

Please note this is an unauthorised translation of the original Dutch text "*Reglement werkwijze Restitutiecommissie 2021*". In case of divergence in the translated version, the original Dutch text prevails.

Restitutions Committee Procedural Regulations 2021

The Restitutions Committee,

Having regard to the provisions in paragraph 6 of article 4 of the Decree Establishing the Restitutions Committee,

Adopts the Restitutions Committee Procedural Regulations 2021, originally adopted on 12 April 2021 and amended as follows:

Article 1. Definitions

1. The terms used in these regulations are defined as follows:
 - a. Expertise Centre: The Restitution of Items of Cultural Value and the Second World War Expertise Centre of the NIOD Institute for War, Holocaust and Genocide Studies;
 - b. parties: the applicant or applicants and the holder;
 - c. application: restitution application;
 - d. applicant: the person applying for restitution of the item of cultural value;
2. The other definitions in the Decree Establishing the Restitutions Committee also apply to these regulations.

Article 2. Assessment of Whether the Application is Admissible for Substantive Handling

1. The Restitutions Committee first of all assesses on the grounds of §1 of the appendix to the Decree Establishing the Restitutions Committee whether the application is admissible for substantive handling.
2. If the item of cultural value is not held by the Dutch State, there is a requirement prior to substantive handling that, at the request of the Restitutions Committee, both parties declare within four weeks that they accept these regulations, the appendix to the Decree Establishing the Restitutions Committee and the Restitutions Committee's opinion about the application as binding. The Restitutions Committee may extend this period.

Article 3. Further Handling in Writing

1. As soon as the Restitutions Committee handles the application substantively, it gives the parties the opportunity to give an explanation and submit additional information within six weeks.
2. The Committee may at any point during the handling:
 - a. obtain information independently;
 - b. have the Expertise Centre conduct an investigation;
 - c. give the parties the opportunity to provide a response within a specified period;
 - d. require a party to provide within a specified period additional information or documents, such as a certificate of inheritance.

Article 4. Sending Documents and Copies

1. In principle all documents and copies are sent exclusively in digital form. A party may request a paper version.
2. The Restitutions Committee sends copies of documents it receives from a party or sends to a party to the other party.

3. If the applicant or applicants have designated a third party as representative, the Restitutions Committee sends all documents or copies to the representative as well as to the applicants using their e-mail addresses as known to the Restitutions Committee.
4. Point 3 does not apply if:
 - a. an applicant tells the Restitutions Committee that he or she no longer wishes to receive documents or copies, or
 - b. if there are multiple applicants, they prefer documents or copies to be sent to only one or some of them.

Article 5. Investigation

1. The Expertise Centre records the results of the investigation that it conducts on the Restitutions Committee's instructions in an overview of the facts.
2. The Expertise Centre may require a party to provide additional information or documents for the purposes of the investigation within a period to be specified. It may extend the period.
3. The Expertise Centre first of all prepares a draft overview of the facts, which it sends directly to the parties.
4. They may submit their written response to it to the Expertise Centre within six weeks.
5. The Restitutions Committee invites the Expertise Centre to a meeting to discuss the draft overview of the facts, including any amendments, and the responses received.
6. Steps that the Expertise Centre takes as a result of this meeting are accounted for in the Expertise Centre's final overview of the facts, which the Expertise Centre sends to the Restitutions Committee.
7. The Restitutions Committee sends it to the parties immediately.
8. They may submit their written response to it to the Restitutions Committee within six weeks.
9. The Restitutions Committee is the focal point for questions in connection with the investigation at the start of and during the Expertise Centre's investigation.
10. The Restitutions Committee may furthermore consult witnesses or experts or have an investigation conducted by experts it designates. The Restitutions Committee may send the report of such an investigation to the parties, who may respond to it within two weeks.

Article 6. Hearing

1. In principle, during its handling of an application the Restitutions Committee may also conduct a hearing, if necessary more than once.
2. It invites the parties and the Expertise Centre to it as soon as possible after the period specified in article 5, eighth or tenth point, or after the extended period pursuant to article 8a.
3. It may decide not to conduct a hearing if:
 - a. both parties see no need for one, or
 - b. on the grounds of article 2, the application is apparently not admissible for substantive handling.
4. The parties may send documents to the Restitutions Committee no later than two weeks before the hearing.
5. The hearing is attended on behalf of the Restitutions Committee by at least three of its members. The hearing is chaired by the chair or the vice-chair or, if they are not able to attend, by one of the other members.
6. It is desirable that the applicant or at least one of the applicants attends the hearing in person, even if a third party has been designated as representative.
7. The Restitutions Committee may permit the parties to have witnesses or experts attend the hearing in person and speak at it provided that their names and addresses are supplied no later than two weeks before the hearing.

8. The parties and their representatives may be given the opportunity to participate in the hearing by means of a digital video link. They may also request that for the witnesses or experts referred to in point 6.
9. The hearing is minuted and the minutes are sent to the parties.

Article 7. Sending the Draft Advice or Draft Binding Opinion

1. Before the Restitutions Committee adopts its advice or finalizes its binding opinion about the application, it sends a draft of it to the parties:
 - a. within six weeks after the hearing or, if there is more than one hearing, within six weeks after the last of them, or
 - b. if the parties decide not to have a hearing, six weeks after the period specified in article 5, eighth or tenth point, or after the extended period pursuant to article 8a.
2. It gives the parties the opportunity to respond to the draft in writing within six weeks.

Article 8. Sending the Advice or Binding Opinion

1. The Restitutions Committee adopts the advice or binding opinion within six weeks after the period specified in article 7, second point, or after the extended period pursuant to article 8a, unless it considers there is need for further consultation with the parties or for additional research by the Expertise Centre.
2. The advice or binding opinion is signed by the chair or vice-chair and the secretary.
3. The Restitutions Committee sends its advice exclusively to the Minister.
4. It sends its binding opinion to the parties, with a copy to the Minister.

Article 8a. Extending or Reducing a Period

A period specified in or pursuant to these regulations may, if necessary, be extended by an equal period, or, if necessary, be reduced.

Article 9. Handing Over the Item of Cultural Value and the Parties' Costs

If the Application concerns an item of cultural value not held by the Dutch State:

- a. the handing over takes place at its location, unless the Restitutions Committee decides otherwise.
- b. the costs incurred by the parties themselves with regard to the handling of the application and the implementation of the binding opinion are to be borne by the parties, unless the Restitutions Committee decides otherwise

Article 10. Publication of the Advice or Binding Opinion

The Restitutions Committee publishes its advice or binding opinion on its website or in some other way, if necessary anonymizing personal details, unless a party has compelling reasons why that should not be done.

Article 11. Competent Court in the Case of a Binding Opinion

1. Dutch courts are exclusively competent to rule on disputes about the binding force on the parties of a binding opinion.
2. Dutch courts may only nullify the binding opinion if requested to do so within two months.

Article 12. Liability

The chair, the vice-chair, the members, the secretary and other Restitutions Committee staff are not liable for any actions or omissions with regard to an application the parties have submitted to the Restitutions Committee.

Article 13. Confidentiality

Without prejudice to articles 4, 7, 8 and 10, the Restitutions Committee is obliged to keep

confidential all information relating to the parties that it has taken note of during the handling of the application.

Article 14. Objection and Exemption

1. A party may object to a member of the Restitutions Committee on the basis of facts or circumstances that might make the formation of an impartial opinion difficult.
2. The chair decides about allowing the objection. If the objection concerns the chair, the vice-chair decides. The parties are informed about the decision.
3. A member of the Restitutions Committee may claim exemption on the basis of facts or circumstances as referred to in point 1. The member is obliged to do so if the chair is of the opinion that the said facts and circumstances relating to that member exist.

Article 15. Unforeseen

The Restitutions Committee decides in a case not provided for in these regulations on the basis of reasonableness and fairness.

Article 16. Short Title

These regulations are cited as Restitutions Committee Procedural Regulations 2021

Article 17. Withdrawal of Previous Regulations

1. The regulations for the binding opinion procedure in accordance with article 2, paragraph 2 and article 4, paragraph 2 of the Decree Establishing the Advisory Committee on the Assessment of Restitution Applications for Items of Cultural Value and the Second World War were withdrawn on 22 April 2021 by a decree of 12 April 2021.
2. The regulations referred to in the first point remain applicable to applications submitted before 22 April 2021 for the restitution of an item of cultural value not held by the Dutch State, unless both parties have requested application of the Decree Establishing the Restitutions Committee and the Restitutions Committee Procedural Regulations 2021.

Article 18. Coming into Force

1. This amending decree comes into effect on 15 July 2021.
2. It and the notes are on the Restitutions Committee's website.

Adopted by the Restitutions Committee in its meeting on 12 July 2021.

Notes

General

In 2007 the Restitutions Committee adopted its first regulations on the grounds of the then Decree Establishing the Advisory Committee on the Assessment of Restitution Applications for Items of Cultural Value and the Second World War. The Restitutions Committee amended those regulations a number of times, most recently on 29 January 2019. Those regulations related solely to applications for restitution of items of cultural value not held by the Dutch State. Those regulations provided for the Restitutions Committee's procedure for that type of applications, the assessment criteria to be used and the content of the findings it formulates in the form of a binding opinion.

The Decree Establishing the Advisory Committee on the Assessment of Restitution Applications for Items of Cultural Value and the Second World War was withdrawn and replaced with the Decree Establishing the Restitutions Committee with effect from

22 April 2021. According to that Decree Establishing the Restitutions Committee, the Restitutions Committee issues *advice* to the Minister if the Dutch State is the current holder of the item of cultural value, and the Restitutions Committee gives the parties a *binding opinion* if the current holder is a party other than the Dutch State. This 'binding opinion' is a decision within the meaning of article 7:900, second section, of the Dutch Civil Code that binds both parties. This distinction between the two sorts of cases is a continuation of current practice.

The new Decree Establishing the Restitutions Committee furthermore contains the complete assessment framework for both sorts of cases and the rules relating to the content of the advice or the binding opinion to be given by the Restitutions Committee.

These changes in the new Decree Establishing the Restitutions Committee have resulted in the Restitutions Committee replacing its regulations with new regulations. The new regulations no longer provide for the Restitutions Committee's assessment criteria. They are concerned solely with its procedure. Unlike the situation previously, the regulations apply to both cases where the Dutch State is the holder and cases where a party other than the Dutch State is the holder. Efforts have been made to formulate provisions that apply to both types of cases. This proved to be impossible for a few provisions. In such provisions the text is explicit about whether the provision applies only if the Dutch State is the holder, or only if the holder is a party other than the Dutch State.

The Restitutions Committee now deems it desirable to have further clarification of the provisions relating to the procedure and to include, for the Restitutions Committee itself and for the parties, as much as possible clear periods so that all those involved have the best possible understanding of the course of the procedure in advance. The new article 8a includes a general option to extend or reduce the periods.

Article by Article

Article 1

The parties to the handling of a restitution application are the restitution applicant or applicants and the current holder. Depending on the item of cultural value concerned, the term 'holder' refers to the Dutch State or a party other than the Dutch State.

Articles 2 and 3

As before, all restitution applications must be submitted to the Minister, who forwards them to the Restitutions Committee. If the item of cultural value is not held by the Dutch State, the restitution applicant, as before, can only ask the Restitutions Committee for a binding opinion jointly with the holder. That also applies to any requests for reassessment of cases already handled.

After the Restitutions Committee has received the restitution application from the Minister, it first of all investigates whether, on the grounds of article 2, the application is admissible for substantive handling. If it establishes that this is so, the first step shall be a comprehensive handling in writing. During it, the parties have the opportunity at various stages to respond or provide additional explanation.

Article 4

If the applicant or applicants have designated a third party as representative, the Restitutions Committee will send all documents to the representative as well as directly to the applicant or

applicants in order to ensure the direct involvement of applicants in the Restitutions Committee's handling of the case. Documents are always transmitted by e-mail. It is therefore important that applicants or their representative see to it that the Restitutions Committee has all e-mail addresses.

Article 5

A careful assessment by the Restitutions Committee usually calls for a thorough investigation of the facts. In general this shall be carried out by the Expertise Centre, which shall record the results of its investigation in an overview of the facts. Like the Restitutions Committee, the Expertise Centre may ask the parties directly to provide further information and additional documents. The Expertise Centre first of all prepares a draft overview of the facts. It sends that draft to the parties, who can give their responses. Thereafter it sends the final overview of the facts to the Restitutions Committee. The Restitutions Committee sends that overview to the parties so that they can also give their responses to the final overview of the facts. If a party wants information about the Expertise Centre's investigation or its progress, that party may not approach the Expertise Centre. Any contact must be through the Restitutions Committee's secretariat.

Article 6

In addition to the handling in writing, in principle the Restitutions Committee may also arrange a hearing, or if necessary several hearings. This is also a way to strengthen the parties' involvement in the handling of the case. It is therefore desirable that at least one of the restitution applicants attends the hearing, even if a third party has been designated as representative. The timing of a hearing shall be arranged in consultation with the parties. Participation in it may be by means of a digital video link if so desired. Point 2 describes circumstances in which there may not be a hearing, for instance if both parties let it be known that they do not need a hearing. If only one of the two parties has let that be known, the Restitutions Committee shall engage in further consultation with the parties because it is preferable if both parties participate in the hearing. In view of the nature of a hearing, in many cases it will be better if the entire membership of the Restitutions Committee does not attend in order to prevent the number of people involved from becoming too great. The fifth point therefore stipulates that the hearing is attended on behalf of the Restitutions Committee by at least three of its members. If it would appear to be useful, the hearing may be used to facilitate bringing the parties together. It certain circumstances this may lead to a settlement between the parties, as referred to in article 4, paragraph 3 of the Decree Establishing the Restitutions Committee, or to a mediated solution as referred to in §4 of the appendix to the Decree Establishing the Restitutions Committee.

Article 7

Before the Restitutions Committee issues its advice to the Minister or binding opinion to the parties, it submits a draft to the parties and invites them to comment.

Article 11

The binding opinion made by the Restitutions Committee if the item of cultural value is not held by the Dutch State is a decision within the meaning of article 7:900, second section, of the Dutch Civil Code. The binding opinion binds the parties. The parties are entitled to contest it on limited grounds in court within two months. The court tests the binding opinion solely against the stipulations of title 15 of book 7 of the Dutch Civil Code.

Article 17

New regulations are being adopted in conjunction with this decree that replace previous regulations. As a transition measure, the withdrawn regulations remain applicable to restitution applications relating to an item of cultural value held by a party other than the Dutch State that were pending when the regulations were withdrawn, unless both parties have requested application of the new assessment framework included in the new Decree Establishing the Restitutions Committee.

See the Restitutions Committee's website (www.restitutiecommissie.nl/en) for contact details and detailed information.