

11.2 The failed restitution of the Kyrnberg estate

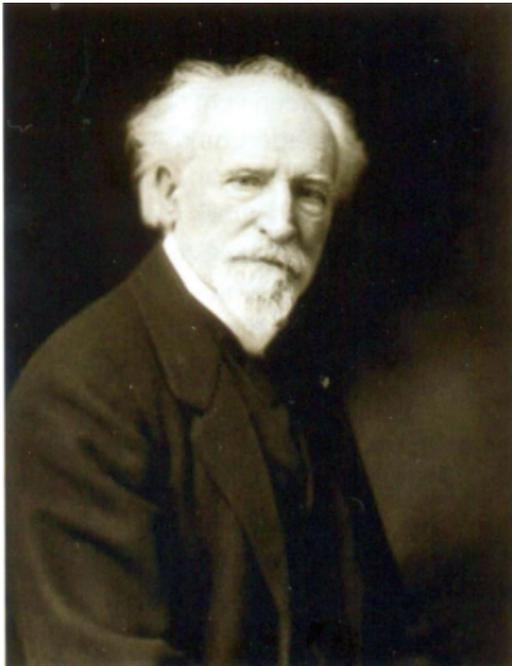
From the book: "The legacy lives" by Dr. Johannes Kammerstätter and Nina Diesenberger

11.2.1 The controversial history of ownership

In 2014, the Pyhra Agricultural College celebrated its 100th anniversary. It had a turbulent history. And an anniversary is reason enough to take a look into this story. In this brief outline, this is done in order to give the Kupelwieser family their importance and an appreciation of their fate. Clearly, it is important for a historical review to rely on reliable sources and not to dodge unpleasant details

The Pyhra Agricultural College was founded by Dr. Carl Kupelwieser and his wife Bertha born Wittgenstein.

This school farm consists of two groups of properties, which both used to be formerly owned by the Kupelwieser family, but at different times and they also had been assigned by various reasons to the Pyhra Agricultural School.



Dr. Carl Kupelwieser 1941-1925

Dr. Carl Kupelwieser donated to the school farm in Pyhra an agricultural terrain from his own estate Kyrnberg of approx. 10 ha. According to the plans submitted by the provincial building office, Kupelwieser had realized the school house and all belonging apartments from his own resources for the principal and teachers. According to the director's wishes, that has been a stable for 20 large cattle and some calves. In addition, more outbuildings, farmhouses, stables for horses, pigs and chickens were erected. There were also facilities for the school, dairy, laundry room, other stables and the fortification of streets and courtyards.

The Pyhra Agricultural School is not the only Kupelwieser Foundation. Dr. Carl Kupelwieser was also the founder of other projects. In Lunz he founded the Biological Research station in 1906, which has enjoyed since its inception an international reputation. In Vienna he donated property, construction and furnishings of the world's first radium institute to research on radioactivity.

He donated a property on the Semmering to build a children's lung sanctuary. His wife Bertha, born Wittgenstein, financed the construction of the hospital in Scheibbs.

The second part of the current school agriculture, covering an area of over 200 hectares, was handed over by the descendants of Dr. Carl Kupelwieser in the summer of 1939 shortly before the starting of the second World War of the Agricultural Technical School Pyhra in a trustee administration. That had the following relevance:

Up to this point, the Kyrnberg estate was owned by the three children of Dr. Hans Kupelwieser, the son of Dr. Carl Kupelwieser. These three children were considered, because of their Jewish mother and a "half-Jewish" father, like others who had then three Jewish grandparents as "full" Jews.

The cousins of these three had owned another 5/12 part from Kupelwieser's legacy, with only one Jewish grandparent they were considered only "2nd degree hybrids".

The remaining 2/12 belonged to a widowed and childless non-Jewish son-in-law from Dr. Carl Kupelwieser, the painter Maximilian Lenz, who was an enthusiastic fan of the NS. How got this community of heirs the idea to hand over the Kyrnberg estate around the agricultural school of Pyhra into such a trustee administration?

What was the situation, especially for the "fully Jewish" Kupelwieser children, grandsons of the founder of the school?

The family had to try to escape the impending discrimination- as well as possible - by using all relations to relatives and good friends.

The Kupelwieser children were upgraded in December 1939 by a decision from Berlin from "three-quarter Jewish" to "first-degree mongrels".

The price for this was the property of the related Wittgenstein family in Switzerland, because this certificate of descent also made the Wittgenstein family members to "half-breeds of first degree".

The trustful handover of the Kyrnberg estate in the summer of 1939 took place at the same circumstances and was the preliminary stage of the Kyrnberg estate purchase by the German Reich province (Reichsgau) of "Lower Danube".

With this purchase in the spring of 1940, the "Gauleiter" and Reich Governor Dr. Hugo Jury figured out itself as a buyer for his "Reichsgau" Lower Danube. The original of the sales contract is lost.

Until the end of the war, the estate remained formally and factually owned by that Reichsgau (German Reich Province of Lower Danube) and was used by the agricultural school.

In the turmoil of the end of the war, this school and the surrounding Kyrnberg Estate were seized twice:

In the weeks before the collapse of the Nazi regime German military including SS divisions had housed in it.

On the 13th / 15th April the Soviet front arrived in Pyhra. After one of those battles remained. From 104 SS men only 4 alive. There were lots of deaths among the civilian population, and among German and Soviet soldiers. 45 families fled from Pyhra, most of them to Lunz. Soviet troops confiscated the school and appropriated farm animals and all supplies.

In autumn 1945, the Kyrnberg estate was incorporated into the agricultural school budget. So, it should be prevented from being considered to be claimed as "German Property" by the Soviet occupying powers the mayor and District administration tried then to get the estate to be represented as a pure Austrian possession.

In September 1947, the federal state of Lower Austria tried to replace in all the suspect land registers the former owner "Reichsgau Niederdonau" (German Reich province of Lower Danube) by "Province of Lower Austria" to avoid that the Kyrnberg estate could be claimed from the Soviet USIA administration.

The province of Lower Austria insisted in their point of view, that the "Reichsgau Niederdonau" had financed the Kyrnberg estate from its reserves, that had been the fortune of the "Reichsgau", and the legal successor of this property was hence clearly the country of Lower Austria. In addition, the "Reichsgau" also has lost some of its proper capital.

The continued ownership of the Kyrnberg Estate was considered therefore a fair compensation for it.

Still in March 1955, a few weeks before the Austrian Republic State Treaty, no property at all from the Gut Kyrnberg was able to be sold for building permits to private individuals without the approval of the Allied Council.

After the State Treaty, it was disputed between the Austrian authorities until 1960, whether a former "German" property, i.e. Assets which had been withdrawn by political or racial persecution should belong now generally to the Federal Government or a Federal state (province).

It was only on November 20, 1957, in spite taking into account this open question, instead of the "Reichsgau Niederdonau" now the Province of Lower Austria has been registered as owner of the Kyrnberg properties in the Land register.

But in 1957, further ownership claims were made to the Kyrnberg estate.

The so-called Collection Points (Sammelstellen) were legally established in 1957 and had the right to withdraw Jewish and politically persecuted Austrians claim assets that had not yet been claimed by the previous owners to compensate the proceeds for the legitimate claims of others whose assets were irretrievably destroyed. These Collection Points also became aware of the Kyrnberg estate and searched to find out whether the estate had been taken away from the heirs of the Kupelwieser family in 1939/40.

To prove that the Kupelwieser family would not have sold the property at all, if not the National Socialist power and its pressure would not have been threatening? The Collection Point "B" tried to enter himself into the restitution claims of the Family Kupelwieser and to use the property for the assets of other expropriated persons, which had been destroyed.

Also, restitution claims that were not brought in on time were not in principle expired, otherwise the "Collection Points" would have been able to seize confiscated Jewish property and assets of others persecuted people.

The "Collection Point B" contacted only one of the Kupelwieser heirs, but who himself had showed no interest. The "Collection Point" would have been indeed be entitled to assign its claims to the heirs of the original owners. The "Collection Point B" turned itself several times in 1960/61 to the State of Lower Austria to clarify whether the heirs to the Kupelwieser had sold the Kyrnberg estate to the "Reichsgau" as "Non-Aryan" people?

The state of Lower Austria claimed that if this had been the case, it should have been explicitly mentioned in the purchase contract. In any case, the current Jewish status of the sellers in 1939/40 was not really thoroughly researched!

1467

1) Neg.
2) F6
3) Allege

Geschädigter: Kupelwieser Dr. Hans
wohnhaft gewesen in:
entzogenes Vermögen: Wiesen, Wälder, Äcker

Meldung Nr. 3344
 Abrechnung Nr. 7728/II

Die Angaben über das entzogene Vermögen sind entnommen aus:
 Vermögensverzeichnis der VVST Zl.:
 Akt des Finanzoberpräsidenten Zl.:

Eine Pflicht-freiwillige Anmeldung nach der Vermögensentziehungsmeldungs-
verordnung liegt nicht vor Zl.:
 Eine Anmeldung nach Artikel 26 des Staatsvertrages wurde fristgerecht,
 verspätet nicht eingebracht Zl.:
 Ein Rückstellungsverfahren wurde nicht festgestellt, der Rückstellungs-
 antrag jedoch abgewiesen (siehe unseitig).

Grundbucheintragungen

EZ 34 Art: Wiesen, Wälder, Äcker
 KG Auern Anteil 1/4
 Gerichtsbezirk: St. Pölten Anschrift der Liegenschaft 246/1, 246/2, 247, 248
 245/5, 237, 238, 239,
 Verkauft lt. Kaufvertrag vom u. Mietvertrag v. 12.6.1940 240, 241, 242, 244/2,
 26.7.1940 bzw. 3.8.1940 245/1, 245/9
 an Ariseur: Reichsgau-Niederdonau (Gauselbstverwaltung)
 um RM 1/1 Ant.
 mit, ohne Genehmigung der VVST Zahl:

Spätere Erwerber:
 Letzter Erwerber (heutiger Eigentümer): Auf Grund der Art. 1 bzw. 4 des Ges.
 vom 1.5.1945 St.G.Bl.Nr. 4, des § 2 des
 Ges. vom 1.5.1945, St.G.Bl. Nr. 5 und des
 § 7 des Ges. vom 20.7.1945, St.G.Bl. Nr.
 "Bundesland Niederösterreich" 1/1
 (Verwaltung landwirtschaftlicher Lehr-
 anstalten)

Erzielter Kaufpreis:
 Belastungen: keine
 Bemerkungen: Grundbuchaussug anbei
 siehe auch Meldung Nr. 3342, 3343

W

Eine Meldung über ein dem oben angeführten Geschädigten gehörendes weiteres
 Vermögen wurde zur Zahl vorgeschrieben.

Deckblatt des Sammelstellenaktes zum Gut Kyrnberg

The

The county of Lower Austria as opponent of the collection points argued as follows: Some Kupelwieser family owned properties, but much smaller ones, before 1938 had been sold to the

province of Lower Austria sold, i.e. for the Kupelwieser family, the federal state of Lower Austria and the "Reichsgau" of Lower Danube had always been the same problem-free contract partner.

On March 9, 1961, the Collection Point B had put away the restitution request for the Kyrnberg estate to its archives.

An "N" is drawn across the entire first page of the act with a thick red pencil, i.e. the Collection Agency considered it hopeless and therefore "negative" to apply for restitution against the overpowering state of Lower Austria and to win successfully and that lawsuits against them. She withdrew the application and so at least avoided further process costs.

In 2001, the General Settlement Fund Act regulated the restitution claims of persecuted Austrians under National Socialist rule, to whom any property had been withdrawn, which is currently still in public ownership.

In 2005, some of the Kupelwieser descendants filled out an application for restitution, which also affected the Kyrnberg estate. The Arbitration Panel for In-rem Restitution of the General Settlement Fund for Victims of the National Socialism declined the submitted application after seven years on 2 June 2012.

But the arbitration board could not prove that the sellers of the estate Kyrnberg 1939/40 the purchase price was paid. The Arbitration panel could not make it credible that the transfer of the Kyrnberg estate to the Reichsgau Niederdonau would have happened even without the impending persecution that of the Kupelwieser family.

The decision with the number 853/2012 has 120 pages. The rejection of the application is based on the appreciation of the arbitration panel that the purchase price for the Kyrnberg estate would anyway have been paid out to the owner.

The Agricultural School Pyhra stands today as a farming school on the one hand which had been available as a generous foundation of the Kupelwieser family from 100 years ago, and, on the other hand, there is also another part of that farming school from the former "Kupelwieser'sche Gut Kyrnberg" which the heirs of the founder in 1939/40 had not probability voluntarily given up!

That "Ownership History" of this part of the school is probably also a teaching example for how the official Austria was for a long time dealing with that contemporary history.

11.2.2 The decision of the Arbitration Panel for in rem restitution 853/2012

The application for In Rem restitution of the Kyrnberg estate was received with a 120 page long rejected justification on June 27, 2012. This justification contains a series of claims that not are withstanding a historical-legal test:

In cases like these, it would be obvious that the new owners or their legal successors, after the end of Nazi rule, would have by themselves corrected this wrongly interpretation and had helped the expropriated, in compliance with the appropriate deadlines, to regain their property

The legal opinions about who, after the end of the Nazi rule, was as a public owner responsible and competent for the confiscated assets and their restitution was controversial.

On the one hand, the authorities of the Second Republic were not clearly on the side of the restitution applicants, on the other hand, this was treated through public institutions in the provinces

and municipalities and so confiscated assets were not considered as federal property at all, but remained within those provinces and communities.

The applications of the Kupelwieser-heirs for In Rem restitution were rejected by the general settlement fund since then by his opinion:

"Could not be made credible that the persecution of the Kupelwieser family was causal for the sale of the Kyrnberg estate to the Reichsgau Niederdonau."

See: <https://www.entschaedigungsfonds.org/detailansicht/6802881> Margin Number 539

But in this case, it was - unlike the schematic "de-jewishisations" of (in NS diction) purely racial Jewish owners - not at all the question for the possible motives of the Kupelwieser family for the sale.

It is a question of whether and how the "Reichsgau" of Lower Danube as the successor would have paid out the purchase price for this estate divided among the sellers and either have transferred it according to the ownership to the account of their common lawyer or to the accounts of all those shareholders themselves.

For this essential part of the sale procedure, there is not a single document existing!

The General Settlement Fund can therefore not prove that the sale of Gut Kyrnberg has been regular.

Peter Kupelwieser 's declaration of majority, from which the Restitution Fund refers indirectly to the correctly sale of the Kyrnberg estate would therefore have happened already after the transfer of the purchase amount and so this amount should have been already paid out from the end of the in December 1940.

However, this contradicts the printed budget plans of the "Reichsgau" from Lower Austria in which the payment of the purchase price is not scheduled until 1943.

In my opinion, the Arbitration Panel's most alarming statements are the apodictic claim, that the sale of the Kyrnberg estate in 1939/40 by racially persecuted people into the ownership of the "Reichsgau" of Lower Danube should be a perfectly correct legal transaction.

The later "disguising" of the legally questionable process of taking possession of the property Kyrnberg should therefore not matter, even after the end of the Nazi regime.

11.2.3 The decision WA 16/2016:

Comment on the final rejection of the application for In rem restitution of the Kyrnberg estate in Pyhra

The final rejection of the restitution application for Gut Kyrnberg was decided shortly before the end of 2016. For purely formal reasons, the applicant's eligibility for a new application was inhibited. The new discovered sources as the basis for the new application were disqualified to seem to be actually not new at all, but had not yet been used by the applicant in the initial application. In principle, they would have been already accessible for the first application.

This concerned both: the published accounts of the "Reichsgau" Lower Danube and the private correspondence from the applicant's mother.

In agreement with the applicant, the author handed over to the President of the National Fund Mrs. Hannah Lessing at an event in the Vienna Museum a comment on the final rejection of the restitution request for the Kyrnberg estate and he criticized the practiced decision in the following points.

° *It is obscured how the Province of Lower Austria came into the possession of Kyrnberg and that there has been a legal dispute between various federal agencies since 1945. All assets acquired under Nazi rule should have been given back to the federal government in 1945. But the country of Lower Austria refused to surrender the Kyrnberg estate. It was not until 1957 that the "Reichsgau" Niederdonau had deleted it from the land register without any procedure. By that, the Federal State of Lower Austria took an advantage against the right of the "Collection Points" to deal with it as a not yet restituted asset of racially persecuted owners.*

° *The arbitration board confesses the fact of the persecution of the Kupelwieser family for racial reasons, but denies that this could have played a role in the most important legal transaction of the family during the Nazi regime, namely when the Kyrnberg estate transitioned to the "Reichsgau" of Lower Danube. The Arbitration Panel claims:*

"The sales price, which was appropriate in terms of its amount, had also benefitted entirely to the sellers."

The arbitration panel was unable to provide any evidence of this and, on the contrary, the applicant was required to prove the non-payment of the purchase price.

The applicant could even demonstrate that the purchase price could not have arrived in one of the family accounts because the open debt stayed at the other domain of Seehof in Lunz existed until 1945.

° *Especially important seems the fact, that the federal province of Lower Austria as a respondent did not have to prove his historical right of legal ownership, but could himself limit to claim only formal errors in the applicant's application. Concerning the accessibility, it wouldn't matter when the applicant "discovered" the evidence, but rather when they were made available to the public and thus all of them would have been accessible to the applicant. In this regard, it was referred to the section 69 (1) (b) of the General Administrative Procedure Act (AVG) that the retrial is only admissible if new facts or evidence would emerge that could not have been asserted yet in the proceedings without fault on the part of the claimant. Any negligence of their assertion, including slight negligence, is closing the legal right to the proceedings for retrial.*

° *Really ridiculous are the alleged formal errors in the application for the applicant, which should have consisted in the way how the applicant has not documented exactly at what date he found which document from private correspondence and transcribed from the current script and identified it as new evidence." The applicant would have to mention the (exact) time of their knowledge and must name and prove that new correspondence exactly listed.*

° *A special light falls obviously on the close relationship between the Arbitration Panel and the respondents concerning the recommendations that the Respondent made to the Arbitration Panel.*

Regarding the assessment of the new evidence submitted by the applicant with the conclusion: "That no other result can be expected" "The Lower Austrian state government stated hence the application to reject the application for reopening!

<https://www.entschaedigungsfonds.org/detailansicht/6881843> Rand 121

That means that the Arbitration Panel should not even deal with the historical ownership claims of the ancestors of the applicant, so that the defendant, the state of Lower Austria, would benefit from the final legalization of his still controversial property.

11.2.4 Feedback from the Arbitration Panel dated 7.3.2017

The author received no information on the content of the procedure from his criticism because he was neither the applicant nor an authorized representative of the same.

The reply letter therefore said:

"However, we would like to take the opportunity to answer questions about your comment on the procedure from the Arbitration Panel. The opinion of the Arbitration Panel on the documentation of the Kyrnberg case is also for you, dear Readers, insightful, in so far as the Arbitration Panel explains its own procedure or its own assessment of evidence:

"It is the task of the Arbitration Panel to discuss applications for restitution of publicly owned properties"

A legal prerequisite for in rem restitution is that the asset had been withdrawn during of the Nazi regime in Austria between 1938 and 1945, Austrian courts have not already claimed for this and administrative authorities had not decided or agreed by mutual agreement on restitution yet and the Asset was standing at the reporting date, January 17, 2001, in public ownership in special exceptional cases, the Arbitration Panel may, in spite of the existence of a previous decision recommend a mutually agreed regulation or restitution, if it comes to the view that this previous measure "was extremely unfair".

During the procedure, both the applicants and the public owner has the opportunity to give to the Arbitration Panel their point of view. This will ensure a legal hearing. After completion of the research and collection of the opinions of the parties involved has been carried out by the responsible decision makers, a draft decision is established, which will be discussed in detail by the Arbitration Panel in at one of its meetings before finally making her decision...

At this background, it appears incomprehensible if you comment on the Arbitration panel assume a "close relationship" with the state of Lower Austria because this "the opinion of the province was token over 1: 1 even in individual formulations, in the decision.

Of course, the arguments of the parties, including those of the respondents, were repeated in the course of their submissions, the respondents can - as well as the applicants - put forward and procure their legal view by the right to be heard. However, that doesn't mean that the Arbitration Panel also shares this legal view....

In its extensive decision No. 853/2012, the Arbitration Panel has detailed all further events after 1945 around the concerned estate in the margin numbers (margin no. 373-425) so any „disguise" by the province of Lower Austria how it became the owner, there can be no question here.

However, the Restitution Fund Law does not allow the Arbitration Panel to judge the legality of later transfers of ownership of undrawn property. As from decisions no. 853/2012 and WA 16/2016 to 853/2012 the Arbitration Panel has examined in detail whether the descent of the Kupelwieser family for the sale of the Kupelwieser estate to the Reichsgau Lower Danube had been causal and came to the conclusion that the initiation and the terms of the purchase contract show no signs of a a confiscation. It could not be determined that the sellers would have been compelled to sell by the "Reichsgau" or other Nazi authorities in a discriminatory influence on the purchase.

The Arbitration Panel has also found no evidence that the purchase price would not would have come to the sellers, and also explained the reasons about the transfer of the purchase price. In the application for retrial, various documents were named "new evidence ", including private correspondence from the Nazi era as well budget statutes and accounts of the "Gau" of Lower Austria. This would prove that the sale of the Kupelwieser property was due to a persecution from their descendance and so the purchase price has not been paid out in full. Contrary to what you have said, the Arbitration Panel has made no statement that whether the newly submitted documents were "previously accessible". This question could remain undecided because the Arbitration Panel in its legal assessment came to the conclusion that even the newly submitted documents have contained no evidence, which proves a persecution-related withdrawal within the meaning of the Restitution Fund Law. These did not justify the assumption that their submission in the previous procedure could have had the effect of a different result (margin nos. 126 and 133 and 389a). As the application for restitution was therefore already subject to the requirement of a confiscation it was to reject in the sense of the Restitution Fund Law, any other requirements on withdrawals were to be rejected and could no longer to be checked."

So, it remained the purely formal rejection of the restitution application. The country of Lower Austria and the respondent did not have to prove that he owned the Kyrnberg estate rightly!

Translation from EXTRACT from the book "Das Erbe lebt", created as a PDF for viewing on the Internet with kind Permits from the author and the Queiser Verlag Wieselburg, © Queiser Verlag 3250 Wieselburg, office@queiser.at

Further links: EXTRACT from the book "The legacy lives" from the book series "Portable fatherland" by Dr. Johannes Kammerstätter and Mag. Nina Werdenberger, see table of contents and introduction, reading sample and order address http://www.tragbaresvaterland.at/wpcontent/uploads/2018/01/Leseprobe_Das-Erbe-leben.pdf

See also the interviews with Univ-Prof. Aicher, MP Univ. Prof. Blimlinger and DI Hans Geißhofer, in the documentary film by Dr. Burgl Czeitschner "Let's keep it": https://letskeepit.at/de_pauline-kupelwieser.htm

And the book by Hans Geißhofer, Der Kältesee, <https://www.united-pc.eu/buecher/biografie-politikzeitgeschichte/geschichte-biografie/der-kaeltesee.html> and the preface here in a copy by Wolfgang

Sobotka on the book "The Legacy Lives" as President of Parliament and Chairman of the Board of Trustees of the General Settlement Fund