The Commission for the indemnification for the Belgian Jewish community's assets, which were plundered, surrendered or abandoned during the war 1940-1945

Final report
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The Commission's mandate started on September 9, 2002 in pursuance of the Act of December 20, 2001 relating to the indemnification of the Belgian Jewish Community's assets, which were plundered, surrendered or abandoned during the Second World War

Plan of the Commission's Final Report

Introduction

The human dimension is a distinctive feature of a task such as the one that was entrusted to the Commission. It raises the following questions: what objective do we wish to achieve and in what way, in other words, the questions of the "whys" and "wherefores".

What objective do we wish to achieve?

The primary objective was clearly to close a section of the past, which still seems half-open, more than sixty years after the events. The circumstances under which, decades later, some assets held by public authorities, financial institutions and insurance companies could not be restored, were sufficiently explained in the Study Commission's final report. Consequently, there is no reason to dwell on them.

That uncompleted past, however, as long as it is considered from the point of view of facts and figures, mostly remains an obscure haze, despite all the efforts made by the Study Commission. Some records are missing or are largely incomplete. Those of the financial sector, including the Office des comptes chèques postaux (Girobank), are the illustration of this. Moreover, in other cases, the Study Commission was compelled to limit itself to a sampling analysis on account of the allotted deadlines. That is why only 8,700 of the 28,500 files of the "enemy" sequester could be sifted through, which was enough for the Study Commission to make a reasonable estimate of the despoilment but which left the current Commission faced with a good many questions.

We might have thought that the Commission was going to be able to draw on the available ready-made files of data making it possible to assess each of the claims. That was far from being the case.

And yet the Commission was well aware that Parliament and the Government

showed a real political willingness to ensure that the claims were processed correctly, in all fairness, by means of serious investigations and having regard to all the circumstances. In any case, that is the attitude adopted by the Commission: it attempted to process each file globally, did not require that the claimants produce evidence impossible to provide, examined all the elements likely to support the claim and frequently discovered traces of despoilment unknown to the claimants.

The Commission addressed the question of the whys by considering its task as a final attempt at reparation and restitution in a broadly human spirit, wherever it was still possible.

In what way?

For the Commission, the assessment of a claim was not confined to a mere arithmetical calculation consisting of subtracting the "assets already restored or indemnified" from the "items positively identified"; its work was more thorough and extensive. The Commission asked the members of the secretariat to put themselves in the claimants' position when they were analysing the files. For instance, what could claimants born in the thirties, who were less than ten years old when the war broke out and whose parents died in deportation, know about their family's wealth?

The additional information that the secretariat was able to gather on its own initiative did not solve everything. The total lack of traces of some cases of despoilment in the records remained the main handicap.

The Commission set itself the delicate task of establishing the elements that could prove credible, taking the whole file into consideration. An eloquent example: the claim for financial indemnification from a claimant born in 1937 whose parents dead in deportation were obviously comfortably off (considerable working capital, substantial real-estate assets, etc.) constituted, in the Commission's opinion, sufficient presumption of despoilment of bank assets. That was done, even if the name of the despoiled person did not appear among the rare "certain" (170) or "possible" (375) identifications of bank assets established by the Study Commission.

In the various areas of despoilment, the Commission quite logically adopted that

method of working. It had to award lump-sum indemnifications, while seeing to it that their amounts were based on concrete elements. The 4th chapter of the final report deals with this aspect in detail.

A very specific problem remained, namely the despoilment of furniture. Strictly speaking, the Commission could purely and simply reject any indemnification claim for furniture, in pursuance of the Act, and more particularly its Article 6. In actual fact, failing proof of any payment of the exchange value of the property into a frozen account, it was unable to identify an asset not restored by the State or financial institutions.

It very quickly emerged, however, after examining some 500 files randomly chosen during the period from March to September 2003, that almost all the claims referred to the looting of furniture.

Those references were hardly surprising. It is worth recalling, concerning this matter, what was said by the Study Commission at the time: "If there really was one form of looting that left a painful memory in the victims' minds, it was the plundering of their homes that began in mid-January 1942 as part of the Möbelaktion. That operation had considerable consequences owing to its extent and its radical measures." (study report, p. 119).

After an in-depth exchange of views, the current Commission considered that it could not ignore that such looting had indeed been "radical" and had affected rich and poor alike and often families whose furniture represented their only possessions.

It should be added that, in three quarters of the cases that referred to the looting of furniture, the secretariat managed to show that indemnification had already been awarded, generally within the scope of the German Reparations Act ("BrüG" legislation), sometimes on the basis of the Belgian Acts concerning war damages.

It is worth noting that the Commission's secretariat systematically devoted its time to checking that the notified looting had not already been the subject of any indemnification in the past.

1. Historical background - Legal and statutory basis

1.1. PREVIOUS HISTORY

The Indemnification Commission was set up as the keystone, as far as Belgium is concerned, of a series of developments at national and international level. These developments aroused a lively interest concerning the issue of unrestituted Jewish assets, confiscated or abandoned during the Second World War.

Access to a certain number of records after the expiry of the legal deadline of 50 years, which applies to secret records, coincided with the commemoration of the 50th anniversary of the liberation of the camps. This increased the interest in what happened behind the scenes of the Nazi regime during the war, in the first instance in relation to the gold stolen from central banks and individuals.

When it was revealed, in the light of these records, more particularly those of the Tripartite Commission (a Commission comprising the United States, France and the United Kingdom, set up after the war to recover the stolen gold) that Nazi Germany had placed gold in Switzerland and that the Swiss Confederation had refused to collaborate with the allies to examine the scale and the nature of these operations, things happened very quickly.

Urged on by a certain number of Jewish organisations (notably the *World Jewish Congress and the World Jewish Restitution Organisation*), the scope of the investigations expanded to include the problem of all the unrestituted Jewish possessions in all the countries where they might be found, including neutral countries.

This was, in short, the impulse for the creation of the "Study Commission into the Fate of the Belgian Jewish Community's assets which were plundered or abandoned during the war of 1940 - 1945" [1]

1 Royal Decree of 6 July 1997 (Belgian Moniteur of 12 July 1997) and the Act of 15 January 1999 (Belgian Moniteur of 12 March 1999). See final report: http://www.combuysse.fgov.be/index-oldsite.html

The final report of this Commission, dating from the beginning of July 2001, led the government to table a bill which resulted in the Act of 20 December 2001 relating to the "indemnification of the Belgian Jewish Community's assets which were looted or abandoned during the war of 1940 - 1945".

The assessment made by the Commission in its final report on the assets which had not been restituted by the State, the financial institutions and the insurance companies, was the basis of the agreements negotiated during the summer of 2002 by the National Commission of the Jewish Community of Belgium for the Restitution a.s.b.l. (Not profit association) on the one part and the Federal State, the National Bank of Belgium, the insurance companies and financial institutions on the other.

In pursuance of the agreements sanctioned by the Royal Decree of 2 August 2002, the following amounts were paid into the special account opened at the Belgian National Bank and placed at the disposal of the Indemnification Commission:

Federal State	€ 45,579,587.00
National Bank of Belgium	€ 314,145.00
Insurance companies (*)	€ 9,943,302.14
Financial Institutions	€ 53,081,416.62
Royal Bank of Scotland Group	€ 1,721,747.54
Total amount made available	**€ 110,640,298.30**

(*) *under the terms of Article 4 of the agreement, adjusted amount.*

1.2. LEGAL AND STATUTORY BASIS

a. The Act of 20 December 2001 (appendix 1)

The law concerning the "Indemnification of the Belgian Jewish Community's assets which were looted or abandoned during the war of 1940 - 1945" (Belgian *Moniteur* of 24 January 2002) came into force on 19 March 2002, the date of the publication in the Belgian *Moniteur* of the Royal Decree of 13 March 2002.

The main provisions of this law were:

- The Commission was given 2 years to complete its mission. This period could be extended twice for one year each by Royal Decree. It finally proved necessary to add a further year. This extension was governed by the Act of 20 July 2006, which will be discussed later.
- Articles 6 and 8, § 2of the Act define the Commission's powers.

> *Article 6* determines those who can make a valid claim and the *assets which are taken into consideration for the purpose:*

The claimant must meet all the following conditions:

- have been resident in Belgium at a given time between 10 May 1940 and 8 May 1945,
- have been despoiled of assets or have had to abandon them in Belgium as a consequence of the anti-Jewish measures or practices of the occupying authorities.

If the person meeting these provisions has died, the rightful claimants in the 1st, 2nd, and 3rd degree, in accordance with Articles 737 to 744 of the Civil Code can make a claim.

The assets taken into consideration are those which have not yet been restituted by the State, by the financial institutions or the insurance companies, insofar as this has not been the subject of previous indemnification or compensation.

> *Article 8, § 2* gives the Commission a large margin of discretion. It can take into consideration the "overriding unfairness" which might arise from a rigorous and restrictive application of the law.

- It was formally stipulated that combined payments agreed by the State, the financial institutions and the insurance companies should be a *final settlement*. Only the Commission is authorised to grant compensation: additional or parallel actions with regard to the above institutions are completely ruled out.

Any balance remaining after the Commission has concluded its work will be made available to a "Foundation of public utility", set up by the Belgian Jewish Community (Art. 14 of the Act of 20.12.2001, as amended by the Act of 20.07.2006).

b. The Act of 20 July 2006 amending the Act of 20 December 2001 (Belgian Moniteur of 28 July 2006)

This Act mainly governs the extension of the Commission's mandate as well as the deadlines set for the secretariat to deal with all the ongoing claims.

The law stipulates that the secretariat must complete the examination of the claims so as to enable the Commission to take all the required decisions before the end of 2007.

Given that some of the Commission's decisions are the subject of an appeal to the Council of State, the law stipulates, in addition, that the Commission's mandate will be completed at latest when the ongoing appeals to the Council of State have been settled.

The law has also taken into account the fact that the balance of the sums paid into the special account in execution of the agreements concluded with the State, the financial institutions and the insurance companies can be turned over to a foundation only in the first quarter of 2008. The sums required for any additional compensatory payments as a result of the appeals pending with the Council of State will be provisionally reserved.

c. Decrees providing for the enforcement of the Act of 20 December 2001.

A number of measures for the enforcement of the Act were set up by Royal Decree:

- *Rules for submitting claims* (Royal Decree of 13 March 2002, Belgian Moniteur of 19 March 2002)

Claims must be made by registered letter and addressed to the Chairman of the Commission by means of the prescribed regulatory form. In order to avoid any confusion and unnecessary formalities, the Royal Decree stipulates, however, that claims submitted previously to the FPS Chancellery of the Prime Minister on one of the Study Commission's forms remain valid. This provision has considerably lightened the

Commission's workload and spared the claimants a great deal of worry. The Commission may, if necessary, demand further information.

- *The appointment of the members of the Commission* (Royal Decree of 2 August 2002, Belgian Moniteur of 30 August 2002).

The composition of the Commission remained unchanged except for the replacement of a deputy member by the Royal Decree of 5 March 2006 (Belgian *Moniteur* of 10 March 2006), for the whole duration of the Commission's mandate (**appendix 2**).

It is composed of 5 officials or retired officials and 2 representatives of the Belgian Jewish community. The latter take part in the meetings in an advisory capacity.

- *The execution of Articles 10 and 12 of the Act* (Royal Decree of 2 August 2002, Belgian *Moniteur* of 30 August 2002).

Relates to the approval of the agreements between the National Commission of the Jewish Community of Belgium for the Restitution a.s.b.l. and the State, the financial institutions and insurance companies (Point 1.1., end).

- *The functioning of the Commission and of the secretariat* (Royal Decree of 4 September 2002, Belgian *Moniteur* of 17 September 2002).

The Commission was inter alia charged with presenting an annual report of its activities to the Prime Minister.

The Commission fulfilled this requirement:

For the period September-December 2002	on 09.12.2002
For the year 2003	on 26.01.2004
For the year 2004	on 21.02.2005
For the year 2005	on 27.02.2006
For the year 2006	on 20.01.2007

- *Extensions of the Commission's mandate* (Royal Decrees of 31 July 2004, Belgiam *Moniteur* of 9 August 2004 and 20 July 2005, Belgian *Moniteur* of 29 July 2005).

The Commission's mandate covered a period of 2 years from the date of the coming into force of the Royal Decree of 2 August 2002, giving approval to the agreements referred to in Article 10 of the Act, i.e. from 9 September 2002.

Because of the higher than predicted number of claims and the difficulties that arose when the Commission's secretariat was launched - more details on this will follow in the report - the extension of the mandate proved to be indispensable. The two Royal Decrees mentioned above were in response to this need. A further extension had to be ruled on by the law.

d. Legal extension of the deadline for submitting claims

On the basis of the law of 20 December 2001, claims for indemnification had to be made to the Commission within one year of the coming into force of the Act, i.e. by 19 March 2003 at the latest.

It proved to be necessary to extend this deadline in order to contact the maximum number of interested parties, in particular abroad, and to enable them to submit their claims. By Article 132 of the act providing framework for government programme of April 2003 (Belgian *Moniteur* of 17 April 2003) the deadline for submitting claims was extended until 9 September 2003 at the latest.

2. Setting up of the Commission - First tasks

2.1. SETTING UP OF THE COMMISSION AND ITS SECRETARIAT

The installation session of the Commission was held on 30 September 2002, shortly after the publication in the Belgian *Moniteur* of the Royal Decree of 4 September 2002 concerning the functioning of the Commission's secretariat.

When the Commission began its activities it had a limited secretariat equivalent to 5.1 full time employees:

1 project director	part time, 80 %
1 systems analyst	part time, 50 %
1 researcher	part time, 50 %
1 historian	full time
1 jurist	part time, 50%
1 administrative assistant	full time
1 administrative assistant	part time, 80 %

It was estimated at the time that the number of claims would be around 2,000. It soon became clear that this figure had been greatly underestimated: it reached 5,620. This is why, from the second half of 2003 and in the course of the first half of 2004, the Government considerably increased the staff. (**appendix 3**).

2.2. THE FIRST TASKS

a. Grouping the files by despoiled person.

If it turned out that the despoiled person had died, the claim for indemnification could be submitted by rightful claimants in the first, second or third degree in accordance with Articles 737 to 744 of the Civil Code.

For one and the same person or family, several rightful claimants could therefore submit claims for indemnification: children, brothers and sisters, nephews and nieces... The first task of the Commission's secretariat was therefore to group together the claims *per despoiled person*.

The Commission did not seek out the rightful claimants and was not authorised to do so. An express application by a person pretending to be a rightful claimant was necessary (Royal Decree of 13 March 2002). The mention of relations in response to the question under item 2C of the application form (Apart from you are there other rightful claimants in the first, second or third degree?) did not have the value of a legitimate claim.

In connection with the communication of the registration number of the claim, it was necessary to remind claimants that a "collective" registration of members of the family was unacceptable; each claimant had to submit a personal claim within the prescribed time.

In a certain number of cases, it turned out that the claimant had died before the Commission was able to pronounce on the claim and that the secretariat had been able to announce the decision. In this case the secretariat took the necessary steps to find the rightful claimants.

b. Dissemination of information

Despite the fact that it might have been expected that, thanks to the collaboration of Jewish organisations and the publicity that had followed the adoption of the Act, the public at large would have been aware of the creation of the Commission, the latter had set up its website and had organised its own publicity campaign. The regional press too covered this campaign in order to reach the largest possible public; a leaflet containing a summary of the essential points of the Act was also distributed, in particular through the post offices.

Wide geographic dispersal is one of the characteristics of the Jewish community. For

foreign countries, the Commission in the first place called on the Belgian diplomatic and consular posts; their collaboration made it possible to distribute the leaflet in question, published in French, Dutch, English and German and to establish contact with local Jewish institutions and the local press.

A specific campaign was conducted in Israel and among the "Gemeinden" and Jewish associations in Germany and Austria. At the same time, the TV5 and RTBF satellite television channels agreed to broadcast a televised appeal. This campaign took place from December 2002 to March 2003.

It was in order to ensure that this information campaign was thoroughly carried out and that it had sufficient impact, especially abroad, that the deadline for the submission of claims, which was normally fixed for 10 March 2003, was extended to 9 September at the latest.

Despite this targeted information campaign, the Commission nevertheless regularly still received applications after 9 September 2003; these applications had to be rejected as unacceptable.

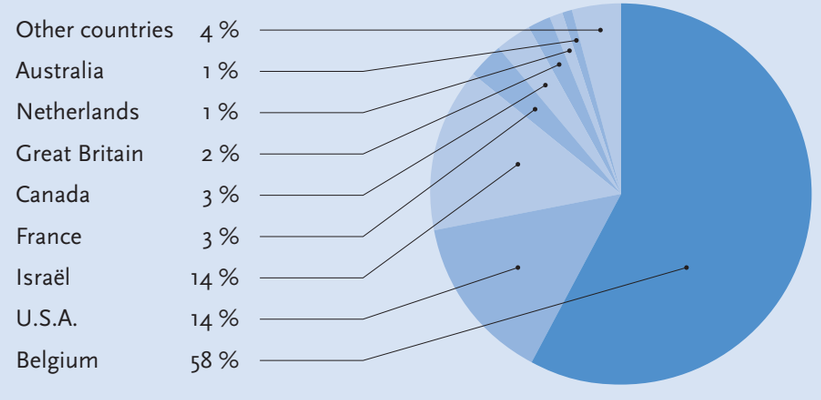
The secretariat of the Commission took permanently care to be accessible to any applicant requiring after the progress of his dossier under investigation or wishing to add any useful document or information.

Over the years 2004-2007, the Commission's website received roughly 2.000 visits a month. The continual telephone calls were fluently dealt with in English, French, Dutch and German and any person preferring to do so, had the opportunity to consult his file, be it personally or through empowered representative. Several applicants took advantage of this possibility.

The figure below, as well as the more detailed overall picture **appendix 4**, prove that the information-flow has been worldwide received.

Setting up of the Commission - First tasks

COUNTRY	NUMBER
Belgium	3285
U.S.A.	790
Israël	766
France	169
Canada	156
Great Britain	111
Netherlands	76
Australia	76
Other countries	191
TOTAL	**5620**



c. Definition of the concept "legal claimant"

The Act of 20 December 2001 set the conditions that the claimant had to satisfy in order to submit a legitimate claim:

- the claim must relate to a person (the "despoiled") who at a given moment between 10.05.1940 and 08.05.1945 had resided in Belgium
- and who, because of the anti-Jewish policy conducted by the occupying power, had been despoiled of his/her assets in Belgium or had had to abandon them.

The conditions are cumulative

The legislator took into account the fact that many despoiled persons would no longer be alive when the Act was adopted. This is why it was decided that, if so, rightful claimants in the first, second and third degree in accordance with Articles 733 to 744 of the Civil Code could submite a claim for indemnification.

The Commission had to decide to what extent the surviving spouse (widow or widower) should be taken into account when a claim was submitted for the family of the time by one or more rightful claimants of the deceased partner.

After legal advice, the Commission adopted the following position:

- Unless there was evidence to the contrary, it was assumed that the couple was married in community of property according to the civil code;
- the surviving spouse could therefore, in the case of despoilment of the shared assets of the household, claim half of any indemnification to be granted.

If the surviving spouse had remarried after the war and had died afterwards, the children from the second marriage could claim only the share of the remarried spouse.

For the record, it should also be emphasised that indemnification granted by the Commission does not come within the field of inheritance law and is not subject to inheritance tax. Moreover, the Commission decided from the outset not to make beneficiaries bear the transfer costs linked to the payment of indemnification. These costs were charged to the special account opened at the National Bank of Belgium.

d. A first sample

For a long time, the Commission was uncertain of the number of claims it would ultimately have to deal with. In fact, the installation session was held on 30 September 2002, whereas the deadline for the submission of claims expired only a year later on 9 September 2003.

Not knowing if other valid claims would be added to the files opened for each despoiled person, and therefore not knowing whether such a file was already complete or not, it could not take any decisions in the short term on those files.

This period enabled the Commission to have an overview of the nature of the despoilments notified and of the prospects of identifying them is the databank of the Study Commission or in connection with its own inquiry, *as assets which have not been restored by the State, the financial institutions or the insurance companies.*

For this reason a sample of about 500 claims taken at random was comfronted with the data registered in the database of the Study Commission.

The results were disappointing. The main conclusion was that merely 18 various identifications (businesses, financial assets, life-insurance) were registered.

It is striking but however entirely understandable to note the considerable proportion of the claims submitted for business assets and/or furniture. Later, it turned out, as far as furniture was concerned, that compensation had already been granted in two out of three cases, in the framework of German Reparation Acts or in application of Belgian legislation on war damage.

Several conclusions were drawn from these figures:

- The Commission's secretariat was clearly facing a difficult task. Its own investigations would be more extensive than had been initially foreseen, given that the Study Commission's databank was far from providing all the solutions.

- Knowing that the records, mainly in the financial sector but also in the public authorities and to a lesser extent in the life-insurance companies, are often very in-

complete, the Commission had to make a basic choice: either to keep strictly to what had been clearly identified or, in all fairness, to take into account as well, be it on a lump-sum basis, the undeniable despoilment as revealed by the overall analysis of the claims.

- Equally, as far as despoilment of furniture was concerned, probably the most distressing aspect of the persecution of Jews during the war, the Commission had to make a basic choice: either to reject the claims on the basis of Article 6 of the Act or to admit, in a broad sense, the fundamental injustice and grant compensation on the basis of Article 8, § 2, of the Act.

This report sheds light on the way in which the Commission eventually proceeded.

3. Processing of claims

3.1. PROCESSING ACCORDING THE CLAIMANTS' AGES

As is known, claims could be submitted by those who had personally been victims of anti-Jewish measures or, in the case of death, by their relatives in the first, second or third degree in accordance with Articles 737 to 744 of the Civil Code.

The age of persons who applied to the Commission or who had previously submitted a claim through the Study Commission's form varied greatly:

	NUMBER OF CLAIMANTS
Claimants born before 1910	80
from 1910 > 1919454from 1920 > 1929	1648
from 1930 > 1939	2,156
from 1940 > 1944	408
After 1945	461
Year of birth unknown	413

A detailed table giving the breakdown by the claimants' year of birth is given in **appendix 5**.

The Commission dealt with the claims in an order related to the age of the claimants, the eldest being given priority. On that basis, the secretariat classified the claims into 17 "blocks" each containing some 330 despoilment cases, the distribution into "blocks" being determined by the age of the oldest claimant in the case.

This way of operating, whereby priority was accorded to the claims of the oldest claimants, meant that other younger rightful claimants were involved in the treat-

ment of the case. This involvement of other rightful claimants was inherent in the treatment by case of despoilment.

So it was by beginning with claimants born before 1910 and by applying this method of working that the Commission progressively closed all the cases.

3.2. AVAILABLE RECORDS: OFTEN INCOMPLETE

Clearly the databank established by the Study Commission, called "Mala Zimetbaum" provided the Commission with a good basic tool.

Above all, this databank offered a mine of information on the identification of persons classified as "Jewish" in the course of the occupation, on their addresses during the war and their family relations. The Commission was also able to rely on the links established in the data bank between the persons identified and the property of which they had been despoiled.

The "Mala Zimetbaum" databank, however, provided no answer to the questions concerning *individual* despoilment suffered by an identified person. The study Commission was essentially entrusted with a *macroeconomic* study and an overall assessment of the unrestituted assets; its databank does therefore not constitute a register of individual property identified and unrestituted.

Thus the secretariat of the Commission had throughout to conduct further detailed searches. This being the case, since the Study Commission had compiled an adequate list of the records, these searches could be conducted in a targeted way. In addition, the Commission had itself also created several files containing individual data with details of the sector and the despoiled person (wages outstanding in the case of forced labour, frozen accounts in the diamond sector, etc.) and it found itself compelled to examine further certain aspects that had not been explored by the Study Commission (cf. retail accounts of the "Textile Corporation, a firm which had played a major role in the liquidation of Jewish textile businesses).

The Commission was limited in what it could do both because of the gaps in the available war records and in the records of the period immediately following the war,

gaps which were explicitly highlighted by the Study Commission:

- The very incomplete records of unclaimed assets in the financial sector "because of the legal vacuum that surrounded their management" *(Study Commission)*;
- The legislation concerning certain public financial institutions, which made it possible after a certain period to close the outstanding balances on unclaimed accounts (after 10 years for the *Office des comptes chèques postaux* [National Girobank], after 30 years for the *Caisse générale d'épargne et de retraite* [Savings Bank]);
- certain gaps in the records of insurance firms, although these proved to be fairly exhaustive on the whole;
- the incomplete character of a certain number of public records which were important for the Commission.

The additional searches conducted in the files of the Sequester placed on enemy organisations after the war ("Brüsseler Treuhandgesellschaft", "Société française de Banque et de Dépôts", accounts of the German management of real-estate assets), at the Deposit and Consignment Office and at the *Administration générale de la Documentation patrimoniale* marked the day-to-day activity of the secretariat.

3.3. A NON-RESTRICTIVE APPROACH

Under the terms of the law, the claimant was in particular required to give "the fullest possible description of the assets, of where they were at the time and where they are now" (Art. 7, § 1. 3. of the Act).

It could be expected that this "fullest possible description" very often proved in practice to be very brief. Even the Study Commission was far from being able to retrieve everything; in many cases the claimants were forced to rely on their memories, sometimes vague, or on the evidence of relatives.

The Commission gave itself the task of conducting, as far as possible, the searches needed to complete the files. Even when there was no such reference in the claim, the secretariat automatically examined all the available records, more precisely as far as life insurance policies not paid out, unrestituted financial assets, arrears of wages for forced labour, accounts frozen following the forced sale of commercial stock or

diamonds and the sale of real estate were concerned.

Aware that what had exactly happened during the years 1940 - 1944 would never fully come to light, the Commission made it a principle to give the benefit of the doubt when the application submitted could be considered as credible on the whole.

The Commission therefore always referred clearly to the study made of the records to reject certain elements of a claim or to make negative decisions.

3.4. ONE RESTRICTION: PREVIOUS INDEMNIFICATION OR RESTITUTION

The claimants, generally relatives in the first, second or third degree of the victim of the despoilment, cannot be blamed for not being aware of any previous reimbursements or indemnification. They essentially remember the house and its facilities, the shop or the business and the occupation of their relatives. They often have an incomplete or distorted image of the possessions and the prosperity at that time.

The Commission itself had to search for any previous compensation paid or restitution made.

A checklist attached to the file summarises the positive and negative results of the study of the various records.

Some sources, whether or not exhaustive, were available from the outset:

- The records of the Sequester;
- The records of the Deposit and Consignment Office;
- The data of the *Administration générale de la Documentation patrimoniale*;
- The management accounts ("Hopchet" accounts) of rents received for property under German management;
- The list of unpaid life insurances

Other files were opened at the beginning of activities, in particular thanks to the obliging cooperation of Mr Lust, a researcher with the Federal Office for Scientific Affairs. These concerned the list of jewellery and personal effects confiscated in the Dossin barracks, the unpaid wages of people made to do forced labour in France and the list of "Frensel accounts" from the name of the manager of the diamond sector designated by the occupying power.

The Commission had not the least idea, however, of the compensation paid over the years, essentially in the period from 1960 - 1970, under the German Federal restitution act ("Bundesrückerstattungsgezetz" or "BrüG" legislation of 19 July 1957). This law provided for compensation for identifiable ("feststellbare") property confiscated in the occupied territories during the Nazi period, on condition that evidence was supplied that it had been transported to the territory of the future Federal Republic of Germany.

The Commission deemed it essential to know what had been the subject of compensation in virtue of this legislation, both because of the number of cases dealt with by the German authorities in the context of the "BrüG" legislation (about 13,000 Belgian cases according to the figures of the "Oberfinanzdirektion", Finance department of the "Land Berlin", "O.F.D.") and because of the nature of the material possessions for which compensation was paid (furniture, professional equipment, diamonds, jewellery and personal belongings). For the record, we point out that sums of money were not indemnified under the "BrüG" legislation because their loss was not identifiable ("feststellbar").

Two of the Commission's researchers, after agreement with the German administration as to the procedures to be followed, obtained access to the records of the "Wiedergutmachungämter" (WGA) in Berlin (the "BrüG" restitution services). They systematically examined the claims that had been submitted to the Commission to ascertain whether and to what extent a confiscated item had already been the subject of compensation. They were authorised to take photocopies of the documents which proved to be of importance for the Commission and received the assistance of the competent German departments and of the Belgian Embassy in Berlin in the execution of their mandate. The timing of their research was adapted to the schedule and the priorities fixed by the Commission.

Finally, whenever it was necessary, the secretariat examined whether and to what degree compensation had been granted in pursuance of the Belgian Law of 1 October

1947 on reparation for war damage to private property. On the basis of the nationality clause therein, most of the despoiled Jewish persons were excluded from benefiting from this law. In this context, a systematic examination of all the claims was therefore not required.

3.5. PROCESSING OF THE INFORMATION WITHIN A DATA BANK

A computer application had to meet the following objectives:

- An everyday working tool for the employees of the service concerned;
- A tool for use in decision making which would give overviews such as, for example, how far the work had progressed;
- Use of existing software, by limiting as far as possible any additional ad hoc work;
- Inclusion of t he Study Commission's databanks ("Mala Zimetbaum").

So the software of the Microsoft Office Pro Suite was chosen. In fact, for an application presenting many types of data (tables) and relationships (claimants, victims, lists of meetings and others), a simple spreadsheet (such as Microsoft Excel) did not suffice. Nor do spreadsheets really allow group collaboration.

Databank software (such as Microsoft Access) was therefore preferable as it made it possible:

- To establish relationships between different lists;
- To launch complex data searches;
- To establish **detailed overall relationships**;
- To include outside lists from other research bodies.

The Indemnification Commission had to deal with more than 5,000 cases in a short space of time using existing records in its searches.

Claimants often made telephone contact with the Commission to find out how their case was progressing or to learn the decision. It was therefore necessary to have a permanent tool for monitoring the situation on line.

The development of this application was achieved entirely within the administration and took one to two months, the objective being to use existing products as far as possible.

Given the relatively large number of users, it became necessary to migrate the databank to the SQL server, which required several days of work (external) but which did not involve any structural changes.

In order to facilitate its use, a link was established between the databank and:

- The minutes of the Commission's meetings;
- The historian's summary sheet;
- Notifications sent to the claimants.

This addition required a small amount of additional programming work but it made it possible to consult all the relevant documents quickly from the databank.

Thanks to a data bank system it is also possible to prepare summary lists of all the cases that:

- Need to be re-examined;
- Are dealt with by the Council of State;
- Satisfy/do not satisfy a particular requirement.

At a later stage of the project, still other data were included which made possible an additional check on the ICHEIC insurance lists: so many initially unforeseen additions.

These functionalities show that such an approach can be **progressively upgraded** without the need to revise the existing part.

CONCLUSION

Unlike simple spreadsheets, the use of databank applications made it possible to utilise many possibilities at the administrative level:

- presentation of information summaries;
- detailed lists;
- group work on the data;
- inclusion in the application of external texts such as reports;
- automatic preparation of personalised mail shots or letters.

4. Despoilment and indemnification - a policy by sector

A substantial part of this report of course concerns the position adopted by the Commission towards the elements submitted in connection with the despoilment of assets: what was its method of approach and assessment and finally has indemnification been granted or not? That was the heart of the matter.

The secretariat divided this matter into a series of "blocks". It resisted the temptation to develop a specific system for every possible detail. Thus, unless there was evidence to the contrary, (specific mention of a frozen account or identification as a cultural object), a piano, a stamp collection, or a violin... was considered as a part of the furniture. Any other approach would have been arbitrary and would have given rise to endless complications. The same method was wisely chosen in the context of the legislation related to war damage and the "BRüG" legislation.

The "blocks" relate to:

- Furniture;
- Personal effects confiscated on arrest or deportation;
- Unpaid salaries in the case of forced labour;
- Financial assets in
  - Financial institutions in general;
  - *The Office des chèques postaux* [National Girobank] and *Caisse générale d'épargne et de retraite* [Savings Bank];
- Businesses and firms;
- The diamond sector;
- The life-insurance sector;
- The real estate sector;
- Cultural objects.

Furthermore, the Commission gave its support to the restitution of *sealed envelopes* identified at financial institutions in the name of members of the Jewish communi-

ty. On examining the claims, it also systematically verified whether unrestituted *relics* could be identified through the War Victims Service. (The envelopes contained personal property most often documents and photos confiscated at the Dossin Barracks).

Finally, the Commission also gave it collaboration to the carrying out of the "Solidarity 3000" project of the Judaism Foundation of Belgium.

4.1. INDEMNIFICATION FOR THE DESPOILMENT OF FURNITURE

The great majority of claims refer to furniture belonging to deported Jews, in hiding or having fled, and seized without any form of legal process as part of the "Möbelaktion". This "Möbelaktion", personally ordered by Hitler on 14 January 1942 and implemented from mid 1942, was systematically carried out until the eve of liberation.

The furniture was intended for the victims of aerial bombing in the Reich and had in principle to be paid for. The German military administration in Belgium also understood this to be the case. It declared, in an internal instruction of 14 December 1943, that the furniture was not delivered free but in exchange for payment of a certain sum and that, in consequence, measures should be taken to secure for the benefit of the Jewish owners or their legal heirs the amounts from the "sales" paid by the (German) towns.

In practice, however, the Study Commission found no trace of any payment whatsoever.

The despatch notes drawn up when the furniture was loaded do not mention the estimated value of the property seized. They identify only the owner (name and address) and include the date of transport, the number and nature of the goods confiscated (tables, cupboards, chests containing linen etc,) as well as the name of the firm responsible for transport.

Once the decision was taken, for the sake of fairness, to pay compensation also for looted furniture, the Commission considered on what basis it should pay this compensation.

Since it was impossible to ascertain the precise value of the furniture in the absence of frozen accounts, and knowing that both the Belgian legislation relating to war damage and the German reparation acts ("Bundesrückerstattungsgesetz" of 19 July 1957 or "BRüG" law) had set a flat rate figure, the Commission logically chose a similar method of working.

As a basis for compensation, it opted for the average of the amounts granted in the framework of the German reparation acts:

- On average, this legislation arrived at a compensation for the furniture of four and a half rooms;
- The compensation amounted, at least according to the basic law of 19 July 1957 (the later modification, "Novelle zum Bundesrückerstattungsgesetz" of 2 October 1964, was less generous), to 4,800 DM per room for all the objects and possessions, including jewellery, taken;
- On this basis (4.5 x 4,800 DM at the rate of the time: 12.50 BEF = 270,000 BEF), the Commission fixed, ex aequo et bono, the lump-sum indemnification for seizure of furniture at 7,000 euro being the average "BRüG" compensation rounded up to the next thousand.

The compensation for the seizure of furniture was of course not paid when indemnification had already been obtained either in the context of the German reparation acts (2 out of 3 cases) or on the basis of Belgian legislation relating to war damage (much less frequent because of the nationality condition, which the majority of Jewish victims did not meet).

4.2. INDEMNIFICATION FOR THE CONFISCATION OF PERSONAL BELONGINGS AT THE TIME OF ARREST OR DEPORTATION

When arrested by the German police services (Gestapo, Devisenschutz-kommando, Feldgendarmerie...), detainees were systematically robbed of all their personal effects: rings, all kinds of jewellery, watches, fountain pens, etc. The same was true in the case of imprisonment in the Dossin barracks in Mechelen as a prelude to deportation.

a) For jewellery and other valuables confiscated in the **Dossin Barracks** and placed in envelopes with the owner's name, the Study Commission had precise information. However, the information was not always exhaustive: some envelopes identified had no name and were labelled "unknown" ("unbekannt").

Some personal property was restored to the rightful claimants after the Liberation; other items, despite all the searches, could not be returned and were finally sold after consultation between the departments of the Sequester and the State Property administration. This concerned the contents of 940 envelopes of which the sale proceeds were kept available and in the name of their known owner.

On the basis of this list of sales linked to identified names, the Commission paid compensation at the re-assessed value (coefficient 24.78) of the seized object, *applying however a minimum amount of 400 euro, discussed below.*

b) It turned out that certain **German police services**, more precisely the Devisenschutzkommando (DSK), fairly systematically converted the value of the goods confiscated, specifically foreign currency and precious metals, into BEF and placed it on a frozen account in the name of the interested party.

The Indemnification Commission managed to identify some of these cases. The proceeds deposited on a frozen account were compensated at the re-assessed value (coefficient 24.78) *applying also here a minimum amount of 400 euro.*

c) In most of the cases where an **arrest and/or a deportation** was/were identified, there was no trace of any unsettled or frozen account.

The Commission started from the principle that arrest or deportation always entailed despoilment and that this, therefore, came under consideration for compensation. In the absence of any more precise information, it was obvious to use as a reference, once more, the amount that the claimant would have received under the German reparation act.

Examination of the "BRüG" files revealed that, as a general rule, compensation of DM 1,200 was paid to the head of the family. Although for the wife and children possibly concerned, the amount was substantially lower, the Commission anyhow

Despoilment and indemnification - a policy by sector

based its practice on the 1,200 DM mentioned and gave compensation to everyone deported or arrested who was at least 12 years old in the year of the deportation, i.e. who was born before 1931.

The lump-sum indemnification was based on the "BRüG" indemnity of DM 1,200 = BEF 15,000, or an amount of EUR 372, rounded up to EUR 400.

This is also the amount that was in fairness applied as a threshold amount in the cases described in points a) and b).

4.3. DESPOILMENT OF SALARY WHEN SUBJECTED TO FORCED LABOUR

a) From August 1942, Jewish workers were put to forced labour in the **north of France** for the construction of the "Atlantic Wall".

Their wages, fixed by the *Todt Organisation*, and paid by the construction companies concerned, should have been periodically paid by clearing to the workers employed or to their beneficiaries through the *Banque de Paris et des Pays-Bas*. The practice was often quite different and the last wages outstanding were generally not paid: a number of workers were, in fact, directly deported to Auschwitz via Mechelen.

After the Liberation, the departments of the Sequester succeeded in identifying the list of wages remaining due (more than BEF 1,350,000); part of this sum was paid to the beneficiaries, the rest (some BEF 966,000) was allocated to the *Oeuvre nationale des anciens combattants et des victimes de la guerre* (War veterans and victims organisation) under the Act of 2 April 1958.

On the basis of the list mentioned above, the Commission was able to identify a series of beneficiaries and to pay the amounts due, re-assessed at the coefficient of 24.78. When the balance of wages due was not stated in the list, the Commission determined the compensation on the basis of the hourly rate paid by the *Todt Organisation* to unskilled workers (BEF5.50) for an average period of work in the north of France (6 weeks at the rate of 6 days of 10 hours), i.e. a sum rounded up to BEF 2,000.

At the coefficient of 24.78 brings this compensation to 1,229 euro, i.e. also the minimum granted.

b) Jewish workers were also made to do forced labour in the armaments industry in the **Liege** region. The Commission had at its disposal the list of names of the workforce employed but unlike the list for the north of France, this list gave no details on the wages remaining due. The Commission therefore opted for a lump sum fixed for fairness at 1,229 euro, i.e. the reference amount for the indemnification of wages for the north of France.

4.4. INDEMNIFICATION FOR THE DESPOILMENT OF FINANCIAL ASSETS

The investigations conducted in the financial sector meant a lot of hard work for the Study Commission. Because of the legal arrangements in the public sector (*Office des chèques postaux* and *Caisse générale d'épargne et de retraite*) and the de facto circumstances in the private sector, the records which could have shed light on the events of the war and the post-war settlement were very few.

The Study Commission had to be content with fragmentary data and sample surveys. The huge chapter devoted to records in the financial institutions, which makes up part.4.1. of the final report, is worth consulting.

Nor was it a sinecure for the Commission to develop a fair and balanced policy in this vagueness and uncertainty where the claimants themselves had difficulty in providing the slightest evidence of despoilment. The Commission therefore took the real circumstances into account in which the despoilments had taken place.

The **anti-Jewish ordinance** of 31 May 1941 forced Jewish owners to identify as "Jewish", their financial assets, whatever their nature, in financial institutions. These assets then had to be deposited within a certain time in a "foreign currency bank". Most Belgian Banks were approved as foreign currency banks.

After July 1941, share and security portfolios were frozen: from September of the same year the free disposal of assets on deposit was strictly limited and, finally, it was

decreed that Jewish financial assets must be centralised on frozen accounts with an "enemy bank" placed under German management - the *"Société française de Banque et de Dépôts"* (SFBD).

The Study Commission's survey showed that this last instruction was followed with very little zeal, a number of "Jewish accounts", how many it is difficult to estimate, remaining in their original banks. The study report also showed many traces of these "undelivered" accounts were erased over the years. The Study Commission found few concrete points of reference.

However the assets which had indeed been transferred to the SFBD could be listed fairly exhaustively by the Study Commission.

After the war, the SFBD, like other German "spoliator banks" (such as the Continentale Bank and the Westbank), was placed under Belgian sequestration. When, after the Liberation, certain transferred sums were returned on request, with the agreement of the Sequester's Departments, to the original bank, the traces remained in the records of the SFBD. Therefore these records constitute the most complete element of identification.

Finally it is important to stress that the assets frozen at the SFBD were not transferred to Germany. The only exception to the rule: the assets of Jews deprived of German nationality by the Nazi regime. Their assets were confiscated for the benefit of the "Reich" in pursuance of an ordinance of 22 April 1942.

a) The financial institutions in general

A distinction can be made between the indemnifications which apply to a concretely identified asset, on the one hand, and indemnifications granted on the basis of credible information and an overall analysis, on the other.

a.1. It goes without saying that when any expropriated or abandoned financial asset (deposit account or share portfolio and bonds) could be identified in the bank records available to the Commission, the amount was indemnified at the reassessed value ("banking coefficient" 29.10). Where appropriate, the indemni-

fication was increased to the minimum lump sum, of which more below.

Such identifications were exceptional. In the best of cases, the Commission was able to identify the transfer of an asset to the SFBD. The starting point being the account opened in the name of the despoiled person in the SFBD, the situation seemed theoretically simple:

- The banking asset had been restituted by the Sequester or the SFBD,
- or it had been returned to the bank of origin,
- or, unclaimed, it had finally been paid to the Deposit and Consignment Office.

In this last case, it was clear that compensation had to be paid on the basis of the amount identified, once more with the possible application of the minimum lump sum.

Things became complicated in the case of the return of the frozen amount to the bank of origin. Most of these returns took place at the request of the bank concerned, without any request of the account holder. Consequently, the return did not prove that the despoiled person had recovered his/her assets.

In these cases, when no other trace could be found in the bank records, the Commission deemed that there was *under certain conditions a sufficient presumption of despoilment*. This brings us to the next point.

a.2. In almost all cases, the Commission was not able formally to identify either the despoilment or, a fortiori, the relevant amount. The previous developments concerning the assets returned to the banks are only one aspect of a general problem.

Considering the very incomplete records and the very considerable extrapolation to which the Study Commission had to resort, the Commission decided that it could not simply declare: no identification = no indemnification.

The Commission thought it was its duty, in all fairness, to assess whether there was enough evidence to prove or justify the presumption that a financial asset had been

spoiled. It took therefore into consideration the real circumstances of the investigation 60 years after the event:

- the striking lack of records;
- the difficulty for the claimants of submitting concrete evidence, all the more so since they were born in the 30s or later and were little or even not at all aware of the financial assets of their parents or of other members of their family.

The Commission concluded that there were *credible grounds for indemnification when:*

1) the despoiled family - spouse and grown-up children - died in deportation or fled in May 1940 and did not subsequently return to Belgium. It is hardly likely that a family which fled in 1940, in principle with the aim of returning as soon as possible, would have withdrawn all its financial assets; on Friday 10 May the banks were, moreover, closed, a situation which persisted for a short time,

2) and, *in addition*, the case contained sufficient elements pointing out that the family was *likely* to have had a bank account:
   - because it was a wealthy family, owner, for example, of a large business or real estate property,
   - or because the despoiled person was top executive in an enterprise or rented a bank safe identified by the occupying power, which automatically implied the existence of a bank account.

In all these cases, the Commission paid the lump-sum indemnification, to which point *a.1.* refers.

For bank accounts, the amount of the lump-sum indemnification was 6,278 euro. This corresponds to the re-assessed average of the assets transferred by the financial institutions to the SFBD (BEF 8,703). This sum also served as the *minimum indemnification amount*.

Regarding the payment of compensation for the seizure of a portfolio of shares and bonds, the lump-sum amount could rise, with reference to the average transfer to the SFBD as calculated by the Study Commission, to 25,536.50 euro. In practice this

amount was allocated very exceptionally, in particular when everything indicated that a very large not specifically identified portfolio had been seized. *This lump sum did not automatically serve as a minimum*. Each spoiled portfolio was calculated as exactly as possible.

b) The "Office des chèques postaux" and the "Caisse Générale d'Epargne et de Retraite (CGER) »

b.1. The "Office des chèques postaux"

Under the terms of the law on post office accounts of 2 May 1956, the balance on an account on which no transaction had been made for 10 years was taken over by the Treasury department. Created in 1971, the *Régie des Postes* did indeed have the remaining balances transferred to the Treasury department, including some undoubtedly belonging to Jews. At the time of the Study Commission, it did not prove possible to obtain details on this matter.

The Study Commission identified 102 transfers of post office accounts to the SFBD for a total amount of BEF 646,500. As the Commission stressed, this number of accounts and the associated sum are in no way representative of all the post office accounts, the total amount of which came, during the period 1938-1943, in average to BEF 12,315.5 million.

In the rare cases of positive identification (SFBD records; no restitution after the war), compensation was awarded up to the amount seized, re-assessed according to the "State coefficient" of 24.78 (the looted assets at the *Office des chèques postaux* as estimated by the Study Commission were charged to the State).

In the other cases, the Commission, as with its policy with regard to financial institutions in general, had in fairness to check whether the dossier had sufficient elements to make it credible that a post office account had been spoiled.

The list of unliquidated post office accounts in 1949 proved very useful. When a post office account was identified in the name of a member of a family entirely decimated at the time of deportation, it was clear that the assets on the account could not have been claimed. This identification, however, did not make it possible to know the amount of the balance at the time.

Similarly, it could be logically assumed that any member of a family who had the opportunity to flee the country from the beginning of the war, had finally settled elsewhere and had not returned, did not come back to claim the balance on a post office account in Belgium after the war, given the practical problems posed at the time.

The letterhead of a business when war broke out could also constitute a credible identification of a case of despoilment, under the same conditions as those described above (family deceased in deportation or having definitively emigrated and identification in the list of 1949).

In all the cases where the account balance was unknown, indemnification consisted in the granting of a lump-sum amount of 3,893 euro, i.e. the average re-assessed according to the coefficient of 24.78 of the transfers of assets in the post office accounts to the SFBD (BEF 6,338). This amount was also used as the minimum compensation when the re-assessed value of the identified despoiled sum was less than 3,893 euro.

b.2. "The Caisse Générale d'Epargne et de Retraite (CGER)"

The records of the CGER, taken over by Fortis Banque, could only be very partially studied by the Study Commission: the CGER was, it is true, still in possession of 248 microfiches containing the details of 4,017,000 accounts closed between 1974 and 1986 but the Study Commission did not find the time to examine more than ten as a sample - hardly 4% of the total.

Moreover, the identification of accounts transferred by the CGER to the SFBD - 12 in total - gave only poor results. The average amount of these transfers came to BEF 1,395, i.e. an amount, re-assessed according to the 29.10 "bank coefficient", of 1,006 euro.

It is this latter amount that the Commission, because of the evident lack of precise data, granted as compensation in the great majority of cases, when the despoilment proved to be credible on the basis of the overall analysis of the case.

The school children's savings book was a specific product of the CGER. The research of the Study Commission revealed that some 750,000 schoolchildren out of 1,200,000 possessed such a savings book in 1938. This children's savings account was especially encouraged in the primary school; this therefore concerns children aged between 7 and 14 years in 1940, i.e. born between 1926 and 1933.

It being impossible to identify the despoilment of these widely distributed savings books, the Commission started, in fairness, from the principle that school age children of deported parents or of parents who did not return to Belgium after the war were assumed to have possessed such a savings book with the CGER and not to have been able to get back the amount after the war.

The Commission's policy can therefore be summarised as follows:

- identification of the looted amount (SFBD records or copy of the savings book): compensation with re-assessment according to the 29.10 coefficient; amount possibly raised to the 1,006 euro minimum;
- no identification of the despoiled amount, but presence of credible elements concerning the looting of a savings account or indemnification of the presumed children's savings book: lump-sum indemnification of 1,006 euro.

4.5. INDEMNIFICATION FOR THE DESPOILMENT OF BUSINESSES AND FIRMS

4.5.1. Despoilment

a) One of the main objectives of the occupying power was to totally eliminate the Jewish presence in commerce and industry. The confiscation of businesses and firms was one of the most radical measures suffered by the Jewish population in the course of the period 1940 - 1944.

It is important first of all to stress that a series of measures adopted by certain Belgian authorities in May 1940 indirectly and unintentionally led to confiscations in virtue of later German ordinances. For instance, because of the shortage of consumables, the Mayor and aldermen of Liège decided on 13 May 1940 to open the shops of absent owners in the presence of a bailiff. The town authorities took possession of the goods necessary for supplying the population and invoiced them for the benefit of the owner. The sum due was paid into an individual account in the town's coffers.

This measure concerned both Jewish and non-Jewish businesses. But, since a certain number of Jewish owners had thought it prudent after May 1940 not to return to Belgium, those "Jewish" accounts could subsequently be identified by the occupying power, which demanded their transfer to the *"Société française de Banque et de Dépôts"* (SFBD).
This then became part of the general confiscation policy.

After all, 83% of the 7,729 Jewish businesses obligatorily declared on the basis of the ordinance of 28 October 1940 were so to speak liquidated "voluntarily" during the war years. Others were provisionally placed under German management before being sold to a non-Jew. Some businesses remained under German management throughout the period 1940-1944.

In the most exceptional cases the owners themselves undertook the "de-Jewishification" of their businesses by selling them to non-Jews; after the war such sales were generally revealed to be fictitious.

b) The liquidation, euphemistically termed *"voluntary"*, was massively carried out during 1942. The owner received the order to close his business, to request that it be erased from the trade register, to hand over his movable property and to put his stock at the disposal of one of the "central merchandise departments" created, of which the main ones were the Central Leather Office, the Central Textile Office and the "Allgemeine Warenverkehrsgesellschaft - AWG" (Central Merchandise Office).

The procedure had a certain semblance of legitimacy because the Jewish owner himself invoiced his stock to the appropriate merchandise office. The latter then took charge of the sale of goods and paid the proceeds of each sale to the account of the despoiled shopkeeper at the SFBD.

There were some "relaxations" of these arrangements according to the size of the

business, the value and nature of the stock of merchandise as well as the business equipment. The Study Commission deals with this question in detail in its final report.

Thus, in some cases, the owner could freely use the proceeds of the sale, which was particularly shown to be possible for small amounts.

Business equipment, at least in theory, also had to be put at the disposal of certain specialised firms and institutions:

- of the Pfaff firm in respect of sewing machines,
- of the "Gruppe gewerbliche Wirtschaft" for certain machines,
- of the Heinrich Kunst firm, also for mechanical equipment and machines,
- if necessary, the German administrators entrusted, either with continuing to run the business, in which case the equipment was not sold, or with selling the business to a non-Jew, the price of the machines then being included in the sale price.

The proceeds of the sale had to be placed on the frozen account in the name of the Jewish proprietor.

c) Businesses **deemed "viable"** were handed over to a "Verwalter" pending their sale to a non-Jew.

The procedure systematically went through various steps:

- the "Verwalter" designated by the military administration made a thorough audit *("Prüfung")* of the business to see whether it merited a sale; the costs of this audit were charged to the business;
- if the result was positive, the manager (Verwalter) would provisionally continue the activities of the business. He was in particular authorised to recover the claims and to pay the costs and debts and he had access to the financial accounts. The "Verwalter" was paid at the expense of the business ("Verwaltungsgebühr");
- finally, when the business was sold, the proceeds were paid into a frozen account opened in the name of the owner at the SFBD; first the "liquidation costs" ("Liquidationsgebühr") were also charged to the business.

d) Businesses that had **strategic importance** for the occupying power remained under the management of a German administrator throughout the occupation.

This administrator could carry out any act of management: he recovered debt, paid invoices, settled taxes, paid the staff. The operations were recorded on a management account opened in his name at a German spoliator bank. The balance of the account in the bank or of the business's post office account was transferred to the "Verwalter's" management account. He could not sell real estate property.

After the Liberation, the German spoliator banks were placed under Belgian receivership, which made it possible to identify the management accounts of Jewish businesses.

4.5.2. Restitution or compensation

a) After the war, despoiled shopkeepers were able to invoke the Belgian government's decree of 10 January 1941 and demand the cancellation of the forced sales. They could either retrieve their property or receive the proceeds of the "sales".

A shopkeeper appealing to the Sequester office to claim the balance of his account in SFBD signed a declaration stating that he forewent any action for the recovery of looted property. In the great majority of cases, this possibility of recovery was highly theoretical; the businesses which had been sold under duress or sold by a German manager could potentially be recovered; this was far from clear for stocks of merchandise.

An important exception should be noted; in the leather goods sector it turned out that the firm "Dirickx Frères" in Antwerp, which bought some stock at the request of the Central Leather Office had had the prudence to keep these stocks available for the owners immediately after the liberation. The Brussels District Court confirmed this in a judgement given on 7 December 1945

b) Insofar as it was impossible to recover the business, the business equipment or the stock of merchandise, compensation could be obtained after the war on the

basis of Belgian war damage legislation or in the framework of the German Reparation Acts. In both cases, the real possibilities turned out to be limited because of the nationality condition imposed by the legislation related to war damage in the first case and because of the obligation to produce proof that the goods had been transported to the Federal Republic of Germany in the second case.

The records of the Sequester concerning the SFBD proved to be crucial for research into despoilment and possible post-war compensation. The matter seemed simple:

- The proceeds of the sale were on an individual frozen account,
- The frozen balance had not been repaid and the goods had not been recovered,
- The indemnification amounted to the sum identified, re-assessed according to the coefficient 24.78.

The Commission however made some corrections to the foregoing.

When the re-assessed amount was less than 1,500 euro, this minimum amount was automatically granted. This was an amount fixed ex-aequo et bono as lump-sum indemnification in the case of the spoliation of a business - or a credible declaration - when the real value of the goods seized could not be established.

The Commission examined each case according to its intrinsic value. The lump-sum amount of 1,500 euro was consequently only applied in the absence of other, more relevant, data.

The Commission did its best to determine as far as possible the real value of the merchandise and equipment *at the time of the spoliation*. The sum paid to the frozen account did not constitute an absolute basis for compensation. It was liable to correction according to the elements of the case such as:

- The detailed inventory made at the time of the spoliation or a little before,
- The invoice for the purchase of new equipment at a date shortly before the spoliation,
- The assessment of the damage by the war damage administration of the Ministry of Reconstruction - damage not compensated as the claimant did not satisfy the nationality condition ...

The Commission could not, however, base its decision on the rough assessment of the pre-war value presented by the claimant.

The Commission felt encouraged in this approach by one of the first decrees of the Council of State (decree 157.921 of 25 April 2006).

Finally, near the end of its activity and fortuitously, the Commission put its hand on a file which had not been studied in detail by the Study Commission at the time. As part of its research project on "the Belgian Authorities and the persecution of Jews in Belgium during the Second World War", the *Centre for Historical Research and Documentation on War and Contemporary Society* ("CEGES") came across the records kept by the Auditorat Général of the "Textile Corporation", the company which bought the textile stock of Jewish businesses at the request of the Central Textile Office.

The examination of these records revealed that the "Textile Corporation" had, in some cases, been forced to hand over part of the stock, bought at 25% of its value, to an "Aufkaufskommission" (Purchasing Commission). The 25% of the value was, as required, paid into a frozen account but this operation hid a genuine looting operation.

On the basis of these new data, the Commission automatically reopened and corrected a series of dossiers. Some 100,000 euro were paid out as compensation in this context.

c) From the first examination of a certain number of randomly chosen accounts, it was clear that the frozen accounts of the SFBD and the later management by the Sequester absolutely did not cover the full reality.

The close to 8,000 declarations ("Anmeldungen") of Jewish enterprises in December 1940 contrasted strongly with the much smaller number of accounts identified with the SFBD. If a business was known by the occupying power, was it credible that it had been "forgotten" during the looting process which had followed? Were all the records complete? Had everything been done "by the book"?

The Commission, conscious of the witch hunt conducted against Jewish businesses during the occupation, decided that it should, in fairness, take the despoilment, theft or abandonment of property for granted, once the existence of the business during the war could be proved by whatever means.

It did not therefore restrict itself to the SFBD records. Other data attesting the existence of a business were accepted: the above mentioned "Anmeldung", registration in the trade register, identification in the population register, the dossier compiled in the context of the German Reparation Acts or any other relevant document.

It was not easy to determine the level of compensation. In the absence of credible data about the real value of the looted possessions at the time they were taken, the Commission decided to fix a generally applicable lump sum.

This amount was fixed, ex aequo et bono, at 1,500 euro, an estimate that in particular took into account the average sum (BEF 10,000) that the despoiled person could freely have available if the value of his stock did not reach BEF 20,000.

This lump-sum compensation, granted in the absence of any other concrete basis, frequently led to a misunderstanding in the minds of the claimants.

The essential task of the Commission, which was:

- not to restore the wealth "ex ante", a task that had previously fallen to the war damage administration,
- but to indemnify, as Art. 6 of the Act of 20 December 2001 makes clear, the identified assets of which restitution has not been identified by the State, the financial institutions or the insurance companies,

was not always correctly understood.

It is true that, on the basis of article 8, § 2, of the Act, the Commission could take into account "overriding injustices" when the strict identification conditions of Article 6. were not fulfilled. In the eyes of the Commission, there was no doubt that the total elimination of practically all Jewish businesses was an "overriding injustice". In those cases of recourse to article 8, § 2, only lump-sum indemnification proved possible.

d) For cases where the business had remained under German management for a certain period, the Commission indemnified the identified costs ("Prüfungsgebühr", "Verwaltungsgebühr" and "Liquidationsgebühr"). If necessary the costs were indemnified as a lump sum on the basis of the average tariffs applied (thus for the "Verwaltungsgebühr", BEF 550 per month).

4.6. INDEMNIFICATION FOR DESPOILMENT IN THE DIAMOND SECTOR

a) Despoilment

Diamonds had a strategic value for the occupying power and the German military administration therefore made every effort to control this sector. At first, until October 1940, the occupying power endeavoured to force diamond merchants who had fled with their stock to return to Belgium.

The first important measure was the compulsory declaration imposed by the ordinance of 5 July 1940. The policy gradually hardened, especially after the designation of William Frensel to the post of general head of operations in the diamond sector in February 1941. Cut diamonds had to be put in deposit after November 1941; rough diamonds, borts and industrial diamonds followed in March 1942.

The real plundering began in May1942 by the progressive liquidation of the Jewish companies and the confiscation of diamonds deposited with the "Diamantcontrole", which were then sold under the management of William Frensel. The latter and the "Devisenschutzkommando" had obtained access to the safes rented by the diamond merchants essentially with the *Beurs voor Diamanthandel*, of the *Diamantclub* and the *Antwerpse Diamantkring* and seized their contents.

William Frensel paid the proceeds from the sale of the diamonds into frozen accounts in the name of the owners ("Frensel accounts"). These accounts underpin the investigations relating to compensation.

b) Compensation

After the war, too, particular attention was paid to diamonds. The Study Commission confirmed that the Belgian State and the Federation of Belgian Diamond Exchanges devoted a lot of time and resources to reparation for the looting suffered in this sector.

As part of its investigations, the Study Commission came to the conclusion that the overall compensation after the war in the diamond sector can be estimated at BEF 150 million, a figure very close to the estimated value (BEF 160.6 million) of the total plundered in this sector.

This considerable compensation is the sum:

- of the indemnities paid in connection with the German Reparation Acts (BEF 90.7 million),
- of the recovery of several lots of looted diamonds, essentially stored in German deposits, which enabled the Federation of Belgian Diamond Exchanges to pay BEF 50.2 million in compensation, and
- of the payment by the Sequester of frozen balances on the "Frensel accounts".

It is therefore hardly surprising that, in a great many cases, the Commission did not find whatsoever justifying additional compensation.

There were grounds for paying compensation when:

- an unrestituted amount had been identified on a "Frensel account";
- not the amount but the name of the despoiled person appeared on the "Frensel account";
- the person's capacity as a diamond merchant or juweller could be convincingly demonstrated by any other means (population register, trade register, register of Jews, etc.).

In the first case, the unallocated amount was re-assessed according to the coefficient 24.78. In the other cases, *lump-sum indemnification* was set at 2,500 euro, an amount corresponding to the average of the unrestituted balances on the "Frensel accounts". That sum was also automatically the minimum compensation in the case of identification of amounts which, after re-assessment, did not come to 2,500 euro.

4.7. INDEMNIFICATION IN THE LIFE-INSURANCE SECTOR

a) Despoilment

Theoretically, life insurance policies fell within the scope of the general anti-Jewish ordinances of 1940 and 1941, and had therefore to be declared. Initially a maturing policy could be paid to the beneficiaries provided that the capital was not more than BEF 30,000. In July 1942, the policy became more radical and all the capital due had to be paid into a frozen account with the SFBD.

In practice and unlike what happened for example in the Netherlands, the life-insurance sector almost totally escaped despoilment.

However, since many Jewish citizens had fled, had gone into hiding or been deported, payment of the premiums had often been interrupted. The result was, following the usual insurance techniques, a reduction in the capital due on the maturity of the policy. Following the ICHEIC example, the Commission, in very precise circumstances, considered these reduced payouts as being a loss sustained as a result of the persecution of the Jews and consequently awarded compensation.

b) The cooperation agreement between the Commission and the ICHEIC

"ICHEIC" is the abbreviation of the "International Commission on Holocaust-Era Insurance Claims". This Commission was created in October 1998 on the basis of a Memorandum of Understanding concluded between the main European insurance firms, the State of Israel, the insurance supervisory authorities of a series of States in the USA and Jewish associations active throughout the world. It terminated its activities at the end of March 2007.

The ICHEIC had the ambitious aim of sorting out the liquidation of the insurance policies concluded world-wide which had not been paid out because of the persecu-

tion of the Jews. This Commission set its own criteria, in particular in respect of the revaluation coefficient that should be applied to the sums remaining due and which, for technical reasons related to the insurance sector, differed from one country to another.

Thus, policies concluded in Belgium could be subject to a claim for payment addressed to the ICHEIC and/or to the Commission, which also meant that the insurance companies could be twice concerned.

Because of this, the insurance companies took the precaution of inserting in the agreement concluded with the National Commission of the Jewish Community of Belgium for the Restitution and approved by the Royal Decree of 2 August 2002, a provision which would not be without consequences for the Commission.

According to this provision, any claim for compensation, *even made after* the due date of payment by the insurance companies into the special account opened at the National Bank, submitted to any other body, including the *ICHEIC*, and which was in accordance with the conditions set out in Articles 6 and 7 of the law, *must be dealt with by the Indemnification Commission and, if need be, be paid by that Commission alone*.

In other words, by the single payment they made, the insurance companies placed the ultimate processing of the claims in the hands of the Commission, thus handing all the responsibility over to it.

Collaboration and an exchange of information between the Commission and the ICHEIC became indispensable. So, at a meeting of 14 April 2003, the Commission approved an operating agreement with the ICHEIC, signed in following July.

A procedure was established for the exchange of information. With the express authorisation of the Data Protection Commission, the Commission also published the list of the Jewish held policies that had been identified by the Study Commission and had not been paid out.

As for ICHEIC, it had to inform any claimant referring to a policy taken out in Belgium that his/her case had been entrusted to the Belgian Commission to be processed in accordance with the Act of 20 December 2001.

Despoilment and indemnification - a policy by sector

In practice the ICHEIC preferred to transfer as a whole all the claims that it deemed important for the Belgian Commission; it was only in August 2006 that a final list of 954 cases was sent to the Commission, which was now the competent body. Hardly a year before the end of its own mandate, this somewhat belated transfer of the files suddenly entrusted the secretariat with a huge task.

It appeared that amongst the claims transferred by ICHEIC, 309 ware related to victims of spoliations for which a claim had been submitted to the Commission as well. This concerned 263 dossiers. Complementary research in this case was therefore required.

Furthermore, the secretariat confronted the ICHEIC-claims with the life-insurance policies identified as such by the Study Commission. The outcome was either integrated in the decision still to be taken or separately submitted to the Commission.

The Commission must put on record that the 954 cases transferred by ICHEIC in August 2006 did not bring the Commission to identify new insurance policies subject to indemnification under the law of 20 December 2001.

Under the terms of the agreement, the Commission was, moreover, required to process the claims according to “relaxed standards of proof”, which was anyway in line with its general policy. Similarly, the request of the ICHEIC, aimed at fixing compensation by taking into account the particular circumstances of the persecution of the Jews, posed no problem for the Commission. This provision was of importance regarding policies paid out at a reduced capital, due to the fact that, pursuant to circumstances beyond the control of the policy holders, premiums could not be paid during the war.

Contrary to what had been generally stipulated in the past, the ICHEIC accepted not to serve as an appeal body against the decisions of the Commission, which could only be disputed before the Council of State.

Finally, the ICHEIC agreed, after discussion, that capital not paid out should be reassessed on the basis of the coefficient applied by the Commission (coefficient 37, lower than what the ICHEIC proposed). This coefficient reflected the relationship between the overall amount in euro paid by the insurance companies and the

amount of the unpaid policies in BEF as calculated by the Study Commission.

The concrete application of the agreement was not done without difficulty. Requests to the ICHEIC for specific information produced little reaction whenever the inquirer mentioned a parallel approach to this institution. So, in order not to leave inquirers in uncertainty, the Commission decided to process the requests on the basis of its own records, promising in its notification to communicate the results of the investigations subsequently to the ICHEIC.

A single claim which, in the view of the ICHEIC, came under Belgian law, was automatically sent to the Commission; the case, treated at the meeting of 23 August 2004, resulted in compensation.

On the other hand, as was stated above, when its activities were in the closing stages, the ICHEIC relinquished, in August 2006, 954 claims to the Commission. The latter informed each "ICHEIC claimant", whether or not he/she had submitted a claim to it, of the result of the inquiry conducted both by the Commission and the ICHEIC.

c) Indemnification

c.1. The general approach

The Study Commission found that the records of the insurance companies had, on the whole, been well preserved. Identification of the policies that had not been paid out and the insured capital was thereby facilitated.

Compensation was awarded on the basis of the amount identified by applying a re-assessment coefficient set at 37. That coefficient, not fixed by the agreement approved by the Royal Decree of 2 August 2002, results from the relationship between the total despoilment estimated by the Study Commission (BEF 10,922,000) and the lump-sum of 10 million euro agreed upon by the insurance companies.

In very exceptional cases, where the policy could not be identified but where all the elements of the case clearly indicated a despoilment, compensation was awarded on the basis of the arithmetic mean of the capital sums covered on 31 December 1939, as calculated by the Study Commission. At the re-assessed value, this came to 24,868 euro.

Moreover, the Commission started from the principle that a capital sum reduced as a result of the death or deportation of the policy holder and, consequently, of the non-payment of all the premiums, constituted an element of despoilment attributable to the persecution of the Jews. In consultation with the insurance company concerned, the difference between the capital insured and the reduced value was calculated and the result, re-assessed according to the coefficient of 37, was indemnified.

c.2. The ICHEIC dossiers

The dossiers submitted by the ICHEIC were processed according to the same principles, including when the policy had been identified only by the ICHEIC and did not appear in the own databank of the Commission.

The acceptability of the claims, nevertheless, had to be assessed by the standards of the provisions of the Belgian law. That is why the Commission had to limit the family relationship to the third degree as a criterion of the acceptability of a claim.

However, in fairness and in the spirit of the "insurance" agreement approved by the Royal Decree of 2 August 2002, the claims submitted via the ICHEIC, were accepted without distinction of date.

This procedure may seem marginal on a legal level. Because of the overlap in the work of the ICHEIC and that of the Commission and, consequently, of the confusion aroused in the minds of the claimants, it would not have been reasonable to refuse compensation for the despoilment of a policy that *had been positively* identified, knowing that the claimant could no longer subsequently make the slightest appeal against the insurance company concerned. The law of 20 December is categorical on this point.

4.8. INDEMNIFICATION IN THE REAL ESTATE SECTOR

a) Despoilment

The Jewish real estate sector did not escape the attention of the occupying power.

Systematic attempts to sell failed, however, because of the attitude of Belgian judiciary.

The obligatory declaration of the land belonging to Jewish businesses, decreed by the ordinance of 28 October 1940, was the first step in the imposition of control. A second ordinance, that of 31 May 1941, imposed the obligation of declaring all the real estate property and rights on such property in possession of Jews or Jewish businesses to the *Office de déclaration de la propriété juive*. This ordinance resulted in some 3,000 declarations.

An additional step was taken in 1941, Jewish property being placed under the management of the "Verwaltung des Jüdischen Grundbesitzes in Belgien" (VJGB), at least for all the property that was not situated in the town and province of Antwerp. There, the military administration designated four administrators: Hütteman, Wäser, Voigt and Wauters.

The VJGB and the administrators mentioned above could let unoccupied property, receive rents, pay maintenance charges and taxes provided those operations were shown in their management account.

They could not, however sell the property in the name of the absent owner, because the Belgian judiciary forbade Belgian notaries to sanction sales concluded without the intervention of the owner.

Compulsory sales, which nevertheless took place, occurred by default to discharge a mortgage debt at the request of a Belgian court. The net proceeds of such sales had, in principle, to be paid to the Deposit and Consignment Office, in accordance with Belgian legislation. In practice, it was sometimes frozen at the request of the occupying power, in one of the spoliator banks controlled by the latter (SFBD, *Banque de Paris et des Pays-Bas*, *Continentale Bank*, etc.).

b) Indemnification

Any sale of real estate during the war could be fairly easily identified at the Administration générale de la Documentation patrimoniale.

The notarised deed of sale, which the Commission systematically requested at the relevant mortgage registry, provided information on the circumstances of the sale, the proceeds as well as the debts and charges (mortgage or others) included in the account. If it turned out that the net proceeds of the sale had not been claimed after the war, the compensation was clear. It amounted to the sum identified re-assessed according to the coefficient 24.78.

Study of the accounting records of the VJGB by the Sequester, expedited by Mr Hopchet, director of the State Property and Registration Administration, also shed light on the rents received by the occupying power. It turned out that, after the Liberation, the account of the VJGB at the Continental Bank did not have enough funds to pay all the balances identified on the rent accounts, so that Hopchet was able to indemnify only 65% of them.

When a "Hopchet" account was identified, the Commission, depending on the case, indemnified the whole amount or made up the remaining 35%. In both cases, the sum due was re-assessed on the basis of the 24.78 coefficient.

In Antwerp, where the district court had, in September 1944, given three lawyers the responsibility of putting the affairs of Hütteman and consorts under administration, identification of the management accounts was considerably more difficult.

In fact, in many cases, the management account could no longer be identified, while it was clear that the property in question had been placed under German management and rented out. The Commission therefore, in fairness, made a flat rate calculation of the compensation basing itself on the average of the rents received under German management in Antwerp, i.e. BEF 345 per month per property.

If necessary and, in the absence of any more specific basis, this fixed amount was also applied for the rental of property in the other provinces.

4.9. INDEMNIFICATION IN THE SECTOR OF CULTURAL ASSETS

a) Despoilment

The final report by the Study Commission provided evidence that the German occupying authorities and the national-socialist services showed a particular interest in the cultural assets (records, libraries, works of art) of the ideological opponents to the regime, of Jews and Freemasons, in particular.

Targeted looting began as early as the summer of 1940. From July of that year, the operational commando *Einsatzstab Reichsleiter Rosenberg* ("ERR" in abbreviated form), named after the ideologue of the party and a close collaborator of Hitler, also became active in Belgium.

The Study Commission was assigned two staff members, only after a certain time, to look into the looting of cultural assets, and more specifically, the despoilment suffered by the Jewish population. It did not confine itself to the activities of the ERR, but also studied the looting carried out by various other German services (*Brüsseler Treuhandgesellschaft", Sicherheitsdienst, Geheime Feldpolizei, Devisenschutzkommando*) as well as by German merchants and collectors, such as H. Göring, who appeared on the Belgian art market during the Second World War.

A first part of the cultural assets seized were transported to warehouses in Germany and in Austria; some of those assets were transferred to Poland and the USSR at the time of the Liberation. A second part was put up for sale on the art market, flourishing during the war years. Lastly, a third part of those assets were found in the Brussels and Antwerp warehouses when the Liberation occurred.

b) Restitution and indemnification

After the war, a series of cultural assets were recovered, mainly in Germany and in Austria. The "Office de Récupération Economique" (O.R.E.) created on 16 November 1944 was the driving force in this. This office also endeavoured to identify the looted cultural assets in the Belgian warehouses but came up against many difficulties of a practical nature (cf. report of the Study Commission).

Despoilment and indemnification - a policy by sector

In a limited number of cases, cultural assets, more precisely paintings and books, could be returned to their rightful owners. In many other cases, the despoiled Jewish families were unable to recover their cultural assets, for lack of communication between the O.R.E. and the owners and in the absence of identification data. Some cultural assets were deposited with Belgian cultural institutions, but most of them were sold for the benefit of the Treasury in auctions organised by the "Office de Récupération Economique" and the *"Administration de l'Enregistrement et des Domaines"*. The most valuable historical furniture, artworks and paintings were sold at the Brussels Centre for Fine Arts (*Palais des Beaux Arts*) (1948-1954).

For the examination of claims which concerned or could concern disappeared cultural assets, the Commission depended on the expertise constantly provided by the unit for the restitution of looted Jewish cultural assets (*Restitution de biens culturels juifs spoliés*) of the Belgian Federal Office for Scientific Affairs. On the basis of the data provided by claimants and a new historical study of German and Belgian sources, about 160 reports were drawn up regarding disappeared cultural assets and opinions were expressed, whenever that proved useful, concerning indemnification in other areas (furniture, vehicles, etc.).

Thanks to the detailed reports submitted, the Commission was able to identify what had been raised for the Treasury and to determine the value at that time that should be attributed to the objects sold. Indemnification was allocated on the basis of the value identified or assessed, re-assessed according to the coefficient of 24.78.

Owing to the activities carried out by national commissions in Europe and in North America and negotiations in progress within the UNESCO concerning international directives aimed at the restitution, between States, of cultural assets disappeared during the Second World War, the Belgian Federal Office for Scientific Affairs (http://www.belspo.be/belspo/home/port_en.stm) is pursuing its investigations into the disappeared cultural assets of Belgium. The aim is to settle the qÒuestion suitably by consulting all the bodies concerned. Priority is given to cultural assets placed after the war under the management of Belgian cultural institutions responsible to Federal scientific establishments.

4.10. THE COMMISSION'S INVOLVEMENT IN VARIOUS INITIATIVES

a) *In its final report, the Study Commission had emphasised that several financial institutions were still in possession of* **sealed envelopes** *enclosing the contents of the safes rented by persons identified as "Jewish".*

An inventory of the contents of these safes had sometimes been made but this was very rarely the case. When this content had a certain value, it remained generally unknown. The Study Commission nevertheless took those possessions into account in the extrapolation, which made it possible to calculate the total despoilment in the banking sector.

This aspect of the matter was evoked in discussions between the banking sector and the Jewish community with a view to the conclusion of the agreement concerning indemnification. An agreement finally emerged under the terms of which the banks undertook to send the identified sealed envelopes to the Minister of Finance on condition that the amount which had to be paid by the banks was reduced by 700,000 euro.

The Commission's secretariat gave its assistance to the *identification* of the rightful beneficiaries. On 17 December 2002, the Minister of Finance was already able personally to hand over several envelopes.

The envelopes that the SPF Finances was not able to restitute were transferred to the *"Fondation du Judaïsme de Belgique"* (Judaism Foundation of Belgium). The foundation undertook to hand over to any beneficiaries who subsequently came forward the share that was due to them.

b) The "relics" with the "Service des Victimes de la Guerre" (War Victims Department).

The Study Commission found that the War Victims Department still held documents and objects ("relics") confiscated in the Dossin Barracks and not yet restituted, belonging to deported persons.

As the Study Commission proposed in its final report, a collaboration has been established between the War Victims Department, the Commission and the Mechelen Museum of Deportation and Resistance in order, as far as possible, to return those documents and personal souvenirs to the families.

The agreement concluded at the beginning of 2003 stated that:

- the War Victims Department makes available to the Museum of Deportation and Resistance the documents that it still holds;
- the Commission's secretariat will systematically check, when it examines claims, whether documents relating to the deported persons concerned should be restituted;
- if so, both the persons concerned and the Museum should be informed at notification of the decision of the Commission, following which the Museum would contact them.

This collaboration made it possible in 224 cases to return family souvenirs to the successors.

c) Belgian Judaism Foundation's "Solidarité 3,000" project

The "Solidarité 3,000" project aims to guarantee a minimum personal indemnification of 3,000 euro to a person who makes a claim for it to the Foundation.

Insofar as the claimant has already personally received certain sums as indemnification for despoilment of material possessions
- either by the decision of the Commission,
- or under German restitution laws,

these sums are deducted from payments made by the Foundation, limited to 3,000 euro per person. In such cases, the Foundation makes up the difference.

In so doing, the Foundation does not take into account pensions, annuities or similar benefits granted, on whatever basis, in particular for mental suffering, imprisonment, or wearing the Star of David, interruption of studies etc. These benefits have no effect on the implementation of the "Solidarité 3,000" project.

The claimant must prove that the anti-Jewish ordinances and practices of the occu-

pying power applied personally to him in Belgium during the war years, his age during this period being unimportant.

To ensure the financial feasibility of the "Solidarité 3,000" operation, a sum of more than 12 million euro was debited by a Royal Decree of 21 December 2006, for the benefit of the Foundation from the special account opened at the National Bank (Article 10, paragraph 3 of the Act of 20 December 2001).

The Commission's contribution to the project remained relatively modest. The secretariat undertook to indicate on the name lists submitted for checking by the Foundation the persons who had made a claim to the Commission and to state whether the claim(s) had been already been dealt with.

In no case did the Commission inform the Foundation of the decision or of any other personal element or fact related to the claim. It was up to the claimant to send the Foundation a copy of the decision(s) notified by the Commission and, if necessary, give the Foundation written authority to obtain a copy of the decision(s) from the Commission.

5. Litigation before the Council of State

INTRODUCTION

Appeals made to the Council of State[2] by claimants were not a negligible aspect of the work of the Commission. It is therefore necessary to give a general overview.

The account of the reason[3] for the draft law concerning the creation of the Indemnification Commission mentions that this is "of a purely administrative nature". A decree[4] of the Council of State confirmed the Commission's administrative character. As a result, the Commission's decisions may be the subject of an appeal to the Council of State. In accordance with Article 14, § 1, of the coordinated laws on the Council of State of 12 January 1973, the administrative section may give rulings on appeals lodged, if necessary, against the Commission's decisions in order to have "the decisions overturned, on the grounds of an infringement of essential procedural requirements or of procedures required under pain of being declared void, or on the grounds that the decisions are ultra vires or represent a misuse of power".

This possibility of bringing an appeal before the Council of State is indissolubly linked to the *obligation to publicise administrative acts*. In order to protect the citizen against the actions of the administration or a part thereof, the federal legislator has stated the administration's obligation to publicise administrative acts in the Act of 11 April 1994[5]. A decision by the Commission granting or rejecting indemnification constitutes an administrative act affecting an individual coming from a federal administrative authority. Under the terms of Article 2, 4. of the abovementioned Act of 11 April 1994, the document by which this decision is notified to the claimant/citizen

[2] A limited number of petitions for a stay of decision appear among those appeals with appeals to have the Commission's decisions overturned forming the lion's share. Our concern for exhaustiveness means that we should also mention a case pending before the District Court of Verviers involving the payment of an indemnification after the claimant's death. That case should be mentioned even though it does not come within the scope of this report.

[3] Bill concerning the indemnification of the Belgian Jewish community's assets looted or abandoned during the war 1940-1945; Chamber, doc. 50, 1379/001, 3 August 2001.

[4] Council of State, 3 November 2004, No. 136.960.

[5] Law of 11 April 1994 concerning the formal publicising of administrative acts, M.B. of 30.06.1994.

must indicate any channels of appeal, the competent bodies to be informed and the procedures and deadlines to be respected. In accordance with this provision, the Commission has systematically mentioned in the notification of its final decisions, the channel of appeal to the Council of State and the related procedures.

A certan number of claimants took advantage of this possibility. The Commission has counted 22 appeals to the Council of State up to the date of 31 December 2007.

SUBJECTS OF LITIGATION: AN OVERALL VIEW

This contribution does not aim to give a detailed or complete description of the cases submitted to the Council of State.

The aim is rather to provide a survey of the essential or most noteworthy arguments or findings.

There is no need for a reminder that the following elements are invoked in the context of an appeal *"to have the Commission's decisions overturned, lodged on the grounds of an infringement of essential procedural requirements or of procedures required under pain of being declared void, or on the grounds that the decisions are ultra vires or represent a misuse of power"* (cf. Art. 14 of the coordinated laws on the Council of State of 12 January 1973, *M.B.* of 21.03.1973).

• (Lump-sum) indemnification

The Commission opted for a broad interpretation of the law and decided to grant lump-sum indemnification on the basis of Article 8, § 2, when the despoilment could be sufficiently established but when there was no trace of any of the property within the meaning of Article 6. It must be said that it is chiefly these lump-sum indemnification payments that gave rise to disputes, as did also the re-assessment or the non re-assessment of the amounts concerned. In this context, it can be stated that in an appeal to have the Commission's decision overturned, a decision was attacked because of the failure to re-assess an amount granted as indemnification for a sum of money handed over to a German senior police officer.

The very principle of granting lump-sum indemnification was also called in question. In the opinions of the claimants concerned, the legislator expressly excluded the possibility of a lump-sum amount and the Commission apparently gave a scope and interpretation to Article 8, § 2 that had not been foreseen and could, moreover, not be justified.

The different amounts, essentially as indemnification for stocks of merchandise or diamonds (€1,500 or €2,500), that for jewellery and personal possessions (€400) and that for furniture (€7,000), were also contested. Other lump-sum indemnification payments were not evoked or were evoked to a considerably lesser degree. The parties concerned declared that the said sums were insufficient and did not correspond to the real despoilment suffered by the persons in question.

A last aspect of the contestation of lump-sum indemnification concerns more particularly the indemnification allotted for the loss of a stock of merchandise. The parties concerned deemed the indemnification too limited insofar as it only covered stock as such. They argued in favour of a broad interpretation of the despoilment of goodwill, considering that the lump-sum indemnification should also cover despoilment of machines, loss of clientele etc. Consequently, the parties involved consider the indemnification granted by the Commission for the stock of merchandise as being insufficient and reproach the Commission for having made a clear error of judgement in awarding lump-sum indemnification of scarcely €1,500.

• Justification

The Commission communicates its decision to claimants by sending notification of the final decision together with the memorandum of 4 November 2004.
This "memorandum appended to the notification" forms an integral part of the notification and explains the scope of Article 8, § 2, of the Act. The lump-sum amounts awarded for the despoilment of furniture, personal belongings and stocks of merchandise are also explained in the appended memorandum.
By virtue of the Act of 29 July 1991[6], the grounds for any decision by an administrative authority must be formally stated. Article 3 of the same law requires that the

[6] Act of 29 of July 1991 concerning the formal obligation to state the grounds for administrative acts, M.B of 12.09.1991.

grounds should indicate the legal and factual considerations serving as the basis of the decision and that the grounds should be appropriate.

The infringement of the obligation to state the grounds for the decision that is invoked is often linked to lump-sum indemnification. According to the parties concerned, the Commission apparently does not sufficiently justify its decision to pay a lump sum. They also allege that the memorandum sent with the notification does not constitute sufficient grounds and is even illegal because it contradicts Article 6 of the Act of 20 December 2001. The claimants are of the opinion that the Commission is not empowered to decide on the basis of "internal rules". In this context, let us add that the Commission is often reproached for not having conducted a "case by case" enquiry.

According to the appealing parties, the Commission's notification does not make clear the correct and exhaustive grounds for the decision. These parties mention, among other things, that "specific" grounds are not forthcoming in the notification as far as the aspects of the claim are concerned for which no indemnification was awarded - on the grounds, for example, that indemnification had already been awarded under the German Reparation Acts.

The parties concerned also affirm that the Commission exceeds its powers by explaining nowhere in the notification of the decision what it considers as being cases of "overriding unfairness" (cf. Art. 8 § 2, of the Act).

- **General legal principles and general principles of good governance**

The Council of State values the intervention of an administration that adheres to general legal principles and the so-called general principles of "good governance". Claimants frequently invoke violation of one or more principles of good governance. This account is limited to the two principles most often raised [7].

Let us first mention the right to a hearing: claimants think that the Commission should have heard them before taking a decision. In their opinion, the fact that the law has not expressly stated this obligation to give a hearing does not impress them.

[7] Other principles such as the right of defence, the principle of equality and the principle of proportionality are also pleaded.

Another frequently invoked principle relates to the investigation (the alleged lack of an investigation or the lack of evidence that the necessary steps have been taken) or to the implementation of the Commission's decision, i.e. to the principle of conscientious management. Claimants consider that the Commission neither conducted the investigation nor implemented the decision conscientiously.

- **The interpretation of the law by the Commission and the method of working**

The application of the law by the Commission has already been partially touched on in the point devoted to (lump-sum) indemnification. Other aspects however merit further comment.

For instance, one of the claimants asserts that the Commission has failed in the fulfilment of the task entrusted to it by Article 2. This task consists essentially in the granting of indemnification for possessions despoiled or abandoned. According to the petitioner, the Commission fails in its duty by allocating an indemnification limited to the re-assessment of an amount (i.e. the proceeds of the sale of a stock of merchandise) found on a frozen account at the Société française de Banque et de Dépôts (SFBD). The petitioner asserts that the amount concerned results from an action answering to the description of extortion (Art. 470 of the Criminal Code). According to this argument, the Commission based its decision on an act which is thus rendered null and void.

This reasoning is closely linked to the reproach according to which the Commission refers to measures (of liquidation) adopted by the occupying power during the war in order to calculate and grant indemnification.

The notion of "restitution" as used and applied by the Commission is also contested. In this context, several parties provide for comparison an outline of the initiatives taken in other countries in the matter of indemnification for members of the Jewish community.

Finally, the Commission's procedures and operating rules are called in question on the grounds of their supposed illegality. The use of languages by the Commission in

the examination and in the treatment of a certain file is thus contested.

- **The constitutionality or unconstitutionality of the law**

During the proceedings before the Council of State, two different parties demanded that a preliminary question should be put to the Court of Arbitration, which became the Constitutional Court in May 2007. The Constitutional Court is charged with verifying the conformity of laws, decrees and ordinances with Title II of the Constitution and with Articles 170, 172 and 191 thereof.

The first preliminary question concerns the conformity of Article 6, § 3, of the Act of 20 December 2001 with Articles 10 and 11 of the la Constitution. Article 6, § 3, defines the rightful claimants who may put forward a claim when the despoiled person has died. The questioner thinks that the exclusion of heirs by marriage as legitimate claimants constitutes discrimination [8].

The second preliminary question also relates to violation of the principle of equality and the principle of non-discrimination. The petitioner wants the Constitutional Court to consider the question of the compatibility between Article 6, read in combination with Article 13 of the Act of 20 December 2001 and Articles 10 and 11 of the Constitution. The petitioner is of the opinion that the combination of the above-mentioned articles of the Act of 20 December 2001 creates two sorts of victims. The Commission could not examine one of those categories because it concerned acts by the Belgian authorities during that period and not by the German authorities as stipulated by the law [9].

POSITION OF THE COUNCIL OF STATE

The Council of State has already ruled several times on the appeals lodged against the Commission's decisions. In a certain number of cases, taking into account the opinion of the Auditor, it has decreed the withdrawal of the case [10].

[8] The Council of State decided the preliminary question could not be put to the Constitutional Court since it related to a new argument. Council of State, 6 June 2007, No, 171.881.

[9] This matter is still pending.

[10] Application of Article 14.4., § 1, of the Regent's decree of 23 August 1948 determining the procedure before the administrative section of the Council of State and of Article 21 of the coordinated laws on the Council of State of 12 January 1973, M.B. of 21.03.1973.

For some appeals to have a decision overturned, the Council of State also gave a ruling on the substance of the matter. These decrees are of great importance for the Commission and must therefore be mentioned here.

In 2004 the Council of State corroborated the administrative character of the Commission [11]. The outline which follows summarises the different judgements.

The Council of State decided a first time in 2006 and afterwards confirmed that the Commission could fix a "line of conduct", from which it would depart only if the particular circumstances of a case justified it. According to the Council of State, such a way of proceeding is all the more acceptable since the mandate entrusted to the Commission is of limited duration and the number of claims to be considered is very high. Recourse to this line of conduct does not rule out an individualised examination of the claims [12].

Moreover, the Council of State recognised the possibility of allocating lump-sum indemnification on the basis of Article 8 § 2, of the Act. The remarks appearing in the preparatory work do not diminish that possibility. The Council of State deemed that, in specific cases, the Commission may take into account the lack of fairness that might result from the application of Article 6. It was therefore on the basis of Article 8§ 2, if the elements of proof were lacking to establish despoilment at the time when it occurred, that the Commission may take a decision in fairness and grant a lump-sum indemnification [13]. The Council of State ruled in particular on the indemnification granted for despoilment of businesses. In its view, it was up to the Commission to assess whether the lump sum of €1,500 constituted fair indemnification for businesses and to determine whether or not the reasons for that amount should be explained in the communication attached to the notification. The Council of State cannot therefore substitute its own assessment for that of the Commission [14].

The Council of State also follows the Commission as far as the interpretation of the term "biens" (assets) is concerned in the sense of Article 6 of the Act. More precisely, it decided that this term should be understood as the goods and financial assets

[11] Supra: Introduction.

[12] Council of State, 25 April 2006, No. 157.921; Council of State 6 June 2007, No. 171.882.

[13] Council of State, 25 April 2006, No. 157.921; Council of State, 6 June 2007, No. 171.882; Council of State, 2 July 2007, No. 173.076.

[14] Council of State, 6 June 2007, No. 171.882; Council of State, 2 July 2007, No. 173.076.

that had been identified and not restituted. The Commission therefore based itself on the amounts concerned for calculating the indemnification. These same amounts are the amounts that are re-assessed. The Council of State consequently concluded that the Commission did not violate Article 6 of the Act by not including all the elements of business goodwill in the lump-sum indemnification. The Commission may in fairness grant a lump-sum indemnification in pursuance of Article 8 § 2 [15].

Finally, the Council of State expressly ruled on the grounds for the decisions or the fact that no grounds were mentioned. The grounds for the Commission's decisions can be briefly stated without thereby lacking in clarity or exhaustiveness. The Council of State judged that reference to the communication attached to the decision constitutes sufficient justification [16]. The Commission is therefore held to have replied in this sense to the elements raised by the claimants. Otherwise, there is a violation of the formal requirement to state the grounds for a decision [17].

FOLLOW-UP OF THE CASES AT THE COUNCIL OF STATE AFTER 31 DECEMBER 2007

On 31 December 2007, the curtain came down on the activities of the Commission and its secretariat - at least as far as the examination and processing of the various claims are concerned. As at 31 December 2007, all matters had not yet actually been settled by the Council of State.

So the question can be raised which persons or bodies will ensure the follow-up.

Following the opinion of Council of State on the bill amending the Act of 20 December 2001, the Commission's mandate was prolonged until all the claims that had been the subject of an appeal to the Council of State had been dealt with. The legislation section of the Council of State thought it necessary that the Commission itself should deal with all such claims so as to respect the principle of fairness and non-discrimination.

[15] Council of State 2 July 2007, No 173.076
[16] Council of State, 25 April 2006, No 157.921
[17] Council of State, 2 July 2007, No. 173.076

The Act of 20 December 2001 was therefore amended accordingly [18] and guarantees claimants treatment by the Commission, whose composition remains identical with that described in Article 3 of the Act [19].

CONCLUSION

This final report was updated up to and including 31 December 2007.

As it turned out, litigation mainly concerned the awarding of lump-sum indemnification. That may seem paradoxical, since that system precisely made it possible to award indemnification wherever the strict application of the law did not allow it. The Commission always considered that the awarding of lump-sum indemnification - in cases where despoilment was undeniable, but where assets could not be identified in accordance with Article 6 of the Act - represented the fairest and most legally acceptable solution. The Council of State ruled that the awarding of lump-sum indemnification payments came within the Commission's powers of appreciation.

To sum up, it may be asserted that the Council of State recognised the particular framework in which the Commission has been working over the course of the past years. The task of the Commission clearly goes further than the "purely administrative aspect", inasmuch as a flexible approach to the legal provisions was necessary. The Council of State understood this endeavour to keep a sense of proportion. It judged the Commission's policy and method of working in the light of the various legal aspects and took into consideration the context in which the Commission fulfilled its mission. In its various judgements, the Council of State corroborated the Commission's method of working. The few adjustments made as a result of a judgement by the Council of State do not concern, as previously explained, the policy followed by the Commission.

As at 31 December 2007, there were still a number of appeals on which the Council of State had not yet given a ruling. The Commission will itself ensure the follow-up

[18] Act of 20 July 2006 amending the Act of 20 December 2001 concerning indemnification of the Belgian Jewish community's assets looted or abandoned during the war of 1940-1945, M.B. of 27.07.2006.
[19] Article 3 of Act of 20 December 2001; The Commission is composed of five officials or retired officials and two representatives of the Belgian Jewish community with an advisory role.

of these cases with the assistance of the services of the Chancellery of the Prime Minister.

6. Final result and conclusion

The Commission finished the examination of a total of 5,620 claims within the prescribed time. The claims grouped by despoiled person or family represent 5,210 closed cases for total indemnification of 35.2 million euro.

The Act of 20 December 2001 rightly provided for the admission of two representatives of the Belgian Jewish community to the Commission as members with an advisory role. The participation of these two representatives was not only an advantage for the transparency of the activities, but it also allowed better decision making thanks to their knowledge and experience.

The harmony in the Commission proved remarkable. It must be stated that, throughout the whole of its mandate, the Commission collaborated in a collegial spirit and that its members always pursued the same objective, which was to process claims with understanding and complete fairness.

The professional support given by a small but very motivated secretariat was decisive. The Commission wishes expressly to stress this, conscious of having many times put its staff under pressure to produce quality work on time. It is with pride and gratitude that it mentions the names of its staff in the appendix.

The Commission has moreover been able to count also on the ongoing support of the FPS Chancellery of the Prime Minister and on the cooperation of the unit for “Restitution of looted Jewish cultural assets” of the Public Planning Service (PPS) “Federal Science Policy” for everything concerning the despoilment of cultural assets.

It is further grateful for the excellent collaboration with, among others, the FPS Finance, the War Victims Department, the Centre for Historical Research and Documentation on War and Contemporary Society (CEGES), the Records Office of the City of Brussels and the Public Records Office of the Kingdom as far as access to the records relating to their respective areas of competence is concerned.

Last but not least, the Commission was delighted with the excellent and numerous contacts with, among others, the Jewish Museum of Belgium, the Museum of Deportation and Resistance in Mechelen, the Diamond Exchanges in Antwerp, the Judaism Foundation of Belgium, the Association of Natives of Belgium in Israel, the Holocaust Claims Processing Office and the Hidden Child Foundation in New York, the Central Office for Holocaust Claims in the United Kingdom (Middelsex) and the "Bundesamt für zentrale Dienste und offene Vermögensfragen" in Berlin.

• • •

Examination of the claims led, in more than 88% of cases, to indemnification.

Some claims had to be rejected because they did not satisfy the conditions of acceptability required by the law concerning the residence of the despoiled person in Belgium at any time during the period from 10 May 1940 to 8 May 1945 or regarding the legally required degree of kinship.

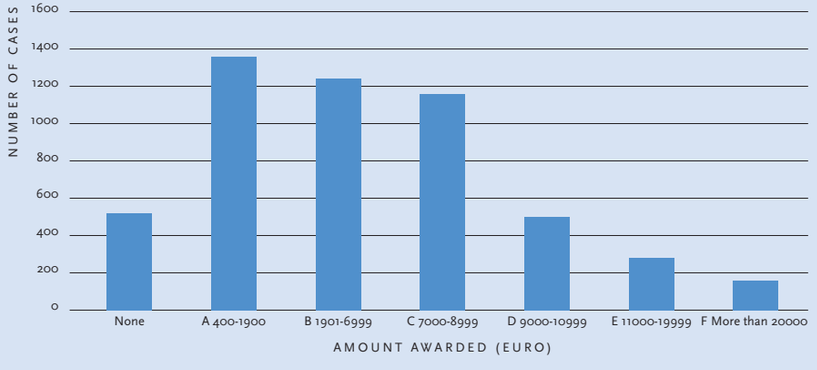
Other fully valid claims did not lead to indemnification either because no property despoiled to the detriment of the claimant in pursuance of the anti-Semitic measures could be identified or - in the majority of cases -the despoiled possessions had already been indemnified or restituted.

In total, these amounted to less than 12% of the claims.

The amount of indemnification granted varies greatly from one case to another. It would be of little interest to mention an average amount given the size of the gap between the large number of small amounts (up to 7,000 euro) and the bigger amounts. The following overview below reflects the reality better.

AMOUNT AWARDED (€)	NUMBER OF CASES OF DESPOILMENT
No amount awarded	518
Between 400 and € 1,900	1,365
Between € 1,901 and € 6,9991,232	
Between € 7,000 and € 8,999	1,147
Between € 9,000 and € 10,999	499
Between € 11,000 and € 19,999	287
Over € 20,000	162
TOTAL NUMBER OF CASES OF DESPOILMENT EXAMINED	5,210

INDEMNIFICATION AWARDED PER CASE OF DESPOILMENT



It is perhaps also useful to show for which components of the despoiled assets the Commission awarded indemnification. The table below follows the pattern of chapter 4 (Despoilment and indemnification: the policy by sector) and gives, on the one hand, the total number of positive decisions in each of the sectors dealt with and, on the other hand, the total sums paid per sector.

Item of despoiled assets	Number of positive decisions	Indemnification awarded in millions of euro	As % of the total
Furniture	1,813	12.7	36.1%
Personal belongings at the time of arrest/deportation	4,392	2.0	5.7%
Wages from forced labour	533	0.7	2.0%
Financial assets	1,054	3.6	10.2%
Companies and businesses	3,1351	0.73	0.4%
Stocks of diamonds	794	2.2	6.2%
Life insurance	48	0.8	2.3%
Real estate	17	01.2	3.4%
Cultural assets	57	0.3	0.9%
Miscellaneous assets	88 [20]	1.0	2.8%

There remains the question of how far the Act of 20 December 2001 and, further, the policy of the Commission based on this Act met the expectations of potential rightful claimants.

Expectations were high. Even if it should have been clear, in the spirit of whoever followed the genesis of the law, that assets could not be restituted in their pre-war condition, the hope of such restitution was widespread. Was this due to misunderstandings? To a lack of information? To a still vivid memory of the injustices of that time and to moral outrage?

Whatever the reason, the Commission and its secretariat were frequently confronted with the disappointment of rightful claimants who had plainly expected much bigger indemnification. Most of the appeals lodged before the Council of State had implicitly or explicitly the aim of obtaining an increase in the amounts granted.

The Commission was unable to interpret the Act of 20 December 2001 in any other way. All the preparatory work, all the steps taken nationally and internationally as well as the very explicit wording of Article 6 of the Act lead to the conclusion that the law essentially concerns indemnification for assets which - for various reasons - were not restituted by the public authorities, banks and insurance companies after the war. It is on this basis alone that the special account opened at the Belgian National Bank was credited.

The identification of these assets was the Commission's key task. It is only because the legislator, who had been alerted by the Study Commission's final report, became aware of the serious gaps in the records and the significant extrapolations that the Study Commission had had to make, that the situation was remedied by Article 8 of the law.

After the event, this decision proved to be very positive. The pages of this report show clearly enough that the Commission based itself at least as much on Article 8 (fairness) of the law as on Article 6 (identification).

All things considered, it was not entirely necessary to use Article 8 as a basis. That said, not to have granted indemnification in cases where the despoilment seemed incontestable but where the records, which are as they stand, did not allow a frozen amount to be identified, would have been not only unfair but also totally unjust. Even more so when we know that according to the Study Commission's report, amounts had been properly "invoiced" to the public authorities, banks and insurance firms for assets not identified physically but only calculated by extrapolation.

So, in these cases, the Commission granted lump-sum indemnification, including payments of 1,500 euro for despoilment of businesses, which gave rise to criticism. The Commission therefore takes the opportunity to recall that this amount was applied only *in the absence of precise information on the value of the business at the time of the despoilment*.

The said amount was granted for all the cases where the circumstances were similar, whatever the value that the claimant placed on the business before the war. The Commission understands that this decision was a hard blow for some, but any other approach would have entailed inconsistent decisions and endless disputes.

The Commission was relieved to learn that the Council of State, in one of its first rulings, shared its interpretation of the law.

• • •

The policy developed by the Commission finally led to the granting of indemnification for a total of 35.2 million euro.

It is striking to note that scarcely 31.8% of the overall amount available of 110.6 million euro was devoted to individual indemnification. To understand the gap between the budget allocated and the sums paid out, we must first ask about the persons from whom the majority of the claims for indemnification could have come.

The Study Commission's report (chapter 3: "The restoration of rights after the Liberation") indicates that, in the period immediately after the war, the Jews who came back from the camps or from their place of refuge were understandably concerned to recover their assets. In many cases, assets could be effectively recovered, in particular on the frozen accounts managed by the Sequester. Subsequently, it was also possible to seek further indemnification for certain components of the assets, essentially in the framework of the German "BrüG" legislation.

A large number of victims of the persecution of the Jews did not however return, either because they had died or because they had settled abroad for good. Indeed, the assets of those persons constitute the hard core of what, for obvious reasons, had either not been reclaimed or only very partially so.

The number of Jews residing in Belgium deported from Mechelen and Drancy is known: it amounts to 30,291. Among them the *number of adults* (+ 15 years) was 24,824, of whom 1,455 survived the camps.

There were therefore 23,369 adults who did not come back from the camps. If we add the indeterminate number of families that had permanently left the country, we obtain the minimum figure of 24,000 adults the management of whose assets could no longer be ensured after the war.

Some relatives of victims were able to claim a limited part of the property, while persons who had not been deported certainly did not recover everything after the liberation. The one makes up for the other.

Now, the Commission dealt with a total of 5,210 cases of despoilment, which represents 21.7% of the number of claims expected for the target group. This rather low

figure is certainly not due to the indifference of the potential rightful claimants or to a lack of information or communication on the part of the Commission. It illustrates a hard reality: *the absence of any survivor to seek indemnification*.

The only two exhaustive and detailed lists of unclaimed assets available to the Commission lead to the same findings:

- *the list of unpaid wages (North of France)*: the list contains 2,688 names; the Commission identified 527 of them (19.6%);
- *the list of jewellery confiscated at the Dossin barracks and sold after the war*: the Commission identified 164 names out of a list containing 940 names (17.4%).

• • •

As might have been expected, the identification of unrestituted financial assets proved to be an extremely difficult task for the Commission.

The Study Commission itself attempted in vain to identify all unrestituted assets. The particular effect of the striking lack of records was that only in 170 cases unclaimed Jewish assets could be identified with near certainty. Doubts existed in 375 cases because essential data (first name, place of birth, date of birth, etc.) were missing or did not match those data contained in the database.

Furthermore, the Study Commission could only identify the frozen accounts at the SFBD where the amounts had been transferred to the banks of origin after liberation, in the absence of the account holder's intervention, since the latter had been deported more often than not.

The Study Commission, by extrapolation, drew up an estimate of the assets not restituted by financial institutions by basing itself on these two elements and by applying the method broadly described in its report.

Since the Indemnification Commission had "inherited" this difficulty of identification, it awarded indemnification in 1,054 cases owing to despoilment of financial assets. The total amount assigned to this item of indemnification amounts to 3.6 million euro.

The identification of unrestituted financial assets will remain, both for the Study Commission and for the current Commission, a quest shrouded in mist.

• • •

The Commission's mandate did not expire on 31 December 2007.

The Act of 20 July 2006 rules in particular that the Commission will not cease its activities until all the claims pending with the Council of State have been dealt with.

The Legislation section of the Council of State has actually ruled that it is up to the Commission established by the Act of 20 December 2001 to decide whenever the Commission's initial decisions are overturned.

The secretariat, on the other hand, was dissolved on 31 December 2007. Subsequent administrative treatment, receipt of telephone calls and support for the Commission when further meetings should be required will be provided by the FPS Chancellery of the Prime Minister.

The Commission recommends entrusting its records, on the expiry of its mandate, to the Public Records office of the Kingdom. The destination of the databank must be decided by Royal Decree debated in the Council of Ministers and after consultation with the Privacy Commission.

Approved at the meeting on 4 Februay 2008

Final result and conclusion

Annexes

Annex 1

20 DECEMBER 2001 (as amended by the Act of 9 July 2004 and by the Act of 20 July 2006) - Act concerning the Indemnification of the Belgian Jewish Community's assets which were looted or abandoned during the war of 1940-1945.

CHAPTER I - General provision

Article 1. This Act regulates a matter referred to in Article 78 of the Constitution.

CHAPTER II. - The Commission for the Indemnification of the Belgian Jewish Community's assets which were looted or abandoned during the war of 1940-1945.

Art. 2. § 1. A Commission for the Indemnification of the Belgian Jewish Community's assets which were looted or abandoned during the war of 1940-1945 is set up in the Services of the Prime Minister. The Commission is referred to hereafter as "the Commission".
The Commission examines indemnification claims and reaches decisions concerning them before 31 December 2007 according to the conditions and the rules laid down in Chapter III.
§ 2. The Commission's term of office takes effect as from 9 September 2002 and ends at the latest when a ruling has been given concerning those claims for which the Commission's decisions are the subject of an appeal to the Council of State.
§ 3. The King regulates the Commission's operation.

Art. 3. § 1. The Commission is composed of five officials or retired officials of which:
- two French-speaking members
- two Dutch-speaking members
- a chairperson, who must have proven knowledge of the French language and the Dutch language, in accordance with the laws concerning the use of languages in administrative matters, coordinated on 18 July 1966

The chairperson is appointed by the King, further to a proposal by the Prime Minister. The other members are appointed by Him further to a proposal by the Minister of Foreign Affairs, the Minister of Finance, the Minister of Justice and the Minister who has war victims within his competence.
§ 2. Two representatives of Belgium's Jewish Community attend the Commission's meetings in an advisory capacity.
§ 3. A deputy is appointed for the chairperson and for each member, according to the conditions laid down in § 1)
§ 4. Within the scope of its assignment, the Commission may call on the services of experts, in a consultative capacity

Art. 4. A secretariat is made available to the Commission. The King determines the composition, the regulations and the rules of operation of the secretariat.

Art. 5. The Commission's and its secretariat's operating expenses are to be borne by the Prime Minister's budget.
The King determines the amount of the attendance fees and travel expenses allocated to the Commission's chairperson, members and experts.

CHAPTER III. - Indemnification claims and processing of claims.

Art. 6. § 1. Any person who fulfils the following conditions may submit an indemnification claim:
1) to have had his or her place of residence in Belgium at any time whatsoever during the period from 10 May 1940 until 8 May 1945;
2) to have been despoiled of assets in Belgium of which he or she was the owner or to have had to abandon them as a result of an anti-Jewish measure by the German occupying authorities or as a result of anti-Semitic acts committed by those same authorities during the same period.
§ 2. For the application of § 1, the assets of which the persons referred to in § 1 were despoiled or which they had to abandon are to be understood as being financial assets and property of which they were the owners and:
1) of which restitution has not been made by the State, by financial institutions or by insurance companies and which have not been the object of any compensation, in-

demnification or reparation;
2) and which have been identified in the report of the Study Commission, established by the Act of 15 January 1999 concerning the Study Commission into the fate of the Belgian Jewish Commission's assets which were plundered or surrendered or abandoned during the war of 1940-1945, or which are identified within the framework of the examination of the claim by the Commission.
The King may, by decree deliberated in the Council of Ministers, extend the scope of application of the previous paragraph, to other sectors, on the basis of the report by the Commission, established by the abovementioned Act of 15 January 1999.
§ 3. If the person referred to in § 1 is deceased, the rightful beneficiaries to the first, second and third degree in accordance with Articles 737 to 744 of the Civil Code, may claim indemnification provided that the conditions referred to in §§ 1 and 2 are fulfilled and they provide proof of their standing in accordance with the rules of common law.

Art. 7. § 1. The indemnification claim is submitted, at the latest, by 9 September 2003, by registered letter to the chairperson of the Commission and is accompanied by all the necessary documents. It contains the following items:
1) the claimant's surname, first names, home address, and nationality, and, if necessary, the surname, first names, home address and capacity of his or her legal representative;
2) a brief description of the circumstances in which the owners of the assets were despoiled or had to abandon them;
3) the fullest possible description of the assets and of the place where they were to be found at the time or where they are to be found at the present time;
4) the declaration that restitution of the assets has not been made and they have not been the object of any compensation, indemnification or reparation.
The claim must be dated and signed and end with the words: "I state on my honour that this declaration is sincere and complete."
§ 2. The King may stipulate the terms and conditions for submitting the claim, referred to in § 1, together with the other rules of procedure before the Commission.

Art. 8. § 1. The Commission may make or have made any necessary investigations in order to substantiate the genuineness of the indemnification claim. The result is solely intended for the claim examination procedure and remains protected by the

right to professional secrecy. The Commission may more particularly require any public service, bank or insurance company to communicate information about the existence of an asset without the right to professional secrecy being opposed thereto.
§ 2. In specific cases, the Commission may take into account the overriding unfairness that might arise, in its opinion, from the application of this Act.

Art. 9. § 1. The Commission may process the personal data which are necessary for the fulfilment of its assignment.
The databank concerning the persons who were victims of anti-Jewish measures adopted by the German authorities, which was compiled by the Study Commission in pursuance of Article 4 of the abovementioned Act of 15 January 1999, is transferred to the Commission.
As a derogation to the procedure laid down in Article 5, paragraph 2, a), of the Act of 8 August 1983 organising a National Register of Natural Persons, amended by the Act of 19 July 1991, it may also access the information referred to in Article 3, paragraph 1, 1) to 6) and 8) and paragraph 2, of the same Act and make use of the identification number of the National Register of Natural Persons within the limits, according to the conditions and for the purposes stipulated in the following paragraphs.
The access and the use referred to in the previous paragraph are authorised:
1) for the chairperson and for the members of the Commission to whom the chairperson has delegated authority;
2) for the level 1 members of the secretariat.
The information obtained from the National Register of Natural Persons shall only be used for the fulfilment of the Commission's investigation assignment.
Such information shall not be communicated to third parties.
Are not considered as third parties:
1) those natural persons to whom that information is related, together with their legal representatives or their rightful beneficiaries;
2) the public authorities or the bodies referred to under the provisions of Article 5 of the abovementioned Act of 8 August 1983.
The persons referred to in paragraph 4 may use the identification number of the National Register of Natural Persons solely for the purpose of a means of identification in their files or directories:
1) for internal management purposes;
2) in the relations that they have with the public authorities and bodies which have themselves received the authorisation laid down in Article 8 of the abovemen-

tioned Act of 8 August 1983.
The list of those persons having access to the information of the National Register of Natural Persons, with the identification of their position and, if necessary, their rank, is sent to the Privacy Commission.
The identification number of the National Register of Natural Persons shall not be reproduced on documents likely to be brought to the knowledge of third parties other than the authorities or bodies also authorised to use it.
§ 2. The King determines, by decree deliberated in the Council of Ministers and subsequent to the opinion of the Privacy Commission, the destination of the databank when the Commission's assignment has been completed.

CHAPTER IV. - The indemnification payment procedure, payment in full discharge and payment of the balance.

Art. 10. Within three months of this Act coming into force, a memorandum of understanding is concluded between the National Commission of the Belgian Jewish Community for Restitution a.s.b.l. (not for profit association), the State, financial institutions and insurance companies, referred to in Article 6, § 2, paragraph 1, 1), in order to determine the amounts and the coefficient or the coefficients making it possible to calculate the re-assessed value of those amounts.
That memorandum is approved by the King, by decree deliberated in the Council of Ministers.
Those amounts are credited by the State, the financial institutions and the insurance companies, referred to in paragraph 1, to a special account that is opened on behalf of the Belgian Treasury in the books of the National Bank of Belgium.

Art. 11. The Commission's decisions are communicated to the Treasury Department which is entrusted with settling the corresponding amounts to be paid from the account referred to in Article 10, paragraph 3.

Art. 12. If the memorandum of understanding is not concluded within the time allotted in Article 10, the King determines, by decree deliberated in the Council of Ministers, and subsequent to the opinion of the National Commission of the Belgian Jewish Community for Restitution a.s.b.l., the amounts that are paid by the State, the financial institutions and the insurance companies referred to in Article 6, § 2, paragraph 1, 1) together with the coefficient or the coefficients making it possible to calculate the re-assessed value of those amounts.

Art. 13. The payments referred to in Article 10, paragraph 3, release the State, the financial institutions and the insurance companies concerned from further obligations towards the persons referred to in Article 6 and automatically imply the extinguishment of the right of those persons to submit any other claim than the one referred to in the same article, de facto or de jure, for the restitution, compensation or indemnification of the assets concerned.

Art. 14. In the course of the 1st quarter of 2008, the balance of the special account referred to in Article 10, paragraph 3, is paid to a Public Utility Foundation whose social, cultural and religious aims meet the needs of the Belgian Jewish Community. Those aims may extend to the fight against racism, intolerance and the violation of human rights.
In the two years following this Act coming into force, an advance on that balance may be paid to the Public Utility Foundation.
The sums relating to the claims referred to in Article 2, § 2, are deducted from the balance mentioned in the previous paragraphs and are paid, where appropriate, when the processing of those claims has been completed.
As a derogation to Article 27 of the Act of 27 June 1921 concerning not for profit associations, international not for profit associations and foundations and after a report by the company auditors appointed by the public utility foundation mentioned in paragraph 1, the King determines, within the limits of the balance of the special account referred to in Article 10, paragraph 3, an amount that may be immediately assigned to the project "Solidarity 3000" developed by the foundation.

CHAPTER V. - Final provision and coming into force.

Art. 15. The decree adopted pursuant to Article 6, § 2, paragraph 2, is abrogated when it is not confirmed by law within the year following its publication in the Moniteur belge (official journal).

Art. 16. The King determines, by decree deliberated in the Council of Ministers, the date on which this Act comes into force.

We promulgate this Act and command that it should bear the Seal of State and be published by the Moniteur belge.

Annex 2

COMPOSITION OF THE COMMISSION

(According to the Royal Decree dated 2 August 2002, as amended by the Royal Decree dated 5 March 2006)

Lucien Buysse	Chairman
Daniel De Brone	Director-General at the Ministry of Finance
Raymonde Foucart	Director-General at the Ministry of Foreign Affairs, Foreign Trade and International Cooperation
Renée Grabiner	Director at the Ministry of the French-speaking Community
Karin Wastiau	Assistant advisor at the Federal Public Service, Justice

Representatives of Belgium's Jewish Community

Anna Landau

Foulek Ringelheim

(Members in an advisory capacity: Act dated 20 December 2001, Article 3, § 2)

Alternate members

Fernand Van Hemelrijck	Director-General at the Federal Public Service, Chancellery and General Services, Alternate chairman
Johan Pieters	Director at the Ministry of Finance
Yvan Hubot	General advisor at the Ministry of Foreign Affairs, Foreign Trade and International Cooperation
Brigitte Feys	First assistant at the Ministry of the French-speaking Community (Replaced since 10 March 2006 by Martine Thomas, Attaché at the Ministry of the French-speaking Community)
Lucien De Leebeeck	Advisor at the Federal Public Service, Justice

Annex 3

COMPOSITION OF THE COMMISSION'S SECRETARIAT

Project leader	De Trazegnies Marc	(01.01.2002 to 31.12.2007)
Programming analyst	Plasschaert Roland	(01.01.2002 to 31.12.2007)
Claim Investigation and Examination Unit	Coeckelberg Fanny (*)	(01.06.2003 to 31.12.2007)
	Bontinck Luc	(01.10.2002 to 31.12.2007)
	Pezechkian Johanna	(01.09.2003 to 31.12.2007)
	Hanssens Nathalie	(17.05.2004 to 31.12.2007)
	Kapper Alain	(01.09.2002 to 16.04.2004)
	Citters Elke	(01.11.2003 to 16.04.2007)
	Jult Leentje	(01.05.2004 to 04.11.2007)
	Chantraine Paul	(15.10.2004 to 30.04.2005)
Legal Unit	Nicaise Dominique	(01.04.2004 to 31.12.2007)
	Opoczynski Virginie	(01.08.2005 to 31.12.2007)
	Rijsbrack Ilse	(21.11.2005 to 31.12.2007)
	Hamer Isabelle	(01.09.2002 to 31.07.2004)
	Reheul Nelleke	(09.09.2004 to 01.11.2005)
Administrative Unit	Boulanger Jeanine	(01.03.2003 to 31.12.2007)
	Bosquillon Bérengère	(17.05.2004 to 31.12.2007)
	Van Snick Nathalie	(01.09.2004 to 31.12.2007)
	Thomaes Laura	(01.02.2006 to 31.12.2007)
Reception Unit	Bosiers Della	(01.09.2002 to 31.12.2007)
	Laios Patty	(01.09.2002 to 31.12.2007)

(*) *In charge of Unit management.*

Annex 4

CLAIMANTS ACCORDING TO THE COUNTRY OF ORIGIN

COUNTRY	NUMBER
Belgium	3285
United States	790
Israel	766
France	169
Canada	156
Great Britain	111
The Netherlands	76
Australia	76
Germany	35
Brazil	33
Argentina	25
Switzerland	24
South Africa	12
Austria	10
Spain	9
Grand Duchy of Luxemburg	8
Hungary	6
Sweden	4
Italy	3
Greece	2
West Indies	2
Mexico	2
Venezuela	2
Dem. Rep. of Congo	2
Thailand	2
Uruguay	2
Porto Rico	1
Czech Republic	1
Turkey	1
Monaco	1
Namibia	1
Hong-Kong	1
Denmark	1
Ecuador	1
Totals	**5620**

Annex 5

CLAIMS ACCORDING TO THE CLAIMANTS' YEAR OF BIRTH

YEAR OF BIRTH	NUMBER
1900	10
1901	1
1902	4
1903	4
1904	7
1905	6
1906	8
1907	12
1908	8
1909	20
1910	26
1911	26
1912	43
1913	36
1914	46
1915	37
1916	51
1917	47
1918	68
1919	74
1920	96
1921	131
1922	148
1923	136
1924	167
1925	167
1926	168
1927	198
1928	213
1929	224
1930	250
1931	248
1932	255
1933	239
1934	228
1935	176
1936	181
1937	208
1938	194
1939	177
1940	132
1941	80
1942	87
1943	69
1944	40
Total with **year of birth (until 1944)**	4746
Claims without year of birth	413
Claims with year of birth after 1944	461
Total numbers of claims	**5620**