

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 on binding 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 (hereafter: the Decree);
- b. the Minister: the Minister for Education, Culture and Science;
- c. the Ministry: the Ministry of Education, Culture and Science;
- d. the work: the item(s) of cultural value, as referred to in Article 2, paragraph 2 of the Decree, that is/are the subject matter of the dispute.
- e. the applicant: the person applying for restitution of items of cultural value;
- f. the owner: the current owner, other than the State of the Netherlands;
- g. the parties: the applicant and the owner.

Task

Article 2

1. At the request of the Minister, the Committee has the task of rendering 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 Section 7:900 of the Netherlands Civil Code (settlement agreement) or by promoting a settlement or the formation of a mediation agreement between the parties.

Article 3

The Committee issues an opinion in accordance with the requirements 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 line of policy concerning the restitution of stolen works of art in so far as they apply by analogy;
- b. the circumstances in which possession of the work was lost;
- c. the extent to which the applicant has endeavoured to trace the work;
- d. the circumstances in which the owner acquired the work and the inquiries the owner made prior to acquiring the work;
- e. the significance of the work for the applicant;
- f. the significance of the work for the owner;
- g. the significance for the public art collection.

Admissibility

Article 4

The Committee can deny a party's application if:

- a. it concerns a dispute regarding which one of the parties has already instituted proceedings before a court,
- b. this is a dispute on the substance of which the court has already given a decision, or
- c. the applicant has previously explicitly relinquished his or her rights to the work at issue.

The hearing of disputes

Article 5

1. Both parties request the Minister to submit their dispute to the Committee in accordance with Article 2, paragraph 3 of the Decree.
2. 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, that they accept the opinion at issue as binding and that they will comply with the outcome of any mediation.
3. If the parties, after a request thereto, have not met the stipulation referred to in paragraph 2 within four weeks, the dispute will not be heard.
4. The Committee may extend the terms.

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:
 - a. that the dispute be settled through mediation;
 - b. that the Committee conducts further investigations, if required, of specified items, and
 - c. that oral proceedings take place.
4. After receipt the explanation provided by the owner, the Committee may, at any point during the handling, decide:
 - a. that oral proceedings will take place;
 - b. that the Committee will obtain information and/or conduct further investigations itself;
 - c. that the parties will be given the opportunity to respond subject to a term of six weeks and/or
 - d. that the applicant and/or the owner will provide further documents or information 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 oral proceedings are 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 the latest ten days before the hearing.
3. Parties may send documents to the Committee until ten days before the oral proceedings.

Article 8

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

Article 9

Each party immediately sends the other party copies of all documents submitted to the Committee during this procedure.

Article 10

If the parties reach a settlement, the Committee will lay down the contents thereof in the form of a binding opinion.

Opinion

Article 11

The Committee may recommend that:

- a. the work be returned to the applicant;
- b. the work be returned by way of a set consideration from the applicant to the owner ;
- c. the work be returned to the applicant subject to further provisions;
- d. settlement of a set consideration by the owner to the applicant, while the work remains in the owner's possession;
- e. the work be exhibited, stating its provenance and the part played by the (heirs of the) original owner;
- f. the application for restitution be denied, subject to further provisions, where applicable.

Article 12

1. The chairman or vice-chairman and the director of the Committee sign the opinion and send it to the parties, with a copy to the Minister.
2. The chairman of the Committee may correct information or obvious calculation or writing errors in the opinion, either of 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

Any costs incurred by the parties themselves with regard to handling of the dispute and the preparation of the opinion are payable by the parties, unless the Committee decides otherwise.

Mediation

Article 14

1. Should both parties let it be known that they wish the dispute to be resolved by means of mediation, the Committee will take preparatory steps to reach an agreement to that effect. This agreement will include the appointment of the mediator and the stipulation that the mediator inform the Committee of the result of the mediation.
2. Should the mediation not lead to a resolution of the dispute, the Committee will resume its handling thereof.

Confidentiality, objection and exemption

Article 15

Without prejudice to the provisions referred to in articles 12 and 17, the Committee is obligated to maintain confidentiality with regard to all information relating to the parties of which it has become cognisant during the handling of the dispute.

Article 16

1. One or both parties may object to a member of the Committee on the basis of facts or circumstances that might make the forming of an impartial opinion difficult. Objections may be lodged within one week after receiving the confirmation of receipt of the application for an opinion.
2. The other members of the Committee decide if the grounds for objection are valid.
3. A member of the Committee may claim exemption in respect of a case on the basis of facts or circumstances as referred to in paragraph 1. The member is obliged to do so if the other members of the Committee are of the opinion that the said fact and circumstances do indeed exist in his case.
4. The parties are informed of the decision as referred to in the second paragraph.

Publication

Article 17

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

Liability

Article 18

The chairman, vice-chairman, the members, the 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 19

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. The opinion becomes irreversible if the decision is not submitted to the ordinary court within the said term.

Unforeseen

Article 20

The Committee decides all cases not provided for in these regulations in accordance with the requirements of reasonableness and fairness.

Transitional and final provisions

Article 21

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 matters being processed at the time the regulations take effect.

Article 22

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