

Please note this is an unauthorised translation of the original Dutch text "*Reglement inzake adviesprocedure in het kader van artikel 2, tweede lid, en artikel 4, tweede lid, Besluit adviescommissie restitutieverzoeken cultuurgoederen en Tweede Wereldoorlog*"

**Regulations for opinion procedure under 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.**

**Definition**

**Article 1**

The terms used in these regulations are defined as follows:

- a. the Committee: the Advisory Committee on the Assessment of Restitution Applications for Items of Cultural Value and the Second World War pursuant to the Decree establishing the advisory committee on the assessment of restitution applications (hereinafter the Decree);
- b. the Secretariat: the Secretariat as referred to in Article 5 of the Decree;
- c. the Minister: the Minister of Education, Culture and Science;
- d. the Ministry: the Ministry of Ministry of Education, Culture and Science;
- e. the work: the item or items of cultural value, as referred to in Article 2, paragraph 2 of the Decree, that is or are the subject matter of the dispute;
- f. the applicant: the person applying for restitution of the work;
- g. the owner: the current owner, other than the State of the Netherlands;
- h. the parties: the applicant and the owner.

**Task**

**Article 2**

1. At the request of the Minister, the Committee has the task of giving an opinion to the parties about disputes concerning the return of the work.
2. The Committee does this by issuing a binding opinion within the meaning of Article 7:900 of the Dutch Civil Code (contract of settlement) or by promoting a settlement between the parties.

**Article 3**

The Committee issues an opinion on the basis of reasonableness and fairness and may, in any event, take the following into consideration:

- a. internationally and nationally accepted principles such as the Washington Principles and the government's policy guidelines concerning the restitution of looted art in so far as they are applicable;
- b. the circumstances in which possession of the work was lost;
- c. the extent to which the applicant has endeavoured to recover the work;
- d. the circumstances in which the owner acquired the work and the inquiries the owner made prior to acquiring it;
- e. the significance of the work to the applicant;
- f. the significance of the work to the owner;
- g. the significance of the work to public art collections.

**Admissibility**

**Article 4**

The Committee can declare an application inadmissible if:

- a. it concerns a dispute regarding which one of the parties has already instituted proceedings before a court, or

- b. this is a dispute on the substance of which a court has already given a decision, or
- c. the applicant has previously explicitly relinquished his or her rights to the work at issue, or
- d. it emerges that the applicant does not represent all those entitled to the assets of the supposed original owner.

### **The hearing of disputes**

#### **Article 5**

- 1. The application is submitted to the Minister and may be addressed to the Committee.
- 2. Both parties request the Minister to submit their dispute to the Committee in accordance with Article 2, paragraph 3 of the Decree.
- 3. After the Minister has presented the dispute to the Committee, it will hear the dispute after the parties have stated in writing that they accept these regulations and that they accept the opinion to be issued by the committee as binding.
- 4. If the parties, after a request to that effect, have not complied with the stipulation referred to in paragraph 3 within four weeks, the dispute will not be heard.
- 5. The Committee may extend the terms.
- 6. The chairman decides which Committee members will issue the binding opinion.

#### **Article 6**

- 1. The Committee sends both parties these regulations and notifies them in writing that it has received the request for an opinion from the Minister.
- 2. The Committee gives the parties the opportunity to provide an explanation concerning their viewpoint within six weeks and to provide the Committee with further information.
- 3. In their explanation, each of the parties can express the wish that:
  - a. the Committee conducts further investigation, if required, of specified items, and
  - b. there is a hearing.
- 4. The Committee may decide at any point during the handling that:
  - a. there will be a hearing;
  - b. the Committee will obtain information and/or conduct further investigation itself;
  - c. the parties will be given the opportunity to respond subject to a term of six weeks and/or
  - d. the applicant and/or the owner will provide further documents or information, such as a certificate of inheritance, subject to a term to be set by the Committee.
- 5. The Committee may extend the terms.

#### **Article 7**

- 1. Should the Committee decide that it will carry out further investigation itself, it will record its findings in an overview of the facts.
- 2. The Committee sends the overview of the facts to the parties. The parties may respond to it in writing within a term of six weeks.
- 3. At the request of the parties, the Committee will arrange for an (unauthorised) English translation of the overview of the facts.
- 4. Should further investigation be limited to hearing witnesses or experts or having research conducted by one or more experts it designates, it will then suffice for the Committee to send the report concerned to the parties, to which they may respond within a term of two weeks.
- 5. The Committee may extend the terms.

#### **Article 8**

- 1. Should the Committee decide that a hearing is to take place, it sets the place, day and time and informs the parties accordingly.



2. The Committee may allow the parties to bring witnesses or experts and have them heard. The names and addresses of such persons are to be given to the Committee at least two weeks before the hearing.
3. In regard to the planned hearing, the parties may send documents to the Committee at least four weeks beforehand.

#### Article 9

The Committee sends copies of the documents it receives from a party to the other party.

#### Article 10

If the parties reach a settlement, the Committee will record its contents in the form of a binding opinion.

### **Opinion**

#### Article 11

Among other things the Committee may recommend that:

- a. the work be handed over to the applicant;
- b. the work be handed over to an impartial third party on behalf of all those entitled to the assets of the former owner, if necessary subject to the provisions of an arrangement about the associated costs;
- c. the work be handed over for a consideration, to be specified, to be paid by the applicant to the owner;
- d. the work be handed over to the applicant subject to further provisions;
- e. rejection of the request for restitution;
- f. rejection of the request for restitution, subject to the obligation on the owner to exhibit the work stating the provenance and the original owner;
- g. rejection of the request for restitution, subject to the specification of a consideration to be paid by the owner to the applicant;
- h. rejection of the request for restitution subject to further provisions.

#### Article 12

1. The Committee's chairman or vice-chair and the director sign the opinion, which is sent to the parties with a copy to the Minister.
2. The Committee's Chairman may correct evident errors and/or evident calculation or writing errors in the opinion, either on his or her own accord or in response to a written request from one of the parties submitted no later than two weeks after the opinion was sent.
3. The parties are informed in writing of any changes or corrections.

#### Article 13

1. The handing over takes place where the work is located, unless the Committee decides otherwise.
2. Any costs incurred by the parties themselves with regard to the handling of the dispute and the implementation of the opinion are to be borne by the parties, unless the Committee decides otherwise.

### **Confidentiality, objection and exemption**

#### Article 14

Without prejudice to the provisions in articles 9, 12 and 16, the Committee is obliged to treat as confidential all information relating to the parties of which it has become cognizant during the handling of the dispute.

#### Article 15

1. One or both parties may object to a member of the Committee on the basis of facts or circumstances that might make the formation of an impartial opinion difficult.
2. Having regard to the provisions in Article 4 of the Decree, the chairman decides about allowing an objection. If the objection concerns the chairman, the vice-chair decides.
3. A member of the Committee may claim exemption in respect of a dispute on the basis of facts or circumstances as referred to in the first paragraph. The member is obliged to do so if the Committee's chairman is of the opinion that the said facts and circumstances do indeed exist in his or her case.
4. The parties are informed of the decision as referred to in the second paragraph.

#### **Publication**

#### Article 16

The Committee may publicize its opinion, if necessary by anonymizing personal details, unless one of the parties has compelling reasons why that should not be done..

#### **Liability**

#### Article 17

The chairman, vice-chairman, members, director and other Committee staff are not liable for any actions or omissions with regard to a dispute the parties have submitted to the Committee.

#### **Reversal**

#### Article 18

1. The Dutch courts are exclusively competent to rule on disputes about the binding force on the parties of a binding opinion issued by the Committee.
2. The Committee's binding opinion may only be reversed if it has been submitted to the ordinary court for review within two months after the opinion was sent to the parties. This relates exclusively to review as referred to in Title 15 of Book 7 of the Dutch Civil Code. The opinion becomes irreversible if the decision is not submitted to the ordinary court within the said term.

#### **Unforeseen**

#### Article 19

The Committee decides in all cases not provided for in these regulations on the basis of the yardsticks of reasonableness and fairness.

#### **Transitional and final provisions**

#### Article 20

1. These regulations will be published on the Committee's website.
2. The regulations will take effect as soon as they have been published.
3. The regulations as sent to the parties will apply to any cases being considered at the time the regulations take effect.

#### Article 21

These regulations were adopted at the Committee meeting on 3 December 2007 and amended at the meetings on 12 January 2009, 19 September 2011 and 27 January 2014.