

Please note that this is not an official English translation of the original. In the event of divergence in the translated version, the original Dutch text of the "Instellingsbesluit Restitutiecommissie van de Minister van Onderwijs, Cultuur en Wetenschap van 15 april 2021, nr. WJZ/27740278, houdende instelling van de Adviescommissie restitutieverzoeken cultuurgooederen en Tweede Wereldoorlog en de vaststelling van het door deze commissie te hanteren beoordelingskader (Instellingsbesluit Restitutiecommissie)," will prevail.

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## Decree establishing a Restitutions Committee

Effective from 22/04/2021 until further notice.

Decree issued by the Minister for Education, Culture and Science on 15 April 2021, no. WJZ/27740278, establishing an Advisory Committee on the Assessment of Restitution Applications for Items of Cultural Value and the Second World War and laying down the assessment framework to be used by that committee (Decree establishing a Restitutions Committee)

The Minister of Education, Culture and Science,

having regard to Section 15(3) of the 1995 Public Records Act,

hereby decrees as follows:

### Section 1. Definitions

For the purposes of this Decree, the following definitions shall apply.

*Archive records*: records as referred to in Section 1c, first paragraph, of the 1995 Public Records Act.

*Expertise Centre*: the Expertise Centre for the Restitution of Items of Cultural Value and the Second World War at the NIOD Institute for War, Holocaust and Genocide Studies; *binding opinion*: a decision as referred to in Section 900(2) of Book 7 of the Civil Code.

*Minister*: the Minister of Education, Culture and Science.

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*Restitution*: the return to the original owner or to their legal heirs under inheritance law of cultural items expropriated involuntarily from the original owner due to circumstances related directly to actions of the Nazi regime.

*Restitutions Committee*: the Advisory Committee on the Assessment of Restitution Applications for Items of Cultural Value and the Second World War, as referred to in Section 2.

*State*: the Dutch state.

*Applicant*: the person applying for restitution of an item of cultural value.

### Section 2. Establishment and tasks of the Restitutions Committee

1. There shall be an Advisory Committee on the Assessment of Restitution Applications for Items of Cultural Value and the Second World War, with the following tasks:
  - a. advising the Minister, at his/her request, concerning ministerial decisions in respect of applications for restitution insofar as the items of cultural value in question are in the possession of the State; and,
  - b. issuing binding opinions, at the Minister's request, concerning applications for restitution

insofar as the items of cultural value in question are in the possession of parties other than the State.

2. The Minister shall make a request as referred to in subsection 1b only if the applicant and the current possessor request the Minister to do so, by mutual agreement.

### **Section 3. Composition of the Restitutions Committee**

1. The Restitutions Committee shall comprise no more than seven members, including a chair and a deputy chair.
2. The members shall not be employed by the Ministry, nor shall they in any way be otherwise employed under the responsibility of the Minister.
3. The chair and the deputy chair shall be qualified lawyers (“meester in de rechten”).
4. The Restitutions Committee shall include at least one member whose expertise on matters concerning the Second World War constitutes a substantial contribution to the work of the Committee.
5. The Restitutions Committee shall include at least one member whose expertise on matters concerning art history and museums constitutes a substantial contribution to the work of the Committee.
6. The Minister shall appoint the chair, the deputy chair and the other members of the Restitutions Committee for a term not exceeding three years. They may be reappointed once at most, for a further term not exceeding three years.

### **Section 4. Consideration of applications**

1. The Restitutions Committee shall consider applications as referred to in Section 2(1):
  - a. in accordance with the assessment framework appended to this Decree; and,
  - b. in a subcommittee comprising at least three of its members, to be appointed by the chair, and in any case including either the chair or the deputy chair.
2. The Restitutions Committee may hear oral submissions by the parties.
3. The Restitutions Committee may promote an amicable settlement between the parties at any stage.
4. The Restitutions Committee may ask the Expertise Centre to conduct an investigation into the facts of a case.
5. The Restitutions Committee may approach third parties directly in order to obtain information and may hear oral submissions from them.
6. The Restitutions Committee may adopt regulations governing its working methods.

### **Section 5. Support**

1. The Minister shall establish a secretariat to support the Restitutions Committee.
2. The secretariat shall be accountable only to the Restitutions Committee for its work.
3. The Minister shall ensure that the Restitutions Committee has timely and complete access to any and all documents it may require, insofar as these are in the Ministry’s possession.
4. All officials of the Ministry shall comply with any request or invitation submitted to them by the Restitutions Committee.

### **Section 6. Non-application of access restrictions**

Should the Restitutions Committee or employees of the Expertise Centre need to inspect archive records held in a government repository or in the Central State Repository with a view to performing the tasks referred to in Section 2, any restrictions on access as referred to in Section 15(1) of the 1995 Public Records Act shall not apply to them.

## **Section 7. Annual report**

The Restitutions Committee shall report annually to the Minister concerning its performance of its duties.

## **Section 8. Committee records**

The records of the Restitutions Committee shall be transferred to the archives of the Ministry's Directorate for Cultural Heritage and the Arts either upon its dissolution or at such earlier time as may be dictated by circumstances.

## **Section 9. Transitional provisions – advice and opinions**

1. Advice and binding opinions issued by the committee referred to in Section 2 of the Decree establishing the Advisory Committee on the Assessment of Restitution Applications and effective on the day immediately prior to the present Decree entering into force shall be considered to have been issued by the Restitutions Committee.
2. Applications as referred to in Section 2(1) which were submitted to committee referred to in Section 2 of the Decree establishing the Advisory Committee on the Assessment of Restitution Applications, as it was constituted on the day immediately prior to the present Decree entering into force, but in respect of which that committee had yet to issue any advice or binding opinion, shall be deemed to have been submitted to the Restitutions Committee.
3. Notwithstanding the provisions of the present Decree and the regulations adopted pursuant to Section 4(6), applications as referred to in Section 2 of the Decree establishing the Advisory Committee on the Assessment of Restitution Applications are subject to the regulations adopted pursuant to Section 4(2) of that decree, as effective on the day immediately prior to the present Decree entering into force.
4. Notwithstanding subsection 3, the present Decree and the regulations adopted pursuant to Section 4(6) shall apply in full:
  - a. to pending applications as referred to in Section 2(1a), if the applicant so agrees; and,
  - b. to pending applications as referred to in Section 2(1b), if both the applicant and the current possessor so agree.

## **Section 10. Transitional provisions – appointments**

1. Those persons who, on the day immediately prior to the present Decree entering into force, were serving as members of the committee referred to in Section 2 of the Decree establishing the Advisory Committee on the Assessment of Restitution Applications, as it was constituted on that day, shall become members of the Restitutions Committee for the remainder of their existing term of office.
2. Section 3(6) shall apply equally, on the understanding that a member of the committee referred to in Section 2 of the Decree establishing the Advisory Committee on the Assessment of Restitution Applications, as effective on the day immediately prior to the present Decree entering into force, may not be reappointed as a member of the Restitutions Committee.

## **Section 11. Repeal of previous statute**

The previous Decree establishing the Advisory Committee on the Assessment of Restitution Applications, first issued on 16 November 2001, is repealed.

## **Section 12. Entry into force**

This Decree shall enter into force on the day following the date of its publication in the government gazette (*Staatscourant*).

## **Section 13. Official title**

This Decree shall be cited as the Decree establishing a Restitutions Committee.

This Decree and its associated explanatory notes will be published in the government gazette (*Staatscourant*).

The Minister of Education, Culture and Science,

I. K. van Engelshoven

## **Assessment framework for the Restitutions Committee**

*This Appendix forms part of Section 4(1) of the Decree establishing a Restitutions Committee.*

The advice and binding opinions issued by the Restitutions Committee are intended to achieve a just and fair solution as referred to in Article 8 of the Washington Principles on Nazi-Confiscated Art (hereafter: the Washington Principles). To that end, the committee applies the following assessment criteria.

### **§1. Admissibility requirements**

#### **Assessment criteria**

The Restitutions Committee first determines whether the application for restitution:

- a. concerns a case on which the Council for the Restoration of Rights or another court has already issued a substantive ruling;
- b. concerns a case currently pending before a court;
- c. concerns an item the applicant or their legal predecessors have previously renounced any claim to or in respect of which they have already reached a settlement;
- d. concerns a case on which the Restitutions Committee has already issued advice or a binding opinion; or,
- e. in the case of an item not currently in the possession of the State, has not been submitted on behalf of all those with a valid claim to the assets of the original owner.

#### **Decision**

If any of the above criteria applies, the Restitutions Committee cannot consider the substance of the application unless there are compelling facts or circumstances which justify that it do so nonetheless.

If the application concerns a case on which the committee's predecessor issued advice or a binding opinion before the current Decree establishing the Restitutions Committee came into effect, the

committee will consider whether reassessment is possible because the previous advice or binding opinion:

- a. was based in whole or in part upon Article 3, preamble and paragraph (c), (e), (f) or (g) of the committee regulations as they applied prior to the entry into force of the current Decree; and,
- b. did not conclude that restitution or any other form of legal redress should take place.

## **§2. Ownership requirement**

### **Assessment criterion**

If the Restitutions Committee does deem the application admissible, it then assesses whether it is highly plausible that the applicant is the original owner or their legal heir under inheritance law.

### **Advice or binding opinion**

If that highly plausibility does not exist, the Restitutions Committee advises that the application for restitution be rejected.

## **§3. Involuntary expropriation requirement**

### **Evaluation criteria**

Once the Restitutions Committee has determined that it is highly plausible that the applicant is indeed the original owner or their legal heir under inheritance law, it then assesses whether it is also sufficiently plausible that the original owner had the item in question expropriated involuntarily.

The committee bases this assessment upon criteria 3.1, 3.2 and 3.3.

### **Criterion 3.1. Private individual belonging to a persecuted group**

If the original owner is a private individual belonging to a persecuted group, involuntary expropriation is presumed if it occurred in the Netherlands after 10 May 1940, in Germany after 30 January 1933 or in Austria after 13 March 1938, unless expressly stated otherwise.

### **Criterion 3.2. Art dealer belonging to a persecuted group**

1. If the original owner is an art dealer belonging to a persecuted group, involuntary expropriation is presumed if there are indications which make it sufficiently plausible.
2. Such indications may include, but are not limited, to:
  - a. a post-war official report of the item's theft, confiscation or involuntary sale;
  - b. a direct sale, under threat of reprisal, to a representative of the Nazis or to a person subsequently convicted as a collaborator;
  - c. a sale in which an undertaking to deliver a passport or safe conduct formed part of the transaction;
  - d. a sale at a price significantly below the then market value; or,
  - e. a sale by a Nazi-appointed custodian ("Verwalter"), unless it can be proven that the original owner enjoyed the full monetary benefit of the sale or explicitly waived their rights after the war.
3. In the absence of an official report as referred to in 2a, or in cases in which only the Netherlands Art Property Foundation has filed such a report, involuntary expropriation is presumed if there are indications which make theft or confiscation sufficiently plausible. The threatening general situation is also taken into account.

4. If there are sufficient indications that the item belonged to the dealer's private collection rather than their stock in trade, criterion 3.1 is applied.

### **Criterion 3.3. Other cases of involuntary expropriation**

Irrespective of the original owner's status and of where and when expropriation occurred, as long as this was after 30 January 1933, it is presumed to be involuntarily if this is sufficiently plausible – for example, because the original owner needed the proceeds to finance his/her escape from the Nazi regime.

### **Advice or binding opinion**

1. Having applied criteria 3.1-3.3, if involuntary expropriation is not sufficiently plausible, the Restitutions Committee recommends that the application for restitution be rejected.
2. Having applied criteria 3.1-3.3, if involuntary expropriation is sufficiently plausible and the item is in the possession of the State, the Restitutions Committee recommends that it be restituted.
3. Having applied criteria 3.1-3.3, if involuntary expropriation is sufficiently plausible and the item is not in the possession of the State, the Restitutions Committee assesses whether the current possessor acted in good faith with regard to its provenance when acquiring it. If the current possessor waives their right to claim good faith, however, the committee recommends that the item be returned without investigating that aspect.

## **§4. Acquisition in good faith**

### **Assessment criterion**

Good faith is presumed if:

- a. the investigation carried out by the current possessor into the item's provenance prior to its acquisition complied with the standards of the time; and,
- b. in the light of that investigation and the general circumstances, the current possessor did not know and could not reasonably have known at the time of its acquisition that the item had been expropriated involuntarily from a previous owner.

### **Binding opinion**

1. If the current possessor did not act in good faith with regard to the item's provenance when acquiring it, the Restitutions Committee recommends that it be restituted.
2. If the current possessor did act in good faith with regard to the item's provenance when acquiring it, the Restitutions Committee determines the extent to which the application for restitution should be honoured nonetheless, in the form of either:
  - a. unconditional restitution; or,
  - b. an arbitrated solution, provided that this is "just and fair" as stated in Article 8 of the Washington Principles.
3. An arbitrated solution may entail, for example:
  - a. restitution subject to appropriate conditions, including financial ones;
  - b. restitution on the condition that the item remain on public view permanently, temporarily or for certain periods of time;
  - c. non-restitution, but with the current possessor required to pay the applicant appropriate financial compensation; or,
  - d. non-restitution, but with the current possessor required to exhibit the item in public with details of its origin and the name of the original owner.

#### **§5. Deviation in case of compelling reasons**

Should the particular circumstances provide substantial reason to do so, in exceptional cases the Restitutions Committee may deviate from one or more of the procedures in this assessment framework in order to achieve a just and fair solution as referred to in Article 8 of the Washington Principles.