

Working Translation

Rules of Procedure

of the Advisory Commission on the return of cultural property seized as a result of Nazi persecution, especially Jewish property as of 2 November 2016

Preamble

In 2003 the Federal Government set up the independent Advisory Commission on the return of cultural property seized as a result of Nazi persecution, especially Jewish property, to implement and comply with the Washington Principles and the Joint Declaration between the Federation, the federal states and the national associations of local authorities. The basis of its activities is the Accord between the Federation, the federal states and the national associations of local authorities published on the Commission's website and annexed to these Rules of Procedure.

Section 1 Mandate

(1) The Commission may be called upon in case of disputes concerning the restitution of cultural property seized from its owners, especially Jewish citizens, as a result of persecution during the Nazi regime from 30 January 1933 until 8 May 1945. Public institutions which hold cultural property and to which the Washington Principles of 1998 and the Joint Declaration of 1999 between the Federation, the federal states and the national associations of local authorities to implement the Washington Principles directly apply may lodge a request for mediation, as may private institutions holding cultural property in Germany which agree to be bound by these Principles. In the same way, private persons who hold cultural property and submit such a binding declaration may also lodge a request for mediation.

(2) The Commission shall serve as a mediator between the parties and work towards an amicable settlement at every stage of the procedure. To settle a dispute it may make recommendations which may also be based on moral and ethical considerations.

Section 2 Composition and chair

(1) The Commission shall be composed of up to ten members¹.

(2) The Commission members shall elect a chair and a deputy from their ranks. The chair shall conduct the Commission's meetings and represent it vis-à-vis third parties.

¹ The names of the current Commission members can be found on the website of the Commission's secretariat at <https://www.kulturgutverluste.de/Webs/EN/AdvisoryCommission/Members/Index.html>

(3) The Commission members shall work in an honorary capacity. The members' expenses shall be reimbursed.

(4) The Commission shall have a quorum if a majority of members is present.

Section 3 Lodging a request

(1) The Commission shall become active if both parties agree to mediation by the Commission and wish to receive and follow the Commission's recommendation, if applicable.

(2) The Commission may become active upon application if:

- the holder of the cultural property has examined the misappropriation of cultural property as a result of Nazi persecution and
- the right of the claimant in line with the guidance provided by the "Guidelines" of 2001 in its current version,
- an effort to reach an amicable settlement has been made and
- a decision regarding the question of restitution has been taken by the competent authority.

(3) The applicant shall send the request to the Commission's secretariat at the German Lost Art Foundation. Documents specifying, on behalf of the claimant, the original property, the circumstances pertaining to the loss as a result of Nazi persecution and the transfer of the right of ownership from the original owner to the claimant shall be attached to the request. In case of a request by the holder of the cultural property it shall be documented that the requirements of Section 3 (2) are met. If the request is lodged by a representative, the power of attorney shall be provided. In case of a request by a private holder of cultural property, the declaration pursuant to Section 1 (1), last sentence shall be provided.

On the basis of these documents the Commission shall decide on initiating a procedure.

Section 4 Preliminary procedure

(1) The secretariat shall request the other party to reply and provide any documents mentioned in Section 3 (3) within six weeks. This deadline may be extended upon application.

(2) For every case a rapporteur shall be appointed from the ranks of the Commission. The rapporteur, the chair and the deputy shall receive the documents once they have been received by the secretariat.

(3) In appropriate cases the Commission shall work towards an amicable settlement between the parties. If this is clearly of no avail or if the Commission's efforts remain unsuccessful, a

date for a Commission meeting shall be fixed. If the Commission decides that a hearing should take place, it shall fix the date, time and place and notify the parties at least six weeks in advance.

(4) The secretariat shall provide the documents to all other Commission members at least three weeks prior to the Commission meeting.

(5) Each party shall send the other party without delay copies of all documents submitted to the secretariat or to the Commission during the procedure.

(6) The parties may submit documents to the Commission no later than four weeks prior to the meeting or hearing. In general, any documents submitted at a later date shall not be taken into account by the Commission.

(7) The Commission may give the parties the possibility to hear third parties. The names and addresses of these persons shall be provided to the Commission no later than two weeks prior to the hearing.

Section 5 Hearing

(1) At the hearing the applicant shall first be given the opportunity to present his/her position. Then the other party shall have the opportunity to illustrate his/her point of view. After that the case shall be discussed by the Commission and the parties.

(2) A representative of the Federal Government Commissioner for Culture and the Media and of the relevant federal state, in which an institution which is a party is situated, may participate in the hearing.

(3) Before and after the hearing of the parties and of a third party designated by them, if applicable, the Commission shall discuss the case internally.

(4) The discussions and votes of the Commission (particularly individual votes and voting results) shall not be conducted in public and shall be strictly confidential.

(5) The minutes shall be recorded in the form of a summary of results by the executive secretary, who shall be bound to secrecy.

(6) If, at the end of the hearing, a party wishes to submit new documents given the course of the hearing, the Commission may grant an additional period of time (term of preclusion), if it deems the relevant question to be decisive. In this case it shall conclude a case only after these documents have been taken into account.

Section 6 Recommendations and general guidelines

- (1) The Commission may issue a recommendation to settle the dispute.
- (2) The recommendation by the Commission shall be adopted with a two-thirds majority.
- (3) The criteria for the Commission's discussions and recommendations shall be
 - a. internationally recognized principles, such as the 1998 Washington Principles and the 2009 Terezin Declaration, and
 - b. the German Joint Declaration of 1999 and the "Guidelines" of 2001 for its implementation in their current versions.
- (3) In its discussions and recommendations the Commission shall take particular account of:
 - a. the circumstances resulting in the loss of cultural property,
 - b. the circumstances in which the cultural property was acquired and the research conducted concerning its provenance.
- (4) The Commission may generally recommend that
 - a. the cultural property should be returned;
 - b. the cultural property should be returned against payment of a compensation;
 - c. the cultural property should be returned subject to further conditions;
 - d. the cultural property should remain with the current holder or owner and a compensation should be paid;
 - e. the cultural property should be publicly exhibited including information on its origin and provenance;
 - f. the request for the restitution of cultural property should be rejected.

Additional measures may be recommended depending on the specific circumstances of the individual case.

- (5) The written version of the recommendation and its explanation shall be transmitted to the parties by the secretariat.

(6) The secretariat shall publish the recommendation and its explanation on the website of the German Lost Art Foundation.

(7) The Commission shall ensure that the recommendation is translated into English in a timely manner, which will also be published on the website of the German Lost Art Foundation.

Section 7 Costs

All costs incurred by the parties and any third parties designated by them in the context of a request to the Commission shall be borne by the parties themselves.

Section 8 Expert opinion

If necessary, the Commission may request expert opinions. The costs for drawing up an expert opinion shall be borne by the Federal Government Commissioner for Culture and the Media.

Section 9 Publication

These rules of procedure shall be published on the website of the German Lost Art Foundation.

These rules of procedure were adopted by the Commission on 2 November 2016 in consultation with the Federal Government Commissioner for Culture and the Media, the federal states and national associations of local authorities.

The chair