild

Werk:	**Stilleben mit Orangen**
Künstler:	Robin Christian ANDERSEN
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1951 Ankauf aus Privatbesitz - Sammlung Dr. Heinrich Rieger

ad 1-3
Provenienz: Sammlung Dr. Heinrich Rieger, Wien
Restitution an Erben, Ausfolgung an bevollmächtigten Vertreter, RA Dr. Christian Broda
Verkaufsangebot an die Österreichische Galerie - Auswahl von 11 Bildern
Dezember 1951 Ankauf aus Privatbesitz: Dr. Robert Rieger, New York (700 S)
ad 10-11
Erteilung einer Ausfuhrbewilligung ist nach dem gegenwärtigen Stand der Provenienzforschung aufgrund der Aktenlage im Bundesdenkmalamt nicht zu belegen

Werk:	**Motiv aus St. Pölten**
Künstler:	Ferdinand ANDRI
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1942 übernommen

ad 1-3
1942 Erwerbung aus der Ausstellung "Niederdonau, Mensch und Landschaft" im Wiener Künstlerhaus durch die Reichsstatthallerei
inventarische Zuweisung an die Österreichische Galerie

Werk:	**Bildnis einer Dame**
Künstler:	Heinrich ANGELT
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1958 Widmung von Clarisse Baronin Rothschild, ehem. Legat Major von Pötsch

ad 1-3
Provenienz: Major von Pötscll, Wien
1958 Widmung von Baronin Hilde Rothschild aus dem Nachlass des Major von PÖtsch
ad 10-11
nach dem gegenwärtigen Stand der Provenienzforschung kein Konnex zur Erteilung einer Ausfuhrbewilligung

Werk:	**Dame im Profil mit Schleier und Nelke**
Künstler:	Heinrich ANGELI
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1963 Übernahme aus dem Bundesdenkmalamt Wien

ad 1-3
Provenienz: nach dem gegenwärtigen Stand der Provenienzforschung unbekannt
"Verfallsgut vom Linzer Kunstmuseum" vom Bundesdenkmalamt in Verwahrung genommen:
Vermögensverfall an die Republik Österreich - Übergabe an das Bundesministerium für Unterricht
1963 über Weisung des Bundesministeriums für Unterricht zuständigkeitshalber der Österreichischen Galerie ausgefolgt

Werk:	**Margarethe Gräfin Lanckoronska**
Künstler:	Heinrich ANGELI
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1973 Schenkung von Karoline Grätin Lanckoronska, Rom

ad 1-3
Provenienz: Sammlung Lanckoronski, Wien
1973 Widmung von Karoline Grätin Lanckoronska, Rom
ad 13
Schenkung steht in keinerlei Konnex mit der Erlangung einer Ausfuhrbewilligung; in der Tradition einer Reihe von Widmungen der Familie Lanckoronski an die Österreichische Galerie (u.a. der Widmung von Teilen der dekorativen Ausstattung des Belvedere 1960)

Werk:	**Hafenlandtschaft**
Künstler:	Karl BACHER
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1939 übernommen

ad 1-3
Provenienz: nach dem gegenwärtigen Stand der Provenienzforschung unbekannt
1939 Überweisung vom Amt des Reichsstatthalters in Österreich
ad 6
keine Restitutionsansprüche nach 1945 nach dem gegenwärtigen Stand der Provenienzforschung

Werk:	**Abenddämmerung in Ober - Sievering**
Künstler:	Rudolf BACHER
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1942 übernommen

ad 1-3
1942 Erwerbung aus der Jubiläumsausstellung des Künstlerhauses im Wiener Künstlerhaus durch die Reichsstatthalterei
inventarische Zuweisung an die Österreichische Galerie

Werk:	**Landschaft mit Burg**
Künstler:	Adolf Christian BAUMANN
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1961 Übernahme aus dem Bundesdenkmalamt Salzburg

ad 1-3
Provenienz: ehem. Sammlung Martin Bormann, nach dem gegenwärtigen Stand der Provenienzforschung sind keine weiteren Vorbesitzer bekannt
1951 Sicherstellung von 14 Bildern aus dem ehemaligen Besitz Burmann durch die Polizeidirektion Salzburg in Bad Gastein
1953 vom Bundesdenkmalamt - Depot Residenz Salzburg in Verwahrung genommen: Vermögensverfall an die Republik Österreich
1 Gemälde (Rudolf von Alt, Prager Veitsdom) an Elsa Gall restituiert
November 1961 Übernahme von 13 Bildern aus dem Bundesdenkmalamt: inventarische Zuweisung an die Österreichische Galerie

Werk:	**Riva degli Schiavoni in Venedig**
Künstler:	Eduard BÄUMER
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1942 Ankauf im Wiener Kunsthandel

ad 1-3
Provenienz: Besitz des Künstlers
1942 Ankauf im Kunsthandel: Galerie Welz, Wien (480 RM) aus der Ausstellung "Zwei Salzburger Maler"

Werk:	**Statue der Urania im Belvederepark**
Künstler:	Eduard BÄUMER
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1942 Ankauf im Wiener Kunsthandel

ad 1-3
Provenienz: Besitz des Künstlers
1942 Ankauf im Kunsthandel: Galerie Welz, Wien (280 RM) aus der Ausstellung 2Zwei Salzburger Maier"

Werk:	**Büste der Josefa Auguste Hopfen**
Künstler:	Reinhold BEGAS
derzeit:	Österreichische Galerie Belvedere
angegebene herkunft:	1963 Widmung von Frau Lilly Schalk an das KHM Wien, 1987 Übernahme in die Ö.G.

ad 1-3
Provenienz: Lilly Schalk; nach dem gegenwärtigen Stand der Provenienzforschung sind keine weiteren Vorbesitzer bekannt
Gipsabguss nach einer Marmorbüste, das Original befindet sich in der Berliner Nationalgalerie
Widmung von Frau Lilly Schalk 1963 an das Kunsthistorische Museum
1987 Übernahme in die Österreichische Galerie

Werk:	**Bildnisbüste Hans Knappertsbusch**
Künstler:	Fritz BEHN
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1942 Überweisung vom Reichsleiter

ad 1-3
1942 im Auftrag des Reichsleiters Baldur von Schirach von Fritz Behn ausgeführt
inventarische Zuweisung an die Österreichische Galerie

Werk:	**Bildnis Richard Strauss**
Künstler:	Fritz BEHN
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1943 Überweisung vom Reichsleiter

ad 1-3
1943 Erwerbung aus der Ausstellung "Wiener Bildnisse aus Kreisen der Kunst und Wissenschaft" im Wiener Künstlerhaus durch die Reichsstatthalterei
inventarische Zuweisung an die Österreichische Galerie

Werk:	**Bildnisbüste Wilhelm Furtwängler**
Künstler:	Fritz BEHN
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1944 Überweisung vom Reichsleiter

ad 1-3
1944 Ankaufaus dem Besitz des Künstlers durch die Reichsstatthalterei
inventarische Zuweisung an die Österreichische Galerie

Werk:	**Bildnis des Klaviervirtuosen Edwin Fischer**
Künstler:	Fritz BEHN
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1944 Überweisung vom Reichsleiter

ad 1-3
1944 Ankauf aus dem Besitz des Künstlers durch die Reichsstatthalterei
inventarische Zuweisung an die Österreichische Galerie

Werk:	**Weiher**
Künstler:	Wilhelm BERNATZIK
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1981 Schenkung Hanna Spitzer und Dr. Edith Neumann, New York

ad 1-3
Provenienz: Nachlaß Dr. Alfred Spitzer, Wien (verstorben 1923 in Wien)
laut Testament von Hanna Spitzer der Österreichischen Galerie vermacht
1981 Schenkung Hanna Spitzer und Dr. Edith Neumann, New York (im Gedächtnis an ihren Vater Dr. Alfred Spitzer)
ad 10
1981 Legat Hanna Spitzer an die Österreichische Galerie

ad 13
Schenkung steht in keinerlei Konnex mit der Erlangung einer Ausfuhrbewilligung (Einfuhr nach Österreich)

Werk:	**Leonie Gräfin Lanckoronska, geb. Gräfin Potocka, mit ihrem Sohn Karl**
Künstler:	Carl von BLAAS
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1973 Widmung von Karoline Grälin Lanckoronska und Adelheid Grätin Brzezie - Lanckoronska

ad 1 - 3
Provenienz: Sammlung Lanckoronski, Wien
1973 Widmung von Karoline Gräfin Lanckoronska und Adelheid Grälin Brzezie - Lanckoronska, Rom
ad 13
Schenkung steht in keinerlei Konnex mit der Erlangung einer Ausfuhrbewilligung; in der Tradition einer Reihe von Widmungen der Familie Lanckoronski an die Österreichische Galerie (u.a. der Widmung von Teilen der dekorativen Ausstattung des Belvedere 1960)

Werk:	**Atelierecke**
Künstler:	Tina BLAU - LANG
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1939 Vermächtnis von M. Goldscheid, Wien

ad 1 - 3
Provenienz: Mane Goldscheid, Wien
Vermächtnis (Legat laut Testament) an die Österreichische Galerie durch die am 9. November 1938 verstorbene Frau Mane Goldscheid, geborene Rudolph

Werk:	**Dame mit Kind**
Künstler:	Tina BLAU - LANG
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1970 Widmung der Galerie Klewan

ad 1 - 3
Provenienz: Herbert Klewan, nach dem gegenwärtigen Stand der Provenienzforschung weitere Vorbesitzer unbekannt
1970 Widmung von Herbert Klewan, Wien
Studie zum Gemälde "Frühling im Prater" aus dem Bestand der Österreichischen Galerie

Werk:	**Der Gastwirt Siebenhandl in Melk**
Künstler:	Leopold BLAUENSTEINER
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1943 Überweisung vom Reichsleiter

ad 1 - 3
Provenienz: nach dem gegenwärtigen Stand der Provenienzforschung unbekannt
1943 inventarische Zuweisung aus dem Bestand der Reichsstatthalterei an die Österreichische Galerie

Werk:	**Bildnis einer Dame**
Künstler:	BRUN, Eugenie le (verh. TRIPIER - LEFRANC)
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1942 von Otto Schatzker, Wien erworben

ad 1-3
Provenienz: Katharina Schratt, Direktor Falckcnberg
1942 Ankauf durch die Reichsstatthalterei "aug dem Besitz der Katharina Schratt und von Direktor Falckenberg"
inventarische Zuweisung an die Österreichische Galerie

Werk:	**Samson und Delila**
Künstler:	Hans CANON
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1946 Ankauf aus Wiener Privatbesitz

ad 1-3
Provenienz: Paula Schleiffelder, nach dem gegenwärtigen Stand der Provenienzforschung sind keine weiteren möglichen Vorbesitzer bekannt
1946 Ankaufaus Privatbesitz: Paula Schleiffelder, Wien, Wiedner Hauptstr. 15(6.000 S)

Werk:	**Allegorische Figur mit Löwe und Pfau (Lunettenentwurf)**
Künstler:	Hans CANON
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1963 Übernahme aus dem Bundesdenkmalamt Wien

ad 1-3
Provenienz: Karl Wilczek, Wien
Erwerbung im Tausch gegen Entwurf zu einem Altarflügel für Kreuzenstein, der an Graf Wilczek zurückgegeben wurde
"Verfallsgut vom Linzer Kunstmuseum" vom Bundesdenkmalamt in Verwahrung genommen: Vermögensverfall an die Republik Österreich - Übergabe an das Bundesministerium für Unterricht
1963 über Weisung des Bundesministeriums für Unterricht zuständigkeitshalber der Österreichischcn Galerie ausgefolgt

Werk:	**Allegorische Figur mit Statuette und Putto (Lunettenentwurf)**
Künstler:	Hans CANON
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1963 Übernahme aus dem Bundesdenkmalamt Wien

ad 1 - 3
Provenienz: Karl Wilczek, Wien
Erwerbung im Tausch gegen Entwurf zu einem Altarllügel ihr Kreuzenstein, der an Graf Wilczek zurückgegeben wurde
"Verfallsgut vom Linzer Kunstmuseum" vom Bundesdenkmalamt in Verwahrung genommen: Vermögensverfall an die Republik Österreich - Übergabe an das Bundesministerium für Unterricht
1963 über Weisung des Bundesministeriums für Unterricht zuständigkeitshalber der Österreichischen Galerie ausgefolgt

Werk:	**Frau Rott**
Künstler:	Hans CANON
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1975 Widmung von Elisabeth Poosch-Gablenz, Bern

ad 1-3
Provenienz: Dr. Hanns Löhr, Wien
1975 Widmung von Elisabeth Poosch-Gablenz an die Österreichische Galerie aufgrund des Legates von Dr. Hanns Löhr

Werk:	**Szene in Nordafrika**
Künstler:	Nach Hans CANON
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1981 Schenkung Hanna Spitzer und Dr. Edith Neumann, New York

ad 1-3
Provenienz: Nachlass Dr. Alfred Spitzer, Wien (1923 in Wien verstorben)
laut Testament von Hanna Spitzer der Österreichischen Galerie vermacht
1981 Schenkung Hanna Spitzer und Dr. Edith Neumann, New York (im Gedächtnis an ihren Vater Dr. Alfred Spitzer)
ad 10
1981 Legat Hanna Spitzer an die Österreichische Galerie
ad 13
Schenkung steht in keinerlei Konnex mit der Erlangung einer Ausfuhrbewilligung (Einfuhr nach Österreich)

Werk:	**Szene aus der Perseussage: Athena mit dem Gorgonenschild**
Künstler:	Franz CAUCIG (Zuschreibung)
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1983 Widmung von Irene und Kurt Cada, Wien

ad 1-3
Provenienz: Familiennachlass
1983 Widmung von Irene und Kurt Cada, Wien

Werk:	**Statuette Kaiser Franz Joseph I.**
Künstler:	Carl CAUER
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1952 Widmung von Adolf Bauer, Wien

ad 1-3
Provenienz: Geschenk des Kaisers an Feldmarschall Freiherr Heinrich von Hess
1952 Widmung von Adolf Bauer, Wien
ad 13
Die mögliche Widmung im Kontext einer eventuellen Ausfuhrbewilligung ist aufgrund der Akten des Bundesdenkmalamtes und der Österreichischen Galerie nicht belegbar.

Werk:	**Sonntagnachmittag**
Künstler:	Theo CHAMPION
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1943 Überweisung vom Reichsstatthalter

ad 1-3
1943 Erwerbung aus der Ausstellung "Junge Kunst im Deutschen Reich" im Wiener Künstlerhaus durch die Reichsstatthalterei
inventarische Zuweisung an die Österreichische Galerie

Werk:	**Niederrhein - Treibeis**
Künstler:	Max CLARENBACH
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1941 Überweisung vom Reichsstatthalter

ad 1-3
1941 Erwerbung aus der Ausstellung "Rheinische Kunst" im Wiener Künstlerhaus durch die Reichsstatthalterei
inventarische Zuweisung an die Österreichische Galerie

Werk:	**Die Waffen des Mars**
Künstler:	Lovis CORINTH
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1940 Ankauf im Berliner Kunsthandel

ad 1-3
Provenienz: nach dem gegenwärtigen Stand der Provenienzforschung unbekannt
1940 Erwerbung durch Tausch im Kunsthandel: Scheuermann & Seifert, Berlin (16.000 RM)
ad 6
nach dem gegenwärtigen Stand der Provenienzforschung keine Restitutionsansprüche nach 1945

Werk:	**Geschlachtete Kälber**
Künstler:	Lovis CORINTH
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1940 Ankauf im Berliner Kunsthandel - ehem. Sammlung W. Trübner

ad 1-3
Provenienz: Sammlung Wilhelm Trtibner; Max Böhm, Charlottenburg
1940 Erwerbung durch Tausch im Kunsthandel: Carl Nicolai, Berlin (6.000 RM)
ad 6
nach dem gegenwärtigen Stand der Provenienzforschung keine Restitutionsanspruche nach 1945

Werk:	**Die Sängerin Frida Halbe**
Künstler:	Lovis CORINTH
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1941 Ankauf im Berliner Kunst handel

ad 1-3
Provenienz: nach dem gegenwärtigen Stand der Provenienzforschung unbekannt
1941 Ankauf im Kunsthandel: Paul Roemer, Berlin (8.500 RM)
ad 6
nach dem gegenwärtigen Stand der Provenienzforschung keine Restitutionsansprüche nach 1945

Werk:	**Liegender weiblicher Akt**
Künstler:	Lovis CORINTH
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1941 Ankauf im Wiener Kunsthandel - ehem. Sammlung Rathenau

ad 1-3
1941 Ankauf im Kunsthandel: Galerie Welz, Salzburg (15.000 RM)
Provenienz: Sammlung Walter Rathenau; Edith Andreae, geb. Rathenau; Maria Holzhausen, geb. Andreae
Rudolf Holzhausen (verheiratet mit Maria Holzhausen, einer Nichte Rathenaus) verkaulte das Bild an Friedrich Welz in Salzburg
ad 4
1998 persönlicher Kontakt Dr. Walter Holzhausen (Großneffe Rathenaus, Sohn des Rudolf Holzhausen) mit der Direktion der Österreichischen Galerie Belvedere
Verzichtsangebot der Erben auf mögliche Restitution

Werk:	**Baumlandschaft (Morgen)**
Künstler:	Camille COROT
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1942 von O. Schatzker erworben, ehem. Sammlung Mendelssohn, Berlin

ad 1-3
Provenienz: Sammlung Robert von Mendelssohn, Berlin; Eleonore und Francesco Mendelssohn
1942 Ankauf durch die Reichsstatthalierei über Kunsthandel: Otto Schatzker, Wien (72.500 RM), Überweisung an die Österreichische Galerie

Teile der Kunstsammlung des 1917 in Berlin verstorbenen Robert von Mendelssohn (Witwe Giulietta von Mendelssohn, geb. Gordigiani lebte als italienische Staatsbürgerin v.a. in Florenz) wurden 1933 von Eleonore von Mendelssohn (Tochter des Robert von Mendelssohn) nach Kammer am Attersee gebracht (u.a. Corot, Degas)
1938 nach "Anschluss" Emigration von Eleonore in die USA: Bilder verblieben in Schloß Kammer: Androhung der Beschlagnahme der Bilder durch NS-Regime
1942 Giulietta von Mendelssohn erteilt Vollmacht zum Verkauf an Dr. Aldo Cima (Italienische Kammer in Wien) - Erweibung über den Wiener Kunsthändler Otto Scliatzker (Transferierung des Kaufpreises nach Italien)
ad 6
1952 Rückstellungsantrag von Francesco von Mendelssohn und Dr. Lillian Rockh (Testamentsvollstreckerin nach Eleonore von Mendelsohn), New York - Antragsteller vertreten durch Rechtsanwalt Dr. Karl Trauttmannsdorf, Wien (kündigt im Mai 1954 Vollmacht als Vertreter der Antragsteller)
1964 Abweisung des Rückstellungsantrages durch Erkenntnis der Rückstellungskommission beim Landesgericht für Zivilrechtssachen in Wien vom 25. Februar 1964

Werk:	**Baumlandschaft (Abend)**
Künstler:	Camille COROT
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1942 von O. Schatzker erworben, ehem. Sammlung Mendelssohn, Berlin

ad 1-3
Provenienz: Sammlung Robert von Mendelssohn, Berlin; Eleonore und Francesco Mendelssohn
1942 Ankauf durch die Reichsstatthalterei über Kunsthandel: Otto Schatzker, Wien (72.500 RM), Überweisung an die Österreichische Galerie
Teile der Kunstsammlung des 1917 in Berlin verstorbenen Robert von Mendelssohn (Witwe Giulietta von Mendelssohn, geb. Gordigiani lebte als italienische Staatsbürgerin v.a. in Florenz) wurden 1933 von Eleonore von Mendelssohn (Tochter des Robert von Mendelssohn) nach Kammer am Attersee gebracht (u.a. Corot, Degas)
nach "Anschluss" 1938 Emigration von Eleonore in die USA: Bilder verblieben in Schloß Kammer: Androhung der Beschlagnahme der Bilder durch NS - Regime
1942 Giulietta von Mendelssohn erteilt Vollmacht zum Verkauf an Dr. Aldo Ciina (Italienische Kammer in Wien) - Erwerbung über den Wiener Kunstliändler Otto Schatzker (Transferierung des Kaufpreises nach Italien)
ad 6
1952 Rückstellungsantrag von Francesco von Mendelssohn und Dr. Lillian Rockh (Testamentsvollstreckerin nach Eleonore von Mendelsohn), New York - Antragsteller vertreten durch Rechtsanwalt Dr. Karl Trauttmannsdorf, Wien (kündigt im Mai 1954 Vollmacht als Vertreter der Antragsteller)
1964 Abweisung des Rückstellungsantrages durch Erkenntnis der Rückstellungskommission beim Landesgericht für Zivilrechtssachen in Wien vom 25. Februar 1964

Werk:	**Felsabhang am Bach**
Künstler:	Ludwig CZERNY
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1963 Übernahme aus dem Bundesdenkmalamt Wien

ad 1-3
Provenienz: 1944 Ankauf von der Kunsthandlung Heinrich Hinterberger, Wien
nach dein gegenwärtigen Stand der Provenienzforschung sind keine weiteren möglichen Vorbesitzer bekannt
"Verfallsgut vom Linzer Kunstmuseum" vom Bundesdenkmalamt in Verwahrung genommen: Vermögensverfall an die Republik Österreich - Übergabe an das Bundesministerium für Unterricht
1963 über Weisung des Bundesministeriums für Unterricht zuständigkeitshalber der Österreichischen Galerie ausgefolgt

Werk:	**Marie Daffinger, geb. Smolk von Smolenitz, die Gattin des Künstlers**
Künstler:	Michael Moritz DAFFINGER
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1948 Übernahme von der Albertina Wien - ehem. Sammlung Castiglioni, Wien

ad 1-3
Provenienz: 1921 auf der Nachlassausstellung bei Wawra angeboten; Sammlung Castigliorii, Wien 1938 von der Albertina im Auktionshaus Weinmüller, München erworben (9.583,60 RM)
1948 Übernahme von der Albertina
ad 6
nach dem gegenwärtigen Stand der Provenienzforschung keine Restitutionsansprüche nach 1945

Werk:	**Ladislaus Pyrker, Erzbischof von Erlau**
Künstler:	Josef DANHAUSER
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1946 Ankauf aus Wiener Privatbesitz

ad 1-3
Provenienz: ehemals Sammlung 11. Kreipel, Sammlung Lobmeyr, Sajovic
1946 Ankaufaus Privatbesitz: Sekt.Chef Sajovic, Wien (3.500 S)

Werk:	**Der eingeschlafene Maler im Atelier**
Künstler:	Josef DANHAUSER
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1961 Ankauf von Prof Heinrich Schwarz, Middletown

ad 1-3
Provenienz: ehemals Sammlung Pastré, Wien
1961 Ankauf aus Privatbesitz: Professor Heinrich Schwarz, USA (1.000$)
1960 Angebot an die Österreichische Galerie, Einfuhr des Gemäldes aus den USA
Heinrich Schwarz war bis zu seiner Vertreibung durch das NS-Regime 1938 Kustos der Österreichischen Galerie in Wien

Werk:	**Die kleinen Virtuosen**
Künstler:	Josef DANHAUSER
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1975 Ankauf im Wiener Kunsthandel - ehe. Slg Baron Kübeck (?), Slg. Oskar Bondy

ad 1-3
Provenienz: Sammlung Oskar Bondy
von Elisabeth Bondy in die USA ausgeführt: 1949 bei der Versteigerung der Sammlung Oskar Bondy von Kende Galleries In New York unter Nr.50 angeführt
die nicht verkauften Kunstwerke wurden von Elisabeth Bondy bei ihrer Rückkehr nach Wien mitgebracht: 1973 dem Antiquariat Christian M. Nebehay, Wien zum kommissionsweisen Verkauf übergeben
1975 Ankauf im Kunsthandel; Antiquariat Christian M. Nebehay, Wien (270.000 5)
ad 10-11
Ausfuhrbewilligung für die restituierte Sammlung in die USA - 1949 Versteigerung der Sammlung Oskar Bondy von Kende Galleries in New York

Werk:	**Herbstliche Aulandschaft**
Künstler:	Charles - Francois DAUBIGNY
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1951 durch Tausch von Galerie Welz, Salzburg erworben

ad 1-3
Provenienz: Sammlung Al Joung, versteigert 1910 bei Christies
1951 Erwerbung (Tausch) im Kunsthandel: Galerie Welz, Salzburg
von Friedrich Welz laut Haltungserklärung vom 17. Februar 1951 "bereits vor der Besetzung Österreichs im Jahre 1937 aus dem Nachlass einer adeligen Dame erworben"
1948 nach zweijähriger Custody der amerikanischen Militärbehörden Friedrich Welz wieder zurückgestellt
Erwerbung erfolgte unter der Bedingung, dass "Herr Welz den Nachweis zu erbringen imstande ist, das Gemälde weder arisiert, noch während der NS-Zeit aus französischem Besitz erworben zu haben"

Werk:	**Alois Zaillner**
Künstler:	Georg DECKER
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1983 Widmung von Caroline Zoknek

ad 1-3
Provenienz: Pauline Mane Zdenek, Wien; nach dem gegenwärtigen Stand der Provenienzforschung sind keine weiteren möglichen Vorbesitzer bekannt
1975 Legat Karoline Pauline Mane Zdenek, Wien an die Österreichische Galerie bei Todesfall
1983 Tod der Karoline Pauline Marle Zdenek

Werk: **Elisabeth Zaillner**
Künstler: Georg DECKER
derzeit: Österreichische Galerie Belvedere
angegebene Herkunft: 1983 Widmung von Caroline Zoknek
ad 1-3
Provenienz: Pauline Marie Zdenek, Wien; nach dem gegenwärtigen Stand der Provenienzforschung sind keine weiteren möglichen Vorbesitzer bekannt
1975 Legat Karoline Pauline Marie Zdenek, Wien an die Österreichische Galerie bei Todesfall
1983 Tod der Karoline Pauline Marie Zdenek

Werk: **Pauline Zaillner**
Künstler: Georg DECKER
derzeit: Österreichische Galerie Belvedere
angegebene Herkunft: 1983 Widmung von Caroline Zoknek
ad 1-3
Provenienz: Pauline Marie Zdenek, Wien; nach dem gegenwärtigen Stand der Provenienzforschung sind keine weiteren möglichen Vorbesitzer bekannt
1975 Legat Karoline Pauline Marie Zdenek, Wien an die Österreichische Galerie bei Todesfall
1983 Tod der Karoline Pauline Marie Zdenek

Werk: **Harlekin und Colombine**
Künstler: Edgar DEGAS
derzeit: Österreichische Galerie Belvedere
angegebene Herkunft: 1942 von O. Schatzker erworben, ehem. Sammlung Mendelssohn, Berlin
ad 1-3
Provenienz: Sammlung Robert von Mendelssohn, Berlin; Eleonore und Francesco Mendelssohn
1942 Ankauf durch die Reichsstatthalterei über Kuristliandel: Otto Schatzker, Wien (35.000RM), Überweisung an die Österreichische Galerie
Teile der Kunstsammlung des 1917 in Berlin verstorbenen Robert von Mendelssohn (Witwe Giulietta von Mendelssohn, geb. Gordigiani lebte als italienische Staatsbürgerin v.a. in Florenz) wurden 1933 von Eleonore von Mendelssohn (Tochter des Robert von Mendelssohn) nach Kammer am Attersee gebracht (u.a. Corot, Degas)
nach "Anschluss" 1938 Emigration von Eleonore in die USA: Bilder verblieben in Schloß Kammer: Androhung der Beschlagnahme der Bilder durch NS-Regime
1942 Giulietta von Mendelssohn erteilt Vollmacht zum Verkauf an Dr. Aldo Cirna (Italienische Kammer in Wien) - Erwerbung über den Wiener Kunsthändler Otto Schatzker (Transferierung des Kaufpreises nach Italien)
ad 6
1952 Rückstellungsantrag von Francesco von Mendelssohn und Dr. Lillian Rockh (Testamentsvollstreckerin nach Eleonore von Mendelsohn), New York - Antragsteller vertreteh durch Rechtsanwalt Dr. Karl Trauttmannsdorf, Wien (kündigt im Mai 1954 Vollmacht als Vertreter der Antragsteller)
1964 Abweisung des Rückstellungsantrages durch Erkenntnis der Rückstellungskommission beim Landesgericht für Zivilrechtssachen in Wien vom 25. Februar 1964

Werk: **Kürassiere**
Künstler: August DEUSSER
derzeit: Österreichische Galerie Belvedere
angegebene Herkunft: 1941 übernommen
ad 1-3
1941 Erwerbung aus der Ausstellung "Rheinische Kunst" im Wiener Künstlerhaus durch die Reichsstatthalterei
inventarische Zuweisung an die Österreichische Galerie

Werk: **Damenbildnis**
Künstler: Tom von DREGER
derzeit: Österreichische Galerie Belvedere
angegebene Herkunft: 1962 Widmung von Dalla Bona
ad 1-3
Provenienz: Dalla Bona, Wien; nach dem gegenwärtigen Stand der Provenienzforschung sind keine weiteren möglichen Vorbesitzer bekannt
1962 Widmung von Dalla Bona, Wien

Werk: **Die Schauspielerin Wessely**
Künstler: Anton EBERT
derzeit: Österreichische Galerie Belvedere
angegebene Herkunft: 1941 übernommen
ad 1-3
Provenienz: nach dem gegenwärtigen Stand der Provenienzforschung unbekannt
1941 Überweisung von der Reichsstatthalterei
ad 6
nach dem gegenwärtigen Stand der Provenienzforschung keine Restitutionsansuchen nach 1945

Werk: **Josef Benesch**
Künstler: Eduard ENDER
derzeit: Österreichische Galerie Belvedere
angegebene Herkunft: 1957 Widmung von Luise Benesch
ad 1-3
Provenienz: Familienbesitz Benesch
1957 Schenkungsvertrag Luise Benesch: Legat an die Österreichische Galerie - Bilder verbleiben bis zum Tod in der Wohnung von Frau Benesch
1965 Tod der Luise Benesch

Werk: **Friederike Benesch**
Künstler; Eduard ENDER
derzeit: Österreichische Galerie Belvedere
angegebene Herkunft: 1957 Widmung von Luise Benesch

ad 1-3
Provenienz: Familienbesitz Benesch
1957 Schenkungsvertrag Luise Benesch: Legat an die Österreichische Galerie - Bilder verbleiben bis zum Tod in der Wohnung von Frau Benesch
1965 Tod der Luise Benesch

Werk: **Phantastisches Stillleben**
Künstler: James ENSOR
derzeit: Österreichische Galerie Belvedere
angegebene Herkunft: 1942 Ankauf von O. Schatzker
ad 1-3
1942 Ankauf aus Privatbesitz: Augusta Boogaerts, Brussel (25.000 Frs = 2.000 RM)
Augusta Boogaerts war seit 1888 mit James Ensor befreundet
Erwerbung durch die Reichsstatthalterei, inventarische Zuweisung an die Österreichische Galerie
die Erwerbung steht im Kontext von Ankäufen von Ensor-Blättern im Auarag der Reichsstatthalterei Wien für die Ensor - Ausstellung der Graphischen Sammlung Albertina 1942

Werk: **Vorbereitung für das Fest**
Künstler: Jehudo EPSTEIN
derzeit: Österreichische Galerie Belvedere
angegebene Herkunft: 1971 Widmung von Ferdinand und Ludmilla Spany, Wien
ad 1-3
Provenienz: Spany, Wien; nach dem gegenwärtigen Stand der Provenienzforschung sind keine weiteren Vorbesitzer bekannt
1971 Widmung von Ferdinand und Ludmilla Spany, Wien

Werk: **Bildnis Herr Nadassy**
Künstler: Franz EYBL
derzeit: Österreichische Galerie Belvedere
angegebene Herkunft: 1938 Ankauf aus Wiener Privatbesitz
ad 1-3
Ankauf aus Privatbesitz: Architekt Niklas, Wien (400 RM)
ad 6
nach dem gegenwärtigen Stand der Provenienzforschung unbekannt

Werk: **Bildnis Frau Nadassy**
Künstler: Franz EYBL
derzeit: Österreichische Galerie Belvedere
angegebene Herkunft: 1938 Ankauf aus Wiener Privatbesitz
ad 1-3
Ankauf aus Privatbesitz: Architekt Niklas, Wien (400 RM)
ad 6
nach dem gegenwärtigen Stand der Provenienzforschung unbekannt

Werk:	**Bildnis einer älteren Dame mit blauen Kleid**
Künstler:	Franz EYBL
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1939 Widmung von Julius Eymer

ad 1-3
1939 Widmung voll Julius Eymer, Wien
ad 6
nach dem gegenwärtigen Stand der Provenienzforschung unbekannt
ad 10
1939 Widmung von Julius Eymer, Wien (Kohlmarkt 11) an die Österreichische Galerie
ad 13
nach dem gegenwärtigen Stand der Provenienzforschung ist kein Konnex zur Erlangung einer Ausfuhrbewilligung bekannt

Werk:	**Bildnis Marie Blümel, geb. Stadler**
Künstler:	Franz EYBL
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1947 aus der Verlassenschaft R.C. Blümel erworben - ehem. Sig. Ullmann

ad 1-3
Provenienz: Familienbesitz Blümel, Wien
Testament des Rudolf Cristian Blümel vom 19. April 1943: "Bildnis meiner Großmutter Marie Blümel" als Legat an die Österreichische Galerie
1947 Widmung an die Österreichische Galerie nach dem am 4. Dezember 1946 verstorbenen Rudolf Christian Blümel

Werk:	**Eine Ramsauer Bäuerin am Spinnrad**
Künstler:	Franz EYBL
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1955 Ankauf im Wiener Kunsthandel - ehem. Slg. Franz Xaver Mayer

ad 1-3
Provenienz: Sammlung Franz Xaver Mayer, Wien
Ankauf im Kunsthandel: Theodor Schebesta, Wien (25.000 S)
ad 6
nach dem gegenwärtigen Stand der Provenienzforschung unbekannt
ad 10-11
nach dem gegenwärtigen Stand der Provenienzforschung unbekannt

Werk:	**Damenbildnis**
Künstler:	Francois- Xavier FABRE
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1963 Übernahme aus dem Bundesdenkmalamt Wien - nach dem Krieg in Bad Aussee aufgefunden

ad 1-3
Provenienz: 1944 Ankauf von der Galerie Sanct Lucas, Wien
nach dem gegenwärtigen Stand der Provenienzforschung sind keine weiteren Vorbesitzer bekannt
vom Linzer Kunstmuseum" von Bundesdenkmalamt in Verwahrung genommen: Vermögensverfall an die Republik Österreich Übergabe an das Bundesministerium für Unterricht
1963 über Weisung des Bundesministeriums für Unterricht zuständigkeitshalber dem Kunsthistorischen Museum ausgefolgt, 1987 von der Österreichischen Galerie übernommen

Werk:	**Bildnis des Malers Georg Christian Andersen**
Künstler:	Anton FAISTAUER
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1938 Ankauf aus Privatbesitz, Wien

ad 1-3
November 1938 Ankauf aus Privatbesitz: Adelgunge Krippel, Wien (4 000 RM)
ad 6
nach dem gegenwärtigen Stand der Provenienzforschung unbekannt

Werk:	**Mutter mit Kind unter dem Kruzifix**
Künstler:	Peter FENDI
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1946 im Tausch von Galerie St. Lucas, Wien erworben - ehem. Kunsthandlung Albert Kende

ad 1 - 3
Provenienz: Teppner, Wien
1946 Erwerbung (Tausch) im Kunsthandel: Galerie Sanct Lucas, Wien

Werk:	**Reiterstatue des Prinzen Eugen**
Künstler:	Anton Dominik FERNKORN
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1947 Ankauf aus Wiener Privatbesitz

ad 1-3
1947 Erwerbung (Tausch) aus Privatbesitz: Herbert Barth - Wehrenalp, Wien
Provenienz: bis 1881 Prinz August von Sachsen - Coburg und Gotha; Prinz Philipp von Sachsen - Coburg und Gotha
1946 Herbert Barth - Wehrenalp zum kommissionsweisen Verkauf übergeben

Werk:	**Liegender Knabenakt**
Künstler:	Gabriel FERRIER
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1939 aus dem HGM übernommen - Ankauf im Dorotheum, Wien

ad 1 - 3
Provenienz: nach dem gegenwärtigen Stand der Provenienzforschung unbekannt
Ankauf im Dorotheum durch das Heeresmuseum
1940 Überweisung aus dem Heeresmuseum
ad 6
nach dem gegenwärtigen Stand der Provenienzforschung unbekannt

Werk:	**Bildnis eines jungen Mannes**
Künstler:	Leopold FERTBAUER
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1948 Ankauf im Dorotheum, Wien

ad 1-3
Provenienz: nach dem gegenwärtigen Stand der Provenienzforschung unbekannt
Ankauf im Dorotheum, Wien (810 S) 23. - 25. November 1948 (Kat. Nr.20, Abb. Tafel 16)

Werk:	**Medea an der Urne**
Künstler:	Anselm FEUERBACH
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1939 Ankauf aus Wiener Privatbesitz - ehem. Gemäldegalerie in Oldenburg

ad 1-3
Provenienz: Sammlung Wilhelm Freund, Wien
1939 Ankauf aus der Sammlung Wilhelm Freund, Wien (45.000 RM)
1939 Sicherstellung der Kunstsammlung in Wien aufgrund des Auslandsaufenthaltes von Wilhelm Freund
Ansuchen der Österreichischen Galerie um die Devisengenehmigung, zugunsten Wilhelm Freund (London) auf dessen Sperrkonto bei der Deutschen Bank, Berlin den Kaufbetrag überweisen zu dürfen - mit Einwilligung Freunds: Betrag im April 1940 gutgeschrieben
ad 6
keine Restitutionsansprüche nach 1945 nach dem gegenwärtigen Stand der Provenienzforschung
ad 10-11
nach dem gegenwärtigen Stand der Provenienzforschung ist nicht zu belegen, ob dem Antrag auf Ausfuhrbewilligung im Mai 1939 stattgegeben wurde

Werk:	**Meeresstrand im Nebel**
Künstler:	Caspar David FRIEDRICH
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1939 im Tausch mit der Kunsthandlung T. Fischer, Luzern erworben - ab 1925 Hugo Simon Berlin

ad 1-3
Provenienz: bis 1918 Baron Medem, Dresden; 1922-24 als Leiligabe von Paul Rusch, Dresden, in der Dresdner Galerie; ab 1925 Hugo Simon, Berlin, Theodore Fischer, Luzern
1939 Erwerbung im Tausch im Kunsthandel: Theodore Fischer, Luzern

ad 6
keine Restitutionsansprüche nach 1945 nach dem gegenwärtigen Stand der Provenienzforschung

Werk:	**Meeresstrand mit Fischer**
Künstler:	Caspar David FRIEDRICH
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1939 im Tausch mit der Kunsthandlung T. Fischer, Luzern erworben - ab 1925 Hugo Simon Berlin

ad 1-3
Provenienz: bis 1918 Baron Medem, Dresden; 1922-24 als Leihgabe von Paul Rusch, Dresden, in der Dresdner Galerie; ab 1925 Hugo Simon, Berlin, Theodore Fischer, Luzern
1939 Erwerbung im Tausch im Kunsthandel: Theodore Fischer, Luzern
ad 6
keine Restitutionsansprüche nach 1945 nach dem gegenwärtigen Stand der Provenienzforschung

Werk:	**Rudolf von Habsburg und der Priester**
Künstler:	Joseph von FÜHRICH
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1942 erworben - ehem. Kronprinz Rudolf und Erzherzogin Sophie; Fürstin Elisabeth Windischgrätz, Schloß Schönau in Mähren

ad 1-3
Provenienz: Kronprinz Rudolf und Erzherzogin Sophie; Fürstin Elisabeth Windischgrätz, Schloß Schönau in Mähren
1942 Ankauf durch die Reichsstatthalterei aus dem Besitz der Fürstin Windischgrätz (27.000 RM)
inventarische Zuweisung an die Österreichische Galerie

Werk:	**Erzherzog Ferdinand als Kind**
Künstler:	Friedrich Heinrich FÜGER
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1969 Übernahme aus dem Bundesdenkmalamt Wien

ad 1-3
Provenienz: aus dem Besitz Frau Reichel durch Posse für das Linzer Kunstmuseum erworben "Verfallsgut vom Linzer Kunstmuseum" vom Bundesdenkmalamt in Verwahrung genommen: Vermögensverfall an die Republik Österreich - Übergabe an das Bundesministerium für Unterricht
1963 über Weisung des Bundesministeriums für Unterricht zuständigkeitshalber der Österreichischen Galerie ausgefolgt

Werk:	**Carl Rahl**
Künstler:	Hans GASSER
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1963 Übernahme aus dem Bundesdenkmalamt Wien

ad 1-3
Provenienz: Dr. O. Pann, Wien
"Verfallsgut vom Linzer Kunstmuseum" vom Bundesdenkmalamt in Verwahrung genommen: Vermögensverfall an die Republik Österreich - Übergabe an das Bundesministerium für Unterricht
1963 über Weisung des Bundesministeriums für Unterricht zuständigkeitshalber der Österreichischen Galerie ausgefolgt

Werk:	**Der Heuwagen**
Künstler:	Friedrich August Mathias GAUERMANN
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1939 aus dem KHM Wien übernommen - ehem. Sammlung Benda

ad 1 - 3
Provenienz: Sammlung Gustav Benda, Wien
März 1930: in seinem Testament vermacht Gustav Benda seine Kunstsammlung dem Kunsthistorischen Museum
1932: Legat an das Kunsthistorische Museum nach dem Tod Bendas - Aufstellung der Sammlung in der Neuen Burg
1939 Auflösung der ehemaligen Sammlung Benda: 10 Bilder der Österreichischen Galerie inventarmäßig übertragen

Werk:	**Suhlende Hirsche am Ufer eines Bergsees**
Künstler:	Friedrich August Mathias GAUERMANN
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1949 Ankauf aus Wiener Privatbesitz

ad 1-3
1949 Ankauf aus Privatbesitz: Meczery, Wien (500 S)

Werk:	**Ein Schimmel auf der Heide**
Künstler:	Friedrich August Mathias GAUERMANN
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1949 Ankauf im Dorotheum, Wien

ad 1-3
Provenienz: nach dem gegenwärtigen Stand der Provenienzforschung unbekannt
Ankauf im Dorotheum, Wien (275 S): Auktion vom 30. Juni1949 (Kat. Nr.55)

Werk:	**Nach der Jagd (Heimkehr von der Hirschjagd)**
Künstler:	Friedrich August Mathias GAUERMANN
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1951 Ankauf im Dorotheum, Wien

ad 1-3
Provenienz: nach dem gegenwärtigen Stand der Provenienzforschung unbekannt
Ankauf im Dorotheum, Wien (900 S) Auktion vom 15. März 1951 (Kat. Nr.28)

Werk:	**Der Maler Jakob Gauermann, der Vater des Künstlers**
Künstler:	Friedrich August Mathias GAUERMANN
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1950 Ankauf aus Wiener Privatbesitz

ad 1-3
Provenienz: nach dein gegenwärtigen Stand der Provenienzforscllung sind keine weiteren möglichen Vorbesitzer bekannt
Ankauf aus Privatbesitz: Dr. Barek, Wien, Schellinggasse 3 (2000 S)

Werk:	**Blick auf Liefering**
Künstler:	Friedrich August Mathias GAUERMANN
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1950 Ankauf aus Privatbesitz, Salzburg

ad 1-3
Provenienz: nach dem gegenwärtigen Stand der Provenienzforschung sind keine weiteren möglichen Vorbesitzer bekannt
1950 Ankauf aus Privatbesitz: H. Primavesi, Salzburg (500 S)

Werk:	**Herrenbildnis in Landschaft**
Künstler:	Peter Johann Nepomuk GEIGER
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1963 Übernahme aus dem Bundesdenkmalamt Wien - ehem. Slg. Jantzen

ad 1-3
Provenienz: Dr. Jantzen, Bremer Kunstschau, G.m.b.H. Wien; nach dem gegenwärtigen Stand der Provenienzforschung sind keine weiteren möglichen Vorbesitzer bekannt
"Verfallsgut vom Linzer Kunstmuseum" vom Bundesdenkmalamt in Verwahrung genommen: Vermögensverfall an die Republik Österreich - Übergabe au das Bundesministerium für Unterricht
1963 über Weisung des Bundesministeriums für Unterricht zuständigkeitshalber der Österreichischen Galerie ausgefolgt

Werk:	**Markt in Nürnberg**
Künstler:	Johann Nepomuk GELLER
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1939 übernommen, ehem. Sammlung Ephrussi

ad 1-3
Provenienz: nach dem gegenwärtigen Stand der Provenienzforschung unbekannt; im Verzeichnis zur Beschlagnalimung der Sammlung Ephrussi (Archiv des Kunsihistorischen Museums) scheint das Bild nicht auf
1939 Überweisung vom Amt des Reichsstatthalters in Österreich
ad 6
keine Restitutionsansprüche nach 1945 nach dem gegenwärtigen Stand der Provenienzforscllung

Werk:	**Die Familie des Reichgrafens Moritz Christian Fries**
Künstler:	Francois Pascal Simon GERARD
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1938 Ankauf aus Privatbesitz - Rudolf von Gutmann, Wien

ad 1-3
1938 Ankauf aus Privatbesitz: Herbert Pugl (20.000 RM)
Provenienz: bis 1909 im Besitz der Familie Fries; Sammlung Rudolf von Gutmann, Baronin Gertrude Ferstl, geb. Gutmann; 1937 Herbert Pugl
1937 Kaufangebot an die Osterreichische Galerie: durch Vermittlung Ferdinand J. Nagler aus dem Besitz der Baronin Ferstl
November 1937 aus finanziellen Gründen erfolgt eine Belehnung des Bildes: das Verfügungsrecht geht an Herbert Pugl über
2. März 1938 Übernahme des Gemäldes zur Ansicht durch die Österreichische Galerie: Erwerbung im Juli 1938

Werk:	**Irrenhaus**
Künstler:	zugeschrieben Francisco Jose de GOYA y LUCIENTES
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1941 Ankauf aus Berliner Privatbesitz

ad 1-3
Provenienz: nach dem gegenwärtigen Stand der Provenienzforschung unbekannt
1941 Ankauf im Kunsthandel: Victor Rheins, Berlin (70.000 RM)
ad 6
nach dem gegenwärtigen Stand der Provenienzforschung keine Restitutionsansprüche nach 1945

Werk:	**Eine alte Dame (Frau von Weinbrenner)**
Künstler:	Josef Maria GRASSI
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1945 durch Tausch erworben

ad 1-3
Provenienz: nach dem gegenwärtigen Stand der Provenienzforschung unbekannt
Oktober 1945 Erwerbung (Tausch) im Kunsthandel: Kunstverlag Wolfrum, Wien
ad 6
nach dem gegenwärtigen Stand der Provenienzforschung keine Restitutionsansprüche nach 1945

Werk: **Anton Vinzenz Petke**
Künstler: Carl HAASE
derzeit: Österreichische Galerie Belvedere
angegebene Herkunft: 1957 Widmung von Dr. Perugia
ad 1-3
Provenienz: nach dem gegenwärtigen Stand der Provenienzforschung sind keine weiteren möglichen Vorbesitzer bekannt
1957 Widmung von Dr. Stefan Perugia, Wien

Werk: **Oberbayrische Landschaft bei Schliersee mit dem Wendelstein**
Künstler: Karl HAIDER
derzeit: Österreichische Galerie Belvedere
angegebene Herkunft: 1939 Ankauf im Kunsthandel in München
ad 1-3
Provenienz: nach dem gegenwärtigen Stand der Provenienzforschung unbekannt
1939 Ankaufim Kunsthandel: Galerie Wimmer & Co, München (12.000 RM)
ad 6
nach dem gegenwärtigen Stand der Provenienzforschung keine Restitutionsansprüche nach 1945

Werk: **Alm mit Rindern**
Künstler: Joseph HEICKE
derzeit: Österreichische Galerie Belvedere
angegebene Herkunft: 1963 Übernahme aus dem Bundesdenkmalamt Wien
ad 1-3
Provenienz: nach dem gegenwärtigen Stand der Provenienzforschung unbekannt
"Verfallsgut vom Linzer Kunstmuseum" vom Bundesdenkmalamt in Verwahrung genommen: Vermögensverfall an die Republik Österreich - Übergabe an das Bundesministerium für Unterricht
1963 über Weisung des Bundesministeriums für Unterricht zuständigkeitshalber der Österreichischen Galerie ausgefolgt

Werk: **Die Sixtinische Madonnaa (nach Raffael)**
Künstler: Carl HEINDEL
derzeit: Österreichische Galerie Belvedere
angegebene Herkunft: 1983 Widmung von Margarete Troll
ad 1-3
Provenienz: Nachlass Johann Peter Kraflt (1828 - 1856 Schloßhauptmann in der kaiserlichen Gemäldegalerie im Belvedere), Dr. Wolfgang Troll, Wien (Urenkel Johann Peter Kraffls)
1983 Widmung durch Margarete Troll (Frau Dr. Wolfgang Trolls)

Werk: **Alm mit Rindern**
Künstler: Joseph HEICKE
derzeit: Österreichische Galerie Belvedere
angegebene Herkunft: 1963 Übernahme aus dem Bundesdenkmalamt Wien
ad 1-3
Provenienz: nach dem gegenwärtigen Stand der Provenienzforschung unbekannt
"Verfallsgut vom Linzer Kunstmuseum" vom Bundesdenkmalamt in Verwahrung genommen: Vermögensverfall an die Republik Österreich - Übergabe an das Bundesministerium für Unterricht
1963 über Weisung des Bundesministeriums für Unterricht zuständigkeitshalber der Österreichischen Galerie ausgefolgt

Werk: **Antike Friedhofsszene (Frau mit Kindern eine Grabstelle schmückend)**
Künstler: Adolf HIREMY - HIRSCHL
derzeit: Österreichische Galerie Belvedere
angegebene Herkunft: 1966 Widmung von Margarete Prohaska
ad 1-3
Provenienz: nach dem gegenwärtigen Stand der Provenienzforschung sind keine weiteren möglichen Vorbesitzer bekannt
1966 Widmung von Margarete Prohaska, Wien

Werk: **Büste Ludwig van Beethoven**
Künstler: Edmund von HELLMER
derzeit: Österreichische Galerie Belvedere
angegebene Herkunft: 1963 Übernahme aus dem Bundesdenkmalamt Wien
ad 1-3
Provenienz: Marianne Nachansky
aus dem Besitz Nachansky durch Vermittlung Dr. Wilhelm Auner für das Linzer Kunstmuseum durch Posse erworben
"Verfallsgut vom Linzer Kunstmuseum" vom Bundesdenkmalamt in Verwahwng genommen: Vermögensverfall an die Republik Österreich - Übergabe an das Bundesministerium für Unterricht
1963 über Weisung des Bundesministeriums für Unterricht zuständigkeitshalber der Österreichischen Galerie ausgefolgt

Werk: **Abenddämmerung in Moorlandschaft**
Künstler: Franz HOFFMANN - FALLERSLEBEN
derzeit: Österreichische Galerie Belvedere
angegebene Herkunft: 1961 Übernahme aus dem Bundesdenkmalamt Salzburg (ehem. Martin Bormann)

ad 1 - 3
Provenienz: ehem. Sammlung Martin Bormann, nach dem gegenwärtigen Stand der Provenienzforschung sind keine weiteren Vorbesitzer bekannt
1951 Sicherstellung von 14 Bildern aus dein ehemaligen Besitz Bormann durch die Polizeidirektion Salzburg in Bad Gastein
1953 vom Bundesdenkmalamt - Depot Residenz Salzburg in Verwahrung genommen: Vermögensverfall an die Republik Österreich
1 Gemälde (Rudolf von Alt, Prager Veitsdom) an Elsa Gall restituiert
November 1961 Übernahme von 13 Bildern aus dem Bundesdenkmalamt: inventarische Zuweisung an die Österreichische Galerie

Werk:	**Eisläufer auf der Thaya bei Lundenburg**
Künstler:	Theodor HÖRMANN
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1942 Ankauf im Wiener Kunsthandel

ad 1-3
1942 Ankauf im Kunsthandel: Neue Galerie, Wien (2.500 RM)
Provenienz: Josef Engelhart, Dr. Michel Engelhart, Wien
1699 aus dem Nachlass des Künstlers von Josef Engelhart erworben, Erwerbung von Dr. Michel Engelliart (Sohn des Josef Engelhart) durch die Neue Galerie

Werk:	**Ungarische Landschaft mit Viehtränke**
Künstler:	Theodor HÖRMANN
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1963 Übernahme aus dem Bundesdenkmalamt Wien

ad 1-3
Provenienz: Benno Klobucaric, Wien (? falls ident mit Hörmann, Landschaft mit Kuli ani Weiher)
"Verfallsgut vom Linzer Kunstmuseum" vom Bundesdenkmalamt in Verwahrung genommen: Vermögensverfall an die Republik Österreich - Übergabe an das Bundesministerium für Unterricht
1963 über Weisung des Bundesministeriums für Unterricht zuständigkeitshalber der Österreichischen Galerie ausgefolgt

Werk:	**Mädchen im Obstgarten**
Künstler:	Theodor HÖRMANN
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1961 Schenkung Hanna Spitzer und Dr. Edith Neumann, New York

ad 1-3
Provenienz: Nachlass Dr. Alfred Spitzer, Wien (verstorben 1923 in Wien)
laut Testament von Hanna Spitzer der Österreichischen Galerie vermacht
1961 Schenkung Hanna Spitzer und Dr. Edith Neumann, New York (im Gedächtnis an ihren Vater Dr. Alfred Spitzer)

ad 10
1981 Legat Hanna Spitzer an die Österreichische Galerie
ad 13
Schenkung steht in keinerlei Konnex mit der Erlangung einer Ausfuhrbewilligung (Einfuhr nach Österreich)

Werk:	**Hundekopf (Detail aus "Amazonenjagd")**
Künstler:	Carl Rudolf HUBER
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1957 Widmung von Prof. Stefan Simony

ad 1-3
Provenienz: nach dem gegenwärtigen Stand der Provenienzforschung sind keine weiteren möglichen Vorbesitzer bekannt
1957 Widmung von Prof. Stefan Simony, Wien
Widmung der Ölskizze von Carl Rudolf Huber gemeinsam mit einer Ölstudie von Stefan Simony

Werk:	**Der Justizrat Guillaume Mila**
Künstler:	Johann Erdmann HUMMEL
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1941 Ankauf im Berliner Kunsthandel

ad 1-3
Provenienz: Nachlass des Künstlers
1941 Ankauf im Kunsthandel: W.A. Luz, Berlin (3.500 RM)

Werk:	**Beduine zu Pferd**
Künstler:	Franz Josef Georg ILLEM
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1984 Widmung von Ing. Heinrich Leitner, Wien - Nachlass Maria Stasser- Schrotzberg

ad 1-3
Provenienz: Maria Stasser-Schrotzberg, Wien
1974 Legat Maria Stasser-Schrotzberg an die Österreichische Galerie im Ablebensfall
1984 Widmung durch Ing. Heinrich Leitner an die Österreichische Galerie entsprechend dem Legat aus der Erbmasse von Frau Maria Stasser-Schrotzberg

Werk:	**Mexikaner zu Pferd**
Künstler:	Franz Josef Georg ILLEM
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1984 Widmung von Ing. Heinrich Leitner, Wien - Nachlass Maria Stasser-Schrotzberg

ad 1-3
Provenienz: Maria Stasser-Schrotzberg, Wien
1974 Legat Maria Stasser-Schrotzberg an die Österreichische Galerie im Ablebensfall

1984 Widmung durch Ing. Heinrich Leitner an die Österreichische Galerie entsprechend dem Legat aus der Erbmasse von Frau Maria Stasser-Schrotzberg

Werk:	**Feldarbeit**
Künstler:	Eugen JETTEL
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1947 im Tausch von Architekt Oskar Neumann, Wien erworben

ad 1-3
1947 Erwerbung (Tausch) aus Privatbesitz: Architekt Oskar Neumann, Wien
Tausch gegen das Portrait Oskar Neumann von Jehudo Epst ein aus dem Depot der Österreichischen Galerie (1928 vom Künstler erworben): Tauschvorschlag des Dargestellten

Werk:	**Flusslandschaft mit Boot**
Künstler:	Eugen JETTEL
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1952 im Tausch von Frau Jeny Metal, New York

ad 1-3
1952 Erwerbung (Tausch) aus Privatbesitz: Jenny Metal, New York
Ausfuhrsperre durch das Bundesdenkmalamt: Tauschangebot gegen ein Werk desselben Künstlers aus dem Bestand der Österreichischen Galerie von Jenny Metal angenommen
übersendung des Bildes "Meeresufer bei Villerville" von Eugen Jettel (als Leihgabe in der österreichischen Botschaft in Washington) an Morris Metal, New York im Oktober 1952
ad 6
im Archiv des Bundesdenkmalamtes ist kein Restitutionsakt erhalten

Werk:	**Alte Frau mit blauer Masche**
Künstler:	KARRER
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1984 Widmung von Ing. Heinrich Leitner, Wien - Nachlass Maria Stasser- Schrotzberg

ad 1-3
Provenienz: Maria Stasser-Schrotzberg, Wien
1974 Legat Maria Stasser-Schrotzberg an die Österreichische Galerie im Ablebensfall
1984 Widmung durch Ing. Heinrich Leitner an die Österreichische Galerie entsprechend dem Legat aus der Erbmasse von Frau Maria Stasser-Schrotzberg

Werk:	**Bauerngarten mit Sonnenblumen**
Künstler:	Gustav KLIMT
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1939 Ankauf im Wiener Kunsthandel - ehem. Henriette Wittgenstein

ad 1 - 3
Provenienz: ehemals Sammlung Wittgenstein, Wien
Oktober 1939 Ankauf im Kunsthandel: Galerie Sanct Lucas, Wien (5.000 RM): im Archiv der Galerie Sanct Lucas sind keine Unterlagen zur Erwerbung erhalten
ad 6
keine Restitutionsansprüche nach 1945 nach dem gegenwärtigen Stand der Provenienzforschung

Werk:	**Dame in Weiß**
Künstler:	Gustav KLIMT
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1948 Ankauf im Wiener Kunsthandel

ad 1 - 3
Provenienz: Nachlass Gustav Klimt (Nachlassstempel), nach dem gegenwärtigen Stand der Provenienzforschung sind keine weiteren Vorbesitzer bekannt
Ankauf im Kunsthandel: Galerie Welz, Wien (4.000 S)
ad 6
keine Restitutionsansprüche nach 1945 nach dem gegenwärtigen Stand der Provenienzforschung

Werk:	**Apfelbaum I**
Künstler:	Gustav KLIMT
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1936 Widmung von Adele und Ferdinand Bloch - Bauer, Wien

ad 1 - 3
Provenienz: Sammlung Bloch - Bauer, Wien
1941 von Rechtsanwalt Dr. Erich Führer an die Österreichische Galerie übergeben (mit Adele Bloch-Bauer I, gegen Ausfolgung von Schloß Kammer) "in Vollzug der szt. letztwilligen Verfügung der Frau Adele Bloch - Bauer"
inventarisiert unter IN 3342 (1936 wurde unter dieser Nummer Schloß Kammer am Attersee eingetragen)
ad 4
1948 Anerkennung des Legates Adele Bloch - Bauer durch die Erben (Rechtsvertreter Dr. Rinesch): 6 Bilder von Gustav Klimt an die Österreichische Galerie
ad 11-13
diverse Ausfuhrbewilligungen für Kunstsammlung 1948 und 1949
Der Konnex der Überlassung der Klimt - Bilder an die Österreichische Galerie mit der Erteilung von Ausfuhrbewilligungen ist evident: Sowohl Dr. Rinesch als auch Direktor Garzarolli beziehen sich in ihren Argumentationen eindeutig auf die Ausfuhransuchen der Erben; so befürwortet Garzarolli im Juli 1949 die Ausfuhr zweier zuvor gesperrter Bilder mit dem Hinweis aufdas Klimt-Legat

Werk:	**Adele Bloch - Bauer I**
Künstler:	Gustav KLIMT
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1941 Widmung von Adele Bloch-Bauer, Wien

ad 1 - 3
Provenienz: Sammlung Bloch - Bauer, Wien
1941 von Rechtsanwalt Dr. Erich Führer an die Österreichische Galerie übergeben (mit Apfelbaum I, gegen Ausfolgung von Schloß Kammer) "in Vollzug der szt. letztwilligen Verfügung der Frau Adele Bloch - Bauer"
ad 4
1948 Anerkennung des Legates Adele Bloch-Bauer durch die Erben (Rechtsvertreter Dr. Rinesch): 6 Bilder von Gustav Klimt an die Österreichische Galerie
ad 11-13
diverse Ausfuhrbewilligungen für Kunstsammlung 1948 und 1949
Der Konnex der Überlassung der Klimt- Bilder an die Österreichische Galerie mit der Erteilung von Ausfuhrbewilligungen ist evident: Sowohl Dr. Rinesch als auch Direktor Garzarolli beziehen sich in ihren Argumentationen eindeutig auf die Ausfuhransuchen der Erben; so befürwortet Garzarolli im Juli 1949 die Ausfuhr zweier zuvor gesperrter Bilder mit dem Hinweis auf das Klimt- Legat

Werk:	**Adele Bloch - Bauer II, 1912**
Künstler:	Gustav KLIMT
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1948 Vermächtnis Ferdinand Bloch-Bauer, Wien

ad 1-3
Provenienz: Sammlung Bloch- Bauer, Wien
1943 Ankauf durch Direktor Bruno Grimschitz für die Österreichische Galerie von Rechtsanwalt Dr. Führer (7.500 RM)
ad 4
1948 Anerkennung des Legates Adele Bloch- Bauer durch die Erben (Rechtsvertreter Dr. Rinesch): 6 Bilder von Gustav Klimt an die Österreichische Galerie
ad 11-13
diverse Ausfuhrbewilligungen für Kunstsammlung 1948 und 1949
Der Konnex der Überlassung der Klimt- Bilder an die Österreichische Galerie mit der Erteilung von Ausfuhrbewilligungen ist evident: Sowohl Dr. Rinesch als auch Direktor Garzarolli beziehen sich in ihren Argumentationen eindeutig auf die Ausfuhransuchen der Erben; so befürwortet Garzarolli im Juli 1949 die Ausfuhr zweier zuvor gesperrter Bilder mit dem Hinweis auf das Klimt- Legat

Werk:	**Buchenwald (Birkenwald)**
Künstler:	Gustav KLIMT
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1948 Vermächtnis Familie Bloch-Bauer, Wien

ad 1-3
Provenienz: Sammlung Bloch-Bauer, Wien
im November 1942 von Rechtsanwalt Dr. Führer um den Betrag von 5.000 RM an die Städtischen Sammlungen in Wien verkauft
Übernahme am 23. November 1948 durch die Österreichische Galerie von der Direktion der Städtischen Sammlungen in Wien

ad 4
1948 Anerkennung des Legates Adele Bloch - Bauer durch die Erben (Rechtsvertreter Dr. Rinesch); 6 Bilder von Gustav Klimt an die Österreichische Galerie
ad 11 - 13
diverse Ausfuhrbewilligungen für Kunstsammlung 1948 und 1949
Der Konnex der Überlassung der Klimt - Bilder an die Österreichische Galerie mit der Erteilung von Ausfuhrbewilligungen ist evident: Sowohl Dr. Rinesch als auch Direktor Garzarolli beziehen sich in ihren Argumentationen eindeutig auf die Ausfuhransuchen der Erben; so befürwortet Garzarolli im Juli 1949 die Ausfuhr zweier zuvor gesperrter Bilder mit dem Hinweis auf das Klimt - Legat

Werk:	**Häuser in Unterach am Attersee**
Künstler:	Gustav KLIMT
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1948 Vermächtnis Familie Bloch - Bauer, Wien

ad 1- 3
Provenienz: Sammlung Bloch - Bauer, Wien
Übernahme am 12. April 1948 durch die Österreichische Galerie aus der Wohnung des Karl Bloch - Bauer in Wien
ad 4
1948 Anerkennung des Legates Adele Bloch - Bauer durch die Erben (Rechtsvertreter Dr. Rinesch): 6 Bilder von Gustav Klimt an die Österreichische Galerie
ad 11 - 13
diverse Ausfuhrbewilligungen für Kunstsammlung 1948 und 1949
Der Konnex der Überlassung der Klimt - Bilder an die Österreichische Galerie mit der Erteilung von Ausfuhrbewilligungen ist evident: Sowohl Dr. Rinesch als auch Direktor Garzarolli beziehen sich in ihren Argumentationen eindeutig auf die Ausfuhransuchen der Erben; so befürwortet Garzarolli im Juli 1949 die Ausfuhr zweier zuvor gesperrter Bilder mit dem Hinweis auf das Klimt - Legat

Werk:	**Schloß Kammer am Attersee (Wasserschloß) III**
Künstler:	Gustav KLIMT
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1949 Widmung von Familie Bloch - Bauer, Wien

ad 1- 3
Provenienz: Sammlung Bloch - Bauer, Wien
1936 Übergabe durch Ferdinand Bloch - Bauer an die Österreichische Galerie als "Widmung von Adele und Ferdinand Bloch - Bauer"
1941 von der Direktion der Österreichischen Galerie an Rechtsanwalt Dr. Führer übergeben (gegen Übergabe von Adele Bloch - Bauer I und Apfelbaum I)
1942 von Dr. Führer an Gustav Ucicky verkauft
1949 Rückstellungsvergleich zwischen Gustav Ucicky und der Österreichischen Galerie "als Rechtsnachfolgerin des Herrn Ferdinand Bloch - Bauer"
ad 4
1948 Anerkennung des Legates Adele Bloch - Bauer durch die Erben (Rechtsvertreter Dr. Rinesch): 6 Bilder von Gustav Klimt an die Österreichische Galerie

1949 Rückstellungsvergleich zwischen Gustav Ucicky und der Österreichischen Galerie "als Rechtsnachfolgerin des Herrn Ferdinand Bloch - Bauer"
ad 11 - 13
diverse Ausfuhrbewilligungen für Kunstsammlung 1948 und 1949
Der Konnex der Überlassung der Klimt - Bilder an die Österreichische Galerie mit der Erteilung voll Ausfuhrbewilligungen ist evident: Sowohl Dr. Rinesch als auch Direktor Garzarolil beziehen sich in ihren Argumentationen eindeutig auf die Ausfuhransuchen der Erben; so befürwortet Garzarolli ini Juli 1949 die Ausfuhr zweier zuvor gesperrter Bilder mit dem hinweis auf das Klimt - Legat

Werk:	**Mohnwiese (Blühender Mohn)**
Künstler:	Gustav KLIMT
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1957 aus Privatbesitz, ehem. Viktor Zuckerkandl, Wien

ad 1 - 3
Provenienz: ehemals Sammlung Zuckerkandl, Rudolf Leopold
Februar 1957 Erwerbung im Tausch aus Privatbesitz: Dr. Rudolf Leopold, Wien
1948 Ausfuhrsperre durch das Bundesdenkmalamt: Kaufangebot von Emil Zuckerkandl, Paris an die Österreichische Galerie 1949; vom Museum nicht wahrgenommen
ad 10 - 11
1948 Ausfuhrsperre durch das Bundesdenkmalamt; da im Archiv des Bundesdenkmalamtes kein Restitutionsakt Zuckerkandl vorliegt, ist die mögliche Erteilung einer Ausfuhrbewilligung für andere Kunstwerke bis dato nicht evident

Werk:	**Beethovenfries**
Künstler:	Gustav KLIMT
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1973 Ankauf durch Wissenschaftsministerium - ehem. Sammlung Lederer

ad 1 - 3
Provenienz: Carl Reininghaus, Wien; ab 1913 August und Serena Lederer, Wien; Erich Lederer
1939 Sicherstellung der Sammlung Lederer: u.a. Beethovenfries (deponiert in Schloß Thürntal)
1948 Ausfuhransuchen des Dr. Erich Lederer für Beethovenfries: Ausfuhrsperre
1965 Antrag der Österreichischen Galerie auf Erwerbung: in Verwahrung der Österreichischen Galerie im Stall des Prinzen Eugen im Unteren Belvedere deponiert
Verkaufsverhandlungen der Republik Österreich bis 1972
1973 Ankauf aus Privatbesitz: Erich Lederer, Zürich durch das Bundesministerium für Wissenschaft und Forschung; in der Secession montiert
ad 6
Restitution der Sammlung
ad 10 - 11
Ausfuhrbewilligung 1950 gegen Überlassung diverser Kunstwerke an Museen (Gentile Bellini an KHM, Handzeichnungen an Albertina etc.)

Werk:	**Amalia Zuckerkandl**
Künstler:	Gustav KLIMT
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1988 Widmung von Dr. Vita Künstler, Wien

ad 1 - 3
Provenienz: Sammlung Zuckerkandl, Wien; Bloch - Bauer, Wien; Prof Müller - Hofmann, Wien; Gustav und Vita Künstler, Wien
1939 im Palais Bloch - Bauer, Elisabethstraße in Wien nachweisbar
1988 Schenkung Dr. Viktoria Künstler an die Österreichische Galerie
ad 10
1988 Widmung Dr. Viktoria Künstler nach dein Wunsch ihres verstorbenen Mannes, Dr. Gustav Künstler, an die Österreichische Galerie (Schenkungsvertrag vom 17. März 1988)
ad 11 - 12
aufgrund der Aktenlage in der Österreichischen Galerie ist ein Konnex zur Erlangung einer Ausfuhrbewilligung nicht belegbar

Werk:	**Arbeiter an einem Hausbau**
Künstler:	Max KLINGER
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1941 Ankauf im Wiener Kunsthandel

ad 1 - 3
Provenienz: nach dem gegenwärtigen Stand der Provenienzforschung unbekannt
1941 Ankauf im Kunsthandel: Galerie Welz, Wien (2.000 RM)
ad 6
keine Restitutionsansprüche nach 1945 nach dem gegenwärtigen Stand der Provenienzforschung

Werk:	**Herrenbildnis**
Künstler:	Max KLINGER
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1942 in den Bestand aufgenommen

ad 1 - 3
Provenienz: Katharina Schratt, Direktor Falckenberg
1942 Ankauf durch die Reichsstatthalterei "aus dem Besitz der Katharina Schratt und von Direktor Falckenberg"
inventarische Zuweisung an die Österreichische Galerie

Werk:	**Weiblicher Studienkopf**
Künstler:	Max KLINGER
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1942 in den Bestand aufgenommen

ad 1 - 3
Provenienz: Katharina Schratt, Direktor Falckenberg
1942 Ankauf durch die Reichsstatthalterei "aus dem Besitz der Katharina Schratt und von Direktor Falckenberg"
inventarische Zuweisung an die Österreichische Galerie

Werk:	**Der Glockengießer Johann Caspar Hofbauer mit Pferd und Jäger**
Künstler:	Josef KREUTZINGER
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1943 Widmung von O. Schatzker

ad 1 - 3
Provenienz: Johann Caspar Hofbauer; Jella von Scharinger, Wien
1943 Widmung von Otto Schatzker, Wien
als Martin Ferdinand Quadals Bildnis des Grafen Anton Lamberg - Sprintzenstein inventarisiert,
1954 von Ferdinand J. Nagler Josef Kreutzinger zugeschrieben, identifizierte den Portraitierten als den k.k. Glockengießer Johann Caspar Hofbauer
ad 6
keine Restitutionsansprüche nach 1945 nach dem gegenwärtigen Stand der Provenienzforschung

Werk:	**Die heiligen drei Könige**
Künstler:	Leopold KUPELWIESER
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1940 Ankauf aus Wiener Privatbesitz

ad 1 - 3
Provenienz: Sammlung Dr. Josef Blauhorn, Wien
1940 Ankaufaus Privatbesitz: Dr. Hans Dechant (Rechtsvertreter für Dr. Blauhorn, der 1930 nach London emigriert war), Wien (3.500 RM)
1939 Ausfuhransuchen Dr. Dechants für die Kunstsammlung Blauhorn (123 Bilder zur Ausfuhr freigegeben; 10 Bilder sichergestellt: u.a. Kupelwieser, 5 Bilder in das Depot der Österreichischen Galerie übernommen)
Oktober 1939 Erwerbungsantrag der Österreichischen Galerie
Übertragung von 2 Bildern (Kupelwieser, Schnorr) durch Dr. Blauhorn an Dr. Dechant "anstelle eines Honorars"
März 1940 Ankauf durch die Österreichische Galerie
ad 6
1949 Rückstellungsantrag von Frau Auguste Bienenfeld, verw. Blauhorn, London
1953 Abweisung des Rückstellungsantrages: weitere Beschwerde der Antragstellerin wurde in der Folge zurückgenommen, wodurch das abweisende Erkenntnis der Rückstellungsoberkommission Rechtskraft erhielt
ad 10 - 11
1939 Ausfuhransuchen für die Kunstsammlung Blauhorn (123 Bilder zur Ausfuhr freigegeben)

Werk:	**Der Selamik in Konstantinopel**
Künstler:	Oskar LASKE
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1944 Überweisung vom Reichsleiter

ad 1 - 3
1944 Erwerbung aus der Frühjahrsausstellung im Wiener Künstlerhaus durch die Reichsstatthalterei
inventarische Zuweisung an die Österreichische Galerie

Werk:	**Selbstportrait**
Künstler:	Oskar LASKE
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1992 Geschenk von Vita Künstler, Wien

ad 1 – 3
1942 von Laske für Vita Künstler ausgeführt - Blatt bezeichnet mit: Nisselabend 13.3.1942 / Frau Dr. Vita Künstler
1992 Schenkung Dr. Vita Künstler an die Österreichische Galerie

Werk:	**Im Nachdenken**
Künstler:	Ivo LOZICA
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1943 Überweisung vom Reichsstatthalter

ad 1 - 3
1943 Erwerbung aus der Ausstellung "Kroatische Kunst" im Wiener Künstlerhaus durch die Reichsstatthalterei (5.100 RM)
inventarische Zuweisung an die Österreichische Galerie

Werk:	**Küste am Golf voll Neapel**
Künstler:	Ferdinand MACKETANZ
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	Überweisung vom Reichsleiter

ad 1 - 3
1941 Erwerbung aus der Ausstellung "Rheinische Kunst" im Wiener Künstlerhaus durch die Reichsstatthalterei
inventarische Zuweisung an die Österreichische Galerie

Werk:	**Junge Frau vorm Spiegel**
Künstler:	Ferdinand MACKETANZ
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	Überweisung vom Reichsleiter

ad 1 - 3
1941 Erwerbung aus der Ausstellung "Rheinische Kunst" im Wiener Künstlerhaus durch die Reichsstatthalterei
inventarische Zuweisung an die Österreichische Galerie

Werk:	**Kopf des Bildhauers Toni Stadler**
Künstler:	Gerhard MARCKS
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1943 Ankauf im Berliner Kunsthandel

ad 1 - 3
Provenienz: Besitz des Künstlers
1943 Erwerbung im Kunsthandel: Kunsthandlung Buchholz, Berlin (1.500 RM)
Ankäufe von "Bildwerken lebender deutscher Bildhauer für die Moderne Galerie"

Werk:	**Die Gärtnerin**
Künstler:	Gerhard MARCKS
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1943 Ankauf im Berliner Kunsthandel

ad 1 - 3
Provenienz; Besitz des Künstlers
1943 Erwerbung im Kunsthandel; Kunsthandlung Buchholz, Berlin (3.600 RM)
Ankäufe von "Bildwerken lebender deutscher Bildhauer für die Moderne Galerie"

Werk:	**Mädchenbildnis**
Künstler:	Arvid MATHER
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1943 Überweisung vom Reichsleiter

ad 1 - 3
1943 Erwerbung aus der Ausstellung "Junge Kunst im Deutschen Reich" im Wiener Künstlerhaus durch die Reichsstatthalterei
inventarische Zuweisung aus dem Bestand der Reichsstatthalterei an die Österreichische Galerie

Werk:	**Moses zerbricht die Geselzestafeln**
Künstler:	Mathias MAY
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1955 Übernahme von der Neuen Galerie der Stadt Linz

ad 1 - 3
Provenienz; Sammlung Wolfgang Gurlitt
Angebot von der Galerie Wolfgang Gurlitt, München vom April 1955
Ankauf von der Neuen Galerie der Stadt Linz (6.000 S)
ad 6
keine Restitutionsansprüche nach 1945 nach dem gegenwärtigen Stand der Provenienzforschung

Werk:	**Südbahnhof in Wien**
Künstler:	Erich MILLER - HAUENFELS
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1942 Ankauf im Künstlerhaus Wien, Überweisung vom Reichsleiter

ad 1 - 3
1942 Erwerbung aus der Jubiläumsausstellung des Künstlerhauses im Wiener Künstlerhaus durch die Reichsstatthalterei
inventarische Zuweisung an die Österreichische Galerie

Werk:	**Knieinder Knabe (IN 3869)**
Künstler:	Georges MINNE
derzeit:	Österreichische Galerie Belvedere
augegebene Herkunft:	1942 Ankauf im Wiener Kunsthandel

ad 1 - 3
Provenienz: nach dein gegenwärtigen Stand der Provenienzforschung unbekannt
Ankauf im Kunsthandel: Auktionshaus Kärntnerstraße, Wien (3.000 RM)
ad 6
nach dem gegenwärtigen Stand der Provenienzforschung keine Restitutionsanspruche nach 1945

Werk:	**Kniender Knabe (IN 3870)**
Künstler:	Georges MINNE
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1942 Ankauf im Wiener Kunsthandel

ad 1 - 3
Provenienz: nach dem gegenwärtigen Stand der Provenienzforschung unbekannt
Ankauf im Kunsthandel: Auktionshaus Kärntnerstraße, Wien (3.000 RM)
ad 6
nach dem gegenwärtigen Stand der Provenienzforschung keine Restitutionsansprüche nach 1945

Werk:	**Kniende**
Künstler:	Georges MINNE
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1948 Widmung von Erich Lederer

ad 1 - 3
Provenienz: Sammlung Lederer
Widmung von Erich Lederer an die Österreichische Galerie: Übernahme durch die Moderne Galerie im Dezember 1945, 1948 inventarisiert als Widmung
ad 10
s.o.

ad 11 - 12
Ausfuhrbewilligung 1950 gegen Überlassung diverser Kunstwerke an Museen (Gentile Bellini an KHM, Handzeichnungen an Albertina etc,)
ad 13
Eine mögliche Widmung des Minne im Kontext der Verhandlungen Erich Lederers um die Ausfuhrbewilligung der Kunstsammlung ist aufgrund der Akten des Bundesdenkmalamtes und der Österreichischen Galerie nicht belegbar.

Werk:	**Der Maler Paul Herrmann und der Arzt Paul Contard**
Künstler:	Edvard MUNCH
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1987 Übernahme aus dem Kunsthistorischen Museum, Wien

ad 1
das 1941 von der Österreichischen Galerie erworbene Gemälde wurde 1953 mit dem internationalen Kunstwerkebestand des Museums an das Kunsthistorische Museum übergeben und von diesem 1987 wieder rückübernommen
ad 2-4
1941 Ankauf im Kunsthandel: Neue Galerie, Wien (12.000 RMI)
Provenienz: Sammlung Walter Rathenau; Edith Andreae, geb. Rathenau; Ursula von Mangoldt - Reiboldt, geb. Andreae
von Hans - Karl Mangoldt über einen Münchner Kunsthändler an die Neue Galerie in Wien verkauft
ad 5
1998 persönlicher Kontakt Dr. Walter Holzhausen (Großneffe Rathenaus, Sohn des Rudolf holzhausen) mit der Direktion der Österreichischen Galerie Belvedere
Verzichtsangebot der Erben auf mögliche Restitution

Werk:	**Meereslandschaft mit Mond**
Künstler:	Edvard MUNCH
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1987 Übernahme aus dem Kunsthistorischen Museum, Wien

ad 1
das 1941 von der Österreichischen Galerie erworbene Gemälde wurde 1953 mit dem internationalen Kunstwerkebestand des Museums an das Kunsthistorische Museum übergeben und von diesem 1987 wieder rückübernommen
ad 2 - 4
Provenienz: Sammlung Alma Mahler - Werfel
1940 Ankauf aus Privatbesitz: Marie Eberstaller, Wien (7.000 RM)
August 1937 Leihgebung von 5 Bildern (u.a. Munch) aus der Sammlung Mahler - Werfel an die Österreichische Galerie auf die Dauer von zwei Jahren
Anfang 1938 Verkaufsabsichten Alma Mahler - Werfels: Verhandlungen mit der Österreichischen Galerie
18. März 1938: Rückübernahme der 5 Bilder durch Carl Moll (Stiefvater der Alma Mahler - Werfel)
April 1940 Erwerbung von Marie Eberstaller (Schwester der Alma Mahler - Werfel)

ad 5
Restitutionsverfahren von 1947 - 1964 (Tod der Alma Mahler - Werfel in New York)
seit Sommer 1998 persönlicher Kontakt mit Marina Mahler (Enkelin der Alma Mahler - Werfel)
ad 7
August 1947 Rückstellungsantrag Alma Mahler - Werfel gegen Republik Österreich
laufendes Restitutionsverfahren bis zum Tod der Alma Mahler - Werfel 1964
Februar 1954 Rückstellung von 2 Bildern (E. J. Schindler, Feisküste bei Ragusa und Pappelallee)
ad 11 - 12
Ausfuhrbewilligung für Kunstsammlung vom August 1948

Werk:	**Schauspieler Peter Petersen**
Künstler:	Ekke OZLBERGER
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1944 Überweisung vom Reichsstatthalter

ad 1 - 3
1943 Erwerbung aus der Ausstellung "Wiener Bildnisse aus Kreisen der Kunst und Wissenschaft" im Wiener Künstlerhaus durch die Reichsstatthalterei
inventarische Zuweisung an die Österreichische Galerie

Werk:	**Opernsängerin Esther Rethy**
Künstler:	Andreas PATZELT
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1944 Überweisung vom Reichsstatthalter

ad 1 - 3
1943 Erwerbung aus der Ausstellung "Wiener Bildnisse aus Kreisen der Kunst und Wissenschaft" im Wiener Künstlerhaus durch die Reichsstatthalterei
inventarische Zuweisung an die Österreichische Galerie

Werk:	**Selbstbildnis**
Künstler:	Josef PIEPER
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1941 Überweisung vom Reichsstatthalter

ad 1 - 3
1941 Erwerbung aus der Ausstellung "Rheinische Kunst" im Wiener Künstlerhaus durch die Reichsstatthalterei
inventarische Zuweisung an die Österreichische Galerie

Werk:	**Damenbildnis**
Künstler:	Josef PIEPER
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1941 Überweisung vom Reichsstatthalter

ad 1-3
1941 Erwerbung aus der Ausstellung "Rheinische Kunst" in' Wiener Künstlerhaus durch die Reichsstatthalterei
inventarische Zuweisung an die Österreichische Galerie

Werk:	**Die letzten Häuser (Motiv aus Krems)**
Künstler:	Viktor PIPAL
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1941 Ankauf im Wiener Kunsthandel

ad 1 - 3
Provenienz: nach dem gegenwärtigen Stand der Provenienzforschung unbekannt
1941 Ankauf im Kunsthandel: Galerie Welz, Wien (600 RM)

Werk:	**Zeichnende Mädchen**
Künstler:	Viktor PUCIUSKI
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1941 Überweisung vom Reichsleiter

ad 1 - 3
1941 Erwerbung aus der Ausstellung "Rheinische Kunst" im Wiener Künstlerhaus durch die Reichsstatthalterei
inventarische Zuweisung an die Österreichische Galerie

Werk:	**Esel**
Künstler:	Robert PUDLICH
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1941 Überweisung vom Reichsleiter

ad 1 - 3
1941 Erwerbung aus der Ausstellung "Rheinische Kunst" im Wiener Künstlerhaus durch die Reichsstatthalterei
inventarische Zuweisung an die Österreichische Galerie

Werk:	**Bildnis von Wilhelm Schäfer**
Künstler:	Ingeborg von RATH
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1941 Überweisung vom Reichsleiter

ad 1 - 3
1941 Erwerbung aus der Ausstellung "Rheinische Kunst" im Wiener Künstlerhaus durch die Reichsstatthalterei
inventarische Zuweisung an die Österreichische Galerie

Werk:	**Flaschen**
Künstler:	Aldo RONCO
derzeit:	Österreichische Galerie Belvedere
angegebene Herkunft:	1943 Überweisung vom Reichsleiter

ad 1 - 3
1943 Erwerbung aus der Ausstellung "Aldo Ronco" in der Wiener Kunsthalle, Zedlitzgasse durch die Reichsstatthalterei
inventarische Zuweisung an die Österreichische Galerie

KUNSTHISTORISCHES MUSEUM

Werk:	**Kriegsschiffe und kleinere Schiffe in einer Brise**
Künstler:	Ludolf Backhuizen
derzeit:	Kunsthistorisches Museum - Gemäldegalerie
angegebene Herkunft:	erworben 1944

ad 1 - 6) Das Gemälde wurde im Jänner 1944 von der Kunsthandlung C. F. Schmidt, Gemälde alter und neuer Meister, Berlin, aus französischem Privatbesitz zum Preis von 100.000 RM erworben. Genauere Provenienzangaben für das Bildes fehlen. Spätere Restitutionsansprüche liegen nicht vor.

ad 10 - 11) Nach dem gegenwärtigen Stand der Provenienzforschung unbekannt.

Werk:	**Feston mit Früchten und Blumen**
Künstler:	Jan Anton van der Baren
derzeit:	Kunsthistorisches Museum - Gemäldegalerie
angegebene Herkunft:	vom Bundesmobiliendepot übernommen.

Es handelt sich um die Übernahme von ehemals hofararischem Besitz.

Werk:	**Marter des Apostels Matthias**
Künstler:	Jan de Beer
derzeit:	Kunsthistorisches Museum - Gemäldegalerie
angegebene Herkunft:	erworben 1939

ad 1 - 6) Das aus der Gräflich Attem' schen Galerie, Graz, stammende Bild wurde am 14. Juni 1939 von Dr. Robert Herzig, Leiter der Galerie Sankt Lukas, Wien, im Tausch für das Gemälde von Jan van Goyen, Kirche am Fluss, aus der beschlagnahmten Sammlung Viktor von Ephrussi erworben. Als die Galerie Sankt Lukas das ihr im Tauschweg überlassene Gemälde des Jan van Goyen, Kirche am Fluss, 1949 an die Erben von Baron Viktor Ephrussi zurückstellen musste, übergab das KHM der Galerie Sankt Lukas am 1. Mai 1950 für den Jan de Beer und Inv. - Nr. 9101, David Vinckboons, Herkules, Deianira und der Kentaur Nessus, drei gleichwertige Bilder aus dem Inventarbestand der Gemäldegalerie des KHM (Inv. - Nr. 1729, Adriaen van Ostade, Zechende Bauern, Inv. - Nr. 7012, Oberdeutsch, Die Kilingerin, und Inv. - Nr. 671 Philips Wouwerman, Halt an der Tränke).

ad 10 - 11) Nach dem gegenwärtigen Stand der Provenienzforschung nicht bekannt.

Werk:	**Marter des heiligen Sebastian**
Künstler:	Jan de Beer
derzeit:	Kunsthistorisches Museum - Gemäldegalerie
angegebene Herkunft:	erworben 1939

ad 1 - 6) Das Gemälde wurde im Juli 1939 zum Preis von 7.000 RM von der Galerie Sankt Lukas aus Mitteln der Dienststelle des Reichsministers Dr. Seyß - Inquart erworben und ging 1942, nach der Übersiedlung Seyß - Inquarts als Reichskommissar für die besetzten Niederlande, auch real in den Besitz der Gemäldegalerie des Kunsthistorischen Museums über. Die Vorprovenienz des Gemäldes ist unklar. Nach 1945 wurde kein Restitutionsanspruch erhoben.

ad 10 - 11) Nach dem derzeitigen Stand der Provenienzforschung unbekannt.

Werk:	**Kardinal Bessarion vor seinem Kreuzartikel (sic!) - Reliquar (sic!) mit zwei Brüdern der Scuola della Carita**
Künstler:	Gentile Bellini
derzeit:	Kunsthistorisches Museum - Gemäldegalerie
angegebene Herkunft:	Widmung Erich Lederer 1950

ad 1 - 6) und ad 10 - 12) Das Bild gehörte zur Sammlung der ungarischen Staatsbürgerin Serena Lederer, welche am 26. November 1938 im Zuge der Verhängung des Konkurses über den Lederer - Konzern von den Nationalsozialisten "sichergestellt" wurde. In weiterer Folge wurde die Sammlung im Schloß Immendorf (bei Hollabrunn) geborgen und erlitt bei Kriegsende schwere Verluste. Nach Kriegsende wurde die Sammlung ihrem rechtmäßigen Eigentümer Erich Lederer (dem Sohn der in der Schweiz verstorbenen Serena Lederer) restituiert. Im Zusammenhang mit einer Ausfuhrgenehmigung wurde das Bild 1950 dem Kunsthistorischen Museum gewidmet. Derzeit ist die Bearbeitung gemäß § 1/1 des Kunstgegenständerückgabegesetzes im Gange.

Werk:	**Italienische Landschaft mit Aquäduktruine**
Künstler:	Nicholas Berchem
derzeit:	Kunsthistorisches Museum - Gemäldegalerie
angegebene Herkunft:	erworben 1950

ad 1 - 3) Beim Erwerb handelt es sich um einen regulären Ankauf.

Werk:	**Stilleben mit Musikinstrumenten, Globus und einem Teller mit Gebäck**
Künstler:	Bartolomeo Bettera
derzeit:	Kunsthistorisches Museum - Gemäldegalerie
angegebene Herkunft:	erworben 1939

ad 1 - 6) Das Bild wurde um 1939/40 um 3.000 RM von der Galerie Welz in Wien angekauft. Da in der Gemäldegalerie kein Erwerbungsakt vorhanden ist, ist die Vorprovenienz unbekannt. Nach 1945 wurde kein Restitutionsanspruch gestellt.

ad 10 - 11) Nach dem gegenwärtigen Stand der Provenienzforschung unbekannt.

Werk:	**Stilleben mit Musikinstrumenten, Notenblättern und Büchern**
Künstler:	Bartolomeo Bettera
derzeit:	Kunsthistorisches Museum - Gemäldegalerie
angegebene Herkunft:	erworben 1939

ad 1 - 6) Das Bild wurde um 1939/40 um 3.000 RM von der Galerie Welz in Wien angekauft. Da in der Gemäldegalerie kein Erworbungsakt vorhanden ist, ist die Vorprovenienz unbekannt. Nach 1945 wurde kein Restitutionsanspruch gestellt.

Ad 10 - 11) Nach dem gegenwärtigen Stand der Provenienzforschung unbekannt.

Werk:	**Amors Krönung**
Künstler:	Guiseppe Bernardine Bison
derzeit:	Kunsthistorisches Museum - Gemäldegalerie
angegebene Herkunft:	erworben 1941

ad 1 - 3) Die Ölskizze wurde im April 1941 bei der 465. Kunstauktion des Dorotheums, Wien, zum Preis von 1.500 RM erworben. Die Vorprovenienz geht aus den Akten der Gemäldegalerie nicht hervor, Restitutionsansprüche wurden nicht erhoben.

ad 10 - 11) Nach dem gegenwärtigen Stand der Provenierzforschung unbekannt.

Werk:	**Berglandschft**
Künstler:	Adriaen Bloemaert
derzeit:	Kunsthistorisches Museum - Gemäldegalerie
angegebene Herkunft:	1941 von der Galerie St. Lucas gewidmet

ad I - 3) Das Gemälde wurde der Gemäldegalerie im September 1941 von der Galerie Galerie Sankt Lukas, Wien, geschenkweise überlassen. Die Vorprovenienz des Bildes ist aus den Akten der Gemäldegalerie nicht ersichtlich. Spätere Restitutionsanspruche liegen nicht vor.
ad 10 - 11) Nach dem gegenwärtigen Stand der Prnvenienzforschung unbekannt.

Werk:	**Mädchen mit Lira da Gamba**
Künstler:	Ferdiand Bol
derzeit:	Kunsthistorisches Museum - Gemäldegalerie
angegebene Herkunft:	erworben 1943

ad 1 - 6) Das Gemälde wurde auf Antrag von Dr. Ludwig von Baldass am 14. Dezember 1943 vom Kunsthändler Otto Schatzker (Wien 1., Köllnerhofgasse 2) zum ermäßigten Preis von 20.000 RM erworben. Genauere Provenienzangaben für das Bildes fehlen. Spätere Restitutionsansprüche wurden nicht erhoben.

ad 10 - 11) Nach dem gegenwärtigen Stand der Provenienzforschung nicht bekannt.

Werk:	**Landschaft mit Merkur und Argus**
Künstler:	Jan Both
derzeit:	Kunsthistorisches Museum - Gemäldegalerie
angegebene Herkunft:	erworben 1941

ad 1 - 6) Das Gemälde wurde gemeinsam mit Inv. Nr.9031 Michiel Jansz van Miereveldt: Bildnis einer jungen Frau, im Mai 1941 von der Galerie Sankt Lukas, Wien, zum Preis von 12.000 RM erworben. Die Vorprovenienz ist unbekannt. Spätere Restitutionsansprüche liegen nicht vor.

ad 10 - 11) Nach dem gegenwärtigen Stand der Provenienzforschung unbekannt.

Werk:	**Kirchweih in Schelle**
Künstler:	Jan d. Ältere Brueghel
derzeit:	Kunsthistorisches Museum - Gemäldegalerie
angegebene Herkunft:	erworben 1950

ad 1 - 3) Beim Erwerb handelt es sich nach dem derzeitigen Wissensstand der Provenienzforschung um einen regulären Ankauf.

Werk:	**Bildnis eines jungen Mannes**
Künstler:	Hans d. Ältere Burgkmair
derzeit:	Kunsthistorisches Museum - Gemäldegalerie
angegebene Herkunft:	erworben 1937

ad 1 - 3) Beim Erwerb handelt es sich um einen regulären Ankauf vor Beginn der NS - Herrschaft.

Werk:	**September**
Künstler:	nach Peter Candid
derzeit:	Kunsthistorisches Museum - Gemäldegalerie
angegebene Herkunft:	aus dem Bundesmobiliendepot übernommen

Es handelt sich um die Übernahme von ehemals hofärarischem Besitz.

Werk:	**Dezember**
Künstler:	nach Peter Candid
derzeit:	Kunsthistorisches Museum - Gemäldegalerie
angegebene Herkunft:	aus dem Bundesmobiliendepot übernommen

Es handelt sich um die Übernahme von ehemals hofärarischem Besitz.

Werk:	**Vanitas Stillleben**
Künstler:	Peter Claesz
derzeit:	Kunsthistorisches Museum - Gemäldegalerie
angegebene Herkunft:	erworben 1941

ad 1 - 6) Das Gemälde wurde im Oktober 1941 von der Kunsthandlung Julius Böhler, München, zum Preis von 4.500 RM erworben. Die Vorprovenienz des Bildes ist aus den Akten der Gemäldegalerie nicht ersichtlich. Spätere Restitutionsansprüche liegen nicht vor.

ad 10 - 11) Nach dem gegenwärtigen Stand der Provenienzforschung unbekannt.

Werk:	**Jupiter, Merkur und "Virtus" bzw. "Virgo"**
Künstler:	Dosso Dossi
derzeit:	von Dr. Anton Graf Lanckoronski gewidmet

ad 1 - 6) und 10 - 11) Die Kunstsammlung des polnischen Staatsangehörigen Anton Lanckoronski wurde unter Berufung auf eine "Verordnung über Behandlung von Vermögen der Angehörigen des ehemaligen polnischen Staates" beschlagnahmt. Für einige wenige Objekte der Sammlung wurden 1939 Ausfuhrbewilligungen ausgestellt, die Kunstsammlung sollte jedoch nach Hitlers Willen nach dem Krieg ‚als Ganzes' verwertet werden.

Im November 1951 wurde das Gemälde im Zusammenhang mit Ausfuhransuchen der Gemäldegalerie gewidmet. Derzeit ist die Bearbeitung gemäß § 1/1 des Kunstgegenständerückgabegesetzes im Gange.

Werk:	**Christus unter den Schriftgelehrten**
Künstler:	nach Dürer
derzeit:	Kunsthistorisches Museum - Gemäldegalerie
angegebene Herkunft:	seit 1940 in der Galerie

Das Gemälde (Inv. Nr. 7793) befindet sich seit 1934/35 in der Galerie.

Werk:	**Waldlandschaft**
Künstler:	Jacob van Geel
derzeit:	Kunsthistorisches Museum - Gemäldegalerie
angegebene Herkunft:	erworben 1942

ad 1 - 6) Das Gemälde wurde im Jänner 1942 von Herrn Viktor Widakowich, Wien, zum Preis voll 5.000 RM erworben. Die Namen eventueller Vorbesitzer gehen aus dem Erwerbungsakt der Gemäldegalerie nicht hervor. Spätere Restitutionsansprüche wurden nicht erhoben.

ad 10 - 11) Nach dem gegenwärtigen Stand der Provenienzforschung unbekannt.

Werk:	**Reiterkampf**
Künstler:	Johan van Hughtenburgh
derzeit:	Kunsthistorisches Museum - Gemäldegalerie
angegebene Herkunft:	erworben 1945

Das Gemälde wurde nach Kriegsende nach dem derzeitigen Wissensstand der Provenienzforschung regulär gekauft.

Werk:	**Apostel Philippus**
Künstler:	Anton van Dyck
derzeit:	Kunsthistorisches Museum - Gemäldegalerie
angegebene Herkunft:	1976 Legat Dr. O. Strakosch

Die Erwerbung des Gemäldes ist nach dem derzeitigen Wissensstand der Provenienzforschung als unbedenklich anzusehen.

Werk:	**Apostel Simon**
Künstler:	Anton van Dyck

derzeit: Kunsthistorisches Museum - Gemäldegalerie
angegebene Herkunft: 1976 Legat Dr. O. Strakosch
Die Erwerbung des Gemäldes ist nach dem derzeitigen Wissensstand der Provenienzforschung als unbedenklich anzusehen.

Werk: **Fischesser**
Künstler: Luca Giordano
derzeit: Kunsthistorisches Museum - Gemäldegalerie
angegebene Herkunft: erworben 1942

ad 1 - 6) Das Gemälde wurde im November 1942 von der Galerie für Alte Kunst, München, zum Preis von 15.000 RM erworben. Der damalige Leiter der Gemäldegalerie, Dr. Gert Adriani, besichtigte im Sommer 1942 in München mehrere Bilder, die zu diesem Zweck aus der Bergung in einem Safe in Tegernsee nach München transportiert worden waren. Adriani meldete das Interesse des KHM an folgenden Bildern an: Luca Giordano, Der Fischesser (Preis 15.000 RM), Abraham van Beyeren, Großes Stillieben (Preis 30.000 RM) und Sebastiano del Piombo, Violinspieler. Das letztgenannte Gemälde war nicht mehr frei, da es bereits Hermann Göring zum Kauf angeboten worden war. Bewilligt wurde nur der Erwerb des Bildes von Luca Giordano. Das gleichfalls nach Wien geschickte Gemälde von Abraham van Beyeren ging wieder nach München zurück. Spätere Restitutionsansprüche liegen nicht vor.

ad 10 - 11) Nach dem gegenwärtigen Stand der Provenienzforschung unbekannt.

Werk: **Simson zerreißt seine Fesseln**
Künstler: Luca Giordano
derzeit: Kunsthistorisches Museum - Gemäldegalerie
angegebene Herkunft: 1971 von Stefanie Gräfin Harrach gewidmet
Widmung ohne Bezug zu "Kunstraub in Österreich".

Werk: **Oferung Isaaks**
Künstler: Giordano (?)
derzeit: Kunsthistorisches Museum - Gemäldegalerie
angegebene Herkunft: 1971 von Stefanie Grafin Harrach gewidmet
Widmung ohne Bezug zu "Kunstraub in Österreich".

Werk: **FIachlandschaft**
Künstler: Jan van Goyen
derzeit: Kunsthistorisches Museum - Gemäldegalerie
angegebene Herkunft: erworben 1939

ad 1 - 6) Das aus altem Familienbesitz von Dr. Fortunat Schubert - Soldern, Präsident des Zentralstelle für Denkmalschutz, stammende Gemälde wurde am 30. Juni 1939 zum Preis von 9.000 RM erworben. Spätere Restitutionsansprüche liegen nicht vor.

ad 10 - 11) Nach dem gegenwärtigen Stand der Provenienzforschung nicht bekannt.

Werk:	**Markusplatz in Venedig**
Künstler:	Guardi - Umkreis
derzeit:	Kunsthistorisches Museum - Gemäldegalerie
angegebene Herkunft:	1932 Legat Gustav von Benda

ad 1 - 4) Die Sammlung des 1932 verstorbenen jüdischen Großindustriellen Gustav Benda gelangte durch testamentarischen Entscheid 1932 als "Legat Gustav Benda" in den Besitz des KHM.

ad 11) Gustav Benda, 1932, Testament

ad 12) Nach dem gegenwärtigen Stand der Provenienzforschung nicht bekannt.

Werk:	**Ansicht des Kneuterdijk im Haag**
Künstler:	Joris von Hagen
derzeit:	Kunsthistorisches Museum - Gemäldegalerie
angegebene Herkunft:	1932 Legat Gustav von Benda

ad 1 - 4) Die Sammlung des 1932 verstorbenen jüdischen Großindustriellen Gustav Benda gelangte durch testamentarischen Entscheid 1932 als "Legat Gustav Benda" in den Besitz des KHM.

ad 11) Gustav Benda, 1932, Testament

ad 12) Nach dem gegenwärtigen Stand der Provenienzforschung nicht bekannt.

Werk:	**Zwei Altarflügel mit Stiftern**
Künstler:	Maerten van Heemskerck
derzeit:	Kunsthistorisches Museum - Gemäldegalerie
angegebene Herkunft:	erworben 1938

ad 1 - 6) Die aus der Sammlung Dr. Richard von Neumann stammenden Altarflügel wurden im Oktober 1938 zum Preis von 18.000 RM aus Mitteln der Dienststelle des Reichsministers Dr. Seyß - Inquart erworben und gingen 1942, nach der Übersiedlung Seyß - Inquarts als Reichskommissar für die besetzten Niederlande, auch real in den Besitz der Gemäldegalerie des Kunsthistorischen Museums über. Dr. Neumann hatte vor der Emigration in die Schweiz seine in Österreich gebliebe Tochter, Frau Dora Selldorf, zum Verkauf der Bilder bevollmächtigt.
Im Auftrag der Familie Dr. von Neumann beantragte RA Dr. Felix Friedlaender am 1. November 1949 aufgrund des Ersten Rückstellungsgesetzes die Restitution der beiden Bilder. Da die Direktion der Gemäldegalerie (Dir. Dr. Ernst Buschbeck) auf der Rechtmäßigkeit der Erwerbung beharrte, reichte Dr. Friedlaender im Herbst 1951 die Klage bei der Rückstellungskommission beim Landesgericht für ZRS Wien ein, der am 29.Jänner 1952 stattgegeben wurde. In der Folge erwarb die Gemäldegalerie im Frühjahr 1953 die beiden Altarflügel von Dr. von Neumann, der sich damals in Havanna/Kuba aufhielt, im Tausch für ein Bild der Gemäldegalerie (Inv. - Nr. 979, Goosen van der Weyden, Anna Selbdritt) und die

Zahlung von 3.000 US Dollar. Der Geldbetrag wurde durch den Verkauf von zwei Gemälden des KHM in den USA (Inv. - Nr. 3689. Niederländisch um 1550, Bildnis eines jungen Mannes, und Inv. - Nr. 920, Kopie nach Holbein, Erasmus von Rotterdam) aufgebracht. Das Gemälde des Goosen van der Weyden übernahm Dr. Neumann persönlich in Empfang, der Geldbetrag wurde nachweislich auf sein Bankkonto übewiesen.

ad 10 - 11) Nach dem gegenwärtigen Stand der Provenienzforschung nicht bekannt.

Werk:	**Allegorie**
Künstler:	Joseph d. J. Heintz
derzeit:	Kunsthistorisches Museum - Gemäldegalerie
angegebene Herkunft:	erworben 1947

ad 1 - 3) Beim Erwerb handelt es sich nach dem derzeitigen Wissensstand der Provenienzforschung um einen regulären Ankauf

Werk:	**Blinder Drehleierspieler**
Künstler:	Francisco de (d.Ä.) Herrera
derzeit:	Kunsthistorisches Museum - Gemäldegalerie
angegebene Herkunft:	1963 Widmung Rudolf Graf Czernin

Es besteht nach dem derzeitigen Wissensstand der Provenienzforschung kein Zusammenhang mit Raubkunst.

Werk:	**Früchtestillleben**
Künstler:	Gottfried Libalt
derzeit:	Kunsthistorisches Museum - Gemäldegalerie
angegebene Herkunft:	aus dem Bundsmobiliendepot übernommen

Es handelt sich um die Übernahme von ehemals hofärarischem Besitz.

Werk:	**Carneval in Rom**
Künstler:	Johannes Lingelbach
derzeit:	Kunsthistorisches Museum - Gemäldegalerie
angegebene Herkunft:	1961 von der Galerie St. Lucas gewidmet - ehem. Sammlung Czernin

Es besteht nach dem derzeitigen Wissensstand der Provenienzforschung kein Zusammenhang mit Raubkunst.

Werk:	**Tanzende Bauern vor einer Scheune**
Künstler:	Andrea Locatelli
derzeit:	Kunsthistorisches Museum - Gemäldegalerie
angegebene Herkunft:	erworben 1943

ad 1 - 6) Das Gemälde wurde am 29. September 1943 gemeinsam mit Inv.-Nr. 9064, Dirk Stoop, Italienische Seeküste, und lnv. - Nr. 9066, Joris van der Hagen, Waldlandschaft mit Hirschen und

Rehen, von der Kunstabteilung des Dorotheums Wien im freien Verkauf zum Preis von 7.000 RM erworben;

ad 10 - 11) Nach dein gegenwärtigen Stand der Provenienzforschung nicht bekannt

Werk:	**Predigt des Hl. Dominikus in Recanti**
Künstler:	Lorenzo Lotto
derzeit:	Kunsthistorisches Museum - Gemäldegalerie
angegebene Herkunft:	1932 Legat Gustav von Benda

ad 1 - 4) Die Sammlung des 1932 verstorbenen jüdischen Großindustriellen Gustav Benda gelangte durch testamentarischen Entscheid 1932 als "Legat Gustav Benda" in den Besitz des KHM.

ad 11) Gustav Benda, 1932, Testament

ad 12) Nach dem gegenwärtigen Stand der Provenienzforschung nicht bekannt.

Werk:	**Sara Ingelbrechts**
Künstler:	Nicolas Maes
derzeit:	Kunsthistorisches Museum - Gemäldegalerie
angegebene Herkunft:	erworben 1941

ad 1 - 6) Das Gemälde wurde am 15. Februar 1941 von der Galerie Sankt Lukas, Wien, zum Preis von 5.000 RM erworben, in deren Besitz sich das Bild seit 1906 befunden hatte. Spätere Restitutionsansprüche liegen nicht vor.

ad 10 - 11) Zum gegenwärtigen Stand der Restitutionsforschung nicht bekannt.

Werk:	**Gerichtsszene**
Künstler:	Alessandro Magnasco
derzeit:	Kunsthistorisches Museum - Gemäldegalerie
angegebene Herkunft:	erworben 1941

ad 1 - 3) Das aus altem Familienbesitz stammende Bild wurde der Gemäldegalerie von Herrn Baron Hans Riefel, Wien, zum Kauf angeboten und im Dezember 1941 zum Preis von 6.000 RM erworben. Spätere Restitutionsansprüche liegen nicht vor.

ad 10 - 11) Zum gegenwärtigen Stand der Provenienzforschung nicht bekannt.

Werk:	**Wäscherinnen**
Künstler:	Alessandro Magriasco
derzeit:	Kunsthistorisches Museum - Gemäldegalerie
angegebene Herkunft:	erworben 1938

ad 1 - 6) Das aus der Slg. Dr. Richard von Neumann stammende Bild wurde gem. mit Gianbattista Pittom: Hannibals Schwur (Inv. Nr.6955) von Dr. Neumanns Tochter, Frau Dora Selldorf, zum Kauf angeboten und am 14. Dezember 1938 zum Preis von 3.000 RM erworben. Zusätzlich

übergab die Gemäldegalerie Frau Selldorf das offenkundig aus einer Beschlagnahmung stammende Bild von P. Lastmann, Ein König reicht einem Knienden eine Urkunde, dessen Wert mit 1.500 RM angegeben wurde. Der von RA Dr. Ludwig Reimer im Juni 1966 im Namen von Frau Alice Neumann, Witwe des Dr. Richard von Neumann, erhobene Anspruch auf Rückstellung des Gemäldes wurde vom damaligen Ersten Direktor des KHM, Dr. Vinzenz Oberhammer, zurückgewiesen. Oberhammer verwies dabei auf Briefe ddo. 19. November 1952 und 2. Mai. 1953, in denen Dr. Neumann ausdrücklich und unaufgefordert bestätigt hatte, dass die beiden Gemälde von Pittoni und Magnasco sowie zwei Bozzetti von Algardi (Kunstkammer Inv. - Nr. 9006 und Inv. - Nr, 9007) ins Eigentum des KHM übergegangen wären. Frau Alice Neumann verzichtet in der Folge auf die weitere Verfolgung ihres Anspruches.

ad 10 - 11) Nach dem gegenwärtigen Stand der Provenienzforschung nicht bekannt.

Werk:	**Maria mit Kind und den Hl. Katharina und Barbara**
Künstler:	Meister von Hoogstraten
derzeit:	Kunsthistorisches Museum - Gemäldegalerie
angegebene Herkunft:	1932 Legat Gustav von Benda

ad 1- 4) Die Sammlung des 1932 verstorbenen jüdischen Großindustriellen Gustav Benda gelangte durch testamentarischen Entscheid 1932 als "Legat Gustav Benda" in den Besitz des KHM.

ad 11) Gustav Benda, 1932, Testament

ad 12) Nach dem gegenwärtigen Stand der Provenienzforschung nicht bekannt.

Werk:	**Bildnis einer jungen Frau**
Künstler:	Michiel Jansz
derzeit:	Kunsthistorisches Museum - Gemäldegalerie
angegebene Herkunft:	erworben 1941

ad 1 - 6) Das Gemälde wurde gemeinsam mit Inv. - Nr. 9031, Jan Both, Landschaft mit Merkur und Argus, im Mai 1941 voll der Galerie Sankt Lukas, Wien, zum Preis von 12.000 RM erworben. Die Vorprovenienz des Bildes ist unbekannt. Spätere Restitutionsansprüche liegen nicht vor.

ad 10 - 11) Nach dem gegenwärtigen Stand der Provenienzforschung nicht bekannt.

Werk:	**Gebirgslandschaft mit Burg**
Künstler:	Joos de Momper d. J.
derzeit:	Kunsthistorisches Museum - Gemäldegalerie
angegebene Herkunft:	erworben 1942

ad 1 - 6) Das aus altem Familienbesitz von Dr. Fortunat Schubert - Soldern, Präsident des Zentralstelle für Denkmalschutz, stammende Gemälde wurde am 30. Juni 1939 zum Preis von 9.000 RM erworben. Spätere Restitutionsansprüche liegen nicht vor.

ad 10 - 11) Nach dem gegenwärtigen Stand der Provenienzforschung nicht bekannt.

Werk:	**Gebirgslandschaft mit Flusstal**
Künstler:	Joos de Momper d.J.
derzeit:	Kunsthistorisches Museum - Gemäldegalerie
angegebene Herkunft:	erworben 1942

siehe oben (Joos de Momper d. J., Gebirgslandschaft mit Burg).

Werk:	**Bauernbesuch**
Künstler:	Adriaen van Ostade
derzeit:	Kunsthistorisches Museum - Gemäldegalerie
angegebene Herkunft:	erworben 1941

ad 1 - 6) Das vermutlich aus beschlagnahmtem jüdischen Kunstbesitz stammende Gemälde wurde im Auftrag der Gestapo durch die Vugesta (=Verwaltungsstelle jüdischen Umzugsgutes der Geheimen Staatspolizei, Wien) der Kunstabteilung des Dorotheums zur Versteigerung (469. Kunstauktion, Nr.106, Tafel. 20) übergeben. Die Gestapo erklärte sich auf Antrag der Gemäldegalerie bereit, das Bild aus der Versteigerung herauszunehmen und dem KHM zum Preis von 16.000 RM direkt zu verkaufen. Der zunächst geltend gemachte "Führervorbehalt" wurde durch die Landesleitung der Reichskammer der bildenden Künste in Wien zurückgezogen. Der Kauf kam am 2. Dezember 1941 zustande. Spätere Restitutionsansprüche liegen bisher nicht vor.
ad 10 - 11) Nach dem gegenwärtigen Stand der Provenienzforschung nicht bekannt.

Werk:	**Bildnis einer allen Frau**
Künstler:	Bartolomeo Passaroti
derzeit:	Kunsthistorisches Museum – Gemäldegalerie
angegebene Herkunft:	erworben 1943

ad 1 - 3) Das aus dem Altbestand (Estensische Sammlung?) der Gemäldegalerie stammende Bild wurde 1943 bei einer Depotrevision in der Schatzkammer aufgefunden und neu inventarisiert.
ad 10 - 11) Nach dem gegenwärtigen Stand der Provenienzforschung nicht bekannt.

Werk:	**Hannibals Schwur**
Künstler:	Gianbattista Pittoni
derzeit:	Kunsthistorisches Museum - Gemäldegalerie
angegebene Herkunft:	erworben 1938

ad 1 - 3) Die Erwerbung erfolgt vor dem März 1938.

Werk:	**III. Maria Magdalena**
Künstler:	Nicolas Regnier
derzeit:	Kunsthistorisches Museuin - Gemäldegalerie
angegebene Herkunft:	1965 vom Bundesdenkmalamt übernommen

ad 1 - 3) Nach dem gegenwärtigen Stand der Provenienzforschung nicht bekannt.

Werk:	**Selbstbildnis im Pelz, mit Kette und Ohrring**
Künstler:	Rembrandt
derzeit:	Kunsthistorisches Museum - Gemäldegalerie
angegebene Herkunft:	erworben 1942 von Frau von Mendelssohn

ad 1 - 6) Das aus dein Besitz des am 20. August 1917 verstorbenen Kunstsammlers Robert von Mendelssohn stammende Bild wurde der Gemäldegalerie im Februar 1942 gemeinsam mit Rembrandts "Hendrijke Stoffels" (erworben von Dir. Dr. Hans Posse um 900.000 RM für das "Führer - Museum" in Linz) und Peter Paul Rubens' "Geflügelter weiblicher Genius" (unbekannt, ob und an wen verkauft) vom Kunsthändler Otto Schatzker, Wien, angeboten. Er war dazu vom Generalsekretär der italienischen Handelskammer in Wien, Aldo Cima, bevollmächtigt worden und hatte von ihm den Auftrag erhalten, die drei Gemälde und andere Wertgegenstände aus dem Besitz der italienischen Staatsbürgerin Frau Giulietta Gordigiani - Mendelssohn zu den bestmöglichen erreichbaren Höchstpreisen gegen Barzahlung zu verkaufen. Der Kaufpreis für Rembrandts "Selbstbildnis" betrug 750.000 RM. Der Betrag wurde Frau Giulietta Gordigiani - Mendelssohn auf dem Wege der italienischen Handelskammer direkt nach Italien überwiesen. Das Bild wurde im Dezember 1952 durch Herrn Francesco von Mendelssohn, New York, und durch Frau Dr. Lillian Rockh als Testamentsvollstreckerin nach der am 24. Jänner 1951 verstorbenen Eleonore von Mendelssohn - Kosleck, ruckgefordert. Beide waren durch RA Dr. Karl Trauttmansdorff, Wien, vertreten. Der Rechstanspruch wurde mit dem unbewiesenen Argument begründet, dass Frau Giulietta Gordigiani - Mendelssohn am 1. Jänner 1933 auf ihr Vorerbrecht zugunsten ihrer Kinder Francesco und Lillian verzichtet hätte. Da der schriftliche Verzicht nicht vorgelegt werden konnte, wurde der Rückstellungsantrag von der Finanzprokuratur im Frühjahr 1953 kostenpflichtig abgewiesen. Nachdem RA Dr. Trauttmansdorff seitens der Antragsteller die Vollmacht entzogen worden war und es der Rückstellungskommission trotz zehnjährigem Bemühen nicht möglich gewesen war, die Antragsteller auszuforschen, wurde das Rückstellungsbegehren mit Erkenntnis der Rückstellungskommission beim Landesgericht für ZRS Wien vom 25. Februar 1964 endgültig abgewiesen.

ad 10 - 11) Nach dem gegenwärtigen Stand der Provenienzforschung nicht bekannt.

Werk:	**Pallas entführt Juveutus aus den Armen der** Venus
Künstler:	Nicola Maria Rossi
derzeit:	Kunsthistorisches Museum - Gemäldegalerie
angegebene Herkunft:	aus dem Bundesmobiliendepot übernommen

Es handelt sich uni die Übernahme von ehemals hofärarischem Besitz.

Werk:	**Landschaft mit Plankenzaun und hohem Wolkenhimmel**
Künstler:	Salomon von Ruysdael
derzeit:	Kunsthistorisches Museum - Gemäldegalerie
angegebene Herkunft:	erworben 1939

ad 1 - 6) Das Bild wurde im Juli 1939 von der Galerie Sankt Lukas im Tausch gegen die aus dem Vermächtnis von Ludwig Lobmeyer stammende Inv. - Nr. 6325, Salomon Ruysdael, Kanallandschaft, erworben. Der Testamentsvollstrecker und Erbe Lobmeyers, Herr Stephan Rath, hatte dem Tausch ausdrücklich zugestimmt. Das neue Bild wurde mit dem Vermerk: "Erworben aus dem Vermächtnis Lobmeyer" ins Inventar der Gemäldegalerie eingetragen.

ad 10 - 11) Nach dem gegenwärtigen Stand der Provenienzforschung nicht bekannt.

Werk:	**Gefangennahme Christi**
Künstler:	Johann Conrad Seekatz
derzeit:	Kunsthistorisches Museum - Gemäldegalerie
angegebene Herkunft:	1962 Widmung Dr. Heinrich und Marianne Röttinger

Nach dem derzeitigen Wissensstand der Provenienzforschung besteht kein Zusammenhang mit Raubkunst.

Werk:	**Stilleben mit Früchten, Weinglas und Blumenvase**
Künstler:	Isaak Soreau
derzeit:	Kunsthistorisches Museum - Gemäldegalerie
angegebene Herkunft:	erworben 1944

ad 1 - 3) Das Gemälde wurde im Herbst 1944 aus dem Privatbesitz von Frau Karoline Nehammer, Wien, zum Preis von 35.000 RM erworben. Spätere Restitutionsansprüche liegen nicht vor.

ad 10 - 11) Nach dem gegenwärtigen Stand der Provenienzforschung nicht bekannt.

Werk:	**Italienische Seeküste**
Künstler:	Dirck Stoop
derzeit:	Kunsthistorisches Museum - Gemäldegalerie
angegebene Herkunft:	erworben 1943

ad 1 - 3) Das Gemälde wurde am 29. September 1943 gemeinsam mit Inv. - Nr, 9065, Andrea Locatelli, Tanzende Bauern vor der Schenke, und Inv. - Nr. 9066, Joris van der Hagen, Waldlandschaft mit Hirschen und Rehen von der Kunstabteilung des Dorotheums Wien im freien Verkauf zum Preis von 12.000 RM erworben. Weitere Provenienzangaben für das Bild fehlen. Restitutionsansprüche wurden bisher nicht erhoben. Der gemeinsame Ankauf mit dem später restituierten Bild von Joris van der Hagen ist ein Hinweis, dem von Seiten der Provenienzforschung noch nachzugehen ist.

ad 10 - 11) Nach dem gegenwärtigen Stand der Provenienzforschung nicht bekannt.

Werk:	**Musizierende Gesellschaft**
Künstler:	nach Valentin de Boulogne
derzeit:	Kunsthistorisches Museum - Gemäldegalerie
angegebene Herkunft:	erworben 1942

ad 1 - 6) Das Gemälde wurde im Juli 1942 von der Galerie Sankt Lukas, Wien, zum Preis von 15.000 RM erworben. Angaben über die Vorprovenienz des Bildes fehlen. Spätere Restitutionsansprüche wurden nicht erhoben.

ad 10 - 11) Nach dem gegenwärtigen Stand der Provenienzforschung nicht bekannt.

Werk:	**Beweinung Christi**
Künstler:	Jan Thomas
derzeit:	Kunsthistorisches Museum - Gemäldegalerie
angegebene Herkunft:	aus dem Bundesmobiliendepot übernommen

Es handelt sich um die Übernahme von ehemals hofärarischem Besitz.

Werk:	**Männliches Bildnis**
Künstler:	Wolf Traut
derzeit:	Kunsthistorisches Museum - Gemäldegalerie
angegebene Herkunft:	erworben 1940

ad 1 - 6) Das Gemälde wurde am 5. Juli 1940 von der Galerie Sankt Lukas, Wien, zum Preis von 25.000 RM erworben. Der Name des Vorbesitzers geht aus den Akten der Gemäldegalerie nicht hervor. Nach 1945 wurde kein Besitzanspruch auf das Bild erhoben.

ad 10 - 11) Nach dem gegenwärtigen Stand der Provenienzforschung nicht bekannt.

Werk:	**Predigt Johannes d. Täufers**
Künstler:	Esaias van de Velde
derzeit:	Kunsthistorisches Museum - Gemäldegalerie
angegebene Herkunft:	1940 von der Galerie St. Lucas gewidmet

ad 1 - 3) Das Gemälde wurde am 4. Juli 1940 von der Galerie für Sankt Lukas, Wien, als Geschenk überlassen. Der Name des Vorbesitzers geht aus den Akten der Gemäldegalerie nicht hervor. Nach 1945 wurde kein Besitzanspruch auf das Bild erhoben.

ad 10 - 11) Nach dem gegenwärtigen Stand der Provenienzforschung nicht bekannt.

Werk:	**Die Malkunst**
Künstler:	Johannes Vermeer van Delft
derzeit:	Kunsthistorisches Museum - Gemäldegalerie
angegebene Herkunft:	erworben 1946

ad 1 - 3) Das Bild gehörte seit 1650 zum Fideikommiss der Familie Czernin, welcher eine umfangreiche Gemäldesammlung umfasste. Seit 1908 war Eugen Czernin Fideikommiss -

Besitzer, dessen Eigentumsrecht aber zugunsten des Nacherben eingeschränkt war. Ab 1933 galt ein Abkommen, dass Eugen Czernin über die übrige Galerie, Jaromir Czernin jedoch über das Vermeer - Bild verfügen sollte; im Falle eines Verkaufes habe dieser 20 % des Preises zu erhalten. Jaromir Czernin versuchte in den 30er Jahren das Bild zu verkaufen. Dies scheiterte nicht zuletzt daran, dass er keine Ausfuhrbewilligung erhielt. 1939 interessierte sich Adolf Hitler für das Bild; der Preis von 2.000.000 RM soll ihm aber zu hoch gewesen sein. Der Verkauf an einen weitereren Interessenten, den Industriellen Reemtsma, wurde von der Zentralstelle für Denkmalschutz verhindert. Über Vermittlung von Posse wurde schließlich das Bild von Hitler um 1.650.000 RM für das geplante Linzer Kunstmuseum gekauft. Das Gemälde wurde in weiterer Folge in Alt Aussee geborgen und von den U.S. Truppen nach München gebracht. Ende 1945 wurde es dem Kunsthistorischen Museum in Wien zur Verwahrung übergeben. Jaromir Czernin - Morzin stellte nun Rückstellungsanträge nach dem 2. und dem 3. Rückstellungsgesetz; und prozessierte gegen die Republik Österreich. Alle Anträge wurden in allen Instanzen abgewiesen. Nicht zuletzt wegen des Kaufpreises misslang der Nachweis, dass das Bild unter Zwang verkauft worden wäre. Als verfallenes Eigentum Hitlers gelangte es ins Eigentum der Republik Österreich.

ad 10 - 11)Nach dem gegenwärtigen Stand der Provenienzforschung nicht bekannt.

Werk:	**Südamerikanischer Königsgeier**
Künstler:	Jan Weenix
derzeit:	Kunsthistorisches Museum - Gemäldegalerie
angegebene Herkunft:	erworben 1942

ad 1 - 6) Das Gemälde wurde im Juli 1942 von der Galerie Sankt Lukas, Wien, zum Preis von 19.000 RM erworben. Angaben über die Vorprovenienz des Bildes fehlen. Spätere Restitutionsansprüche wurden nicht erhoben.

ad 10 - 11) Nach dem gegenwärtigen Stand der Provenienzforschung nicht bekannt.

Werk:	**Paulus in Athen**
Künstler:	Januarius Zick
derzeit:	Kunsthistorisches Museum - Gemäldegalerie
angegebene Herkunft:	erworben 1945

ad 1 - 6) Das aus deutschem Privatbesitz stammende Bild wurde gemeinsam mit dem Bild Januanus Zick, "Petrus und Johannes heilen den Lahmgeborenen im Tempel" (Inv. - Nr. 9082) am 8. Jänner 1945 vom Kunsthändler Dr. G. Johannes Jantzen, dem Vertreter der Bremer Werkschau GmbH., Abt. Galerie für Alte Kunst, Bremen, zum Kauf angeboten und von der Gemäldegalerie zum Gesamtpreis von 150.000 RM erworben. Genauere Provenienzangaben liegen ebensowenig vor wie spätere Restitutionsansprüche.

ad 10 - 11) Nach dem gegenwärtigen Stand der Provenienzforschung nicht bekannt.

Werk:	**Landschaft mit Hirt und Herde**
Künstler:	Aelbert Cuyp
derzeit:	Kunsthistorisches Museum - Gemäldegalerie
angegebene Herkunft:	1947 von Louis Rothschild gewidmet

Restitution nach § 1/1 des Kunstgegenständerückgabegesetzes derzeit in Bearbeitung.

Werk:	**Tielemann Roostermann**
Künstler:	Frans Hals
derzeit:	Kunsthistorisches Museum - Gemäldegalerie
angegebene Herkunft:	1947 von Baronesse Clarisse de Rothschild zum Gedächtnis an Baron Alphonse Rothschild gewidmet

Restitution gemäß § 1/1 des Kunstgegenständerückgabegesetzes derzeit in Bearbeitung.

Werk:	**Bildnis eines Mannes**
Künstler:	Frans Hals
derzeit:	Kunsthistorisches Museum – Gemäldegalerie
angegebene Herkunft:	1947 von Baron Louis de Rothschild gewidmet

Restitution gemäß §1/1 des Kunstgegenständerückgabegesetzes derzeit in Bearbeitung.

Werk:	**Bildnis einer Frau**
Künstler:	Frans Hals
derzeit:	Kunsthistorisches Museum - Gemäldegalerie
angegebene Herkunft:	1947 von Baron Louis de Rothschild gewidmet

Restitution gemäß §1/1 des Kunstgegenständerückgabegesetzes derzeit in Bearbeitung.

Werk:	**Maultiertreiber**
Künstler:	Hans de Jode
derzeit:	Kunsthistorisches Museum - Gemäldegalerie
angegebene Herkunft:	1947 von Baronessse Clarisse de Rothschild zum Gedächtnis an Baron Alphone Rothschild gewidmet

Restitution gemäß § 1/1 des Kunstgegenständerückgabegesetzes derzeit in Bearbeitung.

Werk:	**Mädchen und Offizier**
Künstler:	Gabriel Metsu
derzeit:	Kunsthistorisches Museum - Gemäldegalerie
angegebene Herkunft:	1947 von Baronesse Clarisse de Rothschild zum Gedächtnis an Baron Alphonse Rothschild gewidmet

Restitution gemäß §1/1 des Kunstgegenständerückgabegesetzes derzeit in Bearbeitung.

Werk:	**Halt vor dem Wirtshaus**
Künstler:	Isack van Ostade
derzeit:	Kunsthistorisches Museum - Gemäldegalerie
angegebene Herkunft:	1947 von Baronesse Clarisse de Rothschild zum Gedächtnis an Baron Alphonse Rothschild gewidmet

Restitution gemäß § 1/1 des Kunstgegenständerückgabegesetzes derzeit in Bearbeitung.

Werk:	**Graf Philipp Ludwig Wenzel Sinzendorf**
Künstler:	Hyacinthe Rigaud
derzeit:	Kunsthistorisches Museum - Gemäldegalerie
angegebene Herkunft:	1948 von Baronesse Clarisse de Rothschild zum Gedächtnis an Baron Alphonse Rothschild gewidmet

Restitution gemäß § 1/1 des Kunstgegenständerückgabegesetzes derzeit in Bearbeitung.

Werk:	**Erzherzog Leopold Wilhelm in seiner Galerie Brüssel**
Künstler:	David d. J. Teniers
derzeit:	Kunsthistorisches Museum - Gemäldegalerie
angegebene Herkunft:	1948 von Baronesse Clarisse de Rothschild zum Gedächtnis an Baron Alphonse Rothschild gewidmet

Restitution gemäß §1/1 des Kunstgegenständerückgabegesetzes derzeit in Bearbeitung.

Werk:	**Landschaft mit Jägern**
Künstler:	Jan Wynants
derzeit:	Kunsthistorisches Museum - Gemäldegalerie
angegebene Herkunft:	1948 von Baronesse Clarisse de Rothschild zum Gedächtnis an Baron Alphonse Rothschild gewidmet

Restitution gemäß §1/1 des Kunstgegenständerückgabegesetzes derzeit in Bearbeitung.

Werk:	**Gerhard von Westerburg**
Künstler:	Bartholomäus d.Ä. Bruyn
derzeit:	Kunsthistorisches Museum - Gemäldegalerie
angegebene Herkunft:	1947 von Rudolf Gutmann gewidmet

ad 1 - 6 und 10 - 11) Die Kunst - und Büchersammlung des jüdischen Großindustriellen tschechoslowakischer Staatsangehörigkeit Baron Rudolf Gutmann wurde im Oktober 1938 beschlagnahmt.

Restitution gemäß §1/1 des Kunstgegenständeruckgabegesetzes derzeit in Bearbeitung.

Werk:	**Diana Stuart, Lady Milner**
Künstler:	Sir Thomas Lawrence
derzeit:	Kunsthistorisches Museum - Gemäldegalerie
angegebene Herkunft:	1947 von Baronin Valentine Springer gewidmet

ad 1 - 3) Die Gemäldegalerie erwarb das aus der beschlagnahmten Sammlung der Baronin Valentine Springer, geb. Rothschild, stammende Bild im Februar 1941 gem. mit sieben anderen Gemälden vom Feindvermögensverwalter" der Baronin zum Gesamtpreis von 35.000 RM. Obwohl das KHM damit den Schätzwert aus eigenem Antrieb um 15.000 RM überboten hatte, war man sich in der Gemäldegalerie schon damals bewusst, dass auch die bezahlten 35.000 RM ein viel zu niedriger Preis waren. Baronin Valentine Springer stellte auf der Basis des

3. Rückstellungsgesetzes im Herbst 1947 den Antrag auf Restitution dieses und der anderen sieben von der Gemäldegalerie 1941 erworbenen Bilder. Die nunmehr englische Staatsbürgerin erklärte sich zur Abgeltung der vom KHM bezahlten 35.000 RM bereit, der Gemäldegalerie das Gemälde ins Eigentum zu übergeben. In der Folge wurden RA Karl Graf Trauttmansdorff, dem Rechtsvertreter der Eigentümerin, Frau Baronin Springer, am 25. November 1947 die übrigen sieben Gemälde ausgehändigt.

ad 10) Ja.

GRAPHISCHE SAMMLUNG ALBERTINA

Werk: **Mythologische Szene mit vier Figuren**
Künstler: Amigoni, Jacopo (Umkreis des)
derzeit: Albertina, Inv. Nr.30170

ad 1 - 3:
Vorbesitzer auf dem gegenwärtigen Stand der Provenienzrecherchen nicht bekannt. Die Zeichnung wurde 1944 unter nicht näher geklärten Umständen für 2.200 RM angekauft.
ad 10 - 11:
Auf dem gegenwärtigen Stand der Provenienzrecherchen nicht bekannt.

Werk: **Fliegende Putten**
Künstler: Brusaferro, Girolamo
derzeit: Albertina, Inv. Nr. 30168

ad 1 - 3:
Vorbesitzer auf dem gegenwärtigen Stand der Provenienzrecherchen nicht bekannt. Die Zeichnung wurde 1944 unter nicht näher geklärten Umständen für 3.500 RM angekauft.
ad 10 - 11:
Auf dein gegenwärtigen Stand der Provenienzrecherchen nicht bekannt.

Werk: **Die Aufrichtung der ehernen Schlange**
Künstler: Brusaferro, Girolamo (Umkreis)
derzeit: Albertina Inv. Nr.28558

ad 1 - 3:
Vorbesitzer auf dem gegenwärtigen Stand der Provenienzrecherchen nicht bekannt. Die Zeichnung wurde 1939 unter nicht näher geklärten Umständen für 60 RM angekauft.
ad 10 - 11:
Auf dem gegenwärtigen Stand der Provenienzrecherchen nicht bekannt.

Werk: ***Details aus einem Fries***
Künstler: Caldara da Caravaggio, Polidoro (nach)
derzeit: Albertina Inv. Nr.28535

ad 1 - 3:
Vorbesitzer auf dem gegenwärtigen Stand der Provenienzrecherchen nicht bekannt. Die Zeichnung wurde 1939 unter nicht näher geklärten Umständen für 80 RM angekauft.
ad 10 - 11:
Auf dem gegenwärtigen Stand der Provenienzrecherchen nicht bekannt.

Werk: **Architekturskizze in Untersicht für einen Kuppelban**
Künstler: Dorfmeister, Karl (?)
derzeit: Albertina Inv. Nr.29428

ad 1 - 3:
Vorbesitzer auf dem gegenwärtigen Stand der Provenienzrecherchen nicht bekannt. Die Zeichnung wurde 1942 unter nicht näher geklärten Umständen zusammen mit einem zweiten Blatt (Charles Meryon, Landschaft mit Schloß, Albertina Inv. Nr.29427) für insgesamt 600 RM angekauft.
ad 10 - 11:
Auf dem gegenwärtigen Stand der Provenienzrecherchen nicht bekannt.

Werk:	**Die heilige Familie mit dem Johannesknaben unter einem Baum sitzend**
Künstler:	Palma, Jacopo il Vecchio (Umkreis)
derzeit:	Albertina Inv. Nr.30171

ad 1 - 3:
Vorbesitzer auf dem gegenwärtigen Stand der Provenienzrecherchen nicht bekannt. Die Zeichnung wurde 1944 unter nicht näher geklärten Umständen für 750 RM angekauft.
ad 10 - 11:
Auf dem gegenwärtigen Stand der Provenienzrecherchen nicht bekannt.

Werk:	**Herkules mit Omphale**
Künstler:	Sabatelli, Luigi
derzeit:	Albertina Inv. Nr.29643

ad 1 - 3:
Vorbesitzer auf dem gegenwärtigen Stand der Provenienzrecherchen nicht bekannt. Die Zeichnung wurde 1942 unter nicht näher geklärten Umständen für 100 RM angekauft.
ad 10 - 11:
Auf dem gegenwärtigen Stand der Provenienzrecherchen nicht bekannt.

Werk:	**Des Künstlers Schwester Gerti vor ockerfarbener Draperie**
Künstler:	Schiele, Egon
derzeit:	Albertina Inv. Nr.27943

ad 1 - 3:
Die Provenienzangabe in der Anfrage muss korrigiert werden.
Die Zeichnung befindet sich bereits seit 1936 in der Albertina, wohin sie durch eine Schenkung gelangte.
ad 10 - 13:
Der/die Schenker/in wird in der Sammlungsdokumentation und den Akten der Albertina nicht namentlich genannt. Es ist daher auch nicht möglich, einen Bezug zu früheren oder späteren Ausfuhrbewilligungsverfahren herzustellen.

Werk:	**Junger Mädchenakt von ockerfarbigem Tuch umhüllt**
Künstler:	Schiele, Egon
derzeit:	Albertina, Inv. Nr.29228 (identisch mit Inv. Nr.29094)

ad 1 – 3:
Die Zeichnung wurde am 10.7.1941 für 33 RM auf der 467. Kunstauktion des Dorotheums Wien ersteigert (Kat. Nr. 485, Schätzpreise 60 RM, Ausrufpreis 30RM). Ein Vorbesitzer ist auf Dem gegenwärtigen Stand der Provenienzrecherchen nicht bekannt.
Ad 10 – 11:
Auf dem gegenwärtigen Stand der Provenienzrecherchen nicht bekannt.

Werk: **„Erlösung“**
Künstler: Schiele, Egon
Derzeit: Albertina Inv. Nr. 29764

Ad 1- 3:
Vorbesitzer auf dem gegenwärtigen Stand der Provenienzrecherchen nicht bekannt. Die Zeichnung wurde 1943 unter nicht näher bekannten Umständen für 300 RM angekauft.
Ad 10 – 11:
Auf dem gegenwärtigen Stand der Provenienzrecherchen nicht bekannt.

Werk: **Sitzende Frau mit hochgeschobenem Unterkleid**
Künstler: Schiele, Egon
Derzeit: Albertina Inv. Nr. 29765

Ad 1 – 3:
Vorbesitzer auf dem gegenwärtigen Stand der Provenienzrecherchen nicht bekannt. Die Zeichnung wurde 1943 unter nicht näher geklärten Umständen für 300 RM angekauft.
Ad 10 – 11:
Auf dem gegenwärtigen Stand der Provenienzrecherchen nicht bekannt.

Werk: **Sitzendes Paar – Egon und Edith Schiele**
Künstler: Schiele, Egon
Derzeit: Albertina Inv. Nr. 29766

Ad 1 – 3:
Vorbesitzer auf dem gegenwärtigen Stand der Provenienzrecherchen nicht bekannt. Die Zeichnung wurde 1943 unter nicht näher geklärten Umständen für 300 RM angekauft.
Ad 10 – 11:
Auf dem gegenwärtigen Stand der Provenienzrecherchen nicht bekannt.

Werk: **Liegender Frauenakt, den Oberkörper aufgestützt**
Künstler: Schiele, Egon
Derzeit: Albertina Inv. Nr. 29981

Ad 1- 3:
Die Zeichnung wurde 1943 aus dem Privatbesitz des Wiener Bibliothekars Hans Ankwicz – Kleehoven für 500 RM angekauft. Ein Vorbesitzer ist nach dem gegenwärtigen Stand der Provenienzrecherchen nicht bekannt.

ad 10 - 11:
Auf dem gegenwärtigen Stand der Provenienzrecherchen nicht bekannt.

Werk:	**Marthyrium der heiligen Katherina**
Kütistler:	Zuccaro, Fedrico (nach)
derzeit:	Albertina Inv. Nr.29028

ad 1 - 3:
Vorbesitzer auf dem gegenwärtigen Stand der Provenienzrecherchen nicht bekannt. Die Zeichnung wurde 1941 unter nicht näher geklärten Umständen für 120 RM angekauft.
ad 10 - 11:
Auf dem gegenwärtigen Stand der Provenienzrecherchen nicht bekannt.

SECRET

Industry Report No. 6

BRUCKER ZUCKERFABRIK CLEMENS AUER
(Former name: OESTERREICHISCHE
ZUCKERINDUSTRIE A.G.)

I. RECOMMENDATIONS

1. Under the U.S. definition, the acquisition of most of the German interest must be regarded as a case of duress and inadequate compensation, mostly in the process of Aryanization. Hence no legitimate German interest exists with the exception of about 6% acquired in the open market or in a way not known. 1/

2. No different position is indicated.

3. The Soviets regard all acquisitions as valid and hence regard Brucker Zucker as a 100% German asset.

II. NATURE OF ENTERPRISE

The Brucker Zuckerfabrik, with its factory at

1/ In Chapter VI of the Report it is assumed that even these acquisitions were involuntary.

SECRET

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Bruck a.d. Leitha (Lower Austria)-- now under USIVA administration--is the country's most important sugar refinery, accounting for about one-fifth of Austrian production. Total prewar assets amounted to about (new) S 18 million, of which about S 13 million represented equity.

The property has suffered considerable damage by military activities, requisitions and looting. Basically, however, plant and equipment seem to be in fair shape. The factory is in operation, but liquid funds apparently are short. Even at the present time the value of the property is substantial, probably well above 5 million pre-war Schillings or about $ 2 million.

III. OWNERSHIP BEFORE ANSCHLUSS

Early in 1938 most of the 80,000 outstanding shares of the corporation were closely held as follows:

1. 21,665 shares by LOEW group (Austrian; Jewish)
2. 16,480 shares by GRAETZ group (Austrian; part Jewish; held through a family foundation located in Switzerland)

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3. 13,687 shares by OTTO PICK (Czech; Jewish)
4. 6,500 shares by DAVIES-LLOYD group (British; associated with PICK)
5. 12,850 shares by BLOCH-BAUER group (Czech and Austrian; Jewish)
6. 4,448 shares by PATZENHOFER group (Austrian; non-Jewish)

Total 75,630 shares, or 94.5 percent.

The nationality of most of the shareholders, or their heirs has changed since 1938. At the present time nearly one-half of the interest in Brucker Zuckerfabrik is claimed by U.S. citizens (Loew and Graetz groups) and an additional 25 percent or more by British subjects (Davies, Lloyd, Pick, and some Bloch-Bauer heirs). There also seem to exist substantial Swiss, Czech, and Yugoslav interests in the rest of the equity.

The shares were occasionally traded on the Vienna stock exchange and before Anschluss were quoted at about S 300 to S 350 or RM 200 to RM 230. This would

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indicate a value of the equity of about $ 26 million or RM 18 million, well above balance sheet value. However, dividend payments of $ 15 to $ 18.75 per share were not out of line with the stock exchange quotations.

IV. CHANGES IN OWNERSHIP 1938-1945

A. Aryanization

Aryanization of Oesterreichische Zuckerindustrie in essence took the form of (a) the acquisition at a low price by means of bank credit of almost all outstanding shares by one CLEMENS AUER, a Rhenish industrialist (now reported under arrest in Austria); (b) the transformation of the corporation into a sole proprietorship owned by Auer; and (c) the repayment of the bank credits out of the liquid funds of Brucker Zuckerfabrik. The result of the numerous and complicated transactions involved was that Auer acquired Oesterreichische Zuckerindustrie without any investment of his own.

Auer, with the active support of high NSDAP functionaries and the consent of the competent German

authorities (Vermoegensverwaltungsstelle) in 1938 and 1939 acquired the following blocks of shares, mostly through the Laenderbank:

1. A block of 33,695 shares (16,480 from Graetz; 10,000 from Pick; 7,200 from Bloch-Bauer) for a consideration of about RM 2,50[illegible],000 in blocked marks (Average RM 75-). That duress was involved is indicated by the fact that the son-in-law of Pick and nephew of the company's President Ferdinand Bloch-Bauer, one Leopold Bloch-Bauer, had been arrested immediately after the Anschluss and was released and given an exit permit through the intervention of the Laenderbank only after he had undertaken to secure the sale of important foreign-owned blocks of shares to German interests.

2. Pick's remaining 3,687 shares for RM 276,525 (average RM 75-). The purchase price is reported to have been used to reduce a loan of another enterprise of Pick's (Makospinnerei and Zwirnerei Pick & Co., Wiener Neustadt) at the Merkurbank.

3. Lloyd and Davies' entire holdings of 6,500 shares for RM 486,525 in blocked account (average RM 75-);

use of proceeds as under 2.

4. Another 2,100 shares of the Bloch-Bauer block from German Ministry of Finance, which had confiscated the shares in payment of "flight tax", for RM 193,200 (average RM 92-).

5. The Loew block of 21,665 shares and the remaining 3,350 shares of the Bloch-Bauer block were confiscated by the German tax authorities in connection with criminal tax evasion proceedings against the owners and the corporation and were sold to Auer for RM 2,246,850 (average RM 90-).

6. The Ratzenhofer block of 4,448 shares for RM 400,320 (average RM 92-). In this transaction--the last large acquisition by Auer made in October 1939--considerable pressure was exercised on the seller.

7. Miscellaneous smaller blocks aggregating 3,538 shares at prices and from sources not known.

Auer thus obtained 78,968 shares (98.7% of the total) for RM 6.5 million, or an average of about RM 82. Auer also had to pay to the Government an "arisierungs-

abgabe" of nearly RM 300,000 for permission to acquire the Jewish interest in the firm. He raised the necessary funds by borrowing RM 6,782,265 from four banks, RM 3,282,265 from the Laenderbank, Vienna, and RM 3,500,000 from three banks in Cologne.

B. Transformation into sole Proprietorship

At the end of 1939, after the acquisition of the predominant majority of the shares by Auer, the Oesterreichische Zuckerindustrie A.G. was transformed from a corporation into a sole proprietorship under the new name of Brucker Zuckerfabrik Clemens Auer. On this occasion the capital of the corporation was first restated at RM 13,444,583 (against a previous book value of RM 6,666,666 and a purchase price by Auer of about RM 6.5 million), and then reduced by about RM 6,453,000 to repay out of the firm's liquid assets the outstanding bank debt, incurred by Auer in acquiring the shares, to the initial capital of the proprietorship of RM 6,991,700.

On March 31, 1944 the sole proprietorship was transformed, it is alleged in order to camouflage Auer's

interest, into a limited partnership. One KARL RIGAL, an Austrian sugar factory manager, became active partner with a contribution being set at RM 4,610,000, the reduction from the initial capital of 1940 being due to accumulated net losses and special depreciation charges during the years 1940 to 1944.

V. OWNERSHIP AT END OF WAR

In March, 1945 Auer still owned practially 100% of the capital of Brucker Zucker.

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B e s c h l u s s

Rechtssache:

Klagende Parteien: 1) Maria Altmann, Kauffrau
3065 Danalda
USA-90064 Los Angeles
2) George Bentley, Geschäftsmann
2600 Lunada Lane, Alamo
USA - 945-7-1023
3) Trevor Mantle, Angestellter
1431 W. 534d Ave,
Canada - V7 1L1, Vancouver, BC

vertreten durch: Dr. Stefan Gulner, RA
1010 Wien, Lugeck 7

Beklagte Partei: Republik Österreich

vertreten durch: Finanzprokuratur
1010 Wien, Singerstraße 17-19

wegen: S 2,000.000,-- s.A.

Den Antragstellern (Klägern) wird Verfahrenshilfe gemäß § 64 Abs. 1 Z 1 lit. a, b und c ZPO insoweit gewährt, als die Erstklägerin bzw. den Drittkläger jeweils Auslagen von über S 2,000.000,-- treffen und hinsichtlich des Zweitklägers insoweit, als ihn Auslagen von mehr als S 1,000.000,-- treffen.

B e g r ü n d u n g :

Die die Verfahrenshilfe beantragenden Antragsteller beabsichtigen, gegen die Republik Österreich Klage auf Herausgabe der Bilder des Malers Gustav Klimt mit den Bezeichnungen Buchenwald (Birkenwald, 1903); Adele Bloch-Bauer I (1907) bzw. II (1912); Apfelbaum I (1912) und "Häuser in Unterach am Attersee" (1916) zu erheben. Für den Fall, dass diesem Begehren nicht stattgegeben werden sollte, wird die

Feststellung in diesem Urteil beantragt werden, dass der klagsgegenständliche Sachverhalt den Tatbestand des § 1 Z 1 bzw. Z 2 Restitutionsgesetz 1998 erfülle.

Nach der, dem Verfahrenshilfeantrag beigelegten Klagsschrift kann jedenfalls nicht von vornherein eine etwaige Klagsführung als mutwillig oder offenbar aussichtslos qualifiziert werden.

Aus den von den Antragsstellern vorgelegten Vermögensbekenntnissen ergibt sich folgendes:

Die Erstantragstellerin wohnt im eigenen Haus, das zirka 1975 ausbezahlt wurde und das seinerzeit um S 900.000,-- angekauft wurde. Sie verkauft in ihrem Haus Damenmode, woraus sie ein jährliches Reineinkommen von zirka S 200.000,-- bezieht. Weiters erhält sie monatliche Pension von S 8.000,-- und jährlich zirka S 14.000,-- Pension aus Österreich. Sie verfügt über Bargeld in Höhe von zirka S 600.000,-- sowie zwei Bankdeposite von je $ 100.000,--. Schulden oder Unterhaltspflichten hat sie keine, auch sonst kein wesentliches Vermögen.

Der Zweitantragsteller bewohnt ebenfalls ein ihm gehöriges Haus mit einem Wert von S 5,850.000,--. Er erhält als selbständiger Erwerbstätiger ein jährliches Reineinkommen von S 550.000,--, hat Bargeld von zirka S 1.000,-- und ein Einlagebuch von S 195.000,--. Weiters ist er Eigentümer von Wertpapieren im Wert von S 1,352.000,--. Er hat eine Lebensversicherung abgeschlossen mit einer Versicherungssumme von S 2,340.000,--. Er schuldet einem Gläubiger S 1,500.000,--. Er hat weder Unterhaltsansprüche noch Unterhaltspflichten.

Der Drittantragsteller ist Hälfteeigentümer der Liegenschaft, auf der er auch wohnt. Als unselbständig Erwerbstätiger bezieht er ein monatliches Einkommen einschließlich aller Zulagen und Beihilfen, nach Abzug der öffentlichen-

rechtlichen Abgaben und Beiträge ohne Abzug der Schulden von S 32.500,--. Die gesamte Liegenschaft ist S 4.400.000,-- wert. Er hat Bargeld in der Höhe von S 44.000,-- und eine Bankeinlage von S 2,110.000,--. Auf einem Bankkonto befinden sich weiters S 44.000,--. Er hält Wertpapiere im Wert von $ 8.000,-- und hat eine Lebensversicherung mit der Versicherungssumme von $ 80.000,-- abgeschlossen, wobei seine Söhne die Berechtigten sind. Er besitzt weiters Kunstgegenstände im Wert von S 50.000,--. Der Drittantragsteller hat weder Schulden, noch Unterhaltsansprüche bzw. -pflichten.

Nach ständiger Rechtssprechung ist Verfahrenshilfe nur insoweit zu gewähren, als ansonsten der notwendige Unterhalt, der zwar über dem Existensminimum, aber den standesgemäßen Unterhalt nicht erreichend, liegt, gefährdet wäre. Notwendiger Unterhalt ist derjenige, den die Partei für sich und die Familie zu einer einfachen Lebensführung benötigt. Maßgebend ist dabei die Höhe der konkreten Verfahrenskosten, von denen die Partei befreit werden soll. Für die Verfahrenshilfegewährung ist auch auf das Vermögen des Verfahrenshilfewerbers Bedacht zu nehmen, insbesondere dessen Erträgnisse. Dabei ist auch grundsätzlich die Vermögenssubstanz in Anspruch zu nehmen (EFSlg. 34.364, 36.694, 39.146ff, 52.138, 55.006f, 64.011, 64.013, 76.033 und 79.158ff).

Wenn man nun berücksichtigt, dass bei einem Streitwert von S 2 Mrd. die Pauschalgebühr über S 20,000.000,-- beträgt, ist es aufgrund der dargestellten Einkommens- und Vermögensverhältnisse evident, dass den Klägern jedenfalls nicht zugemutet werden kann, die gesamten Auslagen selbst zu tragen. Allerdings haben sie die aus dem Spruch ersichtlichen Beträge selbst auszulegen, weil ihnen insoweit die Heranziehung von Vermögen zugemutet werden kann. Insbesondere dürfen nämlich Sparguthaben nicht zu Lasten der Allgemein-

heit geschont werden (EFSlg 76.033, 39.149 und 36.694). Dies gilt umso mehr, als das Rekursgericht (OLC Wien 11 R 83/99b) erst jüngst ausgesprochen hat, dass bei der wirtschaftlichen Leistungsfähigkeit von Verfahrenshilfewerbern zu deren Ungunsten auch zu berücksichtigen ist, dass die Pauschalgebühr auf entsprechendes Ersuchen in Raten gezahlt und damit die wirtschaftliche Belastung auf mehrere Monate aufgeteilt werden kann.

Landesgericht für ZRS Wien
1016 Wien, Schmerlingplatz 11
Abt. 9, am 2.11.1999

Für die Richtigkeit der Ausfertigung
der Leiterin der Geschäftsabteilung:

FINANZPROKURATUR
1011 Wien, Singerstraße 17 - 19
Tel. 51 439/140DW
Fax.: 512 24 45
PSK-Kto.Nr.: 5500.017 DVR: 0057169
e-Mail: Post.FP04.FPR@bmf.gv.at
IV/36000

9 Nc 9/99x

An das
Landesgericht für ZRS Wien

Museumstraße 12
1016 Wien

Gebühreneinzug gem. AEV

Klagende Parteien : 1) Maria Altmann, Kauffrau,
3065 Danalda, USA-90064 Los Angeles
2) George Bentley, Geschäftsmann,
2600 Lunada Lane, Alamo,
USA - 945 - 7 - 1023
3) Trevor Mantle, Angestellter,
1431 W. 534d Ave,
Canada - V7 1L1, Vancouver, BC

vertreten durch Dr. Stefan Gulner, Rechtsanwalt,
1010 Wien, Lugeck 7

Beklagte Partei : **Z000109**
Republik Österreich

G010670
vertreten durch die Finanzprokuratur,
1011 Wien, Singerstraße 17-19

wegen: S 2,000.000.000,– s.A.

I. Rekurs der beklagten Partei
gegen die Bewilligung der Verfahrenshilfe
II. Antrag auf Entzug der bewilligten Verfahrenshilfe

1-fach
1 Rubrik
3 Beilagen

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20/12 '99 11:38 +43 1 313 40 92 74 Dr.Stefan Gulner -->0001213473222 Pg. 02

I.

1. In der umseits angeführten Rechtssache erhebt die beklagte Partei, vertreten durch die Prokuratur, gegen den Beschluss des LG für ZRS Wien vom 02.11.1999, 9 Nc 9/99x-4, der Prokuratur zugestellt am 30.11.1999, sohin innerhalb offener Frist, nachstehenden

Rekurs

an das Oberlandesgericht Wien.

2. Rekurserklärung (Anfechtungserklärung):

Der Beschluss des LG für ZRS Wien wird insofern angefochten, als den Antragstellern (Klägern) Verfahrenshilfe gemäß § 64 Abs 1 Z 1 lit. a), b) u. c) ZPO insoweit gewährt wird, als die Erstklägerin und den Drittkläger jeweils Auslagen von über S 2,000.000,– und den Zweitkläger Auslagen von mehr als S 1,000.000,– treffen.

3. Rekursgründe:

A) Mangelhaftigkeit des Verfahrens
B) Unrichtige rechtliche Beurteilung

ad A) Mangelhaftigkeit des Verfahrens:

A) 1. Die Erstantragstellerin gibt gemäß ihrem am 30.09.1999 unterfertigten Vermögensbekenntnis unter Pkt. IV. 4. Einlagebücher u.a. auch eine "Höhe der Einlage: 2,000.000.– S" an, welche sich nicht in den gerichtlichen Feststellungen (Beschluss, Seite 2, oben) findet; zwar sind die beiden Bankdeposite von je $ 100.000,– angeführt, die Einlage von S 2,000.000,– ist keinem konkreten Konto oder Einlagebuch zugeordnet, es findet sich lediglich im Vermögensbekenntnis die Eintragung: "First Republic CD 220060545" und "Peoples Bank CD 5180526", sodass eine konkrete Zuordnung der angeführten Einlage zu einem der beiden Einlagebücher/Konten nicht möglich ist.

Auch diese angeführte Einlage wäre jedenfalls der Beschlussfassung des Erstgerichts zugrunde zu legen gewesen, worin eine Mangelhaftigkeit des Verfahrens begründet ist.

Der Zweitantragsteller verfügt ebenfalls über ein eigenes Haus mit einem letzten steuerlichen Einheitswert von S 6,850.000,– (die Erstantragstellerin hat diesbezüglich jegliche Angaben unterlassen) sowie über ein höheres Jahreseinkommen als die Erstantragstellerin, nämlich S 550.000,–, und über Bargeld, Einlagebuch und Wertpapiere von insgesamt rund S 1,548.000,– sowie eine Lebensversicherung mit einer Versicherungssumme von S 2,340.000,–, wogegen Schulden von S 1,500.000,– stehen. Selbst wenn man davon

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ausgeht, dass erspartes Vermögen und Schulden in etwa einander aufheben, so verbleibt doch auf Basis der gerichtlichen Feststellungen im Vergleich zur Erstantragstellerin ein höheres Jahreseinkommen von rund S 340.000,-- sowie das Liegenschaftsvermögen im aktuellen Wert von S 5.850.000,-- und die Lebensversicherung.

Eine Feststellung, wieso auf dieser Basis der Zweitantragsteller bereits ab Auslagen von mehr als S 1,000.000,– Verfahrenshilfe genießen solle, mangelt jedoch den gerichtlich getroffenen Feststellungen, sodass auch hierin eine Mangelhaftigkeit des Verfahrens begründet liegt.

Der Drittantragsteller verfügt jedenfalls im Unterschied zur Erstantragstellerin über ein höheres Jahreseinkommen von rund S 180.000,– sowie aufgrund des Hälfteanteils des von ihm bewohnten Hauses (letzter steuerlicher Einheitswert S 4,400.000,–) sowie auf Basis der gerichtlich getroffenen Feststellungen über ein etwas geringeres Bar-, Einlage- und Wertpapiervermögen als die Erstantragstellerin, jedenfalls aber auch über eine Lebensversicherung von S 880.000,–, sodass mangels gerichtlich getroffener Feststellungen nicht nachvollziehbar ist, wieso er ebenfalls schon ab einem Betrag von über S 2,000.000,– berechtigt wäre, Verfahrenshilfe zu beanspruchen; auch diesbezüglich erweist sich daher die Mangelhaftigkeit des Verfahrens im Rahmen der getroffenen Feststellungen.

Der Drittantragsteller hat überdies im Vermögensbekenntnis unter Pkt. IV. 11. c) "Sonstige Sachen von größerem Wert, wie Schmuck, Kunstgegenstände, Sammlungen" angegeben: "S 50.000,-- Miscellaneous Prints and Artwork". Die Erstantragstellerin und der Zweitantragsteller haben diese Rubrik jeweils mit "keine" ausgefüllt.

A) 2. Sämtliche drei Antragsteller, die laut beabsichtigter Klagsführung gegen die Republik Österreich aufgrund behaupteter Erbansprüche nach Ferdinand Bloch-Bauer die Vermögensbekenntnisse vorlegten, haben es aber unterlassen, anzugeben, dass den Erben nach Ferdinand Bloch-Bauer auf Basis des Beschlusses des Beirates gemäß § 3 des Bundesgesetzes vom 04.12.1998, BGBl. I 181/1998, vom 28.06.1999 samt nachfolgender Entscheidung der Frau Bundesministerin für Unterricht und kulturelle Angelegenheiten Kunstgegenstände im Wert von mehreren Millionen Schilling (jedenfalls zweistelliger Betrag) ausgefolgt worden sind; hievon sind die Erben nach Ferdinand Bloch-Bauer zu Handen ihrer Rechtsvertretung Fried, Frank, Harris, Shriver & Jacobson in Los Angeles sowie an Frau Prof. Dr. Nelly Auersperg, Vancover, mit Schreiben des BMUkA vom 28.07.1999, GZ. 16.616/121-IV/2A/99, nachweislich in Kenntnis gesetzt worden.

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Bei diesen Kunstgegenständen handelt es sich um:

a) Graphische Sammlung Albertina:

1. Gustav Klimt, *Stehende Dame in Pelzmantel*, Bleistift
   Albertina-Inv.Nr. 30695

2. Gustav Klimt, *Stehende Dame in Pelzumhang*, 2 mal, Bleistift
   Albertina-Inv.Nr. 30696

3. Gustav Klimt, *Dame nach links in weitem Faltenkleid*, Kreide
   Albertina-Inv.Nr. 30697

4. Gustav Klimt, *Dame sitzend in weitem Faltenkleid*, Kreide
   Albertina-Inv.Nr. 30698

5. Gustav Klimt, *Dame sitzend in weitem Faltenkleid*, 2 mal, Kreide
   Albertina-Inv.Nr. 30699

6. Gustav Klimt, *Dame sitzend in weitem Faltenkleid nach links*, Kreide
   Albertina-Inv.Nr. 30.700

7. Gustav Klimt, *Dame sitzend in weitem Faltenkleid nach links*, Kreide
   Albertina-Inv.Nr. 30701

8. Gustav Klimt, *Dame stehend in weitem Faltenkleid nach vorne*, Kreide
   Albertina-Inv.Nr. 30702

9. Gustav Klimt, *Dame im Fauteuil in weitem Faltenkleid von vorne*, Kreide
   Albertina-Inv.Nr. 30703

10. Gustav Klimt, *Dame im Fauteuil in weitem Faltenkleid von vorne, Kopf geneigt*, Kreide
    Albertina-Inv.Nr. 30704

11. Gustav Klimt, *Dame im Fauteuil in weitem Faltenkleid nach links*, Kreide
    Albertina-Inv.Nr. 30705

12. Gustav Klimt, *Dame im Fauteuil in weitem Faltenkleid, Kopf in die Hand gestützt*, Kreide
    Albertina-Inv.Nr. 30706

13. Gustav Klimt, *Stehende Dame von vorne, kleine Wiederholung des Rocks*, Kreide
    Albertina-Inv.Nr. 30.707

14. Gustav Klimt, *Dame sitzend von vorne, Kopf fehlt*, Kreide
    Albertina-Inv.Nr. 30708

15. Gustav Klimt, *Dame im Fauteuil in weitem Faltenkleid, Kopf fehlt*, Kreide
    Albertina-Inv.Nr. 30709

16. Gustav Klimt, *Dame im Fauteuil nach links*, Kreide
    Albertina-Inv.Nr. 30710

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b) Museum für Angewandte Kunst:

1. Tête-à-tête, Goldrauten, Wien, 1787
MAK - Inv.Nr. 29.479, Ke 7779

2. Kaffeebecher und Untertasse, Reliefgold, sign. Kothgasser, 1798
MAK - Inv.Nr. 29.480, Ke 7780

3. Kaffeebecher und Untertasse, dunkel- u. hellblau gestreift, 1793/ 94
MAK - Inv.Nr. 29.481, Ke 7781

4. Kaffeebecher und Untertasse, reicher Reliefgolddekor, 1799
MAK - Inv.Nr. 29.482, Ke 7782

5. Kaffeebecher und Untertasse, Streifen in Gold und Blau, 1797/ 98
MAK - Inv.Nr. 29.484, Ke 7784

6. Kaffeebecher und Untertasse, Reliefgold, Ziegel, 1799
MAK - Inv.Nr. 29.485, Ke 7785

7. Kaffeebecher und Untertasse, grüner Fond, Reliefbilder, 1798
MAK - Inv.Nr. 29.486, Ke 7786

8. Kaffeebecher und Untertasse, roter Fond, Reliefbilder, 1796
MAK - Inv.Nr. 29.487, Ke 7787

9. Deckelbecher und Untertasse, Lusterfond, 1790
MAK - Inv.Nr. 29.490, Ke 7790

10. Teller, Trinkende Tauben, 1796
MAK - Inv.Nr. 29.492, Ke 7792

11. Teller, Vogelbild, 1795
MAK - Inv.Nr. 29.494, Ke 7794

12. Teller mit Tieren, 1801
MAK - Inv.Nr. 29.495, Ke 7795

13. Teller mit exotischen Tieren, 1801
MAK - Inv.Nr. 29.496, Ke 7796

14. Schokoladebecher und Untertasse, „Flora", „Psyche", 1803/ 04
MAK - Inv.Nr. 29.499, Ke 7799

15. Kaffeebecher und Untertasse, blau - silber gestreift, 1797
MAK - Inv.Nr. 29.500, Ke 7800

16. Teebecher und Untertasse, Hofbibliothek, 1800/ 01
MAK - Inv.Nr. 29.504, Ke 7804

17. 2 Dosen und 1 Büchse, grün, bunte Miniaturen, 1798/ 99
MAK - Inv.Nr. 29.506, Ke 7806

Bescheinigung :

Schreiben des BMUkA vom 28.07.1999, GZ 16.616/121-IV/2a/99, Beil./1:

Übergabe- Übernahmebestätigung der Graphischen Sammlung Albertina vom 16.11.1999, Beil./2; Übergabe- Übernahmebestätigung des Museums für Angewandte Kunst vom 18.11.1999, Beil./3;

A) 3. Dem Beschluss im gegenständlichen Nc-Verfahren liegt daher eine Mangelhaftigkeit des Verfahrens zugrunde, da das Erstgericht ohne auf die Vollständigkeit der Vermögensverzeichnisse zu drängen (die Erstantragstellerin unterließ es, zum letzten steuerlichen Einheitswert ihres Hauses auch nur Stellung zu nehmen) und ohne den Antragstellern Ergänzungen oder die Beibringung von Belegen aufzutragen, den gegenständlichen Beschluss fasste, wobei wesentliche, unter den Punkten A) 1. und A) 2. angeführte und zu treffende Feststellungen unterblieben.

Das Erstgericht unterließ es aber auch zu den aufgezeigten Fragen und zur Erörterung erheblich erscheinender Tatsachen eine mündliche Verhandlung gem. § 72 ZPO anzuberaumen. Die Unterlassung einer solchen Verhandlung bildet aber jedenfalls dann einen Verfahrensmangel, wenn infolge der Unterlassung der mündlichen Verhandlung die Entscheidungsgrundlage des konkreten Falles unvollständig geblieben ist, da durch Auskunftserteilung der Antragsgegnerin, insbesondere zur Vermögenssituation der Antragsteller, die notwendige Entscheidungsgrundlage des Gerichts vervollständigt worden wäre.

§ 72 ZPO räumt nämlich der Antragsgegnerin das rechtliche Gehör ein, sodass dieses Gehör jedenfalls dann verletzt ist, wenn der Beschluss ohne Anhörung die Erhebung von für die Entscheidung wesentlichen Umständen verhindert. Das diesbezügliche, erstmals seitens der Antragsgegnerin erstattete Vorbringen ist daher auch im Sinne des § 482 Abs 2 ZPO nicht als Neuerung aufzufassen, da es sich hiebei lediglich um die Dartuung der Relevanz des aufgezeigten Verfahrensmangels handelt.

A) 4. Wie auch noch in der Rechtsrüge anzuführen ist, geht das Erstgericht bezüglich der (grundsätzlichen) Gewährung der Verfahrenshilfe für die Antragsteller offensichtlich von einer materiellen Gegenseitigkeit des diesbezüglichen Anspruchs aus:

Laut Angaben im Vermögensbekenntnis hat die erst- und zweitantragstellende Partei die US-amerikanische Staatsbürgerschaft und die drittantragstellende Partei die britische Staatsbürgerschaft mit Wohnsitz in Kanada.

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Es handelt sich sohin jedenfalls bei der erst- und zweitantragstellenden Partei um EU-Ausländer, welche daher auch nicht unter dem Blickwinkel der Regelungen es EU-Rechtes, insbesondere der Inländergleichbehandlung (Lenz, EU-Vertrag, Art. 52, Anm. II, Rn. 4-6, samt Zitaten) gesehen werden können. Zwar ist die Verfahrenshilfe gemäß § 63 ZPO sowohl für Inländer als auch Ausländer (und Staatenlose) eröffnet, doch setzt die den Ausländern zu gewährende Verfahrenshilfe materielle Gegenseitigkeit voraus (Fasching, Ergänzungsband, § 63, Anm. 13). Formelle Gegenseitigkeit reicht hiefür trotz der Bestimmung des § 33 ABGB nicht aus, denn durch die bloße Gleichstellung von österreichischen Staatsbürgern mit den Angehörigen von ausländischen Staaten ist nicht ausgeschlossen, dass aufgrund einer Bestimmung des betreffenden ausländischen Prozessgesetzes gerade ein österreichischer Staatsbürger vor dem ausländischen Gericht kein Verfahrenshilferecht genießt.

Da mit den Vereinigten Staaten von Amerika nicht einmal ein Übereinkommen, weder bilateraler noch multilateraler Art, über die wechselseitige Anerkennung von Zivilurteilen besteht (vgl. Czernich, die Vollstreckung österreichischer Leistungsurteile in den Vereinigten Staaten von Amerika, WBl. 1995, Seite 10), ist - unabhängig von der Aufsplitterung in 50 unterschiedliche Prozessrechte der jeweiligen Bundesstaaten - sohin nicht einmal auf formeller Ebene eine Gegenseitigkeit bezüglich der Verfahrenshilfe der erst- und zweitantragstellenden Partei gegeben (vgl. EFSlg. 41.664; Länderübersicht zu § 39 RHEZiv), sodass eine tatsächliche Gewährung mangels materielle Gegenseitigkeit unzulässig ist.

Feststellungen, worin das Erstgericht eine materielle Gegenseitigkeit bezüglich der erst- und zweitantragstellenden Partei erblickt, fehlen zur Gänze. Auch eine Anfrage an das Bundesministerium für Justiz gemäß § 41 RHEZiv unterließ das Erstgericht, sodass auch mangels einer entsprechenden Beauskunftung nicht ersichtlich ist, auf welcher Grundlage das Erstgericht die obligatorisch erforderliche materielle Gegenseitigkeit für die Gewährung von Verfahrenshilfe als gegeben ansieht.

Allfällige, bloße Vermutungen reichen aber für die Befreiung nicht aus (Fasching, Kommentar, Zivilprozessgesetze II, § 57, Anm. 6), unabhängig davon, dass es den erstgerichtlichen Überlegungen diesbezüglich an jeder Darlegung mangelt. Vielmehr hätte es konkreter Feststellungen bedurft, worin in concreto bezüglich der erst- und zweitantragstellenden Partei eine materielle Gegenseitigkeit liege.

Zwar besteht auf Basis des österreich-britischen Rechtshilfeabkommens vom 31.03.1931 (BGBl. 1932/45), welches auch für Kanada maßgeblich ist (BGBl. II 1934/359), bezüglich der drittantragstellenden Partei eine Rechtshilfevereinbarung, doch hat auch diesbezüglich das Erstgericht jegliche Feststellungen bezüglich der Wirksamkeit einer materiellen Gegenseitigkeit

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unterlassen; auch bezüglich der drittantragstellenden Partei fehlen daher Feststellungen, worin in concreto eine materielle Gegenseitigkeit liege.

A) 5. Der angefochtene Beschluss weist sohin wesentliche Verfahrensmängel durch Unterlassung notwendiger Feststellungen bezüglich vorhandenen Vermögens, insbesondere bezüglich der Kunstgegenstände, sowie bezüglich der materiellen Gegenseitigkeit als Grundlage für die Gewährung der Verfahrenshilfe auf, sodass auf Basis dieser Feststellungsmängel, welche auch als sekundäre Feststellungsmängel aufgrund unrichtiger rechtlicher Beurteilung der Sache geltend gemacht werden, eine unrichtige rechtliche Beurteilung der Sache erfolgte.

B) Unrichtige rechtliche Beurteilung:

B) 1. Der unter dem Rekursgrund der Mangelhaftigkeit des Verfahrens geltend gemachte Rekursgrund wird auch unter diesem Rekursgrund als sekundärer Verfahrensmangel geltend gemacht, da die aufgezeigten Verfahrensmängel zu einer unrichtigen rechtlichen Beurteilung der Sache dergestalt geführt haben, indem bei der Erstantragstellerin ein Vermögensbetrag von S 2,000.000,-- nicht berücksichtigt wurde und beim Zweitantragsteller keine Begründung ersichtlich ist, warum dieser bereits ab einem Betrag von über S 1,000.000,-- Verfahrenshilfe genießt, obwohl er über ein höheres Jahreseinkommen von rund S 340.000,-- sowie über Liegenschaftsvermögen im aktuellen Wert von S 5,850.000,-- sowie eine Lebensversicherung über S 2,340.000,-- verfügt. Der Drittantragsteller, welcher ebenfalls im Unterschied zur Erstantragstellerin über ein höheres Jahreseinkommen von rund S 180.000,-- sowie über ein Liegenschaftsvermögen im aktuellen Wert von S 2,200.000,-- sowie über eine Lebensversicherung über S 880.000,-- verfügt, wurde ebenso Verfahrenshilfe ab einem S 2,000.000,-- übersteigenden Betrag bewilligt, obwohl er über bedeutend mehr Vermögenswerte verfügt.

Gemäß § 66 Abs 2 ZPO ist über den Antrag auf Verfahrenshilfe auf der Grundlage des Vermögensbekenntnisses zu entscheiden, wobei das Gericht Ergänzungen des Vermögensbekenntnisses sowie die Beibringung von Belegen auftragen kann; hiebei hat das Erstgericht im Sinne einer Zumutbarkeit (vgl. Fasching, Ergänzungsband, § 66, Anm. 7) sämtliche Bedenklichkeiten auszuräumen und auf Basis einer mängelfreien Erhebung über den Verfahrenshilfeantrag zu befinden.

Die lediglich Abstützung der Entscheidung auf nicht vollständig ausgefüllte Vermögensbekenntnisse und Unterlassung von Feststellungen, die sich schon aus den

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vorgelegten Bekenntnissen ergeben, erfüllt jedoch keinesfalls das Kriterium der Unbedenklichkeit der vorliegenden Vermögensbekenntnisse und der hieraus ableitbaren Entscheidung.

Richtschnur für die Gewährung der Verfahrenshilfe ist nämlich - wie das Erstgericht zutreffend unter Angabe von Entscheidungszitaten ausführt - , dass Verfahrenshilfe nur insoweit zu gewähren ist, als ansonsten der zwar über dem Existenzminimum liegende, notwendige Unterhalt für eine einfache Lebensführung (vgl. beispielsweise EFSlg. 34.364), welcher keinesfalls gleichzusetzen ist mit dem standesgemäßen Unterhalt, gefährdet werde; hiebei sind jedenfalls aber auch Bausparkassen- und Lebensversicherungsverträge (EFSlg. 36.694) ebenso wie auch die Substanz von Vermögen (Liegenschaftsvermögen) heranzuziehen und anzugreifen (EFSlg. 39.146, EFSlg. 39.147), was auch zur Verwertung (Belastung) von Liegenschaften zu führen hat, da es mit der Zielsetzung des Gesetzes nicht vereinbar ist, der Allgemeinheit Verfahrenskosten durch gebundenes Vermögen der Antragsteller, welches diese zinsbringend anlegen, aufzubürden (EFSlg. 36.694), zumal diese gewidmeten und gebundenen Vermögen ohnedies nicht für Unterhaltszwecke vorgesehen sind.

Da sohin grundsätzlich die Vermögenssubstanz (kapitalgebundenes Vermögen, Liegenschaftsvermögen) in Anspruch zu nehmen ist (zitierte Fundstellen) und dies überdies auch für Kunstgegenstände, jedenfalls in gegenständlicher Größenordnung, gilt (OLG Wien vom 19.2.1993, 14 R 215/92; WR 610), ist daher festzuhalten, dass es den Antragstellern durchaus zumutbar ist, diese nicht der einfachen Lebensführung dienenden Werte einzusetzen, zumal nur für auch die einfache Lebensführung beeinträchtigende Umstände Verfahrenshilfe zu gewähren ist.

B) 2. Wie bereits unter A) 4. ausführlich dargestellt, geht das Erstgericht - ohne diesbezügliche Feststellungen getroffen zu haben - von einer gegebenen, materiellen Gegenseitigkeit für die Gewährung der Verfahrenshilfe aus; eine solche liegt jedoch allein schon mangels formeller Gegenseitigkeit auf Basis einer völkerrechtlichen Regelung nicht vor (vgl. Länderübersicht zu § 39 RHEZiv).

C) Der Beschluss des LG für ZRS Wien vom 02.11.1999, 9 Nc 9/99x, weist sohin wesentliche Verfahrensmängel durch Unterlassung notwendiger Feststellungen bezüglich vorhandenen Vermögens, insbesondere bezüglich der Kunstgegenstände, sowie notwendiger Feststellungen bezüglich der materiellen Gegenseitigkeit als Grundlage der Gewährung der Verfahrenshilfe an sich, auf, sodass auf Basis der Feststellungsmängel eine unrichtige rechtliche Beurteilung der

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Sache erfolgte. Aber auch auf Basis der getroffenen Feststellungen erweist sich der erstgerichtliche Beschluss mangels materieller Gegenseitigkeit für eine Verfahrenshilfegewährung als verfehlt.

Richtigerweise hätte das Erstgericht den Verfahrenshilfeantrag der antragstellenden Parteien mangels Vorliegen der Voraussetzungen zur Gänze abzuweisen gehabt, weswegen nachfolgende

Anträge

gestellt werden:

Das Oberlandesgericht Wien als Rekursgericht möge dem Rekurs der Antragsgegnerin Folge geben und

1. den angefochtenen Beschluss des LG für ZRS Wien vom 02.11.1999, 9 Nc 9/99x, dahingehend abändern, dass der Antrag der antragstellenden Parteien auf Bewilligung der Verfahrenshilfe in Ansehung der Begünstigungen nach § 64 Abs 1 Z 1 lit a), b) und c) ZPO zur Gänze abgewiesen werde

in eventu

den angefochtenen Beschluss im Umfange der Anfechtung aufheben und dem Gericht erster Instanz eine neuerliche, nach Ergänzung des Verfahrens unter Anberaumung einer mündlichen Verhandlung zu fällende Entscheidung auftragen

sowie

2. den antragstellenden Parteien den Ersatz der Kosten dieses Rekurses an die Antragsgegnerin binnen 14 Tagen bei sonstiger Exekution auferlegen.

II.

Aus anwaltlicher Vorsicht wird für den Fall der Zurück- oder Abweisung dieses Rekurses das Vorbringen des Rekurses zum Vorbringen dergestalt erhoben, dass unter Zugrundelegung der nunmehr von der Antragsgegnerin relevierten Vermögensverhältnisse der antragstellenden Parteien, insbesondere gemäß A) 1. - A) 5. der Rekursausführungen, gemäß § 68 ZPO gestellt wird der

Antrag,

den antragstellenden Parteien die mit Beschluss des LG für ZRS Wien vom 02.11.1999, 9 Nc 9/99x, bewilligte Verfahrenshilfe zur Gänze zu entziehen.

Für den Fall der Stattgebung des Rekurses gilt dieser Antrag als zurückgezogen.

An Kosten werden gemäß § 12 Abs 4 RATG (Nebengebühren) verzeichnet:

TP 3B (Basis Gerichtshof, Einzelrichter S 10.000,–)		S 1.058,00
Streitgenossenzuschlag (10 % und 5 %)	1	S 158,70
Antragsverbindung (10 %)		S 121,67
Pauschalgebühr:		S 660,00
		S 1.998,37.

Wien, am 13. Dezember 1999
Im Auftrag:

(Dr. Toman)

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wichtigstes Indiz wird die Kenntnis des Erblassers angesehen, daß der Gegenstand nicht zum Nachlaß gehört.[31]) Doch ist ein solches Bewußtsein nicht einmal unbedingt erforderlich, vielmehr soll die „Intensität des Zuwendungswillens"[32]) entscheiden. Maßgebend sei bloß, ob die letztwillige Anordnung dahin auszulegen ist, daß sie auch für den Fall der Nichtzugehörigkeit des Vermächtnisses zum Nachlaß in Kraft treten soll.[33]) Daher ist es letztlich unerheblich, ob sich der Erblasser Gedanken über die Eigentumsverhältnisse macht oder einem Irrtum über die Rechtslage unterliegt.[34])

Die Annahme eines Verschaffungsvermächtnisses wird als besonders naheliegend bezeichnet, wenn der vermachte Gegenstand rechtlich nicht zum Nachlaß gehört, aber wirtschaftlich in ihm enthalten ist,[35]) wofür als Beispiel angeführt wird, daß der Erblasser einen wertvollen Schreibtisch vermacht, der zu einem noch ungeteilten Nachlaß gehört, an dem er als Erbe beteiligt ist.[36]) Ebenso wird ein Verschaffungsvermächtnis angenommen, wenn sich der Erblasser selbst als den wirtschaftlichen Eigentümer betrachtet hat.[37]) Die Interpretation ist auch hier keineswegs auf den Text der letztwilligen Verfügung beschränkt, vielmehr kann das Verschaffungsvermächtnis auf Grund ergänzender Testamentsauslegung angenommen werden.[38]) Der zur Zeit der Testamentserrichtung vom Gesetz unterstellte, stillschweigende, mindestens „hypothetische Wille des Erblassers"[39]) fällt somit durch die Ermittlung eines von dieser Vermutung abweichenden Willens dahin, so daß die Vermutung der Ungültigkeit *widerleghar* ist.[40]) Die deutsche Rechtsprechung stimmt mit diesen Grundsätzen überein.[41])

Die Beweislast dafür, daß die vermachte Sache nicht zum Nachlaß gehört, trägt der Beschwerte; die Beweislast dafür, daß der Erblasser (auch) einen nachlaßfremden Gegenstand zuwenden wollte, hingegen der Bedachte.[42])

c) Ergebnis

Die konsequente irrtumsrechtliche Sicht und die Grundsätze des heutigen Beweisverfahrens sprechen dafür, die altertümliche „präsumtionenrechtliche Deutung" des § 662 Satz 1 aufzugeben und mit Lehre und Rechtsprechung zu § 2169 BGB den Beweis über Kenntnis und Unkenntnis sowie Kausalität des Irrtums zuzulassen. Es wird damit nur eine bei § 778 bereits vollzogene Entwicklung nachgeholt. Ist erwiesen, daß der Erblasser die Eigentumsverhältnisse gekannt hat oder daß er bei ihrer Kenntnis genauso verfügt hätte, so liegt ein Verschaffungsvermächtnis vor. Bei ausdrücklicher Anordnung der Verschaffung entfällt der Beweis mangelnden Irrtums.

III. „Legatsverpflichtung" des Erben

Wie dargelegt, ist ein Legat nach § 662 Satz 1 ohne weiteres wirksam, wenn die vermachte Sache nicht dem Erblasser, sondern dem belasteten Erben gehört. Zu prüfen ist, ob dies auch für „Legate" gilt, die erst beim Tod des Erben entrichtet werden sollen. Es soll angenommen werden, daß der Erblasser E seine Frau F zur Erbin einsetzt und verfügt, daß F bei ihrem Tode ihr – nicht von E herstammendes – Unternehmen dem Sohn S als Legat zu hinterlassen habe. Ist auch ein solches Vermächtnis nach § 662 gültig? Dies könnte damit begründet werden, daß der Erblasser ein mit dem Tod des Erben (F) aufschiebend befristetes Vermächtnis angeordnet habe. Da das Unternehmen dem Erben gehört, beziehe sich das Legat nicht auf eine fremde Sache und sei daher wirksam. Wegen des hinausgeschobenen Anfangstermins läge eine „konstruktive fideikommissarische Substitution" vor,[43]) so daß § 652 zur Anwendung komme. Wie sich gleich zeigen wird, ist allerdings diese Auffassung unhaltbar.

1. Verstoß gegen die Testierfreiheit

Eine Anordnung des Erblassers, die den Erben dazu verpflichtet, bei seinem eigenen Tod ein Vermögen oder

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[31]) MünchKomm – *Skibbe*[2] § 2169 RdNr 10 mwN; BGB-RGRK – *Johannsen*[12] § 2169 RdNr 9 und 13 mwN; *Staudinger Otte*[12] § 2169 Rz 10.

[32]) *Lange–Kuchinke*, Lehrbuch des Erbrechts[3], 448; MünchKomm – *Skibbe*[12] § 2169 RdNr 10; *Erman–F. Hense M. Schmidt*[9] § 2169 RdNr 4; *Jauernig–Stürner*[6] § 2169 Anm 1.

[33]) BGB-RGRK – *Johannsen*[12] § 2169 RdNr 8 mwN.

[34]) *Erman–F. Hense–M. Schmidt*[9] § 2169 RdNr 4.

[35]) *Erman–F. Hense–M. Schmidt*[9] § 2169 RdNr 4.

[36]) MünchKomm – *Skibbe*[2] § 2169 RdNr 10.

[37]) *Erman F. Hense–M. Schmidt*[9] § 2169 RdNr 4.

[38]) BGB-RGRK – *Johannsen*[12] § 2169 RdNr 18; RG 164, 196.

[39]) BGB-RGRK – *Johannsen*[12] § 2169 RdNr 2; *Staudinger–Otte*[12] § 2169 Rz 12.

[40]) *Erman–F. Hense–M. Schmidt*[9] § 2169 RdNr 1.

[41]) So hat der BGH in WM 1983, 1211 = FamRZ 1984, 41 klargestellt, daß ein Verschaffungsvermächtnis nicht das Bewußtsein des Erblassers voraussetzt, daß der vermachte Gegenstand nicht zur Erbschaft gehört (ebenso schon BGH WM 1982, 1439). Die Kenntnis des Erblassers vom fremden Eigentum sei nur ein – allerdings gewichtiges – Indiz für den Willen, die Sache auf jeden Fall zuzuwenden (ebenso OLG Hamburg OLGE 24, 78; OLG Celle, HEZ 3, 39). Entscheidend sei die „Intensität des Zuwendungswillens", so daß auch bei einem Irrtum über die Zugehörigkeit des zugewendeten Gegenstandes zum Vermögen des Erblassers ein Verschaffungsvermächtnis vorliegen könne. Der „qualifizierte Zuwendungswille" könne sich aus dem Inhalt des Testamentes aber auch zB daraus ergeben, daß der Erblasser den vermachten Gegenstand wirtschaftlich seinem Vermögen zurechnet. Ein weiterer Gesichtspunkt für das Vorhandensein eines solchen Willens könne die beabsichtigte Gleichstellung gewisser Personen sein. Schließlich verweist auch der BGH darauf, daß sich der „qualifizierte Wille" notfalls auch im Wege der ergänzenden Auslegung ermitteln lasse (unter Berufung auf RGZ 164, 196 und 202).

In NJW 1983, 937 meint der BGH, daß ein Verschaffungsvermächtnis besonders dann naheliege, wenn der vermachte Gegenstand rechtlich nicht zum Nachlaß gehört, aber wirtschaftlich in ihm enthalten sei (unter Berufung auf BayObLGZ 1960, 254, 260 und *Skibbe* in MünchKomm § 2169 RdNr 10). Wiederum heißt es, eine positive Kenntnis vom mangelnden Eigentum sei nur ein (wenn auch gewichtiges) Indiz für seinen gleichwohl bestehenden Zuwendungswillen (unter Berufung auf RG, HRR 1934 Nr 815). Entscheidend sei die Intensität des Zuwendungswillens, so daß auch bei einem Irrtum über die Rechtslage ein Verschaffungsvermächtnis gegeben sei (unter Berufung auf OLG Celle, HEZ 3, 39, 42). Die Absicht der Gleichbehandlung bedachter Personen sei als Anzeichen für den Zuwendungswillen anzusehen. Das Verschaffungsvermächtnis sei zu bejahen, weil die Erblasserin die Verfügung zur Verwirklichung einer Ausgleichspflicht der Beklagten vorgenommen habe.

[42]) MünchKomm – *Skibbe*[2] § 2169 RdNr 3 und 10; BGB-RGRK – *Johannsen*[12] § 2169 RdNr 14; *Staudinger–Otte*[12] § 2169 Rz 12; BGH, FamRZ 1984, 41 mwN.

[43]) Dazu *Welser* in Rummel[2] Rz 1 ff zu § 707.

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eine einzelne Sache einem Dritten zu überlassen, ist ein Verstoß gegen den Grundsatz der Testierfreiheit, gleichgültig ob der Erfolg durch ein Testiergebot oder ein Testierverbot erreicht werden soll. Die Testierfreiheit ist unabdingbar,[44]) Anordnungen, die ihr zuwiderlaufen, sind ungültig. Nur auf den ersten Blick ist es merkwürdig, daß zwar unentgeltliche Zuwendungen durch lange Fristen terminisiert sein können (zB „Fälligkeit nach 20 Jahren"), ohne daß ihre Rechtsnatur als Geschäft unter Lebenden verändert wird, daß aber die Vorschriften über die Schenkung auf den Todesfall oder die letztwilligen Verfügungen eingehalten werden müssen, *wenn der Tod des Zuwendenden den Fälligkeitszeitpunkt bildet.* Wäre es anders, so könnten die gesetzlichen Bestimmungen über die Geschäfte von Todes wegen, zB jene über die Form oder die Testierfreiheit, ganz einfach umgangen werden.

Die Wahrung der Testierfreiheit verbietet also auch die Gültigkeit von Geschäften, mit denen ein Erblasser einem Erben Zuwendungen aufträgt, die aus dem Vermögen des Erben stammen und bei seinem Tod zu leisten sind.

2. Unvereinbarkeit von fideikommissarischer *Substitution* und § 662

Wie schon im Beispiel angedeutet, besteht vom Grundsatz der Testierfreiheit eine, wenn auch nur scheinbare, Ausnahme: der Erblasser kann im Rahmen der fideikommissarischen Substitution seine Erben verpflichten, Vermögen von Todes wegen an andere Personen weiterzugeben. Die Frage ist, ob dies auch für Sachen gilt, die nicht aus seinem Vermögen stammen. Dies ist zu verneinen. Erlaubte man nämlich eine solche „fideikommißähnliche Bindung" für beliebige Sachen, so würde der Grundsatz der Testierfreiheit nicht eingeschränkt, sondern überhaupt aufgehoben. Der Erblasser könnte dann nicht bloß das weitere Schicksal seines eigenen Vermögens regeln, was ihm das Gesetz erlaubt, sondern auch das Schicksal des Vermögens seines Erben, was eben der Testierfreiheit des Erben widerspräche. Schon deshalb kann das Erbrecht ein durch den Tod des Erben aufschiebend befristetes Legat aus dem Vermögen des Erben oder dem Vermögen eines Dritten nicht dulden. Entsprechendes gilt selbstverständlich für die „konstruktive fideikommissarische Substitution" der §§ 707 und 708 oder eine Auflage nach §§ 709 ff.

Die Anordnung eines „Nachlegates" aus dem Vermögen des Erben wäre aber in Wirklichkeit auch gar keine fideikommissarische Substitution. Diese setzt, wie schon die Bezeichnung „fideikommissarisch" sagt, voraus, daß der Vorberechtigte – ähnlich einem Treuhänder – fremdes Vermögen verwaltet und es später einem anderen überläßt. Von einer treuhändigen Verwaltung kann aber keine Rede sein, wenn der Erbe eigenes Vermögen weitergeben soll. § 662 deckt daher solche Fälle nicht.

Für den Erblasser bestehen also in unserem Zusammenhang nur zwei Möglichkeiten. Entweder hinterläßt er dem Erben eigenes Vermögen und verbindet es mit dem Auftrag, es von Todes wegen einem anderen weiterzugeben. Dann liegt eine fideikommissarische Substitution vor, des § 662 bedarf es nicht. Oder der Erblasser verfügt über eine Sache des Erben. Dann kommt zwar eine Wirksamkeit nach § 662 in Betracht, doch darf das Legat nicht mit dem Tod des Erben anfallen, weil sonst dessen Testierfreiheit verletzt wäre. Die Rechtsfigur der fideikommissarischen Substitution ist in diesem Fall unanwendbar.

Das ABGB läßt auch keinen Zweifel daran, daß sich die fideikommissarische Substitution und das Nachlegat nur auf Vermögenswerte beziehen, die *aus dem Vermögen des Erblassers* stammen:

§ 609 bestimmt, daß auch die Eltern ihren Kindern, selbst in dem Fall, daß diese zu testieren unfähig sind, *nur in Rücksicht des Vermögens, das sie ihnen hinterlassen*, einen Nacherben ernennen können. Die fideikommissarische Substitution ist daher nur zulässig, soweit sie sich auf das vom Erblasser stammende Vermögen bezieht.[45]) Auch der „Nacherbe" des § 609 ist daher immer nur fideikommissarischer Substitut des Erblassers. Können aber nicht einmal Eltern den testierunfähigen Kindern einen Nacherben bezüglich ihres eigenen Vermögens ernennen, so ist dies umso weniger bei volljährigen Erben möglich.

§ 610 behandelt das Testierverbot, dem von Lehre und Rechtsprechung das Testiergebot gleichgestellt wird. Erläßt also der Erblasser ein Testiergebot, so ist, soweit möglich, Konversion in eine fideikommissarische Substitution anzunehmen: Die zu bedenkenden Personen sind Nacherben des ersten Erblassers nach dem Belasteten als Vorerben. Daher ist es eine fideikommissarische Substitution, wenn der Erblasser anordnet, der Erbe habe den X zum Universalerben einzusetzen.[46]) Die Konversion darf jedoch nicht auf beliebige Vermögenswerte, sondern nur auf das vom Erblasser herstammende Vermögen bezogen werden, und daher auch nicht auf das freie Vermögen des Erben.[47])

Schließlich folgt aus § 652, daß für fideikommissarische Bindungen nur Sachen des Erblassers in Betracht kommen. Er bestimmt, daß zwar der Erblasser bei einem Vermächtnis eine gemeine oder fideikommissarische Substitution anordnen kann, doch sind darauf „die in dem vorigen Hauptstücke gegebenen Vorschriften anzuwenden". In diesem 10. Hauptstück nun finden sich auch die §§ 609 und 610, aus welchen hervorgeht, daß die Errichtung einer fideikommissarischen Substitution „nur in Rücksicht des vom Erblasser hinterlassenen Vermögens" zulässig ist.

Ist die Verfügung des Erblassers, daß der Erbe bei seinem eigenen Tod aus seinem freien Vermögen ein Legat zu entrichten habe, keine fideikommissarische Substitution, so kann auch für allfällige ungeborene Legatare kein Posteritätskurator bestellt werden. Seine Befugnisse würden die Verfügung über das freie, nicht gebundene Vermögen des Erben beeinträchtigen, was zweifellos rechtswidrig wäre.[48])

[44]) *Welser* in Rummel² Rz 1 zu § 552.

[45]) *Welser* in Rummel² Rz 1 zu § 609.

[46]) EvBl 1961/38; EvBl 1988/117.

[47]) *Welser* in Rummel² Rz 2 zu § 610 mwN.

[48]) Ganz allgemein darf kein Substitutionskurator bestellt werden, wenn fraglich ist, ob überhaupt eine Substitution vorliegt. Das Gericht muß entscheiden, ob die Anordnung der Nacherbschaft gültig ist und danach den Kurator bestellen oder seine Bestellung unterlassen.

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IV. Zusammenfassung der Ergebnisse

1. Wenn § 662 das Vermächtnis einer fremden Sache für ungültig erklärt, so liegt der Grund hiefür nicht in der Verfügung über fremdes Eigentum, sondern in der gesetzlichen Vermutung, daß der Erblasser nur Sachen zuwenden will, über die er unmittelbar oder mittelbar Verfügungsmöglichkeit besitzt und die wertmäßig im Nachlaß vorhanden sind. Er will aber gewöhnlich weder den Nachlaß noch den Erben mit den Kosten und Mühen der Anschaffung von Sachen dritter Personen belasten. Im Regelfall ist diese ratio legis durch das Abstellen auf das Eigentum zu verwirklichen, so daß als „fremd" im Sinne des § 662 alles anzusehen ist, was nicht im Eigentum des Erblassers (oder des Erben) steht. Es gibt aber Fälle, in denen das bloße Abstellen auf das Eigentum der ratio legis zuwiderliefe. Dies gilt dann, wenn der vermachte Gegenstand wirtschaftlich zum Gesamtvermögen des Erblassers gehörte und diesem wenn auch nur unter Setzung besonderer juristischer Schritte auch die rechtliche Verfügungsmacht darüber zustand. Legate beziehen sich daher auch dann nicht auf fremde Sachen, wenn der Legatsgegenstand einer GmbH gehört und die Gesellschaftsanteile an dieser Nachlaßbestandteil sind und der Erbe (mittelbar) über die Sache verfügen kann. Das Ergebnis wird durch einen Größenschluß aus § 662 Satz 1 bestätigt, ebenso durch den Rechtsgedanken des § 662 Satz 2.

2. Ob es bei Vermächtnissen wie bei Geschäften unter Lebenden die Rechtsfigur der „Verfügungsermächtigung" gibt, wurde bisher für das österreichische Recht nicht geprüft. Für die Gültigkeit der letztwilligen Anordnung des Erblassers ist sie nicht von Bedeutung, weil sich diese ohnedies auf fremde Sachen beziehen kann. Denkbar wäre nur eine Verfügungsermächtigung zur Vornahme des sachenrechtlichen Rechtsgeschäfts, die das Eigentum des Erblassers (oder des Erben) ersetzen könnte, nicht jedoch den Übereignungsakt zwischen Erben und Legatar. Theoretisch ist zwar eine solche Ermächtigung möglich, sie dürfte aber nicht von praktischer Bedeutung sein, weil bei Einverständnis des Eigentümers der Erbe die Sache gleich von ihm erwerben wird.

3. Wie erwähnt, sieht die hM den Grund der Ungültigkeit des Vermächtnisses einer fremden Sache in einem Irrtum des Erblassers. Unter Zugrundelegung der modernen Irrtumslehre, die sich vom Präsumtionendenken gelöst hat, muß (entgegen der hM) auch der Beweis zugelassen werden, daß überhaupt kein Irrtum des Erblassers vorlag oder daß der Erblasser bei Kenntnis der Sachlage genauso verfügt hätte. Dies entspricht auch der neueren Judikatur zu § 778. Bei Gelingen des Beweises ist ein Verschaffungsvermächtnis anzunehmen. Hat der Erblasser die Verschaffung ausdrücklich angeordnet, so bedarf es des Beweises der Kenntnis nicht.

4. Daß das Vermächtnis einer fremden Sache gültig ist, wenn die vermachte Sache dem Erben gehört, gilt nicht für den Fall, daß der Erblasser verfügt, der Erbe solle bei seinem eigenen Tod eine aus seinem freien Vermögen stammende Sache einem Dritten hinterlassen. Die Verfügung kann auch nicht als fideikommissarisches Legat (des Erblassers) betrachtet werden, weil dies dem Grundsatz der Testierfreiheit widerspräche. Von einem „fideicommissum" (eine Art treuhändiges Anvertrauen) kann auch gar nicht gesprochen werden, wenn der Erbe eigenes Vermögen hinterlassen soll. Daher sind Testiergebote und Testierverbote nur soweit in eine fideikommissarische Substitution umzudeuten, als die davon betroffenen Sachen aus dem Vermögen des Erblassers stammen. Dieses Ergebnis wird durch die §§ 609, 610 und 652 bestätigt.

Rechtsprechung

§ 879 ABGB – *Mißbräuchliche Veräußerung des Treugutes*

Bei mißbräuchlicher Veräußerung des Treugutes durch den Treuhänder ist die gleiche Interessenlage wie bei mißbräuchlicher Veräußerung eines Gutes durch den Vertreter gegeben.

Die absprachewidrige Veräußerung des Treugutes an einen Erwerber, der diesen Mißbrauch kennt, hat daher zur Folge, daß gem § 879 ABGB das Verpflichtungsgeschäft nichtig und daher mangels Titels auch das Verfügungsgeschäft unwirksam ist.

OGH 17. 6. 1993, 8 Ob 625/92 (OLG Graz 21. 5. 1992, 6 R 289/91-10; LG Klagenfurt 30. 9. 1991, 30 Cg 211/91-4)

Die Bekl lebte mit R, den der Kl seit mindestens 20 Jahren kennt, von 1978 bis November 1989 in Lebensgemeinschaft. Die Bekl kennt der Kl seit etwa 12 Jahren. Sie besaß zwei Motorboote, die in Jugoslawien im selben Hafen wie das frühere Boot des Kl lagen. Diese, von der Bekl und ihrem Lebensgefährten benützten Motorboote wurden jeweils aus den Mitteln der Bekl gekauft, aber aus geschäftlichen Gründen auf den Namen ihres Lebensgefährten zugelassen. Die Bekl hielt zwar ihren Lebensgefährten während der Dauer der Lebensgemeinschaft aus; sie schenkte ihm jedoch weder die Boote noch das Geld dazu.

1989 kaufte die Bekl gegen Inzahlungnahme ihres alten Bootes wiederrum ein neues Boot, und zwar die nunmehr streitverfangene Motoryacht um S 2,240.000.–. Nach Ende der Lebensgemeinschaft benötigte ihr ehemaliger Lebensgefährte Geld. Deshalb verkaufte er dem Kl am 1. 9. 1990 die Motorjacht um den (überaus günstigen) Kaufpreis von S 800.000.–; hätte er länger Zeit gehabt, hätte er für sie mit Sicherheit S 1,3 Millionen bekommen können. Der Kl wußte damals, daß nicht der ehemalige Lebensgefährte, sondern die Bekl die wahre Eigentümerin der Yacht war. Anläßlich der Übergabe am 6. 10. 1990 mußte sie der Lebensgefährte aufbrechen, da er sich zwar zuvor die Nummern der Zündschlösser aufgeschrieben und Schlüssel hatte nachmachen lassen, aber nicht über die übrigen Bootsschlüssel verfügte.

Die Bekl machte in der Folge ihre Motoryacht in einem anderen Hafen ausfindig, nahm sie eigenmächtig

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E. Randol Schoenberg
Fried, Frank, Harris, Shriver & Jacobson
tel: (213) 473-2045
fax: (213) 473-2222

Vienna, August 2nd 1999

Dear Mr. Schoenberg!

Please find enclosed an interesting paper (10 pages total) out of the archive of the Institut für Zeitgeschichte, Wien.

With all best wishes,

sincerely

Oliver Rathkolb

Nr. R. Schoenberg

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Probleme II; Volkswirtschaft.

A. Restitution.

Bevor auf die eigentlichen Aufgaben des Um-und Neubaus eingegangen werden kann, sind zwei wichtige Wiederherstellungsaufgaben zu erörtern.

1.) Rückführung der 1934 und 1938 der Arbeiterschaft geraubten privat-und öffentlichrechtlichen Einrichtungen. Diese Restitution muss allem anderen vorangehen, nicht nur aus Gründen der Gerechtigkeit und Sühne, sondern praktisch vor allem, um den Trägern der proletarischen Aufbaubewegung die gesicherte Existenzbasis zurückzugeben. Hieher gehören:

a) Gewerkschaften, ihre Bureaus und ihre Häuser,

b) Konsumgenossenschaften und GöC,

c) Arbeiterheime und sonstige Parteihäuser, Kinos etc.,

d) Parteipresse. Ihre Neuorganisation gehört zu den politischen Problemen.

2.) Herausgabe des geraubten Judengutes, dies nicht an die einzelnen Geschädigten, sondern an einen gemeinsamen Restitutionsfonds. Die Errichtung eines solchen und die im folgenden vorgesehenen Modalitäten sind notwendig, um ein massenhaftes, plötzliches Zurückfluten der Vertriebenen zu verhüten. (Ein Umstand, der aus vielen Gründen sehr zu beachten ist). Einsetzung lokaler Untersuchungs-und Nachforschungskommissionen, Feststellung der Schuldigen und deren allfällige Uebergabe an die ordentlichen Gerichte. Soweit wirtschaftliche Unternehmungen (Fabriken, Handelsgeschäfte etc.) in Betracht kommen, sofortige Erlassung eines Verbots, demzufolge derzeitige Inhaber, Betriebsführer und Angestellte zunächst die arisierten Betriebe nicht verlassen dürfen, sondern ordnungsgemäss auf Rechnung des Fonds fortzuführen haben, bis die erforderlichen persönlichen und sachlichen Verfügungen getroffen sind. Die erwähnten Kommissionen haben insbesonders nach der geraubten Fahrhabe (Einrichtungsgegenstände, Schmuck etc.) zu fahnden. Die Schuldigen haften mit ihrer Person und ihrem Vermögen für alles nicht zustandegebrachte Gut.

Die Rückgabe an die Geschädigten kann nicht in natura erfolgen. Sobald das Fondsvermögen, das allen Beraubten solidarisch zur Entschädigung dienen soll, festgestellt sein wird, werden Anteilscheine ausgegeben, für jeden pro rata des erlittenen Schadens - nicht nach dem Masstab, ob gerade sein Vermögen ganz, teilweise oder gar nicht zustandegebracht worden ist; diese solidarische Einrichtung bewirkt natürlich, dass die Ansprüche nur in dem Verhältnis des zur Stelle gebrachten Besitztums und erst nach dem Abschluss der Untersuchung, Verfolgung und Rückgabe der Werte befriedigt werden können (das ist nach Jahren !). Soweit Unternehmungen sozialisiert werden - und das sind alle grossen - tritt anstelle des Fondsanteils die allfällige staatliche Ablösungsrente. (C 5). Für den Judenschaden soll grundsätzlich die Volksgesamtheit nicht haftbar gemacht werden.

Natürlich sind die Massregeln der Restitution nicht die Hauptprobleme. Diese sind vielmehr:

B. Währung, Preise, Löhne.

Die Erschütterung der Katastrophe droht mit einem Chaos, das vor allem die Währung angreift.

1.) Es ist anzunehmen, dass zugleich mit der Besetzung eine Relation zwischen der heimischen und der Siegerwährung kundgemacht wird wie in Italien. Nur wenn dies so geschieht, gelten die folgenden Vorschläge; Andernfalls ist die der neuen Ordnung gestellte Aufgabe weitaus verwickelter.

2.) Soll eine sofortige Hungersnot vermieden werden, so muss der bisherige Preis-und Lohnstop - letzterer trotz dem zu erwartenden Ansturm der Arbeiter - fürs erste aufrecht erhalten bleiben, dies solange, bis normale wirtschaftliche Zustände ("Re-ökonomisierung") eingekehrt sind. (Siehe Punkt 9)

3.) Allerdings müssen sofort ausländische Konsumgüter herbeigeschafft werden und können nur im Wege des Kredits bezogen werden. Reliefkredite sind unvermeidlich und ob sie zu erlangen sein werden, ist fraglich. Die darauf bezüglichen Pläne der Andern sind genau zu beachten.

4.) Die Auslandsgüter haben zunächst für das Inland unerschwingliche Preise. Sie können vom Staate gar nicht zu diesen Preisen abgegeben werden, das Reliefgeschäft ist daher für ihn höchst passiv: Der Staat wird in wachsendem Ausmasse mehr schulden als er vom Konsumenten hereinbekommt.

5.) Dieser Zustand erfordert eine strikte Grenzsperre für Güter wie für Personen (letzteres aus diesen und anderen, später zu erwähnenden Gründen). Belässt man nur während einer kurzen Spanne Zeit eine Lücke oder machen die besetzenden Mächte eine solche Lücke auf, so ist der Schaden ungeheuerlich (Zustände bei der Ruhrbesetzung).- Ein sofortiges Uebereinkommen mit den Siegermächten darüber unerlässlich.

6.) Der nächste Schritt ist: Dort, wo Inlandsaufbringung mit Auslandszufuhren in Konkurrenz tritt, z.B. Getreide, sind beide Quanten zu poolen und ein etwas erhöhter Verkaufspreis durchzusetzen, um allmählich den Reliefschaden geringer zu machen.

Das erfordert zumindestens das lückenlose Grosshandelsmonopol des Staates (Getreide, Vieh, Kolonialwaren). Die heute dafür bestehenden Lenkungsstellen sind danach umzubauen.

7.) Da das Inlandspreisniveau lange Zeit tiefer steht als das Niveau des Welthandels, besteht die Gefahr, dass das Land von der Spekulation ausgeplündert und dadurch die Hungersnot noch verschärft wird. Ausser der Spekulation ist zu befürchten, dass die Besetzungsorgane ihre mitgebrachten Waren teuer im Schleichhandel abgeben und sich dafür billig mit Inlandware eindecken. Daher ist es geboten, dass

a) die Ausländer sich selbst durch die Zufuhren versorgen und sich einem Einkaufsverbot unterwerfen;

b) dass die betreffenden Waren überhaupt nicht anders als gegen Karten abgegeben werden und nur Inländer solche Karten erhalten.- Ueberaus schwierig, nur kurze Zeit wirksam !

8.) Die Gefahren dieser Uebergangswirtschaft können nur durch eine starke Regierung (stark nach innen wie nach aussen !) bei hermetischem

Abschluss überstanden werden und dies jedenfalls nur eine Zeitlang. Dann ist ein Zeitraum (von etwa zwei Jahren) in Aussicht zu nehmen, innerhalb dessen die Preise den Weltmarkspreisen tunlichst angeglichen werden. (Re-ökonomisierungsfrist).

Solange dies nicht der Fall ist, erscheint jeder Zollschutz überflüssig - die Inlandsproduktion ist durch das Absatzmonopol und die Monopolpreise völlig gesichert. Aber auch sie - insbesondere der Getreidebau und die Viehhaltung - wird mit Recht auf höhere Preise hindrängen, um zumindestens die Weltmarktparität wieder zu erreichen. Trotz dem Monopol ist die Preisangleichung anzustreben.

9.) Diese Währungs-und Preismassregeln erfordern selbstverständlich eine gleichzeitige schrittweise Lockerung des Lohnstops. Nach dem ersten Weltkrieg habe ich zur Bewältigung dieses Problems die sogenannte Industriekommission eingeführt - mit durchschlagendem Erfolg.

a) Industriekommission: Unternehmerverbände plus Gewerkschaften bilden eine politische Körperschaft, der die Statistische Zentralkommission die Materialien beistellt. Automatisch von Monat zu Monat werden die Löhne nach den Verhältniszahlen des Kleinhandels-Index gesteigert.

b) Kommission der öffentlichen Dienste: Staat, Länder, Kommunen, sonstige öffentliche Körperschaften einerseits und Vertreter aller Angestelltenkategorien anderseits. Sie erfüllen dieselbe Funktion.

c) Die heute bestehenden sonstigen Preisregulierungsbehörden bleiben in Funktion und passen die Fabrikatpreise den geänderten Lohn-und Gehaltspositionen an. Ueber die sonstigen Probleme der Industrie später.

C. Währung und Geldwesen überhaupt.

1.) Angenommen ist, dass der Sieger selbst die Relation mit den Weltwährungen herstellt. Ist dies nicht geschehen, so bleibt das Inflations- und Stabilisierungsproblem völlig dem neuen Staatswesen überlassen. Vorbild

Den solchen Fall ist das Deutschland nach der Ruhrbesetzung und die Einführung der Rentenmark. Von diesem Falle müssen wir hier absehen.

2.) Zur Ordnung des Geldwesens ist die Neubegründung einer Notenbank unerlässlich. Ob ein Teil des Goldschatzes vom Reich restituiert wird, ist fraglich oder vielmehr keine Frage. Möglich infolge äusseren Zwanges. Als Deckung der Noten hat zu dienen:

a) Die allgemeine Haftung des Staates und der Grosskommunen,

b) das Pfand der Staatsdomänen,

c) der Staatskunstbesitz.

Diese Deckung ist keineswegs eine bankmässige, d.h. jederzeit flüssige Deckung, wie durch den Goldschatz, aber sie reicht für den Inlandsnotenumsatz aus (nicht so für internationale Zahlungen, für die keinerlei Unterlage vorhanden ist. Dies war der Grund der ewigen Bettelei um Garantiemächte). Die Reichsbanknoten müssen sofort abgestempelt, ohne Verzug eingesammelt und durch Austronoten ersetzt werden, auch diese haben nur transitorischen Charakter (lauten also noch auf Mark) - in einem geeigneten Zeitpunkt, wenn die unter B.) vorgeführten Massregeln der Re-ökonomisierung schon erfolgreich im Gange sind, werden sie durch vollwertige Noten in Gulden und Kreuzern ersetzt und so eine eigene stabile Währung gewinnen.

3.) Spareinlagen - auch Bankdepots - unterliegen der allgemeinen Entwertung, sie werden nicht aufgewertet. Daraus Gefahr eines Wiederentstehens der Kleinrentnerbewegung. Arbeits-und Erwerbsfähige finden in der allgemeinen Wirtschaftsregelung Abhilfe, Erwerbsunfähige in der allgemeinen Fürsorge Ersatz. Billigkeitsausnahmen können unter dem Titel Kriegsopferfürsorge erwogen werden.

4.) Pensionen. Alle bisherigen öffentlichen und privaten Ruhegenüsse werden auf eine einzige "Renten-und Pensionskasse" überführt, an die die bisherigen Leistungspflichtigen ihre Beiträge zu leisten haben. Alle Pensionen werden gepoolt und unter Berücksichtigung aller berücksichtigenswerten Umstände abgestuft. Die unterste Stufe erhält das Existenzminimum

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Die aufsteigenden Stufen werden degressiv bedacht: Zunächst so, dass die Summe der realen Eingänge der Anstalt in Ausgabe gebracht werden. Ob später Staatszuschuss möglich ist, werden die Umstände zeigen - eine allgemeine Aufwertung von Staatswegen kann nicht in Betracht gezogen werden.

5.) Kapitalablöse: An anderem Orte wird geschildert, in welcher Weise die Produktions-, Transport- und Zirkulationsmittel in öffentliches Eigentum (Staat, Länder, Kommunen - nach Rationalität) überführt werden können. Besitzende, die sich vorbehaltslos dem neuen System einordnen und ohne Sabotageversuche volkswirtschaftliche Stellungen übernehmen und ausfüllen, erwerben den Anspruch, dass ihr Besitz eingeschätzt und durch eine Leibrente in angemessener Reduktion abgelöst wird. Zu dieser Leibrente des Besitzers kann eine Angehörigenrente für minderjährige oder hilfsbedürftige Familienmitglieder kommen. Vom Uebergabstage an erhält der weichende Besitzende auf eine kurze Uebergangsdauer, solange er keine andere Verwendung findet, einen Unterhaltsbeitrag.

Zur Durchführung wäre die Errichtung einer Ablösestelle vorzusehen, welche über Rente und Unterhaltsbeitrag entscheidet. Beide Ansprüche erlöschen, wenn Widerstand oder Sabotage eintritt, von den strafrechtlichen Folgen etc. abgesehen.

Man kann die Zweckmässigkeit einer solchen Massregel bestreiten. Angesichts der auswärtigen Lage wäre zur Erleichterung des Ueberganges eine solche Kapitalablöse jedenfalls in Aussicht zu stellen. Sie wäre bei entsprechender Reduktion der zugrundeliegenden Sachwerte auch tragbar, da eine Einziehung des bäuerlichen und handwerksmässigen Arbeitseigentums (Mittel- und Kleinbesitz) nicht vorgesehen ist. Nützlich und beruhigend wäre die Massregel im Hinblick auf allfälligen Einspruch der Besetzungsmacht gegen entschädigungslose Enteignung.

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D Kriegsopfer und Kriegsschäden "Reparation".

Kriegsopfer ist im Grunde jedermann, ein Grundsatz, der dem Ansturm der Fordernden gegen den neuen Staat immer wieder entgegenzuhalten ist. Anspruch auf Vergütung haben nur ausserordentliche Opfer und Schäden.

1.) Kriegsopfer. Die ungeheure Zahl an Invaliden- Witwen-und Waisenrenten muss aufrecht erhalten bleiben. Sie auf Vermögensleistungen der an der Katastrophe Schuldigen zu verweisen, wäre naheliegend, aber offenbar ganz zwecklos. Aus aussenpolitischen Gründen muss diese Ersatzquelle schon der Restitution A 1 (Judenentschädigung) vorbehalten werden. Zu den oben angeführten Renten muss billigerweise noch eine Massregel treten: Ausser Witwen und Waisen können noch erwerbsunfähige Kranke und Alte aus dem Familienkreise Anspruch auf Entschädigung für den Verlust des Familienerhalters erheben. (Familienrente). Für die Uebergangszeit besteht keine Möglichkeit, von diesen Renten Umgang zu nehmen, wiewohl sie allein gross genug sein dürften, die staatliche Steueraufbringung auszuschöpfen. Die Verwaltung geht gleichfalls auf die allgemeine Renten-und Pensionskasse (C 4) über.

2.) Sachliche Kriegsschäden. Dazu rechnen sowohl die im Kampfgebiete selbst entstandenen Sachschäden wie die Schäden aus dem Luftkrieg. Auch ihnen gegenüber ist der Grundsatz geltend zu machen: Der neue Staat hat an sich keinerlei Verpflichtung, Schäden zu ersetzen, die er nicht verschuldet hat, ihm obliegt die alleinige Aufgabe, die Schuldigen zur Verantwortung zu ziehen und zur Ersatzleistung zu verhalten und allenfalls dann einzugreifen, wenn ein Ersatz angesichts der Bedürfnisse der lebenden und kommenden Generation tragbar ist. Da das Privatvermögen der Haupt- und Mitschuldigen ohnehin beschlagnahmt ist, bleibt nichts übrig, als die persönliche Haftung, d.i. die öffentliche Arbeitspflicht der Schuldigen. Diese Frage gehört zu den Problemen: Politik.

e) Verlust an Geräten, Einrichtungs- Kleidungs- und sonstigen persönlichen Bedarfsartikeln durch den Krieg: Naturalersatz, soweit nicht Luxus oder übermässige Bedürfnisse in Frage stehen, ist anzustreben.

F. Zusammenfassung der Lasten.

Liquidierungslasten im allgemeinen.

Ein flüchtiger Ueberblick über die aus A bis D dem kommenden Gemeinwesen erwachsenden Lasten erweist diese so gewaltig, dass an ihrer Tragbarkeit verzweifelt werden muss - ein Zustand, der an sich die radikalsten Sozialisierungsmassregeln erzwingen dürfte. Unleugbar begegnet der neue Staat dem Ansturm grosser Massen - vielleicht der Mehrheit der Bevölkerung, die sich der Vorstellung hingibt, zunächst einmal müsse für sie der frühere Zustand der Dinge hergestellt werden! So gewiss die eigentliche Kapitalistenklasse, die numerisch nicht so sehr ins Gewicht fällt und der gesamte Mittelstand und endlich alle proletarischen Kriegsopfer. Am wenigsten berührt ist die Landwirtschaft! Daraus erwächst eine nur mit Mühe zu bannende Gefahr, die, wenn eine Kalliierung aller Kriegsopfer zustandekomme, unbesiegbar wird! Dieser Gefahr liesse sich, wenn überhaupt, nur auf folgendem Wegen begegnen:

a) Zunächst die kategorische Betonung des Grundsatzes: Eine Wiederherstellung des Gewesenen ist unmöglich und der bloße Gedanke daran unter allen Umständen auszuschliessen. Niemand kann verlangen, dass Geschehenes ungeschehen gemacht wird und dass die lebende und die kommende Generation für die Schuld der Vergangenheit schuldlos in alle Ewigkeit hungere und verblute. Es handelt sich - das ist immer zu betonen - um die Aufrichtung eines neuen Staatswesens, das sich bemüht, den Lebenden und den Kommenden eine Lebensbasis zu schaffen und nicht, alte Vorrechte zu erhalten.

b) Trotzdem setze man den Ersatzfordernden kein absolutes Nein entgegen, sondern bekenne den guten Willen, das Mögliche und Notwendige zu leisten.

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[redacted]

a) Landwirte: Zerstörte Wirtschaften und vernichtete Kulturl§ , soweit der bäuerliche Besitz erhalten bleibt, mit Staatshilfe wieder herzustellen, vernichtetes lebendes und totes Inventar mit Staatshilfe zu ersetzen.

b) Derselbe Grundsatz ist auf Gewerbe-und Kleinhandelsbetriebe nur sehr eingeschränkt anwendbar. Die vom vorangegangenen Regime einmal gesperrten Betriebe bleiben tunlichst geschlossen.

c) Industrielle, landwirtschaftliche und Handelsgrossbetriebe gehen in Staatsbesitz über, ihre Wiederherstellung ist Staatssache, die Besitzer sind auf Ablöse C 5 angewiesen. Ebenso Geld-und Kreditinstitute, soweit in persönlichem Besitz. Aktien und Anteile aller Art von Gesellschaften, deren Betrieb Schaden gelitten hat, sind einzuziehen und durch Ablöserenten zu ersetzen.

Die Frage der ausländischen Besitzer bedarf einer besonderen Studie, deren Ergebnis von der Gestalt abhängt, die die allgemeine europäische Liquidation annehmen wird.

d) Hausbesitz. Zu unterscheiden Eigenheime und Miethäuser.

1.) Bescheidene Eigenheime bleiben im Besitz der Privaten, unterliegen aber der Last der Bequartierung bei öffentlichem Bedarf, soweit sie überflüssige Räume haben oder reiner Luxusbesitz sind.

2.) Miethäuser, die als Kapitalsanlage gedient haben. Dabei ist zu unterscheiden, ob sie öffentlich-rechtlichen Körperschaften oder solchen Gesellschaften gehören, die zur Verstaatlichung bestimmt sind und für die sie als Kapitaldeckung fungiert haben wie bei Versicherungsgesellschaften, Rentenanstalten etc. Letztere bleiben Körperschafts- oder Anstaltsbesitz, private Miethäuser gehen in öffentlichen Besitz (zumeist Kommunalbesitz) über und Ersatz findet nur in der Form der Ablöse C 5 statt. Das Wohnrecht des Eigentümers kann aufrecht erhalten bleiben.

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SECRET

Industry Report No. 6

BRUCKER ZUCKERFABRIK CLEMENS AUER
(Former name: OESTERREICHISCHE ZUCKERINDUSTRIE A.G.)

I. RECOMMENDATIONS

1. Under the U.S. definition, the acquisition of most of the German interest must be regarded as a case of duress and inadequate compensation, mostly in the process of Aryanization. Hence no legitimate German interest exists with the exception of about 6% acquired in the open market or in a way not known. 1/

2. No different position is indicated.

3. The Soviets regard all acquisitions as valid and hence regard Brucker Zucker as a 100% German asset.

II. NATURE OF ENTERPRISE

The Brucker Zuckerfabrik, with its factory at

1/ In Chapter VI of the Report it is assumed that even these acquisitions were involuntary.

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Bruck a.d. Leitha (Lower Austria)-- now under USIVA administration--is the country's most important sugar refinery, accounting for about one-fifth of Austrian production. Total prewar assets amounted to about (new) S 18 million, of which about S 13 million represented equity.

The property has suffered considerable damage by military activities, requisitions and looting. Basically, however, plant and equipment seem to be in fair shape. The factory is in operation, but liquid funds apparently are short. Even at the present time the value of the property is substantial, probably well above 5 million pre-war Schillings or about $ 2 million.

III. OWNERSHIP BEFORE ANSCHLUSS

Early in 1938 most of the 80,000 outstanding shares of the corporation were closely held as follows:

1. 21,665 shares by LOEW group (Austrian; Jewish)
2. 16,480 shares by GRAETZ group (Austrian; part Jewish; held through a family foundation located in Switzerland)

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3. 13,687 shares by OTTO PICK (Czech; Jewish)
4. 6,500 shares by DAVIES-LLOYD group (British; associated with PICK)
5. 12,850 shares by BLOCH-BAUER group (Czech and Austrian; Jewish)
6. 4,448 shares by PATZENHOFER group (Austrian; non-Jewish)

Total 75,630 shares, or 94.5 percent.

The nationality of most of the shareholders, or their heirs has changed since 1938. At the present time nearly one-half of the interest in Brucker Zuckerfabrik is claimed by U.S. citizens (Loew and Graetz groups) and an additional 25 percent or more by British subjects (Davies, Lloyd, Pick, and some Bloch-Bauer heirs). There also seem to exist substantial Swiss, Czech, and Yugoslav interests in the rest of the equity.

The shares were occasionally traded on the Vienna stock exchange and before Anschluss were quoted at about S 300 to S 350 or RM 200 to RM 230. This would

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indicate a value of the equity of about $ 26 million or RM 18 million, well above balance sheet value. However, dividend payments of $ 15 to $ 18.75 per share were not out of line with the stock exchange quotations.

IV. CHANGES IN OWNERSHIP 1938-1945

A. Aryanization

Aryanization of Oesterreichische Zuckerindustrie in essence took the form of (a) the acquisition at a low price by means of bank credit of almost all outstanding shares by one CLEMENS AUER, a Rhenish industrialist (now reported under arrest in Austria); (b) the transformation of the corporation into a sole proprietorship owned by Auer; and (c) the repayment of the bank credits out of the liquid funds of Brucker Zuckerfabrik. The result of the numerous and complicated transactions involved was that Auer acquired Oesterreichische Zuckerindustrie without any investment of his own.

Auer, with the active support of high NSDAP functionaries and the consent of the competent German

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authorities (Vermoegensverwaltungsstelle) in 1938 and 1939 acquired the following blocks of shares, mostly through the Laenderbank:

1. A block of 33,695 shares (16,480 from Graetz; 10,000 from Pick; 7,200 from Bloch-Bauer) for a consideration of about RM 2,50[illegible],000 in blocked marks (Average RM 75-). That duress was involved is indicated by the fact that the son-in-law of Pick and nephew of the company's President Ferdinand Bloch-Bauer, one Leopold Bloch-Bauer, had been arrested immediately after the Anschluss and was released and given an exit permit through the intervention of the Laenderbank only after he had undertaken to secure the sale of important foreign-owned blocks of shares to German interests.

2. Pick's remaining 3,687 shares for RM 276,525 (average RM 75-). The purchase price is reported to have been used to reduce a loan of another enterprise of Pick's (Makospinnerei and Zwirnerei Pick & Co., Wiener Neustadt) at the Merkurbank.

3. Lloyd and Davies' entire holdings of 6,500 shares for RM 486,525 in blocked account (average RM 75-);

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use of proceeds as under 2.

4. Another 2,100 shares of the Bloch-Bauer block from German Ministry of Finance, which had confiscated the shares in payment of "flight tax", for RM 193,200 (average RM 92-).

5. The Loew block of 21, 665 shares and the remaining 3,350 shares of the Bloch-Bauer block were confiscated by the German tax authorities in connection with criminal tax evasion proceedings against the owners and the corporation and were sold to Auer for RM 2,246,850 (average RM 90-).

6. The Ratzenhofer block of 4,448 shares for RM 400,320 (average RM 92-). In this transaction--the last large acquisition by Auer made in October 1939--considerable pressure was exercised on the seller.

7. Miscellaneous smaller blocks aggregating 3,538 shares at prices and from sources not known.

Auer thus obtained 78,968 shares (98.7% of the total) for RM 6.5 million, or an average of about RM 82. Auer also had to pay to the Government an "arisierungs-

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abgabe" of nearly RM 300,000 for permission to acquire the Jewish interest in the firm. He raised the necessary funds by borrowing RM 6,782,265 from four banks, RM 3,282,265 from the Laenderbank, Vienna, and RM 3,500,000 from three banks in Cologne.

B. Transformation into sole Proprietorship

At the end of 1939, after the acquisition of the predominant majority of the shares by Auer, the Oesterreichische Zuckerindustrie A.G. was transformed from a corporation into a sole proprietorship under the new name of Brucker Zuckerfabrik Clemens Auer. On this occasion the capital of the corporation was first restated at RM 13,444,583 (against a previous book value of RM 6,666,666 and a purchase price by Auer of about RM 6.5 million), and then reduced by about RM 6,453,000 to repay out of the firm's liquid assets the outstanding bank debt, incurred by Auer in acquiring the shares, to the initial capital of the proprietorship of RM 6,991,700.

On March 31, 1944 the sole proprietorship was transformed, it is alleged in order to camouflage Auer's

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interest, into a limited partnership. One KARL RIGAL, an Austrian sugar factory manager, became active partner with a contribution being set at RM 4,610,000, the reduction from the initial capital of 1940 being due to accumulated net losses and special depreciation charges during the years 1940 to 1944.

V. OWNERSHIP AT END OF WAR

In March, 1945 Auer still owned practially 100% of the capital of Brucker Zucker.

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Report on Bruche Textilfabrik Carmen Auer A.G. from CEA branch #11

NACP RG 260 - M1928 - German external assets
USACA Reel 4 Reports on businesses

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[redacted]

[redacted]

I. FORMATION AND RETURN TO AMERICANS.

II. [redacted] OWNERSHIP, MARCH 13, 1938

III. WAR REPARATIONS PAID BY GERMANY

IV. GERMAN PROPERTY POST ARMISTICE

A. General Background

B. Acquisition of Control by Claimant Army

C. Details of the Acquisition of the Various Kinds of Property.

D. Ownership of the Purchase Price.

V. POST ARMISTICE TO END OF THE WAR

VI. HISTORY FROM THE END OF THE WAR TO DATE

VII. FINANCIAL STATUS

CONCLUSION

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[redacted] Bruenner Zucker Fabrik Gewerk Aktien A.G.

This report was prepared by Albert H. Feary Jr. from information secured from personal interviews and the files of interested persons and firms.

I. FORMATION AND HISTORY OF ANSCHLUSS.

A. The Bruenner Zucker Fabrik Gewerk Aktien A. G. (hereinafter called Bruenner), is the present title of the Oesterreichische Zucker Industrie A. G. founded on 6 August 1909. The firm was incorporated in Austria with its home office in Vienna and was authorized to refine sugar beets and produce sugar beet products. The capital was 4,000,000 Crowns divided into 10,000 bearer shares at par 400 Crowns each. The shares were entirely subscribed and were never offered on the market except in isolated cases of small blocks. (Exhibit 1)

B. The General Meeting of 1 September 1936 increased the share capital from S.8,000,000 consisting of 80,000 par S.100 bearer shares, to S.10,000,000, by capitalizing the free reserves and raising the par value of a share to S.125. No further capital changes occurred until after Anschluss. (Exhibit 1)

C. The processing of raw sugar and sugar products at the factory at Bruenn a.d.Leitha (now Soviet Zone of Austria) totaled 18% of Austria's production. (Exhibit 1 & 2)

II. SHARE OWNERSHIP, MARCH 13, 1938

A. On 5 March 1938 a syndicate voting agreement was concluded at Zuerich, Switzerland, representing 71,246 of the 80,000 shares. (89% of the shares) (Exhibit 2) This agreement restricted the sale of the shares, the manner of voting and provided for the deposit of the shares in Switzerland. The underlying motive was to place the shares outside Austrian-German control. The shares held by the syndicate were owned as follows:

1. The Schweizerische Bankgesellschaft, Zuerich represented a block of shares owned by:

a) [redacted] 16,500 shares 20.6%

b) [redacted] 16,000 " 20.0%

c) [redacted] 6,000 " 7.5%

* * *

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d) Dr. Gustav Bloch-Bauer, Vienna, Austria.....	440 shares	.55%
e) Dr. Robert Bloch-Bauer, Vienna, Austria.....	305 "	.38%
f) Maria Altmann (nee Bloch-Bauer) Translyvania, Vienna, Austria...	201 "	.25%
Subtotal	49,195 shares	59.24%
2. Gradis Industrial, Glarus (owned by the Lowe family).....	5,100 "	6.37%
3. Mr.Ferdinand Bloch-Bauer.....	3,300 "	4.12%
4. Dr.Gustav Bloch-Bauer.....	2,335 "	2.92%
5. Dr. Marianne Hamburger Lowe.....	8,329 "	10.41%
6. Mrs. Gertrude Lowe.....	8,300 "	10.37%
7. Ing. Otto Pick.....	3,487 "	4.61%
total	71,246 shares	89.06%

(Exhibits 2 & 3)

C. 8,754 shares, 10.96% of the share capital, were not held in the syndicate. Of these shares, the Petschnofer family, Hungarian Aryans, owned 4,448 shares, 5.56% of the share capital, and the remainder were held in blocks of less than 1,000 shares. (Exhibit 3 & 7)

D. 92% of the shares were held by persons who qualified as Jews under Nuernberg Racial Laws of whom several were non-Austrian residents or non-Austrian citizens.

III. THE EVASION PENALTY SUIT

A. On March 28, 1938 President Ferdinand Bloch-Bauer and Director Pfeiffer appeared before the tax authorities through their attorney and made an oral self indictment against the firm for tax evasion. No fixed amounts were stated. Since it would take some time to go over the books for the years 1938 to 1938, it was agreed that 2 separate detailed statements should be filed at the earliest possible date, the first to cover the years 1934/35, to 1936/37 and a later declaration to cover the years 1938/31 to 1933/34. (Exhibit 4)

B. Subsequently four supplementary tax declarations were filed revealing additional taxes due on income according to:

1931/32	S [illegible]
1932/33	" [illegible]
1933/34	" [illegible]
1934/35	" [illegible]
1935/36	" [illegible]
1936/37	" [illegible]
Total	[illegible] (Exhibit 5 & 6)

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On these amounts a tax of approximately 44% was due (Exhibit 12 and attachment thereto)

C. The tax authorities ordered an investigation of the books of Brucker and its two subsidiaries, A.G. fuer Landwirtschaftliche Betriebe and Vereinsmilkerei A.G. The report of auditor Reg. Comm. Guido Walcher dated 20 May 1938 states that the books reveal discrepancies consisting of false entries, erasures, hidden accounts, double entries for the same items, expenses for which no vouchers existed, illegal payments and undervaluation of the inventory and realty. It concludes that these irregularities, which it terms as fraud and embezzlement, were carried out by the president Ferdinand Bloch-Bauer, the manager, Carl Bloch-Bauer and by Director Pfeiffer. (Exhibit 8)

D. Taxable sums which had not been declared in the annual tax returns nor in the self indictments were discovered. Such items were subject not only to the normal tax but also to a penalty of 3 to 9 times the tax. Rumors were rife that the maximum penalty would be assessed which would have consumed the free reserves and impaired the capital of the firm. The tax suit and the threat of a large penalty decreased the market value of the shares and in part accounts for the low selling price at which they were purchased during the time the tax suit was pending as described below. (See tax statutes Exhibit 29)

E. Responsibility for certain discrepancies in the books regarding which the firm did not want to disclose further details which apparently consisted of bribes, etc., to tax officials and others, was accepted by Ferdinand Bloch-Bauer personally. At the same time he and his nephew Carl Bloch-Bauer wrote to their attorney stating that they had not received illegal payment of any kind. (Exhibit 9 & 10)

F. The tax investigation dragged on through 1938 and early 1939, during which time the shares of the firm were acquired by Hermann Anner. On 17 April 1939 a decision on the tax suit was concluded, by the terms of which the tax was set as follows:

1) The firm was to pay a tax of RM 1,150,000

[illegible] to be paid by 1 May 1939
[illegible] to be paid by 1 June 1939
[illegible] to be paid by 1 July 1939

Payments already made were not to be deducted from this amount.

2) The personal taxes of Ferdinand Bloch-Bauer, at the same amount

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by the firm. The tax penalty against F. Bloch-Bauer was to be satisfied from a block of 3,300 shares of Brucker which had already been seized by the tax authorities.

3) The tax and penalty due from the A.G. fuer Landwirtschaftliche Betriebe was RM 420,000 and from Vereinsmolkerei A. G. RM 66,700. (Exhibit 11)

C. The tax suit was reopened and an agreement was concluded on 8 November 1939 in Berlin with the Reichs Finance President. The settlement of 17 April 1939 was amended so that the tax liability of F. Bloch-Bauer, RM 806,000, was to be paid by him personally and not by the firm and the tax penalty of RM 180,000 against the A.G. for Landwirtschaftliche Betriebe (See F 3) above) was forgiven.

Thus the tax against Brucker amounting to	RM 1,350,000.00
plus tax and penalty against A.G. fuer Landwirtschaftliche.....	" 420,000.00
plus the tax against Vereinsmolkerei.....	" 66,700.00
Total	RM 1,836,700.00
was reduced by the penalty against A.G. fuer Landwirtschaftliche.....RM 180,000.00	
and tax against F.Bloch-Bauer RM 806,000.00	" 986,000.00
leaving a tax against Brucker of.....	RM 850,700.00

It was further provided that payments already made were to be deducted from this figure. (Exhibit 12

H. The attorneys for the shareholders contend that since a self-indictment was made prior to the institution of a tax investigation, the entire criminal tax penalty suit was illegal; (See Exhibit 29 for statutory provisions governing tax penalty proceedings), that their legal rights to protection from such a suit were denied them because they were Jews and that the suit was instituted and kept pending with the motive of pressing them to sell their shares at a low figure. The shareholders were in fact urged to sell their shares at a low figure because of the threat of an adverse decision in the tax penalty suit (Exhibit 13).

I. Dr. Wagner, attorney for Clemens Auer contends that only a portion of the unreported amounts was disclosed in the self-indictment and that therefore the tax penalty suit was legal as regards the undisclosed profits; that settlement of such a tax suit requires considerable time and the suit was not finally concluded until many months after Auer had acquired control; that the value of the shares dropped considerably due to this tax penalty suit and that the shares were worth only approximately par value at the time they were purchased by Auer.

IV. [redacted]

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IV. [illegible] POST ANSCHLUSS

A. [illegible]

1. The Aryanization of Brueder was a part of the planned penetration of the Austrian economy by German interests. On 14 March 1938, the only known Nazi party employee the Chief Cashier, Malecek was appointed by Dr. Ferdinand Hoch-Bauer to act as manager and director of the firm, pursuant to orders of Nazi officials. The appointment was not recorded in the Commercial Register and thus Malecek acted in an unofficial capacity. (According to oral information given by Dr. Gustav Reinisch, attorney for former shareholders and Dorie Ritzaro, Public Administrator, & Exhibit 1)

2. On 13 May 1938 Malecek was replaced by Rudolf Hemminger, whose appointment was officially registered in the Commercial Register. (Exhibit 1)

3. Leopold Hoch-Bauer, the son-in-law of Otto Pick, a large shareholder was imprisoned from 14 March 1938 until 23 March 1938. As a condition to his release he agreed to negotiate the sale of large blocks of stock belonging to his father-in-law. In June 1938 through the Schweizerische Bankgesellschaft, a block of 10,000 shares belonging to Otto Pick were offered to the Leonderbank Wien at RM 160.- per per RM 83.33 share. There were no purchasers at this figure and the offer lapsed. (Exhibits 3, 14 & 15)

4. By letter dated 3 December 1938 the Property Traffic Authority instructed Leonderbank Wien, to purchase all available shares of the company and indicated the possibility of using the pending tax penalty proceedings to exert pressure on the shareholders. The first paragraph of the letter stated:

> "In the course of the Aryanization of the above mentioned firm [illegible] and seems offers a desirable possibility, in consequence of the pending tax evasion penalty proceedings, of acquiring foreign share holdings under favorable conditions."

The letter mentioned Moritz Brueder A.G. Vienna and Clemens Auer, Cologne as ultimate purchasers of the shares through the Leonderbank Wien, Hitherto, and Auer instructed Leonderbank to acquire the shares for his account by letter dated 29 December 1938.

B. [illegible]

1. During the [illegible] Clemens Auer authorized the Leonderbank to offer RM 70 per share or in the event that more than 30,000 (43% of the shares) shares were sold, RM 75 per share, with a [illegible] time limit. The [illegible]

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Ueberseebank Aktiengesellschaft notified the members of the syndicate of this offer on 22 December 1938 and stated that Director Pilgrim of the Leanderbank had informed the syndicate that there was considerable discussion favoring the nationalization of the factory and that it was doubtful if an offer of RM 70 - 75 would be made in such an event. (Exhibit 16)

2. Pursuant to the above offer, 36,667 shares (45.83%) consisting of 16,480 shares owned by the Gronin family and 20,187 shares owned by Otto Pick were transferred to the Leanderbank.

3. Subsequently Clemens Auer acquired at increasingly higher prices ranging to RM 93 per share, 78,968 of the 80,000 shares (98.71%) for a total cost of RM 6,490,237.50 or an average of RM 82.18 per share. (Exhibit 17)

C. DETAILS OF THE ACQUISITION OF THE VARIOUS BLOCKS OF SHARES:

1. Otto Pick - 21,187 shares - 26.48%

a) 16,500 were owned by Sapafin A.G. Chur, Switzerland, which was wholly owned by Otto Pick. (Exhibit 18). T.E. H. Davis, British, held 4,250 of these shares and 2,250 were held by J. E. Lloyd, British, both agents of Pick. The remaining 10,000 shares were held directly and were sold on 30 December 1938 at RM 75 per share to Clemens Auer through the Leanderbank. The proceeds of the sale of the 10,000 shares were paid to Aktien-Sperrkonto and were later released to the Bankers Trust Company, London and converted to $ 28,000.

b) The 6,500 shares held by Davis and Loyd were sold on 30 December 1938 to Clemens Auer through the Leanderbank for RM 75 per share. The proceeds of the sale were credited by Leanderbank to Picks debt to it.

c) Pick's 3,687 remaining shares were sold on 30 December 1938 for RM 75 and the proceeds credited to Picks bank debt. (Exhibits 19, 20 & 21)

2. THE GRONIN FAMILY - 16,480 shares - 20.60%

a) These shares were sold on 30 December 1938 to Clemens Auer through the Leanderbank for RM 75 a share. The proceeds of the sale were paid into the Aktien Sperr-Konto and later transferred to Lehman Brothers, New York, New York in favour of Irene Gronin at the official Sperrmarkkonto rate of Exchange. (Exhibits 19 & 20)

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3. Ferdinand Bloch-Bauer - 1,37 shares - 11,96%

a) The 6,870 shares deposited by Ferdinand Bloch-Bauer in the Swiss syndicate were sold on 28 June 1939 to Clemens Auer through the Leu&Co-bank for RM 89,35 per share. The proceeds of the sale were paid to Creditanstalt-Bankverein with the Preussner Bank, Berlin, for purchase of 4 % Reichspost Treasury Bonds 1935, and later transferred to Lewenhaupt, Amsterdam, for free disposition of the seller. The exact amount received by Ferdinand Bloch-Bauer for this block is not known. (Exhibit 19 & 20)

b) The remaining 3,300 shares were deposited in the home office of the firm at the time of Anschluss. During the tax penalty proceedings described above, these shares were seized pursuant to orders of the Finance office, Vienna, on 31 March 1939 (order dated 29 March 1939 S-1,S 32-38) and sold to Clemens Auer for RM 90 per share on 28 August 1939 by the Chairman-president. The proceeds were credited to Ferdinand Bloch-Bauer's tax penalty obligations. (Exhibits 19,20 & 22)

4. Gustav Bloch-Bauer - 2,47% shares - 3,22%

a) Doctor Gustav Bloch-Bauer died on 2 July 1938 and left as possible heirs his wife, a resident of Vienna and five children, living outside of Austria. Only one daughter Luise Baroness Gutmann a Yugoslavian citizen, by marriage, elected to declare herself as heiress being the only heir not liable to Reich's emigration tax. Her claim was denied however, and the emigration tax office refused to permit the widow of Gustav Bloch-Bauer to leave Austria until she claimed the estate and paid the Reich's emigration taxes on it. The amount of tax claimed was RM 172,230 which was later reduced to RM 55,207/

b) 2,135 of the 2,575 shares were deposited in Creditanstalt Bankverein, Vienna and were seized pursuant to the Finance office, emigration tax order of 16 June 1939. The shares were sold to Preussische Staatsbank, Berlin without authorization. Since the emigration tax had been reduced, the value of the shares exceeded the tax and a demand for the return of the balance of these shares was made by Dr. Gustav Bloch-Bauer, attorney for the estate. The shares having been transferred, their return was impossible and Bloch-Bauer was credited with a face value of RM 1,600,000,- par worthless, were returned in lieu of the stolen shares and other securities seized. (Exhibit 19) Also of these 2,135 shares were sold to Clemens Auer for RM 90 per share on 19 October 1939. The disposition of the remaining 33 shares of this block is unknown. (Exhibit 19)

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a) 440 shares were sold on 28 June 1939 to Clemens Auer through the Landerbank at par, RM 83.33 per share. The proceeds were paid to the Handelsgesellschaft with the Dresdener Bank, Berlin, for purchase of 4% Reichspost Treasury Bonds 1935 and later transferred to Lewenhaus, Amsterdam, for free disposal of the seller. (Exhibit 19,20 & 23)

5. Robert Bloch-Bauer - 385 shares - .28%

Maria Altmann (nee Bloch-Bauer) - 280 shares - .25%

a) These shares deposited with the Schweizerische Bankgesellschaft were sold on 28 June 1939 for RM 83.33 per share, and the proceeds were handled like Dr. Gustav Bloch-Bauer's block of 440 shares described above. (Exhibits 19 & 20)

6. The Lederer Family, Ampern, Austria - 21,665 shares - 27.08%

a) The Lederer family operated agricultural and industrial property in Ampern, Austria. On 18 March 1938 a self-declaration of tax evasion was made by the partners, Gustav and Wilhelm, to the competent Tax authority and the protection accorded by law Sec. 245 P. St. G. was claimed.

b) The details of the subsequent legal action have not been examined. A criminal tax penalty suit was instituted against the partners. On 30 June 1938 a total tax and penalty amounting to RM 13,340,465.74. was assessed. The entire property of the partners was confiscated including 21,665 Brucker shares and sold by the Vermogensverwertungsstelle, (Property Traffic Authority) of the Ministry for Economics and Labor, to Clemens Auer through the Oberfinanzpresidenten, Wien, at RM 30 each. (Exhibits 19,20 & 24)

7. The Petschacher Family - 4,448 shares - 5.56%

a) The Petschachers were Hungarian Aryans and owned 4,448 shares. These were sold on 29 September 1939 to Clemens Auer. The proceeds, amounting to RM 93 per share the highest amount paid for any block of shares, were paid directly to the Petschachers.

8. The remaining 4,336 shares (5.42%) were held in small blocks and were sold at figures varying from 70 to 85 RM per share. (Exhibits 19 and 25)

D. AMOUNT OF THE PURCHASE PRICE.

1. The par value RM 80.33 shares were purchased by Clemens Auer at prices ranging from RM 75 to RM 93, an average price of RM 81.92 per share. (Exhibit 1,19,20)

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2. The balance sheet for 17 July 1937 indicates that the share capital was intact and the firm had free reserves of S 553,000 (Exhibit 25). The firm was also earning substantial profits (see paragraph below) The existing criminal tax evasion penalty suit had a depressing effect on the market value of the shares however. Had the tax amounting to roughly RM 1.5 millions and the maximum penalty amounting to roughly four million been assessed, the free reserves and half the capital account would have been wiped out. The question whether per was adequate compensation must therefore be decided in terms of the legality of the tax penalty suit.

3. Subsequent to acquisition of 98% of the shares, Clemens Auer converted the firm into a private firm under the name Brucker Lumberfabrik Clemens Auer. Auer had financed the share purchases through four bank loans. One of these loans was paid off by liquidation of the two Brucker subsidiaries (A.G. fuer Landwirtschaftliche Betriebe and Vereinsanlagen A.G.) which had a book value of RM 636,000. The remaining three bank loans, totaling RM 5,443,939 were changed as liabilities of the firm in the Reichsmark opening balance of 1 January 1940 (Exhibit 26). Obligating the firm to pay these loans was possible since the firm was now wholly owned by Auer. (Exhibits 1, 19,20,26 and oral statement by Clemens Auer) The balance sheet indicates the capital of the firm as RM 6,191,788.80 as against the share capital of RM 6,666,666.66. Unobligated reserves were sufficient to make up the capital account impairment however. Thus, without introducing any new capital, Auer purchased the entire firm less its two subsidiaries. Thus, but for the uncertainty created by the tax penalty suit, the shares of the firm were worth considerably more than par value.

4. On 14 May 1947 the General Secretary of the Vienna Stock Exchange certified that he had investigated sales of shares of Brucker during 1935 - 1938, and had found the value of the shares in March 1938 was S 300 to 320 for a par S 125 shares. [illegible] published by Steiner Inc, Vienna VIII, copies of which are in the files of Dr. Regner, in Brucker/Mur, attorney for Clemens Auer, quote Brucker shares at RM 85 on 3 December 1938 and RM 90 - 100 on 31 October 1939.

V. [illegible]

A. By November 6, 1939 Auer had acquired control of the firm and appointed Director. The work of the firm was strengthened by break exhibiting [illegible]

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of Austria). The General Meeting of 15 February 1940 made the firm a sole proprietorship under the name of Brauerei Ziehrerbräu Clemens Auer, A.G. as of 1 January 1940. Clemens Auer accepted the obligations of the firm and liability to the minority share holdings not yet purchased by him (1.5%). (Exhibit 1)

B. On December 2, 1942 the seat of the firm was again moved back to Vienna. (Exhibit 1)

C. On 23 March 1944 the sole proprietorship was converted into a limited partnership by the introduction of the manager Karl Rigel, an Austrian, as general partner with a nominal capital of RM 12,000 and Clemens Auer as a limited partner with a nominal capital of RM 4,618,000. That this partnership agreement served as a cover for Clemens Auer is indicated by the fact that the agreement provided the General Partner, Rigel was not responsible for business losses and received a salary and a restricted participation in the profits. (Exhibit 1 and information given by Public Administrator Bizzaro)

VI. HISTORY FROM THE END OF THE WAR TO DATE

A. Pursuant to the law of 10 May 1945, St.GBl. No. 9 Friedrich Schanz became public administrator of the Vienna office and Alfred Wanke became public administrator at Bruck a.d.Leitha, representing the firm mutually. (Exhibit 1)

B. On March 22, 1946 Friedrich Schanz was replaced as administrator by Mario Bizzaro of Vienna (Exhibit 1) The Soviet Government disagreed with these appointments and appointed Ing.Anton Erisman on April 16, 1946. The contest was carried to the Oberlandesgericht, Vienna. On 30 October 1946 the Court ruled (4 R 73/46) that the appointment of Ing.Anton Erisman was cancelled and Alfred Wanke of Bruck a.d. Leitha and Mario Bizzaro, Vienna, were the proper public administrators (Exhibit 1).

C. The Soviet Government ignored the courts decision and has continued to operate the sugar refinery with Erisman as administrator under a Soviet Commissar, Lt.Col.Lupalo. Correspondence from Vienna remains unanswered and no funds are allocated for payment of salaries and expenses of the Vienna home office. The administrator and two secretaries are paid from funds loaned by the Landerbank Wien. (For information given by Public Administrator Bizzaro)

D. Clemens Auer is in the Vienna jail awaiting trial for his participation in the Aryanization of this firm, under Art 11 of the War Criminal Law. His file number is Gv.Vr. 2b- Vr 3140/45 at the Landesgericht. (See interview with Clemens Auer and his attorney Dr. Wagner).

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E. At a meeting early in October 1947 Dr. Gustav Rimesch, was instructed by Doctor Baljeff, Soviet Minister, that the Soviet Government considered the sugar refinery at Brunn a German external asset in Austria and that unless proof could be brought that direct physical force had been used to acquire the shares, or that the shareholders had received no compensation whatever, the Soviet Government had no further interest in restitution claims.

F. The 46/47 season sugar production resulted in an operating loss of roughly S 2,000,000. The Soviets allege that the control price fixed by the Austrian Government was so low that production costs exceed proceeds. According to Dr. Rimesch, the Austrian Government paid this loss and the entire stock of sugar is being released to the Austrian Economy. The payment was made to the Soviet since it had financed the current seasons operations. (Per oral information given by Dr. Rimesch.

VII. FINANCIAL STATUS:

A. Following is a tabulation of the profit and loss for the years 35/36 through 43/44:

YEAR	PROFIT	LOSS
1935/36	S 1,485,011.65	
1936/37	S 1,533,125.84	
1937/38	RM 89,460.21	
1938/39	RM 326,181.11	
1939/40		RM 461,638.86
1940/41		RM 913,546.52
1941/42	RM 698,944.09	
1942/43		RM 296,697.95
1943/44		RM 439,235.54
TOTALS	S 3,018,137.49	
	RM 1,088,586.41	RM 2,109,118.87

B. The latest available balance sheet dated 30 September 1944 carries assets totaling RM 7,662,947.98 and liabilities totaling RM 2,451,119.79. The capital investment then accounted to RM 5,211,828.19. Of the total assets, Real Estate and buildings comprised RM 1,[illegible] machinery, furniture and equipment RM 2,295,[illegible], inventories RM 2,[illegible], sugar RM [illegible], cash RM 42,772.44. Accounts receivable RM 531,917.78 and the remainder consisted of advance payments and adjustment entries. The only large liability was the Accounts payable account totaling RM 1,[illegible]. (Credit's OK and Schneider answered thereto.) The firm was in a very liquid condition as of September 1944.

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[redacted]

1. As of Anschluss there was no German capital invested in the firm.

2. Between December 1938 and November 1939 Clemens Auer, a German, acquired 100% of the shares at about par value.

3. At the time Auer purchased the shares they were worth nearly double par value according to previous sales figures, the profit and loss statistics and the current balance sheets.

4. During the time when Auer was purchasing the shares a tax evasion penalty suit was pending against the firm. And the maximum penalty been assessed the value of the shares would have been reduced to a figure somewhat under par and thus the pending suit depressed the market value of the shares.

5. Despite contentions by restitution claimants that par was inadequate compensation, shares which had been seized by the German authorities for various reasons were sold to Auer at par or slightly above. Also the shares owned by Hungarian Aryans, against whom no pressure was brought were sold at 10% above par. Such sales would not have been made had the price been excessively low.

6. Despite contentions of restitution claimants that [redacted], the tax penalty suit was illegal since they had made self-indictments and thus claimed immunity from a tax penalty, the various audits of the books of the firm reveal numerous irregularities which, coupled with the reluctance of the former directors and the attorneys for the restitution claimants, indicate that a tax investigation was in order and the penalty suit was not illegal.

7. While it appears that the tax penalty suit was legal, it appears that the investigation was unduly severe and that the pending suit was used as a means to induce the shareholders to sell at low figures. Although the tax suit was used as an inducement to sell, it was not kept pending for that purpose since it was not settled until many months after Auer had secured control of the firm.

8. As regards the individual blocks of stock, it is concluded that,

a. Adequate consideration was paid for the shares of:

1. [redacted]	[redacted]
2. [redacted]	[redacted]
3. [redacted]	[redacted]
4. [redacted]	[redacted]
5. [redacted]	[redacted]

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b. Inadequate consideration was paid for the shares of

1. Dr. Gustav Bloch-Bauer - 3.22% seized for emigration tax.

c. Unknown:

1. The Lowe family - 27.08% - this would depend on the nature of the tax penalty suit against them.

9. This firm should be considered as a German external asset in Austria valued at roughly RM 5 million as of the last balance sheet (September 1944). Compensation should be paid to shareholders listed in 8 b. and possibly in 8 a. above.

10. The firm is considered as a CEA by the Soviet and is treated as such. There are no known assets in the U.S. Zone of Austria.

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SCHEDULE OF EXHIBITS

1. Extracts from the Commercial Register.
2. Syndicate Voting Agreement.
3. Statement by Dr. Gustav Feinhals re Clemens Auer securing control of Brucker.
4. Statement dated 29 November 1938 by Dr. Kaufmann re meeting with tax authorities.
5. Supplemental tax declaration of 8 April 1938.
6. Supplemental tax declaration of 27 April 1938.
7. Tax summary accompanying tax settlement of 17 April 1939.
8. Report And. G. Walcher re audit of Brucker books dated 20 May 1938.
9. Letter dated 28 November 1938 from Mr. Ferdinand Bloch-Bauer.
10. Letter dated 28 November 1938 from Mr. Karl Bloch-Bauer.
11. Tax settlement of 17 April 1939.
12. Final Tax settlement of 8 November 1939 and enclosures A.G.
13. Letter dated 6 December 1938 to Clemens Auer from Landerbank, Wien, re purchase of shares of Brucker.
14. Letter dated 31 May 1946 from Karl Bloch-Bauer , alias Bentley, re pressure exerted by Nazi.
15. Affedavit dated 13 December 1946 by Otto Pick re sale of Brucker shares.
16. Letter dated 22 December 1938 from Schweizerische Bankgesellschaft to syndicate members re offer of Clemens Auer.
17. Letter dated 13 February 1940 from Landerbank, Wien to Clemens Auer, re shares purchased for Auer.
18. Certificate that Sepafin A.G. was owned by Otto Pick.
19. Summary of shares purchased by Auer.
20. Summary of shares purchased by Auer and Disposition of proceeds.
21. Memorandum dated 11 January 1940 by Otto Pick, re sale of Brucker Shares.
22. Memorandum dated 17 July 1947, re shares of Ferdinand Bloch-Bauer.
23. Memorandum dated 17 July 1947, re disposal of shares of Fr. Gustav Bloch-Bauer.
24. Memorandum dated 16 July 1947, re disposal of shares of the Lobe Family.
25. Extract from Balance sheet of 31 July 1937.
26. Extract from balance sheet of 1 January 1940.
27. Certificate dated 21 May 1947, re value of Brucker shares in 1938.
28. Extract from Balance Sheet of 30 September 1944.
29. Extracts from tax law applicable to tax penalty suit.

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EXTRACT FROM THE COMMERCIAL REGISTER

OESTERREICHISCHE ZUCKERINDUSTRIE AKTIENGESELLSCHAFT

1.) August 6. 1902

Title of the firm: Oesterreichische Zuckerindustrie Aktiengesellschaft

Head-office: Vienna

Original capital: = Crowns 4,000,000.-- divided into 10,000 bearer shares at 400 crowns each.

2.) October 29. 1936

Capital increase on the basis of a conclusion reached in the general meeting of September 7, 1936, increase from S 8,000,000.- to 10,000,000.- by using the reserves amounting to S 2,000,000,-.

The existing shares at a par value of S 100.- each were increased to par value S 125.- each.

3.) May 13. 1938

Commissary administrator: Rudolf Henninger.

From now on only the commissary administrator will be entitled to represent the firm. He represents the firm independently.

During the time of commissary administration the board of directors and the former proxies have no right for signature and representation.

4.) November 25. 1938

Entry concerning some changes in the statutes.

5.) March 31. 1939

Appointed on the basis of the "Vetg. G.Bl." for the land Austria as trustee Rudolf Henninger.

Right for representation from now on Only the trustee independently.

6.) May 9. 1939

Appointed as trustee Dr. Viktor Ehinger

Right for representation only the trustee indepently.

7.) November 6. 1939

Oesterreichische Zuckerindustrie Aktiengesellschaft Brueck a.d.Leitha.

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Original capital - RM 6,666,667.- = S 10,000,000.-

Director: Clemens Auer, Trader at Koeln.

Joint proxy : Viktor Pfeiffer, Vienna. He represents the company together with a member of the board of directors.

The activity of the former members of the board of directors has been cancelled.

Clemens Auer was appointed as director.

Dkfm. Dr. Viktor Exinger, was appointed trustee, during the time of this appointment the director and the recorded proxies have no [illegible] for signature or representation.

8.) December 1, 1938

The activity of the trustee Dr.Viktor Exinger has been cancelled.

9.) March 8, 1940

The general assembly of February 15, 1940 concluded upon a change in the company through handing over of the property to the [illegible]-partner Clemens Auer, who will continue this enterprise under the title "Brucker Zuckerfabrik Clemens Auer". This conclusion was made under exclusion of liquidation. With this entry the company i.e. the firm has been cancelled.

10.) March 8, 1940 (Commercial Register Bruck a.d.Leitha)

Brucker Zuckerfabrik Clemens Auer

Home office: Bruck a.d.Leitha

Director: Clemens Auer, manufacturer Vienna.

Joint Proxies : Dkfm. Viktor Pfeiffer, Vienna, Ing. Adolf Hartmann, Bruck a.d.Leitha.

This enterprise was established through a transformation out of the Czechoslovakian Zuckerindustrie-Aktiengesellschaft.

11.) December 2, 1942

The power of attorney of Ing. Adolf Hartmann has been cancelled.

The seat (home-office) of the enterprise was moved to Vienna.

12.) December 2, 1942 (Commercial Register Vienna)

Maria Pfeiffer appears for the first time as a proxy.

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13.) March 22, 1944

Director Karl Rigal, Vienna.

The power of attorney of Karl Rigal has been cancelled.

The enterprise went over from Clemens Auer to Karl Rigal.

Clemens Auer, Trader, Vienna, has participated in the enterprise as "Kommanditist" (general partner) with an investment of RM 4,610,000.-

Therefore from now on "Kommanditgesellschaft" (Limited partnership)

The partnership started on October 1, 1943.

14.) November 6, 1945

The power of attorney of Dkfm. Viktor Pfeiffer has been cancelled.

The power of attorney of Mario Bizzarro is cancelled for the period of public administration.

Appointed as public administrator on the basis of the law of May 10, 1945, St. G. Bl. No. 9: Friedrich Schanz, commercial manager, Vienna and Alfred Wanke, chief administrator, Bruck a.d.Leitha.

They represent mutually.

During the time of public administration the general partner has no right for representation.

15.) March 22, 1946

Dismissed the public administrator Friedrich Schranz.

Appointed by the USA Military Government- Austria, as administrator Mario Bizzarro, Vienna.

He represents together with the public administrator Alfred Wanke.

16.) April 16, 1946

Dismissed the administrators Alfred Wanke and Mario Bizzaro.

Appointed as public administrator: Ing. Anton Krisam, Vienna.

17.) November 13, 1946

On the basis of the decision of the "Handelsgericht" (superior district court) Vienna, of October 30, 1946 - 4 R 715/46, the public administrator Ing. Krisam was cancelled and the former public

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administrators i.e.

Alfred Wanke in Bruck a.d.Leitha, appointed by the former State-
and from Volksvermahrung

and

Mario Bizzaro, appointed by the USA, or better, by the British
Military Government

were newly appointed.

Right for representation from now on again the two public adminis-
trators Alfred Wanke and Mario Bizzaro mutually together.

Extract made by Karpa Waldemund.

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Translation
Copy

Syndicate Contract

The Schweizerische Bankgesellschaft in its own name and for a Swiss group in Zuerich, represented by it, the Credit Industriel in Glarus, Mr. Ferdinand Bloch-Bauer, in Vienna, Dr. Gustav Bloch-Bauer, in Vienna, Dr. Marianne Hamburger-Loew in Vienna, Mrs. Gertrude Loew, in Vienna, Ing. Otto Pick, viz. all Viennese individuals, represented by Dr. Rudolf Bienenfeld, lawyer in Vienna, have together concluded the following verbal legally binding

Syndicate Contract.

Preamble.

The following cited Swiss shareholders of the Oesterr. Zucker-Industrie A.G., which represent together a great part of the entire shares of the Oesterr. Zucker-Industrie A.G. have declared to the other shareholders, listed in the following that they have the intention, with regard to the existing circumstances, to sell their shares, unless the other shareholders would decide to establish a syndicate together with them for the purpose of permanent stabilization of the administration and management and to give them the proper representation within the scope of the administration and the management of the business.

With regard to this, the following shareholders have decided, to form a share-syndicate.

I.

The formation of a syndicate.

All the above mentioned physical and juridical individuals are shareholders of the Oesterr. Zucker-Industrie A.G., viz.

the Schweizerische Bankgesellschaft for its own name and for a Swiss group, with	40,198	shares
Credit Industriel, Glarus, with	5,100	"
Mr. Ferdinand Bloch-Bauer, with	3,300	"
Dr. Gustav Bloch-Bauer, with	2,325	"
Dr. Marianne Hamburger-Loew, with	6,339	"
Mrs. Gertrude Loew, with	8,300	"
Ing. Otto Pick, with	3,687	"

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so that by this way the aforenamed juridical and physical individuals possess from the existing 80,000 shares of the Oesterr.Zucker-Industrie A.G. 71,246 shares. They unite these 71,246 shares into a syndicate and they assume in this syndicate the following obligations.

II.

Purpose of the syndicate.

Purpose of the syndicate is the joint preservation and the execution of the appertaining interests and rights of the member of the Oesterr.Zucker-Industrie A.G. as a share-majority, by the joint management of the enterprise through the administration elected by the members of the syndicate, as well as the guarantee of the stable administration and management.

III.

Disposal, Hypothecating and encumberance of shares.

Each member of the syndicate loses the right of disposal, hypothecating, encumberance, or to make arrangements with the shares brought into the syndicate during the period of syndication in any other manner, except without the unanimous decision of the syndicate.

If a member of the syndicate wishes to dispose of his pledged shares, he has to submit the respective written proposition to the management of the syndicate. The management of the syndicate will arrive immediately at a syndicate decision about this matter.(Item VII)

The transfer of syndicate shares to the heirs, to partial heirs of a member, does not require the consent of the other syndicate-members. If the ownership of syndicated shares will be transferred during the period of the syndicate to underaged heirs of a member of the syndicates, they have to appoint as their representative a fullaged member of the syndicate.

If such a member will not be nominated within three month to the management of the syndicate, the management of the syndicate is entitled to execute the rights of the shares, belonging to the underaged within the syndicate.

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IV.

Blocking of the shares.

For the purpose of the execution of item II), all the shareholders have to block their shares at the place of deposit, by informing the place of deposit concerning that a disposition of the shares during the period of the syndicate is admissible, only with the consent of the Schweizer Bankgesellschaft.

V.

The new deposit of shares.

Id anyone of the members of the syndicate acquires shares, wether by purchase or by exercising of a purchase right, or by the issue of "young" shares by the company, he is obliged to bring this shares into the syndicate.

VI.

Management of the syndicate.

Mr.Ferdinand Bloch-Bauer is entrusted with the management of the syndicate. He is in charge of the transaction of the syndicate, according to the particular or general orders of the meeting of the syndicate, the external representation of the syndicate, the entering and execution of syndicate conferences.

If Mr. Ferdinand Bloch-Bauer should be permanently prevented to execute his management of the syndicate, another manager will be elected by a majority of the syndicate, which is to be reckoned according to the represented shares.

The management of the syndicate will be executed honorary.

VII.

Decisions of the syndicate.

The decision of the syndicate takes place at the meeting of the syndicate, or by written information of the members of the syndicate and the demand to express their desire.

If some affairs shall be discussed or decided in the manner of a meeting of the syndicate, an interval of at least ten days must exist between the forwarding of the invitation and the day of the

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of the meeting, but in urgent cases the invitation can be made by a cable. The agenda of the meeting is to be included in the invitation. It is the free will of the Schweizerische Bankgesellschaft to decide upon the place of the syndicate-meeting.

If written decisions are intended, the management of the syndicate has to inform each of the members of the syndicate of the decision to be made, with the request, to forward their decision within eight days after the receipt of the letter to the management of the syndicate. If a member of the syndicate does not express his wish in his letter to an agreement of the syndicate, it is to consider as a positive indication. These letters, as well as all written deliveries as per this syndicate contract are to be forwarded to each of the members, under the last address given to the management, registered with receipt.

A representation as well at the meeting, as with the written decisions is admissable through an authorization, but the authorization must be proved in writing to the management of the syndicate.

The manager of the syndicate is in the chair at the meeting of the syndicate; he can also entrust an other member of the syndicate with the management of the meeting.

VIII.

Necessary majority

For all important decisions, especially as

a) the sale of shares by the syndicate

b) the change of the contract of the syndicate

c) the anticipated dissolution of the contract of the syndicate

d) for decisions to which the shareholders are pledged for a change of the object of the company at a general meeting, increase or reduction of the joint stock capital, change of the statutes of the company, dissolution or fusion of the company, the voting of new members of the board of administration, the appointment of directors or other leading individuals of the company, is unanimity necessary.

If such an unanimity is not reserved, all the members of the syndicate are obliged with their entire shares to vote against such a

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majority decides six months before expiration to continue the contract. An earlier dissolution of the syndicate is permitted, only with unanimity.

XI.

Representation in the board of directors.

The present formation of the board of directors will not be changed by the decision to let the management of the company remain unchanged at the present time. However all the Austrian shareholders are pledged not to make decisions in important affairs through their confidents on the board of directors of the company, without first asking the opinion of the Swiss shareholders and to only execute an eventual decision after a consent has been received, according to the contract. Therefore all members of the syndicate are pledged to instruct their confidants on the board of directors to inform immediately the Swiss shareholders, as also the Schweizerische Bankgesellschaft of all important occurances within the company, to watch carefully that all enters obligations, as in the aforementioned passage will be observed summarily to do everthing, to make it possible for the Schweizerische Bankgesellschaft, to obtain a general view of the legal and objective status of the company.

The Swiss shareholders are entitled to be represented on the board of administration, proportionately to their percentage of shares in case they wish to express their wishes with at least two members. All shareholders pledge themselves to elect two nominated individuals to the board of administration at a general meeting, in case such a request would be uttered.

XII.

Arbitration Court.

For the decision of all disputes from this syndicate agreement including all disputes of the legal validity of the syndicate contract, or of each of its regulations, an arbitration court at Zuerich is competent, whereof a separate arbitration contract will be made.

The undersigned, Miss Martha Luethy and Miss Emmy Burkhardt confirm as witnesses that the afore verbal contract between the

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Schweiz.Kredit Bankgesellschaft represented by Director F.Lehnherr and Deputy-Director Dr.L.Birchler, the Credit Industriel, represented by Mr.K.F.Keller and Mr.Alvin Widmer and the Messrs.Ferdinand Bloch-Bauer, Dr.Gustav Bloch-Bauer, Ingenieur Otto Fick,as the Mrs.Dr.Marianne Hamburger-Loew, Mrs.Gertrude Loew, all the five lastmentioned represented by Dr.Rudolf Bienenfeld, Rechtsanwalt in Wien, had been concluded as per notary legal authorisation from March 8, 1938.

As witnesses:
sngd. Martha Luethy
sngd. Emmy Burkhardt.

Official attestation.

The authentisity of the signatures, on the other pages, put in in my presence, of

Miss Emmy Burkhardt an der Bahnhofstrasse 10, at Thalwil and
Miss Martha Luethy, an der Burninastrasse 123, at Zuerich 11

will be officially attested.

Zuerich March 11,1938 — NOTARIAT ZUERICH (Altstadt)

Taxi Fr. 4.-
Contr.No. 2004/05 — sngd. E.Buehler,Substitut

Official attestation

The beforestanding copy corresponds exactly with the original submitted to us.

Zuerich, March 11, 1938 — NOTARIAT ZUERICH (Altstadt)

Taxi Fr. 9.-
Contr.No. 2024 — sngd.E.Buehler, Substitut

The above copy corresponds verbaly with the stamped, attested copy submitted to me, Wien, on the sixteenth of July Nineteenhund nine hundred and fourty-seven.-

Tax and turn over tax and stamp S 7.70

Signature illegible

ROUND STAMP
Dr. Josef Kurat
Oeffentlicher Notar
Wien-Innere Stadt.

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EXHIBIT No.2

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To the
Chief of the Legal Department of the
Administration of Enemy Property in Austria
Mr. P o l l a k
Vienna I.
Singerstrasse 4-6

Woodcock Hutchison Ltd., Vancouver B.C. Canada
Mag. Ing. Otto P l a n k , 1397 The Crescent,
Vancouver, B.C. Canada

Dr. Bruno G r a e t z , 995 Fifth Avenue
New York, USA

Heirs after the late Mr. Ferdinand Bloch-Bauer,
deceased on November 13, 1945
last residence: Zurich, Utoquai 47

Estate Dr. Gustav Bloch-Bauer
deceased on July 2, 1938
last residence: Vienna I., Stubenbastei 12

all represented by: Rechtsanwalt
Dr. Gustav Rinesch
Wien IV., Shalimplatz 10
U 45-3-77

Dr. Marianne and Gertrude L o e w
New York

represented by: Dr. Emerich H a a s , attorney
Vienna I., Rosenbursenstr. 6

for acknowledgement of their restitution - claim
upon the property of the firm: Brünner sugar-refinery,
Clement Aust in Vienna III., in Rennweg 13
and in Brunn a/d. Riedenschgewirth, and upon renewal
of the control

Exhibit 3
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At the time of the liquidation of Austria in April 1945 as well as today the firm Brauhaus Augustinerbräu Simmering Ges.m.b.H., Limited Liability Company, was and still is, formally, German property, the only partner (Gesellschafter) being the German national Clemens A u g u s t , Cologne. It is for this reason, apparently, that by the Soviet Element of the Allied Occupational Forces the property of the firm is considered to be German property and is put under the control of the Soviet administration of property.

In opposition to that the claimants state the following:

1. The firm Brauhaus Augustinerbräu Simmering Clemens Auer is the legal successor of the "Centralbrauhaus Zentralindustrie A.G.", which operated the Augustin-Brauerei in Brunn a/G. Proof: The file of the commercial register-general ("Handelsregister") Vienna HRA 11,538 and the resolution of the General Meeting of February 15, 1940, deposited there.

2. Clemens Auer had gained possession of 98% of the shares of the "Centralbrauhaus Zentralindustrie A.G." subsequent to March 13, 1938 availing himself of the compulsory measures against the Jews, taken by the National Socialists. By intervention of the Government and patronized by the national socialist agencies the shares were acquired partly from the sub-administrator, which had seized them from the original owners, partly from the original shareholders themselves, threatening with exhibitation and force. The price paid by Clemens Auer was not at all adequate.

The rightful owners of the shares have, therefore, a claim for the restitution of their property according to the restitution-law in preparation as well as according to the Austrian civil code sub. 878.

To prove these facts, the following is stated:

a) On March 13, 1938 the shares were distributed as follows:

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Name and Address of Bank	Nationality	Amount [illegible]
Dr. Otto Pick, Vienna XIX, Billrothstr. 78	Czechoslovak	[illegible]
Bankhaus Carl Spängler & Co., Salzburg	Austrian	[illegible]
Bankhaus Gebrüder Arnhold, Dresden	Germany	[illegible]
Dr. Oskar Steinbauer, Vienna I, Rotenturmstr. 12	Austrian	[illegible]
Dr. Albert Steinbauer, Vienna IX, Porzellangasse, 2	Austrian	[illegible]
Moritz Altmann, Vienna I, Rotenturmstr. 12	Austrian	[illegible]
Dr. Stockamer und Czedowitz, Lemberg, Jesuitengasse 9, Ch.	Austrian	[illegible]
Rudolf und Alfred Sen. Petschek, Aussig/Elbe, Bergschloß	Austrian	[illegible]
Ignaz Petschek, Tetschen	Austrian	[illegible]
Karl v. Rothschild, Wien, Hegelg.	Austrian	[illegible]
Dr. Oskar Pollak, Wien XIX, Döblinggasse 30	Austrian	[illegible]
Herbert Gutmann	Austrian	[illegible]
Moritz v. Lieb, Vienna XIX, Döblinggasse, 7	Hungarian	[illegible]
		[illegible]

[illegible] Page 1 of the list of securities deposited at the Reichsbank on [illegible] 1938, and [illegible] on March 31, 1939, [illegible] of the decree of 21 May 1938 [illegible] Property, Rights and Interests [illegible] Decree, this deposit [illegible] is released.

With the [illegible] 1940 on March 31, 1939 is [illegible] and [illegible] of the securities

[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]

[illegible]

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b) Subsequent to March 13, 1938 Clemens Auer had bought 96% of the (national socialist)
shares partly from the nat. soc. agencies, which had sequestrated the
shares, partly, by force, from the shareholders.

Proof: The file of the "Vermögensverkehrsstelle, Wien", department Ind. Ref. 976/38, the examination of which at the "Bundesministerium für Vermögenssicherung und Wirtschaftsplanung" in Vienna is proposed. Furthermore: letter of the "Vermögensverkehrsstelle" to the "Landesbank Wien A.G." of the Dec. 3, 1938 showing the order, to remit the total of the shares, as quickly as possible, to Clemens Auer; letter of the "Landesbank Wien A.G." to Clemens Auer, dated Dec. 5, 1938, showing that it was intended to avoid oneself of the then-collecting criminal procedure ("Abgabenverfahren") and of the state of insecurity caused by it, to eliminate the Jewish shareholders; copy of a letter of Clemens Auer, dated June 8, 1938 to major general Bodenschatz, chief of the "Ministerrat Goering", asking him for his support in the process of organizing the firm; copy of a letter of the "Landesstatthalter von Niederdonau", Ing. Hirtenlaner, dated March 25, 1939; copy of a letter of the "Schweizerische Bankgesellschaft Zurich", dated Dec. 22, 1938, to Otto Fink, in it is certified, that the representative of the "Landesbank Wien A.G." had pointed out, that the nationalization of the firm was to be expected, if the buying-offer should not be accepted; notes taken at the "Oberfinanzpresident Wien" on August 16, 1939, proving that about 25,000 shares had been taken in pledge by the revenue-office, finally letter of the "Oberfinanzpresident Wien", dated August 22, 1939, in which he approves of the purchase of these shares (Loew and Bloch-Bauer)

The fore-mentioned documents may be produced at my time.

c) According to a statement made by Clemens Auer himself (Encl. A), referring to the purchase-cost of the shares, he has paid..... RM 6,490,237.50 for 78,966 shares i.e. 98 1/2% of the total. The average-price for each share was, therefore, RM 82.18.

An official information of the "Wiener Börsenkammer" of the 10th of Oct. 1945 shows, that the rate of exchange of the shares of the "Oesterreichische Zuckerindustrie A.G." was about S 300 (RM 200) per share until March 13, 1938. Thus the rate of exchange for the total of the shares (80.000) was about S 24,000,000 (RM 16,000,000) whereas Clemens Auer has actually paid only about 6,5 millions Reichsmark, as already mentioned. A considerable part of this amount (RM 3,140,000) was not paid to the shareholders but directly to the national socialist agencies (shares of Loew, partly shares of Bloch/Bauer).

In the official value of the shares of S 300 per March 13, 1938 considerable reserves of the company are not included. This is proved by a report of the "Deutsche Revisions- und Treuhand A.G." about a special

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amalgamation of July 31, 1938 and by a balance of Sept. 30, 1939. This balance shows before all, that in autumn 1939 (time when the firm was taken over by Auer) there were about 7 millions Reichsmark of at once realizable assets (claims, stock on hand, cash) at the disposal of the firm. This amount alone covers the total expenditure made by Auer, who just took the money from the firm. The real estate, the factory with its valuable machinery, the partnerships and so on worth at least RM 10,000.000, were taken over by Auer without any payment. Furthermore the fact is pointed out that immediately after the purchase of the shares Auer sold the partnerships in the "Nieder-oesterr.Zuckerfabrik A.G. Tulln" (book-value RM 695.200) and the 100% partnership in the "A.G. fuer Landwirtschaftliche Betriebe" (book-value RM 1,000.000) and thus acquired considerably more cash in hand.

For further proof that the purchase price of about 6.5 millions Reichsm. for nearly the total of the shares of the firm did not even approximately correspond with the value of the firm, the proceeds of the "Oesterreichische Zuckerindustrie A.G." for the three years prior to 1938, given as a basis for tax-collecting, are shown below:

1934/35	declared	S 2,455.155	assessed	S 3,000.000
1935/36	"	" 2,763.182	"	" 3,256.000
1936/37	"	" 2,564.256	"	"

This alone shows, that the purchase price did not amount to much more than about the double net proceeds of one year only.

Proof: The respective tax-collecting file deposited at the "Prueher Finanzbehoerde Klagenf.Auer" and the file of the "Finanzamt fuer Koerperschaften Wien

3. The shareholders of the "Oesterreichische Zuckerindustrie A.G." entitled to claim the restitution had been compelled to leave Austria after 1938. They have taken residence abroad in the meantime and have become foreign citizens.

Eg. this P a k e t (85 1/2% of the shares) has brought in the claim into the Canadian company Western Sugar Ltd. Vancouver B.C. and the former British/Canadian subject himself.

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The legal successor of the "Graphische Kunstanstalten" St.Gallen, Dr. Bruno S p a e t h (50 1/2% of the shares) is U. S. subject.

Mrs. Gertrude and Dr. Marianne L a e w (25% of the shares) have also become U.S. citizens.

Of the heirs after the late shareholder Ferdinand Bloch/Bauer, Mr. Robert B. Buckley (former Dr. Robert Bloch/Bauer) (3% of the shares) has become Canadian citizen and Maria V. Altmann (former Bloch/Bauer) (3% of the shares) has become U.S. citizen. The third heiress after Ferdinand Bloch/Bauer, who is also heiress after the late Dr. Gustav Bloch/Bauer, Mrs. Luise (wife), (9% of the shares) is Jugoslavian citizen.

Proof: Enquiries at the British and USA Military Government, Vienna

Thus restitution is claimed:

26 1/4% ..... by British subjects, 50 1/2 % by USA subjects, 9% by Jugoslav. subjects.

The legal department of the Soviet property control in Austria is requested, to examine thoroughly the right of the claimants and the legal situation of the firm on the basis of the offered evidence and the documents available at the "Bronker Zuckerfabrik", and to ask for further evidence if necessary.

The undersigned representatives are asking herewith for an invitation to a meeting at which they will produce all the aforementioned documents.

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Dr. Friedrich Kamann
Wien I.,

29 March 1938

An

Oesterreichische Kohlenindustrie Aktiengesellschaft,

Wien I.,
Schwarzenbergplatz 16.

Betreffend:

As discussed yesterday, I have talked to the reporter Dr. Fritsch today and agreed with him that the declaration of the hidden reserves and other supplementary items for the past 3 years, will be filed before April 6, this year.

I request you, to inform me in time about the accounts and remain

Respectfully

Dr. Friedrich Kamann

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COPY

8 April 1939

To
Steuerverwaltung fuer den I.Bezirk,

Wien I,
Renngasse 2

Oesterreichische Zucker-
industrie Aktiengesellschaft

Wien I.,Elisabethstrasse 10

Reports regarding Corporation tax
in the fiscal years 1934/35,
1935/36,
1936/37.

In our final account for the fiscal years 1934/35,1935/36, and 1936/37 are a number of expenditures which are as we have now convinced ourselves not permitted, according to par.84 and 98 P. St.G.

We did not mention these items at the time of the assessment, and therefore request that these additional expenditure items mentioned in detail in the enclosure, be taxed according to the provisions of par. 245 P.St.G.

In case it should be necessary to submit new tax returns, we request you to grant us a 8 day's delay.

Oesterreichische Zuckerindustrie
Aktiengesellschaft

Ferdinand Bloch-Bauer m.p.
Pfeiffer m.p.

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COPY

Hidden reserves in the inventory

A difference of $ 99,086.08 is shown between the factory inventory and the balance inventory in the fiscal year 1934/35, because some raw materials were not evaluated.
Of the items sacks and wrapping material, old manipulation sacks were not evaluated and further more the stock on paper (by reason of its short stability) for ..... $ 68,347.08
of the coke, about 35 railwaywarloads were
not evaluated because of shortage ..... $ 9,800.--
of coke, about 24 railwaywarloads of ..... $ 17,976.--
of porcelaine material ..... $ 2,962.80 $ 99,086.08

In the fiscal year 1935/36, a difference of $ 52,912.73 is shown between the factory inventory and the balance inventory, which has reserved from the non-evaluation of materials.
The old sacks of the item sacks and wrapping material were not evaluated, furthermore the stock on paper (because of its short stability) and Styrian earthenware, which became completely worthless per $ 33,392.23
further of coke about 37 railwaywarloads $ 19,520.50 $ 52,912.73

The fiscal year 1936/37 shows a difference of $ 42,647.01 between the factory inventory and the balance inventory, by non-evaluation of materials.
Of the items sacks and wrapping material, old sacks for manipulation were not evaluated, further the stock on paper (because of its short stability) ..... $ 38,067.43
Of coke about 8½ railwaywarloads were not evaluated ..... $ 4,579.60 $ 42,647.01

totally therefore $ 194,646.84

Expenditures

Various expenditures were made in the fiscal years 1934/35, 1935/36, and 1936/37 for drainage-work, road maintenance contributions various payments to beer wholesale and retail publicans, further for various deliveries of material, which were not used by the managing director at this time, Karl Hieb-Bauer for the mentioned purposes but might have been used for other purposes, first of all for different contributions, which involve presumably expenditures, which could not been entered in the books. The precise use of this amounts is certainly not known to us.

The total amount is: In the year 1934/35 ..... $ 402,951.63
" " " 1935/36 ..... $ 477,764.68
" " " 1936/37 ..... $ 320,830.43
Total $ 1,199,546.82

Amounts declared

Hidden reserves in the inventory ..... $ 194,646.84
Sum of withdrawals ..... $ 1,199,546.82
Total $ 1,394,193.66

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GOVT

K. Vienna, 29 April 1938

To

Oberverwaltungsgerichtsrat Dr. Anton I. Renner

I. I. I. I.,
Fleischmarkt 19

Österreichische Kontrollstelle
für Bodenschätze

Wien I., Elisabethstrasse 18,

through Dr. Friedrich Hausmann
Solicitor
Vienna I., Elisabethstr. 20
Phone No A-30032/9

Proposes supplementary
Taxation for 1931, 1932, and 1933

Corresponding to the following years, there are in the closing of the accounts for the fiscal years 1931/32, 1932/33, and 1933/34 a large number of items, which according to par. 94 ff F. St.G. should be assessed as proceeds and which can not be recognized as expenditures.

As our representative has orally informed the reporter already this morning, these amounts are of the same extend as in the fiscal years 1934/35, 1935/36, and 1936/37 for which our supplementary declaration is already in your hands.

The items, which we had not included in the taxation-procedure, amounted during the various years to the following sums:

1931/32 ..... S 307,183.--
1932/33 ..... S 80,259.54
1933/34 ..... S 276,552.10

We request to prescribe the supplementary regarding these items, applying the prescriptions of par. 303 F.St.G.

Österreichische Kontrollstelle
für Bodenschätze

ENCLOSURE No. 6

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Development of the General Balance, additional depreciation, additional allowance, and appropriations has been from the Balance of the Undistributed

	1929/30	1930/31	1931/32	1932/33	1933/34	1934/35	1935/36	
Profit according to balance)	959,156.17	70,972.44	1,897,607.58	1,221,142.34	1,975,563.94	1,479,184.28	1,465,011.65	1,8
./. Profit balance	./. 42,846.65	./. 42,692.00	./. 97,013.84	./. 58,048.68	./. 111,096.26	./. 152,039.03	./. 165,484.80	./. 1
# Depreciation tax	# 270,709.43	# 186,585.31	# 538,589.88	# 585,412.50	# 596,000.—	# 728,000.—	# 691,885.42	# 1,0
# Allotment to reserve fund	—	—	—	—	# 250,000.—	# 400,000.—	# 350,000.—	
Total declared profit	1,186,886.90	154,473.98	1,720,963.76	1,726,506.01	2,258,467.08	2,455,115.25	2,763,182.47	2,8
Additional allotment:								
Depreciation provisions								
" Act provision and equipment	12,634.91	—	142,163.88	237,984.92	127,641.74	188,334.45	190,848.16	
" Profit share of pensioners	11,868.75	19,182.72	17,750.—	24,182.15	24,822.88	21,471.28	29,589.08	
" Dividends & travel expenses of D of D	94,837.80	5,393.40	88,981.45	25,020.—	30,543.40	48,438.—	35,150.—	
" Maintenance costs	28,417.81	—	60,807.87	81,529.27	76,076.40	80,947.28	84,236.—	
" Auto (Car) Investments	5,898.10	—	1,597.48	15,198.44	—	—	—	
" Auto costs	3,000.—	2,037.88	—	—	—	6,633.07	6,000.—	
" Other items	—	78,942.94	—	8,600.06	7,659.66	80,091.87	87.50	
Profit from sale of Ldp.								
" " " " Libs	—	—	158,614.27	—	—	—	—	
Share of A.G.f.landespfandbr	—	—	50,000.—	—	—	—	—	
Contributions	—	—	8,328.89	14,500.—	10,674.87	139,580.—	155,038.87	
Gain withdrawn by General Directors	—	—	8,890.—	8,800.—	—	6,300.—	6,300.—	
Transf.Interest reserve for loss in exchange	—	—	—	237,944.40	—	—	—	
Interest difference Aspitz Libbm	—	—	—	15,698.10	15,698.10	15,698.10	4,706.10	
Adjusted profit	1,340,000.—	260,000.—	2,244,834.01	2,375,506.26	2,585,473.10	3,000,000.—	3,256,000.—	
1. Additional declaration of 1.IV.1932								
Reserve withdrawals						402,351.25	437,764.66	
" Investment reserves						99,086.09	88,913.75	
						3,502,437.81	3,782,678.41	
Additional adjustments 19.IV.1932								
2. Second additional declaration of 27.IV.1932								
Reserve withdrawal			397,182.—	259,233.94	372,839.18			
3. Fourth additional declaration of 25.May 1932								
Shortfall shares not entered in books					54,488.—			
" Interest not entered in books					15,988.07	19,976.09	20,784.—	
Right for tax payment from last declaration	1,340,000.—	260,000.—	2,632,016.01	2,632,740.20	3,026,188.35	3,521,113.70	3,837,662.41	4,0
Total additional profits								
Sum of total profit application								
" " " " Special reserve fund	4,000.—	5,000.—	—	—	48,000.—	—	—	
" " " " Pensioners fund	—	—	—	—	24,000.—	—	—	
" " " " Dividends	2,137.50	2,137.50	2,137.50	2,137.50	1,968.—	2,137.50	2,137.50	
" " " " Allot.of profit from participat.in Ldp. or A.G.f.landespf.	—	—	130,048.—	—	—	—	—	
" " " " Contributions	—	—	—	24,841.54	27,284.50	28,000.—	28,000.—	
" " " " Allotment and settlement	—	—	—	—	—	39,000.—	39,000.—	
" " " " Allotment to reserve fund	—	—	—	—	—	—	—	
" " " " Other items	—	—	—	—	—	—	—	

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By NND NARA Date 1978

Report First Part on the Auditing of the Business Books and Papers of the Austrian Sugar Industry A.G. Wien I, Elisabethstr.16

Auditor
Engineer
Comm.O.Walcher

This audit took place by order of Dr.Rudolf Freiherrn Von Rosenberg-Orsinich during the time April 26 until May 20, 1938 in the offices of the aforenamed company.

1. It was the purpose of this audit to find out whether the business books agreed with the legal decrees and whether all expenditures are approved.

2. Whether the balance includes the whole business of the company and was made out on the consideration of the legal prescriptions with regard to tax matters with the care of an ordinary business man.

3. Whether the business results of the balances complied with facts.

For the leg of material this report was divided into two parts, the first part includes item 1 and 2 while item 3, the second part of the report, will explain the business economic investigation. The enclosures to the individual reports are appended. The following report is being made out by myself on the carried out investigation of the business years 1927/28 until 1937/38 on the basis of the books and documents of the company and on the explanations and the proofs submitted by Director Victor Pfeiffer.

R E P O R T

Documents for the auditing investigation (all books of the company) .....

For the auditing of the business account only the books for last four years were taken into consideration as the auditing of the last annual balance was carried out by special investigation, the commission for the Making out of Statutes.

LEGAL CONDITIONS

The Centraweichische Sugar Industry A.G. has its home in Vienna I, Elisabethstrasse 16. The factory is located in Hrusk s. d. Leitha. The share capital amounts according to the last balance sheet of July 31, 1937 to S 10,000,000 in 80,000 bearer shares at par value of S 125.- per share. The last increase of the share capital from 8,000,000 S to 10,000,000 S was agreed upon in the last general regular meeting of September 7, 1936 through conversion of reserves in the amount of S 2,000,000.-. The conversion was made out in a way that the par value of the individual shares was increased from 100.-S to 125.- S. .....

On occasion of the annexation of Austria to the German Reich, the former auditor of the company, Mr.Walter Malik, was appointed Director of this company, according to letter of March 18, the current year. At the same time he was also chosen into the Board of Administration and was also appointed as Chairman Administrator. Since May 10 of the current year, Director Rudolf Sonntagar is Commissar Administrator. Furthermore individual changes have been made in the Board of Administration. The business have always begins

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with August 1st and closes down 31 July of each year.

ACQUISITION OF THE A.G. FUER LANDWIRTSCHAFTLICHE BETRIEBE.

Among others there were also in possession of the company the shares of the A.G. fuer Landwirtschaftliche Betriebe, the offices of which are located in the same building in which the offices of the Sugar Industry. The shares of this company, i.e. 25,000 shares were bought during the time December 22,1931 till July 31, 1932 from miscellaneous owners for the total price of S 1,296,625.00, by the Oesterreichische Sugar Industry. Therefore, the average price for one share of the A.G. fuer Landwirtschaftliche Betriebe, amounted to S 51.92.

The banking institution Auspitz Lieben & Co., acquired on December 22, 1931 7,796 shares at a total price of S 382,000.-. Member of the Board of Administration Wilhelm Loew bought on July 31, 1932 2,207 shares at S 80.- S 176,560.-. The proofs of the documents of the Oesterreichische Zucker Industrie A.G. do not show by whom the remaining shares were purchased. In the year 1932 the shares of the A.G. fuer Landwirtschaftliche Betriebe were written off to S 1,000,000.-and in the year 1934 a further S 100,000.- were written off so that the shares of the A.G. fuer Landwirtschaftliche Betriebe appear in the last balance of Oesterreicher Zucker Industrie A.G. and S 900,000.

Furthermore, it would have to be mentioned that the A.G. fuer Landwirtschaftliche Betriebe is in possession of 46,628 shares out of 50,000 shares of the Vereinsmolkerei A.G. Wien, So that the Oesterreicher Zucker Industrie A.G. is through the share possession of the A.G. fuer Landwirtschaftliche Betriebe, also owner of the Vereinsmolkerei A.G.Wien.

1. Concerns bookkeeping and documents.

General.

Investigation of the business books and proofs it was ascertained that not only repeatedly erasures in the books but also changes in the text of the documents were carried out. To illustrate this fact reference is made to cash voucher 304 of November 23, 1934 belonging to the voucher 304 of January 29, 1935 (Enclosure No.1) six bottles of oreolinator fluid were bought. To make the bookkeeping as unclear as possible there were several times accounts transfer carried out, also it could be ascertained that in the books of the Oesterreicher Zucker Industry the credit accounts of the members of the Board of Administration were booked to the debit of the business calculation while in the books of the A.G. fuer Landwirtschaftliche Betriebe these credit accounts were booked as money payments to the persons concerned.

There also were several times invoices which were made out by a supplying firm for the purpose of an advance payment booked as real bills and the amount was taken out of the cash to the debit of the business calculation. Special reference is being made to the fact that this manipulation, which would be called fraud, having to a greater extent in the year 1931 when the group Bloch-Bauer, after the breakdown of the banking house Auspitz Lieben & Co., had acquired the share majority through purchase of the shares from this banking institution.

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According to letter of September 15, 1931 from Dr.Rudolf Bienenfeld addressed to the Oesterreicher Zucker Industry A.G. Dr. Bienenfeld supports information that he had to hand over as follows the shares of the Oesterreicher Sugar Industry taken over from Rothschild, Oesterreicher, Credit Anst fuer Handel und Gewerbe Exkompte Gesellschaft and from Auspitz Lieben & Co.

fuer Dr.Arthur Loew	20,186 shares
" Ferdinand Bloch-Bauer	6,990 shares
" Gustav Bloch-Bauer	3,898 shares
Total	30,074 shares

At the breakdown of the banking house Auspitz Lieben & Co., the Oesterreich Zucker Industry A.G. had, according to the minutes of June 22, 1937 and according to a letter of June 26, 1937 from Dr.Ludwig Draxler, granted an allowance of S 1,442,462,80. According to these minutes there was still a remainder of S 114,746,22 outstanding. Also an allowance of S 20,000 granted for this amount according to aforementioned minutes.

In the following years there were various book entries made to the debit of the business calculation but these amounts were not cancelled but taken out by Karl Bloch-Bauer presumably for own purposes or greft. Therefore, not only the business results were made worse by these manipulations and as a result of this less taxes were not paid, but also the shareholders had to suffer damage for these amounts taken out.

To make the bookkeeping as unclear as possible it may be for tax reasons or to be able to book illegal drawings from the cash various accounts and methods were used. The endowments for these accounts took place in the form that partial amounts were directly booked to the accounts concerned to the debit of various business accounts, and partly through the fact that amounts were credited to these accounts as payments. For various expenditure items only insufficient proof is available. These insufficient proofs do not show signatures of receivers of payment but only the initials of the member of the Board of Administration Karl Bloch-Bauer or another person (?).

In order to illegally restore money from the cash they used fictitious invoices or double accounting of advance payments. Further they withdrew money from the cash in such a way that incoming money resulting from reimbursement of excess payments was not booked at all. Further they illegally took the interest reimbursement of the Laenderbank, which according to a statement of Director Pfeiffer, Director Karl Bloch-Bauer had these amounts which were reimbursed each half year, paid to himself personnally by the Laenderbank.

ERASURES

The purpose of all these manipulations was obviously to use various amounts for another purpose than the one which was stated and also to make the business accounts appear smaller for tax reasons so that through these smaller taxes had to be paid.Erasures and changes in the text and the carrying out of wrong book entries were not only used as false proofs but also several times erasures and changes in the text took place as, for instance, in the Ledger, page 18, of the Nov. 6, 1937, the text was left out. On page 181 of the same ledger on the account of transfer Amalie Zuckerkandl, an acquaintance of President Bloch-Bauer, the text on December 31, 1937 and on the same account on November 26, 1937 also the amount has been erased. (Other incidents were cited).

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On March 14, 1928 there is also the text erasing, but it was done badly that one could see that formerly there was the word "payment".

Management of Cash

(Incidents cited were changes in the figures when the books were made.)

Futures

It can not be ascertained how far such futures business were carried out in the business books of the company with regards to this the following book entries were made in years 1929/30. .....

Hidden Accounts

Hidden Account of President Ferdinand Bloch-Bauer

The following hidden accounts were carried for his account: "August Mueller,Prahe" (See enclosure 5). The endowment of this account took place by transfer in Czech Crowns. In February 1928 according to cash ledger, page 138 of February 14, 1928, there is a payment of $ 45,000 to August Mueller shown. The bill comes from the Boden-Cranat and reads "to Ferdinand Bloch-Bauer". The turnover on this accounts amounts to 2,000,000 Crowns, that is $ 420,000.

R. Bloch-Bauer, Vienna (enclosure 6)

This account begins with balance carried foreward on August 1, 1927 in the amount of $ 74,116.44 or $ 524,068.05. Furthermore, the Swiss Francs account R.Bloch-Bauer Vienna which appears on August 1, 1927 was a balance carried forward in the amount of Swiss Francs 100,611.11 or $ 137,448.80. Both of these aforementioned accounts were liquidated on December 31, 1927 and on the same day the account R. Bloch-Bauer, New York was opened at $ 100,000.-, that is $ 707,400.-. The liquidation of this account took place through repayment on Nov. 29, 1929 (see enclosure 6.) No interest are accounted on the account R. Bloch-Bauer, New York. According to the documents discovered No.341 of July 21, 1928 there were $ 32,247.32 paid for interest for R. Bloch-Bauer, New York to the debit of the interest account. This document is only signed by the former Director, Mr.Fitcher. To the hidden account for "Verkaufsvereinigung der B.U.Lacker Fabriken,Wien, Aktretungs-Ruuben-Konto 1928/33". (Enclosure 7), $ 381,721.- were accredited to the debit of the Ruuben account on July 30,1928. The text says 30,000 q beets 1931/32. The entries in the text took place on the basis of document No. 139 in the primary notes, page 164. In November and December 1928 and on February 1, 1931 there took place drawings to the debit of this account. The referring cash bills are partly signed by Ferdinand Bloch-Bauer and partly by Karl Bloch-Bauer. These bills do not show the signature of the person who has actually received the money.

A further hidden account is to be found in the balance account 12 on page 208 (enclosure 8) under the name "Rueben-Lieferungs-Zuckerfabriken Konto 1928/32". This account was opened on July 2, 1928 with $ 115,000.-. The transfer to the book of this account was carried out into two special accounts, one, $ 75,000.- paid according to bill No.138 for freight and transporting expenses and according to bill No.139 for Rueben Product $ 40,000.- under the same bill number. The aforementioned amount total $ 115,000.- was drawn out during the

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time November 30, 1932 till June 30, 1933 in four partial amounts. The bills referring to these show the initials of Karl Bloch-Bauer. Furthermore, there exists a hidden account under the name A.G. fuer Landwirtschaftliche Betriebe Konto septe" (enclosure 9), which on July 31,1933 according to primary note document 193 endorsed to the debit of the Septe account. Also the drawings to the debit of this account took place in four partial amounts during the time November 16,1932 to December 7, 1932. The bills referring to these are signed by Ferdinand and by Karl Bloch-Bauer. No corresponding account was found with the A.G. fuer Landwirtschaftliche Wien.

Hidden Account - Director Karl Bloch-Bauer

He used the account Karl Berger Wien which was opened on May 24, 1933 with payment of $ 60,000.- (enclosure 10). This account remained unchanged until January 4, 1930. On this day a further $ 5,000.- were accredited to this account according to Wiener Kasse, page 18. From this total amount of $ 65,000.- there were $ 60,000.- drawn out in three partial payments during the time October 30 until November 17, 1936 and the remaining balance of $ 5,000.- is still open according to balance account. A further hidden account for Karl Bloch-Bauer was carried under the name Karl Baumann (enclosure 11). This account was opened on January 19, 1932 with the payment of $ 12,000.- though the account was increased to $ 90,000.- through investments during the years 1932, 1933 and 1935. On January 28, 1936 $ 80,000.- were taken out. The remaining balance of $ 10,000.- was on March 25, 1938 by order of the Commissar Manager, Mr. Malak, used for the covering of a cash debit of Ferdinand Bloch-Bauer. A further hidden account for Director Karl Bloch-Bauer was carried under the name Kurt Briegler, Bern (enclosure 12). This account begins on January 8, 1930 with investment of Sw.Frs. 10,980.97, that is $ 15,000.-. This account was increased to Sw.Frs. 45,192.- that is $ 61,736.31 (as of May 26, 1933) through further investments in the years 1930 and 1931 and also through a crediting of the interests. On May 26, 1933 this credit account was drawn out at once. While the interest for starting the second quarter 1931 were always accredited to the account on July 31 and December 31, 1930 and July 31, 1931, the payment of interest took place direct through the cash. The interest amounted to $ 3,385.38.

Hidden account of Dr. Gustav Bloch-Bauer.

For Dr.Gustav Bloch-Bauer the account Gaston Branquard, Brussel was carried. This was a Konto septe Schilling account (enclosure 13) and dollar account (enclosure 14) . Before August 1, 1927 the Konto septe was carried with the balance of $ 16,337.80 (enclosure 14-a) and was drawn out on December 31, 1927 with $ 10,337.80. The Schilling account begins on August 1, 1927 with a balance of $ 30,000.00 and was also drawn out on December 31,1927. The dollar account begins on August 1, 1927 with a balance of $ 25,000. that is $ 177,712.50. A payment of $ 17,000.- took place on December 31, 1927 and a transfer of $ 25,000.- took place on October 9, 1928 this account. The highest state of this account was August 1, 1929 with $ 60,000.- that is $ 425,887.50. This amount was drawn out in various partial amounts in the year 1930 and 1931. On March 2, 1931 the equivalent of $ 44,800.- that is $ 318,083.80 was booked under expenditures as transfer. No accredit accruals of interest appear on this account, but a bill that is cash bill 148 of July 31, 1929 was found according to which $ 2,000.41 and $ 700.00, that is 20,473.83 (enclosure 15) were paid out for interest to Gaston Branquard Brussels. This bill does not show any signature and was booked direct to the debit of the interest account. After cancellation of the dollar account Gaston Branquard, Brussels on March 2, 1931, the account Schweizer Kreditanstalt Zuerich was the continuation. This account was opened on March 2, 1931 with the payment of Sw.Frs. 220,000.-

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that is $ 416,100.- as of February 28, 1931. The highest state of this account was on August 1, 1938 with $ 547,347.56. Repayments were started in October 1936 and on December 17, 1937 the account was closed when the last repayment of $ 72, 959.86 was made.

Furthermore, another hidden account was carried for Dr. Gustav Rieck-Bauer under the name of Franz Freyer Wien (enclosure 18). This account was started on December 29, 1931 with the payment of $ 400,000; after this account was drawn out into lots on June 7, 1933, $ 90,000.- were paid in again. On October 21, 1933 this account plus interest was drawn out and the account was cancelled.

Hidden Account for Mrs. Rita Georg

According to enclosure 19, three hidden accounts were carried for Mrs. Rita Georg. The account Rita Joseph Berlin was opened on January 15, 1931 as an investment of $ 5,000.20, that is $ 21,937.50.

Another account was opened in the name of Goldmann Sachs & Co., New York on 27 August 1931 with the payment of $ 9,000.-, that is $ 65,913.05. --- After the cancellation of the account Goldmann Sachs & Co., November 11, 1933, of the account was changed to Rudolph Josephi and the state of the account as of April 1, 1938 after various investments and repayments had taken place was $ 5,281.82.

Hidden Account of Fritz Stockinger, Minister of Commerce

For the firm Fritz Stockinger, the account "Johann Gabler Vorm.Jakob Czerny" was carried. For Stockinger personally an enabling account was opened on the books of the company in name Franz Graedler Vienna on January 4, 1936 with an investment of $ 40,000 (enclosure 21)

Illegal Drawings

The payment for the above mentioned hidden accounts were made partly in cash, partly by crediting interest or remittances. These amounts, which were credited under the title such seem to be amounts which were booked in the form of fictitious invoices, accounts of double advance payments, payments of freight charges for which there exist no proofs, payment of fictitious invoices for casks and cases, etc. Further these amounts seem to have been taken from the fictitious payments which were supposed to have been paid for reimbursement of drainage works, repairs of boat sheds, for premiums to various big and small boat growers. All these proofs don't show any signature which would be considered as correct receipt, chiefly the initials of Karl Rieck-Bauer. On examination of the proofs which show the remark "Payment of freight charges" it was ascertained by the freight book that freight amounts shown in the proofs concerned were never paid and that they are therefore fictitious items.

The particulars of these illegal accounts can be seen in the enclosures No. 22 to 28 for 28 for the years concerned. The tax authorities informed and the part of these amounts already on April 7, 1938 of the balance end of April for the purpose of overlooking the corporation cancellation of all these illegally obtained amounts was carried out in the books of the company to the debit of liquidations Fund and Reserve (enclosure No.). The amounts illegally drawn out to

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The debit of the operation account on the basis of fictitious invoices amounted in the individual business years to, according to enclosure 22, 1a:

1922	1922/23	$ 4,000.--
1923	1923/24	$ 5,000.--
1924	1924/25	$ 207,182.--
1925	1925/26	$ 280,237.24
1926	1926/27	$ 418,452.18
1927	1927/28	$ 452,881.83
1928	1928/29	$ 437,064.05
	1929/30	$ 1,000.--
1929	1930/31	$ 348,599.45
	1936/37	$ 28,417.45
1930	1937/38	$ 317,298.98
	Total	$ 2,813,417.77

Remarks to the business year 1929/30:

In the year 1928 according to document 373 of Nov.22, 1928 there were $ 2,500.- under the title of freight compensation Zucker Fabrik and according to document 379 of Nov.23, 1928 for freight compensation Siegendorf $ 1,500.- shown as cash expenditure. The corresponding proofs show only signature of Karl Bleab-Bauer.

Explanation for year 1930/31:

According to proof 386 there are two documents available under one number on Oct. 24 and 27, 1930 which show the remark Propaganda by order of President Ferdinand Bleab-Bauer, $ 2,500.- signature illegible. Further without any text he signed as aforementioned $ 2,500.- to come to $ 5,000.-.

Explanation of business year 1934/35:

According to document 105 of May 2, 1935 there was an amount of $ 1,000 account to the debit of the operation account without any explanation.

Explanation of business year 1936/37:

Besides the cash entries which are shown in enclosure 29 there were booked through the primary note and cancelled in the year 1939.

For boat expenses	$ 10,661.01
For sake and packing material	$ 27,756.42
Total	$ 38,417.43

Therefore these two entries are also to be separated. The way in which these illegal withdrawals were carried out as well as the way in which they were accounted, is to be seen from the enclosures so that it is not necessary to show them here once again. Reference is being made to the double accounting of advance payments.

In the year 1936 to 1937 there was an amount of $ 4,000.- accounted to the debit of the account for boat expenses, for advertising boats according to proof 321 of September 10,1936. The original proof is only signed by Karl Bleab-Bauer. It is remarkable that a receipt for $ 25,000.- for boat advertising is appended to this original proof. This receipt shows the signature of Hailer (see enclosure 71.

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Reimbursement of Excess Freight Not Booked

The Oesterreicher Bundesbahnen granted various reimbursements of which two amounts were not blocked in the cash book according to enclosure 31 were reimbursed but not booked S 5,439.- on November 3, 1933. On January 10, 1934 the Postsparkasse received the amount of S 29,000.- according to voucher 36/273. This amount, however, was not booked at the Postsparkasse. On 11 January 1934 the check was written out amounting to S 152,000.- but on the Postsparkasse's account only S 123,000.- were booked whereby the amount of S 29,000.- disappeared. All together S 34,389.- for reimbursement for excess freight were not booked.
Interest reimbursement of the Laenderbank was not entered in the books The Laenderbank reimbursed semi annually interest which in the individual years amounted according to statements of Director Pfeifer (enclosure 32) 1933/34 S 15,268.07

1934 - 35	S 19,076.09
1935 - 36	S 80,904.38
1936 - 37	S 14,862.30
Total	S 130,210.84

Those amounts were withheld from the cash in the way that according to statements made by Director Pfeifer, Karl Bloch-Bauer had the Laenderbank paying him personally semi-annually these sums and did not deliver them to cash of the company.

Charity Contributions

The amounts paid out by the company under the title "Charity Contributions" are considerable higher in the large individual years. They amounted, for instance, according to enclosure 33 in 1927 till 1933 to S 21,376.46.

Enclosure 33 -	1927-33	21,376.46	Thereof gone to the share of the Central Charity Contribution Fund
" 34 -	1933-34	18,506.97	
" 35 -	1934-35	139,617.82	107,800.-
" 36 -	1935-36	144,616.88	95,672.-
" 37 -	1936-37	206,486.--	173,316.-

Especially large are the payments made to the Central Charity Contribution Fund. It would have to be found out for which purpose these Charity Contributions were used. (This Contribution Fund is said to be administered by the Leipnik Lundenburger).

It also would be interesting that Dr.Emil Hoffmannsthal received contributions of S 2,000.-, as Dr. Hoffmannsthal belonged to the Board of Directors of the shareholders society, which society represented the interests of the small shareholders the contribution given to the aforementioned persons seemed to have served for special purposes.

(The following paragraph disclosed contributions to a fund which campaigned for reelection of Schussnig).

Paragraph 2

Subject: Bookkeeping with reference to tax payments:

As it can be seen from the aforementioned explanation the deterioration of the balance results which were made through fictitious invoices and other manipulations are also of influence to the tax payments. This is not only tax concealment, but also embezzlement, this

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refers not only to the tax conditions of the company, but also especially to the tax conditions of the individual members of the Board of Administration and those persons which received payments under hidden means. It would have to be investigated by the tax authority whether Mrs. Kiss Geza as well as all the other owners of hidden accounts declared their interests from the accounts with the company and whether they paid the taxes referred heretofore as, for instance, income and rent and capital taxes. The tax concealment and evasion took place in the way that not only fictitious invoices were entered in the books for the purpose of falsifying balance results but also in the form that when estimating the stocks the value were put in at a very low rate or that individual items of the stocks were not taken into consideration at all.

The following breakdown shows what differences there exist in the valuation of the stock:

Business Year	Actual Inventory according to valuation of the factory	Balance sheet Figures	Under valuation in Percentage
1932 - 33	5,283,189.96	4,575,278.61	13.07%
1933 - 34	5,867,644.93	5,314,312.83	9.36%
1934 - 35	9,480,976.14	8,462,119.55	10.74%
1935 - 36	12,877,561.22	10,199,967.55	18.90%
1936 - 37	9,826,146.71	7,180,734.27	18.64%

If the company informed the tax administration in its answers of the fact that the inventory was estimated at the rate of 5 percent below the market price and that no other depreciations from these values took place this is not true, as it can be seen from the foregoing breakdown the undervaluation amounts to approximately 9.6% to 18.9% in the individual years.

Furthermore, it has to be taken into consideration that the estimation basis of the individual tax years was made smaller because of illegal withdrawals and fictitious entries which have been mentioned in the first part of this report. According to the corporation tax payment order a copy of which is enclosed the former taxation basis would have to be increased not only for the undervaluation in the inventory estimation, but also for the illegal withdrawals, as follows:

Enclosure No	For Year	Basis for the taxation according to pay order	Amounts for which the estimation basis was reduced: Fictitious Items	Int.not booked	Reimb.for excess frt. not booked
1926	1929/30	1,340,000.-	4,000.-	-	-
1929	1930/31	980,000.-	5,000.-	-	-
1940	1931/32	3,494,000.-	357,182.-	-	-
1941	1932/33	2,379,706.25	288,231.94	-	-
1942	1933/34	2,847,000.-	412,952.18	15,388.07	34,489.-
1943	1933/34	36,788.10	-	-	-
1944	1934/35	3,408,037.81	405,251.53	15,076.09	-
1945	1935/36	5,250,000.-	437,024.86	80,904.38	-
	1936/37	-	386,847.86	14,882.30	-

The corporation tax loss which in this way was not delivered to this government, without taking into consideration undervaluation

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of the inventory, amounts to S 560,609.25 for the time 1929-30 until 1935-37. No final estimation is available for the last year. Large statements of accounts and explanations are enclosed to the former answers but the aforementioned fictitious debits and illegal withdrawals for wich the estimation basis was reduced are not mentioned.

On April 8, 1938 a partial correction of the corporation taxes for the year 1934-35, 1935-36, 1936-37 was made by the company in appeal to the tax administration. On the basis of this appeal (see enclosure 1 of the Interim Report No. 1), the tax authority increased the original estimation basis of the year 1935-36 from
3,256,000 by
490,667.36
3,746,667.36

The differences from cash proceeds and interest reimbursement which were not entered in the books as ascertained in the course of this revision, are not yet included in this correction. These amounts, as well as differences of the other years, were only later in the beginning of May declared by the company to the tax authorities but not only is the corporation tax seen to have been reduced for the aforementioned amounts but also the income tax declarations of the persons in question were seemingly made out incorrectly. As today it is not any more tobe ascertained who received the bribes and grafts from the illegal withdrawals, it has to be presumed that these withdrawals must be a dad to the income of the family Bloch-Bauer. The same is to be said with regard to the crediting of interests for the hidden accounts if they are not contained in the tax declarations of the individual persons.

SUMMARY:

The total bookkeeping can by no means be considered as regular bookkeeping because of irregularities, erasures and washings which were made especially in the years prior to 1931, furthermore because of falge book entries and repeated consolidations. For the aforementioned reasons this bookkeeping also can not be considered as fully able to bring proof. Some manipulations are of a kind that one can call them fraud against the State and the shareholders. The founder of all these manipulations seemed to have been Karl Bloch-Bauer. He was described by employees as being rough, selfish, always thinking of his own advantage, one who does not take into consideration his surrounding, also seemes to have forced his employees, by constantly threatening them with dismissal, to carry out such manipulations. According to information given him, Karl Bloch-Bauer was able to visit Schuschnig, Stockinger and other members of the government without previous notification. The aforementioned person was therefore under the protection of the former system government and it would have been in vain to enter a claim under the former system under these circumstances. It is to be explained by the aforementioned reasons that when the employees did know of these manipulations and did not ask for legal proceedings against the persons concerned. It has to be said that only through the detailed explanations given by Dr. Victor Pfeifer and the other employees, it was possible to carry out the investigation of the business books of the years 1927/28,1937/38 in this considerably short time. It was possible to bring a part of the shares of the company to foreign countries only due to the fact that Karl Bloch-Bauer as counsel could always bring over the binders luggage which was not to be controlled. Thus the removal of property to foreign countries was simplified. The taxes authorities will have to find out to what extent the tax concealments and the defrauding by the persons concerned was carried out.

According to statements given by Director Pfeifer large amounts are said of having been given to Mrs. Dollfuss and the children of Dollfuss. It could be ascertained that Stockinger and/other

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C O P Y

Ferdinand Bloch-Bauer Vienna January 28 Nov. 1938

Herrn
Direktor P f a f f e r
Centralsteinbruch A.G. Saar Zementmarkt

W i e n I.
Elisabethstrasse 16.

Dear Director,

I was very much pleased to hear from you again after such a long period.

Concerning your question I always can only repeat:

I never took a single cent from the disposition fund to which I would not have been entitled and all amounts were used only for the interest of the company.

The character of a disposition fund is such that one never may demand ask for a receipt from the receiver. It was used for Ministers, presents for the support of museums, the arts and sciences (in addition to these amounts I spent out of my own money for the above-mentioned purposes, for theatres, concerts etc, etc; in other words, all that which is necessary in such a big company. It is impossible to give these facts in detail.

If I make these statement to you upon my word of honour, that must suffice for the gentlemen, because I am no vagabond, who would assert something, which is not true.

Asking you to repeat this statement to the competent authority I remain with many greetings

yours

Ferdinand Bloch-Bauer m.p.

Translated by I. Kornayl
Checked by D. Hughes.

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COPY

Ferdinand Bloch-Bauer

Fanenske Hrazany 28 May,1938
p.Odolena Voda

To

Direktor Pfeiffer
Oesterreichische A.G.fuer Zuckerindustrie
Wien I., Elisabethstrasse 18

Dear Director,

I was very glad to hear from you after so long a time. Concerning your question, I can only repeat always the same:

I have never taken from the disposition fund one cent, to which I was not authorized and have used all the amounts only for the interest of the company. The nature of a disposition fund is, that a confirmation can not and may not be required of the receivers. It was used for the Ministries, for the press, for the support of museums, art and science, beside the amounts given by me from own means as donations for the mentioned purposes for theatre, concerts etc. etc. so everything,- obligations the company must fulfill - it is impossible to give particulars in such cases.

It must give satisfaction to the gentlemen, if I confirm these assertions with my word of honor, as I am not a "somebody" who would assert anything, which is incorrect.

I am asking you to repeat this, my declaration, at the competent quarters and I remain with many regards

yours

Ferd. Bloch-Bauer

I affirm by oath that I have not used for myself or retained for my uncle Ferdinand Bloch-Bauer any amount from 1931 until the middle of March 1938 of the disposition fund of the Oesterreichische Zuckerindustrie Aktiengesellschaft, but much more, there were only payments made to political parties, to institutions supported and favored by the Dollfuss-Schuschnigg Government, to the press of various shades, to actions for the prevention of the lowering of sugar prices and purposes similar to that.

Paris, March 18,1939 sngd. Karl Bloch-Bauer m.p.

The aforestanding signature was made today in my presence.

Paris, March 18, 1939 sngd. Dr.Erich Fuehrer m.p.

Translated by: Paul Laure
Checked by: [illegible]

003581

EXHIBIT No. 18.

DECLASSIFIED
Authority 785007
By NND NARA Date 1978

FINAL DISCUSSION

on 17 April 1939,

with the Oesterreichische Zuckerindustrie A.G.,

the Aktiengesellschaft fuer landwirtschaftliche Betriebe and

the Vereinsmolkerei A.G.

in the rooms of the Oberfinanzpraesidium, Vienna III., Vord.Zollamtstrasse 7.

Attendants:

Regierungs-rat Dr.Rassdoerfer,
Regierungsrat Dr. Jawetzky,
Dr. Liebhart,
Director Rudolf Henninger as trustee of the Oest.Zuckerind.,
Dr. Fritz Koppe,
Dr. Dr. Erich Fuehrer,
Dr. Friedrich Lammann,
Artur Steinle,
Alfons Ripperger,
Director Walter Malek,
Director-Assistent Dkfm. Viktor Pfeiffer.

- . -

Between the Oesterreichische Zuckerindustrie A.G., represented by its trustee Director Rudolf Henninger, who is authorised to represent also the Aktiengesellschaft fuer landwirtschaftliche Betriebe and the Vereinsmolkerei A.G., and the finance authorities the following agreement was reached:

The company pledges itself to pay on the strength of the results of the enterprise-inspection in 1938 the amount of

RM 1,350,000.--

Payment will be made to the Finanzamt Wieden as follows:

50 % per 1 May 1939,
additional 25 % per 1 June 1939,
and the remainder per 1 July 1939.

This payment will cover:

1.) all taxes of the firm including taxes on dividends and charges for dividends until 31 December inclusive.

2.) the personal taxes of Mr.Ferdinand Rieth-Bauer and Mr. Karl Rieth-Bauer; the firm pledged itself to pay these taxes in accordance with the declaration issued today, according to contract.

3.) the liability to the Trust Agency as Personal Liability and Mrs. Rieth-Bauer for collection of the legacies, as far taxes are concerned, which are to be treated as the taxes of firm pursuant.

Regarding the taxes of [illegible] mentioned above [illegible] will not be applied to the Oesterreichische Zuckerindustrie A.G.,

Page 1 of 2 pages
Exhibit No. 8

003582

COPY

To

Oberfinanzpraesidium

Wien III.,Vordere Zollamtstrasse 7

Oesterr.Zuckerindustrie A.G.

A.G. fuer landwirtschftl.Betriebe

Vereinsmolkerei A.G.

all Vienna I.,Elisabethstr. 18

Represented by:

Auditor
Dkfm Dr.Viktor Exinger
Wien I.,Stock im Eisenplatz 3-4
Phone R 27450

APPLICATION

For urgent settlement of pending tax matters.

With letter of 1e November 1939 our authorized representative Rechtsanwalt Dr.Fritz Koppe, Berlin, has been informed by the Oberfinanzpraesidium that on November 6, 1939 during a conference in the Reichsfinanzministerium in Berlin the following agreement concerning our pending tax matter has been concluded.

The contract of April 17, 1939 remains, according to following measures, in force:

1.) Liability for tax and fine of Mr.Blech-Bauer is abolished according to par. 477 A.O.

2.) Stating the compensation of April 17, 1939 lateron some mathematical errors have been found, the rectification of which is up to the tax-payer.

Hereto we beg to state as follows:

ad 1). From the compensation therefore has to be deducted:

a) from Oesterr.Zuckerindustrie A.G.
Liability for income tax and rent tax for

Ferdinand Blech-Bauer ... RM 216,000.-
Karl Blech-Bauer ..... " 240,000.- RM 456,000.--
Liability for fine ..... " 300,000.--
total RM 756,000.--

b) from A.G. fuer landwirtschftl.Betriebe
Liability for fine of ..... RM 180,000.--

c) from Vereinsmolkerei A.G.
nothing, as no liability existed.

ad 2). The payments mentioned in the final protocol of 17 April 1939 for

Page 1 of 2 pages

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Oesterr.Zuckerindustrie A.G.	RM	1,350,000.-
A.G. fuer landwirtschaftl.Betriebe	"	420,000.-
Vereinsmolkerei A.G.	"	66,700.-
total	RM	1,836,700.-

would be reduced for the amounts abolished stated sub 1) i.e. for

Oesterr. Zuckerindustrie AG...	RM	806,000.-	
A.G.fuer landwirtschaftliche Betriebe	"	180,000.-	" 986,000.-
			RM 850,700.-

and further for tax payments already made. This way of settling the accounts according to the statement of 17 April 1939, seems to be very unclear, as it does not include the amounts, which still are due for payment and easily could cause errors, the more, as in the meantime further payments have been made on the various tax accounts, which have to be considered, so that the amounts stated in the final protocol of April 17, 1939 are ever due.

The supplement payments will have to be newly stated as made in the following.

It must, however, be anticipated that in the final protocol which has to be newly set up, amounts due until now should not be particularly stated, but only those amounts which will be prescribed according to the issued supplement are payment orders. Our payments due may be determined from the statement of outstanding taxes after posting of the issued. supplementary pay-orders through the competent tax office.

At all 3 companies auditings including the fiscal year 1937 have taken place, so that in the course of completing the pending tax matters all tax-assessments, up to 1937 incl. can be made. We therefore urgently request you to give us not only the supplementary pay-orders but also those for the taxes, which have not yet been ascertained.for 1937 are the Oesterr.Zuckerindustrie A.G., the A.G. fuer landwirtschaftliche Betriebe and the Vereinsmolkerei A.G., not even for 1936 and 1937. There is further missing the assessment for all 3 companies that means that the assessment for the latter 2 companies is outstanding for 3 years, for the former one for 2 years.

In order that these assessments can be made in due time, we have figured them out ourselves and beg to submit them for further control.

1.) Oesterreichische Zuckerindustrie A.G.

In enclosure 'A' we submit a statement regarding the basis for assessment for the supplementary assessments for 1930 to 1936 and the assessment 1937 still to be made.

The taxes therefore are stated in enclosure 'B' in which a tax participation for the municipality of Wien and Bruck has been made.At that occasion the federal tax, as usual this year, has been devided with 90% for Wien and Bruck, each, and the assessments of 11% for Wien and 8% for Bruck have been considered.

Totally the supplementary tax amounts to for 1930 - 1936 RM 276,648.16 and the tax-to-be for 1937 ..... RM 745,896.61.

Hereof the payments in advance have to be deducted, any outstanding taxes will be stated at the tax office and then paid.

003584

2.) [redacted]

In enclosure "C" the basis for supplement assessment for 1928 - 1935 and basis for the assessment for 1936 and 1937 which still has to be made are shown.

Enclosure "D" shows the total taxes hereto, i.e.

Supplement taxes 1928 - 1935 ..... RM 111,306.86
taxes to be assessed 1936/37 ..... RM 89,836.00

Enclosure "K" is a summary of the tax-participations according to the various years and municipalities details can be determined from the enclosures K 1 to K 9.

Also here the advance payments made have to be deducted. Any outstanding taxes will be stated at the tax office and then paid.

3.) Vereinsmolkerei A.G.

The supplement assessments to be made for 1928 to 1935 and the assessment for 1936/37 may be determined from enclosure "F".

Details for taxes herefor i.e.

Supplement tax 1928 - 1935 ..... RM 31,891.72
tax 1936/37 to be assessed ..... RM 9,084.33

may be determined from enclosure "G".
From these amounts the payments in advance have to be deducted.

- - -

We beg to issue, based on the submitted statements, the demand to issue the resp. orders for payment so that we may be able as soon as possible to pay our due taxes.

With regard to the imminent conversion of the Oesterr.Zuckerindustrie-A.G. per 31 December 1939 we would need the orders for payment latest on 24 December 1939.

Oesterr.Zuckerindustrie A.G.
A.G.fuer landwirtschaftliche Betriebe
Vereinsmolkerei A.G.

Enclosures.

003585

Gesellschaft für Textilindustrie A.G.

a) Estimation for the following years

Year			Supplementary assessment + increase - decrease
1930	acc. to	payment order	$ 1,340,000.-
	"	audit	$ 1,346,127.50
			$ 6,127.50
1931	"	payment order	$ 280,000.-
	"	audit	$ 287,127.50
			$ 7,127.50
1932	"	payment order	$ 2,244,834.61
	"	audit	$ 2,764,188.61
			$ 519,354.00
1933	"	payment order	$ 2,372,806.26
	"	audit	$ 2,671,209.24
			$ 298,402.98
1934	"	payment order	$ 2,583,473.10
	"	audit	$ 3,183,571.85
			$ 600,098.75
1935	"	payment order	$ 3,502,037.81
	"	audit	$ 3,497,554.85
			$ 14,482.96
1936	"	payment order	$ 3,748,677.39
	"	audit	$ 3,846,470.41
			$ 98,793.02
			$ 1,515,381.21

b) Estimations still to be made

1937 acc. to the audit $ 4,096,608.81

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[illegible] a) additional taxes due according to tax authority

Tax declaration

Reference

Years	Base for computing additional taxes	25 % Federal Tax	+ 11% Vienna surcharge	+ 5% Penalty Assessment	Total
1930	$ 6,147.80	1,536.98	676.19	827.22	S 1,677.41
1931	$ 7,127.90	1,781.98	784.54	958.22	" 1,951.16
1932	$ 519,354.80	129,838.65	72,680.44	70,113.88	" 142,173.29
1933	$ 298,302.96	74,575.75	41,737.58	40,270.91	" 81,680.46
1934	$ 609,098.75	152,024.68	85,265.71	81,015.54	" 164,277.06
1935	- $ 14,488.96	- 3,630.74	- 2,009.51	- 1,955.20	- " 3,964.71
1936	$ 98,798.05	24,698.88	13,707.82	13,337.05	" 27,044.87
	$ 1,515,321.29	S 378,830.26	S 210,250.86	S 204,648.39	S 414,819.25

b) Adjustment remaining to be made

1937	$ 4,085,608.81	S 1,021,502.20	S 566,933.72	S 551,611.19	S 1,118,544.91

Summary

1930-36	$ 1,515,321.29	S 378,830.26	S 210,250.86	" 204,648.39	S 414,819.25
1937	" 4,085,608.81	S 1,021,502.20	" 566,933.72	" 551,611.19	" 1,118,544.91
	$ 5,601,329.10	S 1,400,332.46	S 777,184.58	S 756,179.58	S 1,533,364.14

Additional taxes 1930-1936 S 414,819.25 = RM 276,546.16

Taxes for 1937 as yet undetermined S 1,118,544.91 = RM 745,696.61

EXHIBIT No. 18

DECLASSIFIED
Authority 185007
By NND NARA Date 1978

Verseinwolkerei A.G.

a) Additional adjustments

Years			Supplementary assessment :
1928	tax to be paid		$ 7,500.—
1929	tax to be paid		" 21,700.—
1930	acc. to payment order	$ 37,448.13	
	" " audit	" 59,648.13	" 22,200.—
1931	" " payment order	" 18,312.75	
	" " audit	" 38,962.75	" 20,650.—
1932	" " payment order	$ 16,048.30	
	" " audit	" 38,623.30	" 22,575.—
1933	" " payment order	$ 11,618.36	
	" " audit	" 36,293.36	" 24,675.—
1934	" " payment order	" 6,800.—	
	" " audit	" 38,953.—	" 32,153.—
1935	" " payment order (minimal tax)*	$ 5,303.80	
	" " audit	" 26,133.22	" 20,829.42
			$ 172,282.42

b) Estimations still to be made

1936 acc. to the audit	$ 18,453.13
1937 acc. to the audit	" 30,652.42
	$ 49,105.55

* Minimal tax = $ 1,325.95 x 4 = $ 5,303.80

003588

NARA 639

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Authority 785007
By NND NARA Date 1978

Territory/Liberal I.C.

a) Additional tax according to the IRS authority

Year	Base for computing additional taxes	25 % Federal tax	11 % assessment	Total taxes
1932	$ 7,800.—	$ 1,875.—	$ 213,75	$ 2,088.75
1933	" 21,709.—	" 5,425.—	" 618,45	" 6,043.45
1934	" 22,800.—	" 5,350.—	" 610,50	" 6,160.50
1935	" 20,880.—	" 6,168.50	" 687,83	" 6,730.33
1936	" 22,875.—	" 5,843.75	" 666,81	" 6,264.86
1937	" 24,675.—	" 6,169.75	" 676,56	" 6,847.31
1938	" 22,153.—	" 5,038.25	" 574,81	" 5,613.46
1939	" 20,529.42	" 5,207.35	" 572,81	" 5,780.17
	$ 172,422.42	$ 43,070.61	$ 4,766.57	$ 47,837.38

b) Adjustment remaining to be made

1938	$ 18,468.18	$ 4,613.38	$ 507.48	$ 5,120.74
1937	" 30,658.48	" 7,658.11	" 842.84	" 8,500.95
	$ 49,126.65	$ 12,272.49	$ 1,350.32	$ 13,621.79

Summary

1932-36	$ 172,422.42	$ 43,070.61	$ 4,766.57	$ 47,837.38
1936-37	" 49,126.65	" 12,272.49	" 1,350.32	" 13,621.79
	$ 221,549.07	$ 55,343.—	$ 6,116.89	$ 61,459.17

Additional taxes 1932 - 36 $ 47,837.38 + 10% $ 51,621.72

Tax for 1936/37 as yet undetermined $ 13,621.79 + 10% 9,004.53

003589

DECLASSIFIED
Authority 785007
By NND NARA Date 1978

TRANSLATION

Laenderbank Wien Aktiengesellschaft

Wien, 5 December 1938
Am Hof 2.

Mr. Clemens Auer
Manager of the Heinr.Auer Muehlenwerke A.G.
Koeln - Deutz

Re.: Oesterreichische Zuckerindustrie Aktiengesellschaft
Wien - Bruck.

Dear Mr. Auer !

To day we received from the Vermoegensverkehrsstelle Wien I, the enclosed copy of an instruction and hasten to inform you accordingly.

The Vermoegensverkehrsstelle does not want to wait for the conclusion of the Tax Criminal Procedure instituted against the company, but want to utilize the status of uncertainty for the aryanisation and re-patriation of the enterprise, and that without making any allowance, whether and at which rate of exchange it will be possible, to procure a share-majority.

According to your instruction we ask you to send us as soon as possible a fixed-order for the absorbtion of all shares, which are available, to the limit, which appears appropriate to you.

By order of the Vermoegensverkehrsstelle we asked Messrs. Martin Brinkmann A.G. respectively Senator Hermann Ritter by the same mail to forward his order.

Yours faithfully

Heil Hitler !

Laenderbank Wien
Aktiengesellschaft

2 signatures

1 enclosure

Dr. Bankmann

Translated with Standard
Checked by [illegible]

003590

Export No. 13

UNCLASSIFIED
Authority 785007
By NND NARA Date 1978

TRANSLATION
COPY

AFFIDAVIT

CONCERNING THE APPOINTMENT OF AUTHORITY TO THE MERCURBANK, VIENNA, IN CONNECTION WITH THE SALE OF THE FORMER OBJECTS OF THE AUSTRO DAIMLER WERKE TO THE REICHSLUFTFAHRTSMINISTERIUM (Reichs-Airforce-Ministry) IN THE YEAR 1938.

In the middle of May 1938, Dr.H.Mann, at that time Syndicus of the Mercurbank, Vienna, turned up without being announced in Zuerich, where I lived at the same time with my family and demanded from me a series of documents with my signature, whereby almost our entire properties and interest in Austria should have been handed over to the Mercurbank for trustworthy administration and/Or liquidation after appointing Dr. Mann as plenipotentiary.

Certainly I was not inclined to do that, but next day I decided to do so according to the word of honor given by Dr. Mann that my son in law Leopold Bloch-Bauer (now L.L.G.Bently) gets the permission to leave Austria. Mr.Leopold Bloch-Bauer was arrested by the Nazis on March 13th - 22nd, 1938 and it is due to a lucky incident that he was not killed in the jail.

Signed: Otto Pick

I hereby certify that Otto Pick
personally known to me appeared
before me and signed this document.

December 13, 1946

Signed: A.I. Strike,
Notary Public in and for the
Province of British Columbia.

Translated: Neumann
Checked : Trinks

003591

DECLASSIFIED
Authority 785007
By WND NARA Date 1998

COPY

Zuerich, 22 December 1938

Dr.B/Ro.

To the members of the syndicate of shareholders
of the [illegible] shares of the
Centraleinkaufsgesellschaft Zuckerindustrie A.G. Wien.

Subject: Sale of sugar shares and eventual dissolution of the syndicate.

We refer to our letter dated 17 December, in which we transmitted a copy of the letter from the Landerbank concerning the above matter.

Rosenhild Dir. Pilgrim of the Landerbank has visited us and has informed us that his institute has given a firm offer for the shares of the Zucker Industrie on the basis of 70 blocked Reichsmark per each share. The offer is valid up to 30 December in Vienna. In case that at least 20.000 shares are sold, the Landerbank agrees to increase the offer to 75 blocked Reichsmark. If you wish to accept this offer, we ask you to let your report arrive at the latest on the 29 December, 16 o' clock in Zuerich.

If we are without your reply, at that time we assume, that you have no interest in this sale.

Director Pilgrim further more informed us that according to his information there exists a certain danger that the Zucker Industrie A.G. may be nationalised, because the Gauleitung may have the intention of taking over the enterprise from the present shareholders. These data regarding the offer and the remark concerning nationalisation we give you only for your information without any reference to the propriety of the offer or the auditicity of the nationalisation. We obviously cannot say if, in case of nationalisation, more than the offered amount could be obtained.

At the same time we take the liberty to point out that we were unable to achieve the unanimous agreement of the syndicate during the conferences on the sale, while some members of the syndicate, did not find the Vienna offer worthy of discussion, other members appeared not averse to a sale in the event of an improvement in the offer.

Not only in case of these difficulties is the continuation of the syndicate hard, but also because the addresses of several members of the syndicate are no longer known.

Because of these difficulties and also because the situation has changed since the foundation of the syndicate we should like to propose the syndicate be dissolved according to the decision made at the beginning of March 1938. If we have not received information to the contrary by 15 January 1939 we shall assume your approval.

Very truly yours

Schweizerische Bankgesellschaft
2 signatures

003592

DECLASSIFIED
Authority 785007
By NND NARA Date 1978

TRANSLATION

Wien, 13 February 1940

Mr. Clemens Auer
Manager of Oesterr.Zuckerindustrie A.G.
Wien I., Elisabethstr. 18

Dr.B./H.

Re.: 'Ariernachweis' for previous owners of Oesterr. Zuckerindustrie A.G. shares

I beg to inform you that by the inquiries, made in the meantime the previous owners of the Zuckerindustrie A.G. shares could now be determined. Accordingly you acquired the following shares:

1.) From "Non-Aryan" previous ownership

on 21 December	1938	3300 shares	from Ferdinand Bloch-Bauer
" 17 "	1938	3587 shares	from Ing.Otto Pick, Paris,
" 19 January	1939	611 shares	from Elisabeth Suspitz-Artenenegg, Wien

2.) From "Aryan" previous ownership

on 30 December	1938	28480 shares	from Schweizerische Bankgesellschaft Zuerich
" 31 "	1938	2250 shares	from J.Heampson Lloyd, Liverpool,
" 31 "	1938	2480 shares	from T.E.H.Davis,Liverpool,
" 19 January	1939	526 shares	from Dr.Rudolf Leitner,Wien,
" 10 May	1939	775 shares	from Baronin Felicita Baratta-Dragone, St.Cloud,
" 25 May	1939	250 shares	from Marianne Nechansky
" 28 August	1939	24965 shares	from Finanzamt f.Verkehrssteuern, Wien,
" 25 September	1939	4448 shares	from Konrad von Batzenhofer

You have, therefore, acquired 7,498 shares from non-Aryan previous ownership and 62,143 from Aryan previous ownership.

I do not know whether you bought - beyound that - shares from the Laenderbank.

For shares acquired by you from Non-Aryan ownership are 9,37% of 100 of the total joint stock capital of Oesterr.Zuckerindustrie A.G. of 80,000 shares.

I ask you to take cognisance of above informations.

Yours faithfully
Heil Hitler !

Translated: Blenker
Checked : Trinks

003593

DECLASSIFIED
Authority 785007
By NND NARA Date 1978

Cost of Purchase of the Brucker Zuckerfabrik Shares

Day	Dealer	Shares	Rate of Exchange	Value of Rate of Exchange RM	Exchange Expenses RM	Total Amount RM
28.12.38	Laenderbank	1,025	80	82,000.--	7,210.60	2,867,735.60
28.12.38	"	37,047	75	2,778,525.--		
8.2. 39	"	11	70	770.--	1.20	771.20
11.3. 39	"	100	81,50	8,150.--	12.30	8,162.30
23.3. 39	"	75	83	6,225.--	9.50	6,234.50
23.3. 39	"	20	83,34	1,666.80	2.80	1,669.40
9.5. 39	"	775	80	62,000.--	186.--	62,186.--
16.6. 39	"	772	80	61,760.--	92,70	61,852.70
27.6. 39	"	20	83	1,660.--	13.20	1,673.20
9.6. 39	"	7,215	83,33	601,225.95	1,127.50	602,353.45
30.6. 39	"	234	80	18,720.--	147.55	18,867.55
4.7. 39	"	13	83	1,079.--	8,60	1,087.60
1.8. 39	"	80	84	6,720.--	50.50	6,770.50
28.8.39	Oberfinanz-praesidium	24,965	90	2,246.850.--		2,246.850.--
30.9. 39	Familie Patzenhofer	4,448	90	400,320.--	3,370.40 600,80	3,370.40 400,920.80
2.10.39	Laenderbank	68	91	6,188.--	54,50	6,242.50
13.10.39	Dresdnerbank	2,100	92	193,200.--	289,80	193,489.80
		78,966				6,490,237.40

The average rate of the purchased shares inclusive exchange-expenses amounts to RM 82,18 for each share (nominal value Sch 125 = RM 83,33) = 98,62%.

Translated:Blender
Checked :Trinks

003594

DECLASSIFIED
Authority 785007
By NND NARA Date 1998

TRANSLATION
COPY

Allgemeine Treuhand AG
(Fiduciaire Generale SA)
Treuhandgesellschaft
Zuerich, Bahnhofstrasse 3
Phone: 23.80.15
Cable address: "Revisa"
Postscheck-u.Girokonto VIII 8805
SP/TL

Zuerich, 29 June 1946

To: British Military Government

Property Control Office

W i e n

We herewith testify that

Sapafine Aktiengesellschaft fuer finanzielle Beteiligungen
in Chur

was founded on July 11, 1936, by our company for the account of Ing.Otto Pick.

As legal control office of this company - according to Art.727 ff.O.R. - we are further able - based on the knowledge of the situation - to state, that all shares of Sapafine from its foundation to this very day have been without interruption in the hands of the aforementioned gentleman, who is a British subject, according to the documents, which are in our possession, Ing.Pick has been and is on virtue of the full power issued on his behalf by the board of administrators of Sapafine entitled, to represent the company with his signature.

Respectfully
Allgemeine Treuhand A.G.
2 signatures, illegible

Official Legalization

The Authentiqy of aforestanding signature recognized by myself, of the gentlemen known to me
Dr.Otto Germann, Deputy Director and
Hans Boellinger, Prokurist of Allgemeine Treuhand A.G. in Zuerich,
- is herewith attested.

Zuerich, July 2,1946 — Notariat Zuerich (Altstadt)
Fr. 4.- — Signature illegible Substitut
No. 5949/50

L.S.Notariat Zuerich
(Altstadt) Kt.Zuerich

50 Groschen tax stamp
Before mentioned copy corresponds literally with the original with tax submitted to me.
Wien, the twenty ninth of May one thousand nine hundred fortyseven.
Tax and turnover tax and tax stamp S 1,05.

L.S
Dr.Josef Wurst
Public Notary
Wien

Signed: Dr.Josef Wurst Notar

Translated: Berglechner
Checked : Trinks

003595

DECLASSIFIED
Authority 785007
By DNO NARA Date 1978

003596

DECLASSIFIED
1950
A... NARA Date

COPY

Copy
New York City
January 11, 1940.

INFORMATION

Regarding 6,500 shares of the Oesterreichischen Zuckerindustrie A.G. Bruck a.d.Leitha.

Mr. Leopold Bloch-Bauer, son in law of Mr.Otto Pick was arrested after the entry of Hitler on March 14, 1938 in the forenoon, without a reason, by the Gestapo and released after about 10 days through the intervention of the Mercurbank A.G. at that time. His departure took place on May 31, 1938 and the Mercurbank, later on Laenderbank A.G. in Vienna took over the guarantee for his Reichsfluchtsteuer (emigration tax). Without this, the permission for departure would not have been given.(Unbedenklichkeitserklaering)

To obtain this guarantee and the alleged insolvency at the Macospinnerei & Zwirnerei Pick & Co., Wiener Neustadt, of which Mr. Leopold Bloch-Bauer was partner, Director Wolzt of the Mercurbank asked for a further guarantee, which was promissed by Mr. Leopold Bloch-Bauer, after his arrival in Zuerich.

As a matter of fact, Ing.Otto Pick induced his friends, Col.J.E.Lloyd and Capt.T.E.H.Davies, both in Liverpool, to put 6,500 of the above mentioned shares at the disposal of the Mercurbank as guaranteed.

These shares were bought by the above mentioned persons, many years ago, on recommandation of Mr.Otto Pick and were the same deposited on their names at the Schweizerische Bankgesellschaft Zuerich. The shares were forwarded from Zuerich to the Mercurbank,Vienna, viz about the middle of 1939, the exact date had to be investigated. On the end of August/the begin of September 1938 Dr.Kurt Grimm at this time residing in Zuerich, asked Mr.Otto Pick to get in touch with his friends, to sell the shares to the Mercurbank/Laenderbank. As per information of Dr.Grimm, the bank has taken over the responsibilities for a smooth assumption of control and to answer for the execution of the following regulations, the shares were bought at RM 75.- each and the equivalent amount of RM 486,525.- should be credited to the account Pick & Co. at the Mercurbank/Laenderbank. The Messrs.Lloyd and Davies had tp pledge themselves, not to give notice for the loan for a certain number of years, as far as I remember, ten years, whereas the competent quarters have granted that the loan will bear 3% p.a.interest, if I am not mistaken. As a matter of fact, none of the agreed conditions were fulfilled, namely the amount of RM 486,525.- was credited to Messrs Lloyd and Davies as a blocked account at the bank. When a protest was filed against it, the above mentioned gentlemen received the answer, it is only an ordered formality and the transfer agreed upon, would take place in the next near future.

This situation remained, inspite of repeated urgencies and finally the mentioned gentlemen from Liverpool decided to urge the bank, to return again the shares and to cancel the concluded business, since the conditions agreed upon, had not been fulfilled.

About the middle of 1939, during a visit of director Wolzt at the office of Ing.Otto Pick, the latter made objections and director Wolzt promised, not only to settle the case, but also to take care so that the difference between the interest, which are to be paid the by the firm Pick & Co (about [redacted]) and the interests which will be obtained by the gentlemen from Liverpool (about 3%), will be compensated for

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Some time after the conference the Messrs.Lloyd and Davies were ordered to show the Ariernachweis (proof of pure blooded aryan) according to the competent German regulations. The mentioned gentlemen are Vollarier (full blooded Aryan), they have already once given a declaration on their origin on request of Ing.Otto Pick and they were very much indignant, when they learned that the German authorities request a declaration, stretching back many decades. The Consulate at Liverpool, which would have been the competent authority, was closed down because of the expulsion of the Consul at Liverpool at that time and the gentlemen have it, inspite of the repeated request of Ing.Otto Pick, to produce lengthly and expensive proofs by the authorities of the Church of England, (sentence incomplete) and have again asked the Bank, to put their property of shares in foreign countries, uncurtailed at their disposal.

As fas as I am informed, no further steps were made in this matter until the end of the war.

Signed Otto Pick Ing.

I confirm that this information was dictated to me personally by Ing. Otto Pick on January 11, 1940.

Signed Franz Horsch
New York City, January 11, 1940.

Translated: Love
Checked : Trinka

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TRANSLATION

17 July 1947.

MEMORANDUM

concerning the shares of the Oesterr.Zuckerindustrie A.G. of President Ferdinand Bloch-Bauer, which were the property of the native country (Inland).

As representative of the heirs of Ferdinand Bloch-Bauer in Austria I will execute the legacy of President Ferdinand Bloch-Bauer, who died in fall 1945. Therefore I had access to the data in the files, which were put at my disposal by the former representative Dr.Erich Fuehrer and the Brucker Zuckerfabrik.

These documents show the following:

1.) 3,200 pieces of shares of the Oesterr.Zuckerindustrie A.G., property of President Ferdinand Bloch-Bauer, were deposited at the town-office in Vienna, of the Oesterr.Zuckerindustrie A.G. on the 13th of March 1938.

2.) These shares were sized according to the seizure order of the Finance Office, Vienna, of 29 March 1939 Zl.E 1932/38 and were delivered to the executory officer of the Finance office on 31. March 1939.

3.) According to a written statement, taken down by the Oberfinanzpraesident Wien on 14 August 1939, these shares together with those likewise in possession of the Finance authority, the package of shares of Loew (21,865) were sold to Clemens Auer, at an amount of RM 90.- for each share. No representative of Mr.Bloch-Bauer was present, when this agreement was made.

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Translation

REPORT

About the dispatch of the property left after the death of

Dr.Gustav Bloch-Bauer

Dr. Gustav Bloch-Bauer died on the 2nd July 1938 at Vienna. The heir was his widow, Mrs.Therese Bloch-Bauer, who at this time has already taken measures for the emigration of her children to Canada. She had already paid Reichsfluchtsteuer on own property. At the time, when the legacy was made, the Reichsfluchtsteuerstelle distributed the property left by the dead person, amounting to RM 689,000.- to the widow, just ready to emigrate. The Reichsfluchtsteuer alone should amount to about RM 172,000.-. In this state the legacy was unable to pay the tax at once. To prevent the delay of the emigration of Mrs.Therese Bloch-Bauer for an uncertain time, Mrs.Bloch-Bauer dismissed the legacy on December 22, 1938. I was appointed, with decree of the Court from 26.1.1939 GZ. 4 A 393/38, as administrator (trustee, Abwesenheitskurator) for her 5 children, all of whom were already abroad. With the authorization of the heirs, I made declarations for the renunciation of the inheritance for 4 of the children and only one declaration for the inheritance for the daughter of the testator, the Yougoslavian citizen, Luise Baroness Gutmann, born Bloch-Bauer. The heirs after consideration came to the decision that the inheritance could be protected in the best way from JUVA, Reichsfluchtsteuer etc. by not entering the inheritance of the children, who were at this time still Austrian citizens, but only by entering the inheritance of Baroness Luise Gutmann, who became a Yougoslavien citizen in 1932 by marriage.

The renunciation of inheritance and the declaration of inheritance of Baroness Gutmann were accepted by the Court and the legacy was developed through me, in course of the time.

The Reichsfluchtsteuerstelle did not agree with this settlement by civil law and refused the issue of a Steuerunbedenklichkeitsbescheinigung to the widow, Mrs. Therese Bloch-Bauer, just about ready to emigrate. The Finance office declared that it can not be guided by the legal considerations, but that the circumstances in signifiance of national-socialistic ideology be rated. Therefore the management of the Reichsfluchtsteuerstelle decided only to agree with the exemption of the legacy property of Therese Bloch-Bauer from the Reichsfluchtsteuer, if the property would remain blocked under all circumstances, without regard to the time of emigration and the individual Reichsfluchtsteuerpflicht of the other heirs. Under this pressure, I decided as trustee in order to make possible the emigration of Mrs.Bloch-Bauer, to recognize the payment of the Reichsfluchtsteuer in the name of Baroness Luise Gutmann, who is not obliged at all to pay the Reichsfluchtsteuer, instead of Mrs.Bloch-Bauer. Shortly afterwards, i.e. on 25.2.1939 a Reichsfluchtsteuer decision amounting to RM 172,238.- was issued against Baronin Gutmann.

Meantime I made objections against this decision, because of its high amount and finally the Reichsfluchtsteuer was reduced to RM 35,007.-.

The essential property of the legacy consisted of a deposit securities at the Creditanstalt-Bankverein,Wien, consisting especially of a packet of 2,15[illegible] shares of the Oesterr.Zuckerindustrie A.G.

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According to an order of the execution department of the Finance office Reichsfluchtsteuerstelle this deposit of shares was deposited for the aforementioned Reichsfluchtsteuer and according to an order of the Finance office, Innere-Stadt-Ost from 12.6.1939, was taken in for the Reichsfluchtsteuer account. The shares were transferred to the account of the Preussische Staatsbank, Berlin. Despite of the protest against this confiscation executed without the consent of the Legacy-Court, the shares were not returned again in their original form even after the later effectuated reduction of the Reichsfluchtsteuer. Only much later after the Reichsfluchtsteuer had been reduced a compensation was given in the form of present completely worthless treasury bills of the Deutsches Reich deposited to the legacy.

Apart from the fact that the recognition of the Reichsfluchtsteuerpflicht for the foreign heiress, Baroness Luise Gutmann, was given only under the pressure, which was exerted on the occasion of the emigration of Mrs. Therese Bloch-Bauer on the heirs, the performed transfer of 2,135 pieces Zucker-shares to the Preussische Staatsbank, without order and without permission of the Abhandlungsgericht, has to be considered arbirary and void.

The later facts show that the main part of these shares, i.e. 2,100 pieces were sold in October 1939 through the Dresdner Bank to Clemens Auer. Through what procedure these shares arrived ath the Dresdner Bank, can not be explained by me.

Because the entire procedure was performed through me, as trustee of the heirs and the complete proofs are at my disposal, I am willing at any time to confirm the fact by proofs at the Court.

Vienna, 17 July 1947

Rechtsanwalt
Dr. Gustav Rinesch
Wien IV, Stalinplatz 10,

Translated: Loew
Checked : Trinka

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[redacted]

V/s.

[redacted]

concerning the compulsory sale of 51,000 shares of the Austrian sugar industry share company of the family Low.

1.) As attorney and legal representative of the partners of the partnership of Gustav & Wilhelm Low in Aspern for several decades I was highly surprised by my own observation about the family and property conditions and also about their fate in 1938.

Gustav Low, Wilhelm Low, his daughter, Dr. Marianne Hamburger-Low and Mrs. Gertrude Low, the widow of the son of Dr. Wilhelm Low, who died in 1936, Dr. Arthur Low, with the children Mrs. Edeny and Martha Low (minor at that time) were partners in 1938.

The residence of Dr. Wilhelm Low and Mrs. Dr. Marianne Hamburger-Low was in Vienna XIX, Peshlingergasse 26, the residence of Mr. Gustav Low since Mrs. Gertrude Low and their children was in Aspern (Lower Austria).

The partners were Austrian citizens. Notarized copies of the "Heimatrolle" (citizenship certificate) from the town Aspern for Mr. Gustav and Wilhelm Low and Mrs. Gertrude Low also for Mrs. Dr. Marianne Hamburger-Low of the city Vienna are enclosed in 1 - 6).

2.) The firm Gustav and Wilhelm Low bought over a period of years 51,000 shares of the Oesterreichische Zucker Industrie A.G. for the partners at a par value of S. 100 - each. The shares were deposited partly in vault of the firm at Aspern and partly in Vienna. The partners held a quarter share each of this share capital, but Mrs. Gertrude and her four children held one quarter together, thus 1/20 per person. This fact can be seen in the property registration and tax declaration, which were made by the firm Gustav and Wilhelm Low in 1938.

3.) The firm Gustav and Wilhelm Low in Aspern, and the Spiritusfabrik und Raffinerie Gustav & Wilhelm Low Aktiengesellschaft were occupied beneficiary after 13 March 1938 by Nazi party officials and put under public administration. The partners of the enterprise were not allowed to enter the factory or the offices anymore. Mr. Gustav Low was not allowed to leave his apartment, Mr. Wilhelm Low was not allowed to move to Aspern. The "Verwaltungsmassnahmen" (property control order) of the Ministry for Interior and other Nazi or Ministry authorities gave for instance application of the agricultural and industrial property of the enterprise Gustav & Wilhelm Low.

4.) To make possible a fast execution of property confiscation a test criminal procedure was set up, which was not legally binding materials. Against the late Mr. Gustav Low, especially in the matter of the properties the firm Gustav and Wilhelm Low had established after the First World War through [redacted] of their assets and trade rights of profit. It [redacted] to be expected that one of the two [redacted] would not be punished. [redacted] the property of the enterprise [redacted] and [redacted] would be confiscated, [redacted] to Law Gazette No. 1938/1 [redacted] family.

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By violating this legal regulation, the local procedure was subjected to unusual delay of several months. [redacted] In accordance with this I sent to the Reichsminister of the Interior a report in which I proposed the confiscation of the property of the two family [redacted] I stated as the reason for this proposal that the family had violated the law by exporting capital in this [redacted] and that the confiscation of the property of the two family members was necessary in order to prevent further exports of capital. [redacted]

b) The entire property of the emigrants and the partners was confiscated in 1938. The partners had no authority over their property. Therefore they could not be expelling to raise this [redacted] amount of money by exporting capital or by sale. The family Low had to withdraw, by any means at first as possible, their foreign industrial capital which already [redacted] to confiscation steps or threatened by the German consul [redacted] members of the Low family also were under constant control, several times called in to the German consul police and had to report regularly at the police. Their passports had been taken away. To leave the country would be impossible, if the tax procedure were not straightened out.

In agreement with the attorney Dr. Friedrich Werner, whom I consulted for the execution of the tax procedure, I had to recommend that the family withdraw the already granted appeal against the illegal tax penalty and that the family renounce their total personal property, real estate, private and business property.

The procedure for emigration was given after a statement of this kind was signed and after Dr. Werner was given an irrevocable plenary power to sell the whole property of the family in favor of the [redacted] - finance - administration. All property in foreign countries had to be handed over to the Finanz Ausgleichs [redacted] After enforcement of existing Government, the following values in marks for the account of the Low family were delivered to the Reichsbank:

Cash, funds and coins of an estimated value of		
18000 - kg War Iron	S.Fr.	[redacted]
100 Kuchen Silver	"	[redacted]
88 Shares of the Deutschbank Aktg Gesellschaft Industrie Bonds	"	[redacted]
[redacted]	"	[redacted]
[redacted]	"	[redacted]
Credit at Dr. Meyer	"	[redacted]
	S.Fr.	1,167,210.67

To complete the information it is pointed out that the "Deutsche Ausgleichsgesellschaft" sought the industrial and [redacted] property of the Low family for an amount of RM 2,800,000. This included:

a) The [redacted] and rooms, and as a half property of the [redacted] with an estimated value of about RM 1,200,000.

b) The [redacted] and [redacted] property of Mr. Gustav Low with an estimated value of about RM [redacted]

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c) The estate rental property of Frau Dr. Marianne Hedwigsgrund, with an estimated value of about RM 800,000.

d) The estate valuable property of Frau Gertrude [illegible] and her 4 children, of an estimated value of about RM 600,000.

e) The estate stocks and Reichsmark property of the deceased Landrat's Gustav and Wilhelm Lorz valued at about RM 3,000,000.

f) In addition the real estate in Vienna [illegible], Dr. Hedwigsgrund RM property of Frau Dr. Marianne Hedwigsgrund-Lorz, of an estimated value of RM 150,000.

g) The industrial participation in the Gustav and Wilhelm Lorz A.G. in Angern.

The company was founded in 1897 with a share capital of RM 6,000,000. It took over the Spiritusfabrik und Hefefabrik, the Futtermittelwerk, Lagerhäuser, the silo and other agricultural enterprises besides the trade company Handelsgesellschaft Gustav & Wilhelm Lorz at a booking value of RM 8,000,000.

The hidden reserves of the firm Gustav and Wilhelm Lorz which were established by the low evaluation of the assets and operating capital over the years, through the deduction of the liabilities for taxes, are not considered in this valuation. The joint stock company took over these hidden reserves without special reimbursement. The real value of the enterprise Gustav & Wilhelm Lorz A.G. amounted in December 1938 at least to 4 million Reichsmark. Two thirds of this belonged to the [illegible] family, which is RM 4,000,000. Rm. But if even only the par value of the share are considered, which is two third of 6 million M. or RM 4,000,000, it shows that with these shares alone the agreed purchase price of RM 2,800,000 has been reached. All the other persons items mentioned under Number 2 - 7 (all agricultural estate and the real estate in Vienna with estimated value of together about RM 4,250,000.) the [illegible] Anhalt Kapitalanlage received free of charge and without any payment.

6.) The liquidation of the total property of the family took place through the then still existing [illegible] in Vienna ordered by the [illegible] Vienna. Dr. Lorz or representative of the persons took care of the sale.

The sale of the RM 800 shares of the enterprise Industrieanlagen A.G. did not take place through a bank. Dr. Lorz has discussed this with various banks.

The sale of these shares and other shares of the family [illegible] as 6,500 German Reichsmark and 1,500 Austrian Schilling was [illegible] of the [illegible] Vienna [illegible] [illegible] by [illegible] the [illegible] [illegible] [illegible]

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the Irish mail plane.

The family and friends of the victims of crimes of war and murder, I assume, especially the kin of the victims of the bloody acts of 1944 in Civitella, Cornia and S. Pancrazio.

[illegible] a copy of this book has come to the attention [illegible] the Supreme Court of Italy, [illegible] and citizens of the [illegible] the [illegible] Civitella [illegible] Italian [illegible] (Tuscan) hills west of the Apennines.

I certify to the accuracy of these statements, which I have taken from my diary of 1944-45. I have been attending to my bookkeeping duty as chairman of the Civitella Peace Center [illegible]

Fr. Ruffo

Vienna 16 July 1947

Translated by Ingrid A. Rhienpl

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Balance - sheet per 31 July 1937

ASSETS	Schilling	LIABILITIES	Schilling
1 Real estate	181,000.—	1 Capital	10,000,000.—
2 Buildings	9,782,481.84	2 Reserves	653,784.25
3 Employees & workers dwellings	548,000.—	3 Special reserves I	30,268.70
4 Inventory	1.—	4 Contingeous liabilities	100,000.—
5 Cash	22,061.94	5 Reserve for depreciation	7,711,653.62
6 Participations	1,173,466.84	6 Accounts payable	5,092,758.83
7 Accounts receivable	7,076,541.90	7 Accumulated profit	1,533,125.84
8 Inventory stock on hand	7,266,332.62		
	26,021,555.24		26,021,555.24

Vienna, 14 December 1937

Oesterreichische Zuckerindustrie

Aktiengesellschaft

Ferdinand Bloch-Bauer m.p. Dr.Viktor Groetz m.p.

Checked and found correct

by the auditors:

A. Stiassny m.p. Erich Kraus m.p.

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Opening balance sheet per 1 January 1940

of the

Brünner Kammgarnspinnerei Clemens Müller, Brünn a.d.Leitha

Assets	RM	LIABILITIES	RM
Real estate	20,000.—	Accounts payable	3,081,153.02
Buildings	1,200,000.—	Reserves	636,676,98
Machineries	4,163,281.—	Invested reserve	900,000.—
Tax free investments	362,713.45	Welfare fund	30,000.—
Inventory and motor pool	60,000.—	Reserve for payment for unpurchased shares	195,000.—
Inventory stock on hand	3,924,000.78	Bank debts *)	5,443,939.—
Securities	43,283.33	Capital	3,191,700,80
Bank accounts	2,740,005.42		
Accounts receivable	438,507.04		
Cash	78,747.79		
	13,508,479.80		14,508,479.80

*) Creditanstalt Bank Filiale Aussig 700,000.—
Deutsche " " 1,417,112.—
Landesbank Wien, Credit account 1,326,827.—
3,443,939.—

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TRANSLATION

VIENNESE STOCK EXCHANGE

Vienna, May 16, 1947
I, Wipplingerstrasse 34
Phone A-11500

No. 4259/47

To the
Brucker Z-uckerfabrik Klemens Auer in

Vienna III
Neumarkt 13

With reference to your letter dated May 14, 1947, concerning the market value of shares of the Oesterr.Zuckerindustrie A.G. in Vienna, as of March 1938 (prior to German occupation of Austria) we inform you, that these shares which were not quoted at the Viennese Stock Exchange were for the most part in permanent hands and only a very small part of them was available for trade. Our investigations showed that, according to a few turn-overs and in comparison to the officially quoted sugar shares, the estimated value of the shares in March 1938 at about S 320.- to S 350.- for one share at a par value of S 125.- seems to be adequate.

Viennese Stock Exchange
The General Secretary
Signature illegible

This photo-copy agrees exactly with the unstamped original shown to me. - Vienna, on May 21, (twenty-first) 1947 (onethousandnine-hundredfourtyseven)

Sgd. Dr. Anton Klesarek
Public Notary

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[redacted]
Oleana Aser, Eln.

Balance sheet per 30 September 1944

ASSETS		RM	LIABILITIES	RM
1. Fixed assets:			1. Reserves	2,221.80
Real estate		46,900.—		
Offices & dwellings		636,280.—	2. Contingencies	479,600.19
Factory buildings		267,750.—		
Out Algea		118,144.—	3. Accounts payable	1,503,296.—
Apartment houses unlisted		67,055.—	4. Adjustment entries	66,672.10
Machinery & equipment		2,259,901.—	5. Capital	
Transportation		7,814.—	1. Oleana Aser	5,182,311.16
Office equipment		14,702.—	2. Karl Nigel	29,517.00
Dwelling equipment		982.—		
Tools		1.—		
Books		1,835.—		
Current inventory		—.—		
Participations		410,188.—		
Securities		2,063,570.—		
2. Current Assets:				
Sugar inventory		361,923.40		
Advance payments		252,801.13		
Accounts receivable		531,917.78		
Cash, Post & Bank Savings		25,353.15		
Other Bank & Savings Account		17,420.29		
3. Adjustment entries		79,311.25		
		7,492,947.00		7,492,947.00

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[redacted]
[redacted]

EXTRACT FROM THE AUSTRIAN TAXES ACT 1949

(Verwaltungsstrafgesetz)

EVASION OF TAX

§ 33

Anybody is culpable of evasion of tax payment, who consciously and with the intention to deprive himself of the legal tax performances makes a wrong statement in a tax declaration or while answering to an inquiry directed at him by a competent authority, or at the proof of a legal measure in order to gain tax exemptions or conceals facts which are made to frustrate the tax prescriptions to the payment of which he may be obliged by the law, or to cause the prescription of a lower tax as the legal one, or granting of a tax exemption of which he is not entitled to; culpable is further the representative, who commits for his client the aforementioned punishable actions and omissions regarding the taxation.

§ 34

Liable to the same punishable action, is anybody, who makes consciously wrong declarations in any statement handed to him regarding the collection and payment of rent tax (§ 134 para. 2) or dividend tax (article III. 4th paragraph of the law of 23.1.1914 R.G.Bl. 19 and § 85a) or in a list submitted by himself, regarding paid wages and deductions, made by himself, regarding wages-tax or income tax (§ 42, 2nd paragraph and § 43 3rd paragraph), this with the intention to reduce the tax or to conceal facts, which may frustrate the assessment of the taxes to be paid from these revenues or to reduce the assessment to a lower tax than the legal one.

§ 35

(1) Evasion of taxes is punishable with a fine to the amount of 3 to 5 times the amount the tax evasion would be the sum of the tax which has been evaded.

[redacted]

(2) Evasion of taxes is punishable with a fine to the amount of 2 to 3 times the amount the tax evasion would be the sum of the tax which has been evaded.

[redacted]