

Checklist “Appearance of wartime losses (“trophy art”)”

When cultural properties displaced as a result of the Second World War (so-called “trophy art”) turn up in the art trade or at auctions, or when private individuals offer to re-acquire such objects for the institutions that lost them, questions arise for the original owner institutions as to how to proceed swiftly and in the correct manner.

Regardless of the concrete facts and legal specifics of any individual case, this checklist serves as an initial guide and legally non-binding recommendation for those concerned in that it provides information on the main steps to be taken right away.

As a general rule, the institution that suffered the loss or the body that sponsors it is responsible for asserting or enforcing its claims for the return of the object, whether in or out of court. To this end, it can receive support from the federal government through diplomatic channels (see “Third step” below).

The responsibilities of the German Lost Art Foundation include documentation or online publication of lost and found objects in its Lost Art Database (<https://www.lostart.de/en/start>). The Foundation also serves as a point of contact and central information base in the course of further proceedings, providing assistance for the institution in question within the scope of its mandate. The Foundation does not provide legal advice, however.

The contact details of the Foundation are as follows:

German Lost Art Foundation
Humboldtstrasse 12, 39112 Magdeburg
Tel.: +49 (0) 391 727 763 27
kontakt@kulturgutverluste.de
www.kulturgutverluste.de

The Foundation treats all information confidentially and is available to provide information free of charge to those who submit enquiries.

First step / immediate action:

Enter the searched object in the Lost Art Database

Since haste is often necessary, the object that is being sought or is missing from a collection should be entered in the Lost Art Database as soon as possible, regardless of any of the steps described below – if this has not already been taken care of. This ensures that the loss of cultural property suffered by the institution is reported nationally and internationally free of charge.

Second step / immediate action:
Secure the object

In cases where a missing object turns up in the art trade in particular – for example at an auction – it is often necessary to secure the object without delay.

To this end, the art dealer or auction house should be informed as soon as possible that the object they are offering may be a cultural asset displaced as a result of war (so-called “trophy art”) that belongs or formerly belonged to the institution and is publicly listed in the Lost Art Database, possibly also in other registers and publications. The auction house should be requested to remove the object from the auction; if necessary, an injunction should be obtained to this effect in court by way of interim relief, possibly with the involvement of a lawyer.

Third step / immediate action:
Who has to be informed?

In addition to the Foundation, information should be provided in the short term to the following in particular:

- the body which sponsors the institution (e.g. legal department)
- the federal state in which the institution is based (in this case the highest state authority responsible for the protection of cultural property, such as the Ministry of Culture or the Ministry of Education)
- in the case of properties located abroad or with a foreign connection: the Federal Foreign Office (<https://www.auswaertiges-amt.de/en>) and the Federal Government Commissioner for Culture and the Media
- in connection with criminal law: the police or special police departments

Fourth step:
Clarify the identity of the object

The next step involves clarifying or establishing beyond doubt the identity or authenticity of the object that has turned up, e.g. by means of an expert appraisal. This may incur costs. This is required in order to determine whether the object found really is the item missing from the institution and not a copy, variant or forgery. Photographs or illustrations of the object can be helpful here, for example, as well as descriptions on the reverse side, photographs or purchase documents.

Fifth step:
Further procedure

Further action is likewise taken under the responsibility or at the discretion of the institution or the body which sponsors it.

There are several options when it comes to asserting a claim for the return of an object, such as:

- Negotiated settlement / out-of-court procedure: The aim should be to reach an agreement with the current owner, consignor or dealer on the handover of the object and the further procedure. This also includes considering a so-called “finder’s fee” or a “reimbursement of expenses”: such points must be taken into account as appropriate to each specific case. The Foundation will be happy to provide advice here. In individual cases, the involvement of a lawyer may be necessary or advisable (especially if the case involves a foreign country due to specific foreign legal provisions), and this may incur costs.

- Legal action to enforce the restitution claim: The assessment of legal issues – such as clarifying current ownership status or examining the enforceability of a claim today (given the possibility of a statute of limitations) – presupposes that the facts of the case are fully known as far as possible. To this end, the institution must clarify and prove as comprehensively as possible the provenance of the object, its acquisition of ownership and the circumstances of the loss. It should be noted that the institution or the body that sponsors it may incur costs (fees for courts, lawyers, experts, interpreters, etc.) when asserting or enforcing their claim.
- Filing of criminal charges (potentially necessary in order to seize the object with regard to any potential threat of a transfer abroad or in order to establish the facts of the case, also with regard to possible civil proceedings)

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