



Minister of State
for Culture and the Media



Guidelines

for implementing the Statement by the Federal Government,
the Länder and the national associations of local authorities on
the tracing and return of Nazi-confiscated art, especially Jewish
property, of December 1999

New edition 2019

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Foreword

The Washington Conference on Holocaust-Era Assets, held in December 1998, was a historic turning point in dealing with the legacy of Nazi art theft. The Washington Declaration, released after the conference, laid the foundation for systematic provenance research into art stolen mostly from Jewish citizens. This Declaration (also known as the Washington Principles) sets out aims to the effect that art collections should be checked for any Nazi-looted items, that any such items should be returned to the pre-War owners or their heirs, or that other just and fair solutions should be found in agreement with the pre-War owners or their heirs.

In December 1999, the German Federation, the Länder and national associations of local authorities showed their commitment to the Washington Declaration by making a statement on the “tracing and return of Nazi-confiscated art, especially Jewish property”. This “Common Statement” stresses that the identification and return of Nazi-looted art is one of the core tasks of our public cultural institutions and encourages private institutions and private owners to play an active part in implementing the Washington Declaration.

These Guidelines are not legally binding and are intended to aid in implementing the Common Statement. They are aimed at those responsible for handling art in public and private ownership as well as those involved in provenance research. They are also a useful reference for those with a general interest in the issue of Nazi-looted art.

This new edition of the Guidelines is based on the revised version from 2007. It focuses to a greater extent than before on policy aspects of dealing with the legacy of Nazi art theft. It is meant as an introduction, explaining the importance of the issue, and is also aimed at readers with little or no previous knowledge of the subject. The information in these Guidelines is supplemented by a guide to practical provenance research, which is published jointly by the German Lost

Art Foundation and museum, library, and provenance research associations.

Since adopting the Washington Principles and the Common Statement, Germany has continually improved the framework for the research and return of Nazi-looted art.

We are able to handle this complex task thanks to increased awareness of the problems involved; greater sensitivity in dealing with collections and the history of cultural institutions; and the enormous dedication of provenance researchers. As a result, a great many works of art, books and archived materials in Germany (more than 20,000) have been identified as Nazi-looted and returned to their rightful owners – or other just and fair solutions have been found.

The German Lost Art Foundation in Magdeburg was set up jointly by the Federation, the Länder and national associations of local authorities. When the German Lost Art Foundation organized a conference in 2018 to mark the 20th anniversary of the Washington Principles (“20 Years Washington Principles: Roadmap for the Future”) this was seen not only as a sign of trust, but also as a reminder never to relax our efforts. That international event in Berlin honoured the historical Washington Conference, took stock of progress made on the issue of Nazi art theft, and looked at prospects for the future.

The federally funded German Lost Art Foundation is a major asset for provenance research into Nazi-looted art. It is a key sponsor of provenance research in Germany and a central point of contact for those working to implement the Washington Declaration and the Common Statement, bringing together knowledge and people from the world of provenance research.

To improve support for the victims of Nazi art theft and their families, whether from Germany or abroad, the German Lost Art Foundation has set up a contact and information office (help desk) to advise on questions of restitution. Claimants can get help and advice in finding the right points of contact within Germany’s federal system of cultural institutions.

The foundation also offers financial support to institutions holding cultural property, helping them to find heirs to the victims of Nazi art theft. If no heir or rightful owner of a Nazi-looted artwork can be found, that artwork is held in trust (by publicly funded institutions) until such time as a rightful owner can be found.

For more than 20 years now, much has been achieved by museums, libraries, archives and universities. At the same time, many questions remain unanswered, and the restitution of Nazi-confiscated art is still not complete – even 70 years after World War II and the end of the Nazi reign of terror. The Federation, Länder and local authorities will therefore continue to implement the Washington Declaration and the Common Statement until this is done.

Provenance research is one of the core tasks of institutions holding cultural property, and is absolutely essential for dealing with the legacy of Nazi art theft. The Federation, Länder and local authorities are aware of their responsibility to provide their museums, archives and libraries with sufficient staff and funding to carry out this work on a permanent basis.

Transparency is crucially important in dealing with the legacy of Nazi art theft. This applies to collections and holdings, to research about those collections and holdings, and to the procedures for claiming ownership of artworks. Electronic records are a prerequisite for transparency and a crucial resource in the search for Nazi-confiscated art. Records must therefore be digitized more quickly.

A centralized, accessible research database is being created to allow easier access to multisource information on provenance research. This database will contain all research results pertaining to funded projects. This will exist alongside the established Lost Art database.

The independent Advisory Commission, established in 2003 by the Federation, Länder and local authorities to mediate disputes, should be used to an even greater extent than before. In cases of dispute, institutions holding cultural property are expected, at all times, to be

constructive in seeking solutions that are agreeable to the victims of Nazi art theft and/or their heirs.

Another pillar of long-term support for provenance research is a new programme of professorships and junior professorships which has been established in this field at German universities. The Federation and Länder will continue to support this programme.

Dealing with the legacy of Nazi art theft and studying the fate of its mostly Jewish victims are extremely important tasks for our society as a whole. The terrible injustices perpetrated by the Nazi regime cannot be undone. What we can and should do, however, is to deal with the legacy of these injustices, including the legacy of Nazi art theft. It is worth every effort, because each and every work whose provenance is traced – and preferably restored to its rightful owner – is another piece in the mosaic of historical events. We have a duty to do all we can to complete this historical picture. We still owe it to those people who were robbed of their property and their rights, who were persecuted and murdered by the Nazi regime. We owe it to those victims and their families.

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Senator for Culture and Media, Hamburg
President of the Standing Conference of Culture Ministers

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A. Introduction

I. The Washington Declaration and the Common Statement

The Washington Conference on Holocaust-Era Assets was held from 30 November to 3 December 1998 in Washington D.C. It was attended by 44 countries, including Germany, and by numerous non-governmental organizations. During the conference, a set of principles was formulated to address the issue of artworks confiscated by the Nazis during World War II. These “Washington Principles” are contained in the Washington Declaration, which is the first and only international arrangement addressing the issue of Nazi-looted art, albeit non-binding under international law. It is essentially a set of recommendations.

The basis for implementing the Washington Declaration in Germany is the Common Statement by the Federal Government, the Länder and the national associations of local authorities of December 1999.¹ According to this, art collections and holdings are to be checked for any works that may have been confiscated from their rightful owners under the Nazi regime. When such works are identified, they are to be returned to their rightful heirs, or other just and fair solutions should be found in agreement with those heirs in the spirit of the Washington Declaration. The Common Statement stresses that the identification and return of Nazi-looted art is one of the tasks of our public cultural institutions and their funding bodies. In addition, the Federation, Länder and local authorities encourage private institutions and private owners to play an active part in implementing the Washington Declaration.

1 Statement by the Federal Government, the Länder and the national associations of local authorities on the tracing and return of Nazi-confiscated art, especially Jewish property (known as the “Common Statement”) of 9 December 1999; see annex.

II. Background

Over the years, the Federation, Länder and local authorities have done much to implement the Washington Declaration and Common Statement:

In 1994, the **Coordination Office** for the Return of Cultural Property was established in Bremen. Its initial purpose was simply to document artworks held by German public institutions that had been stolen during the war. From 1998, the Coordination Office, now based in Magdeburg, served as a central German institution for the restitution of lost art. From 2001, the Coordination Office received federal funding. In 2015, it became part of the German Lost Art Foundation.²

On 10 April 2000, shortly after the release of the Common Statement, the Lost Art Database³ went online at www.lostart.de. This fulfilled the intention expressed in the Common Statement to provide online resources.⁴ To this day, the database registers lost and found reports on artworks stolen by the Nazis during the war. Such works may be held by institutions or persons, both in Germany and abroad.

In 2001, these practical **Guidelines** were developed to help implement the ideas of the Common Statement. The Guidelines provide additional information to institutions holding cultural property, helping them to fulfil tasks outlined in the Common Statement. The Guidelines were revised in 2007 and were rewritten in the present version in 2019.

In 2003, the **Advisory Commission⁵ on the return of cultural property seized as a result of Nazi persecution, especially Jewish property** was set up under an accord⁶ between the Federation, Länder and local authorities. The Advisory Commission may be called upon in case of disputes concerning the restitution of cultural property seized by the Nazis.

2 See Section B.II.2.a.

3 For more information see Section C.I.

4 See point III in the Common Statement (provided in the annexes to this document).

5 For more information see Section E.

6 The text of the accord is provided in the annexes to this document.

- In 2008, the **Provenance Research/Investigation Unit** was founded at the Institute for Museum Research of the National Museums in Berlin – Prussian Cultural Heritage Foundation. It was funded by the Federal Government Commissioner for Culture and the Media, and by the Cultural Foundation of the Länder. Until 2015, when it (like the Coordination Office) became part of the German Lost Art Foundation, the Unit served primarily to provide funding for provenance research into Nazi-looted art.
- From 2008, the **Cultural Foundation of the Länder** was involved in various ways in investigating Nazi-confiscated art in public institutions. In many cases it provided museums (primarily museums run by local authorities) with funds to buy back restituted artworks.
- In June 2009, the **Terezin Declaration**⁷ was adopted at the Holocaust-Era Assets Conference in Prague, with Germany's support. The Terezin Declaration reinforced the principles set out at the Washington Conference in 1998.
- On 1 January 2015, the **German Lost Art Foundation** in Magdeburg was established under civil law by the Federation, Länder and national associations of local authorities. It is federally funded and its workspace is provided by the state of Saxony-Anhalt (at Länder level). The German Lost Art Foundation has helped to meet the ongoing requirement to search for Nazi-looted art. Its core task is to strengthen, consolidate and expand provenance research, especially into Nazi-looted art.⁸
- On 6 August 2016, the **Cultural Property Protection Act** (*Kulturgutschutzgesetz*, *KGSG*) came into force.⁹ It contains various rules that help implement the Washington Declaration and the Common Statement. It ensures that mechanisms to prevent cultural property being removed from the country do not stand in the way of just and

7 The text of the Terezin Declaration can be found at www.kulturgutverluste.de/theresienstaedter-erklaerung_en.

8 For more information on the German Lost Art Foundation and its project funding, see Section B.II.2.a.

9 www.kulturgutschutz-deutschland.de/Kulturgutschutzgesetz

fair solutions.¹⁰ And it introduces stricter due diligence obligations to stop cultural property suspected of having been stolen under the Nazi regime being sold on the private market in Germany.¹¹ Potential buyers who suspect that a work may have been the object of Nazi theft have a right to inspect the sellers' records.¹² For further information, see the practical guide to the Cultural Property Protection Act.¹³

III. The history of provenance research

Immediately after the war, Nazi-looted art was returned via central collecting points set up by the occupying allied powers. Later, the allies' restitution law, followed by the Federal Restitution Act (*Bundesrückerstattungsgesetz*) became the legal basis for restitution and financial compensation.¹⁴ The deadlines for applications specified in those regulations all expired decades ago. As a result, the principle of provenance was increasingly neglected in the research of historical artworks and collections. Only after the Washington Declaration in 1998 did this start to change. Today, 20 years later, it is a matter of broad societal consensus that dealing with the legacy of Nazi-looted art – systematically and without reservation – remains a relevant and important topic and a key task for institutions holding collections of cultural property.

Since the Washington Declaration and the Common Statement were adopted, the conditions for carrying out provenance research and restitution in Germany have continually improved thanks to the

10 An entry made in the register of cultural property of national significance should be deleted if it is found that the cultural property in question was confiscated from a previous owner under the Nazi regime and is therefore to be restituted somewhere outside Germany (Section 13 subsections 1 and 2 of the Cultural Property Protection Act).

11 See Section 44, first sentence, number 1, of the Cultural Property Protection Act.

12 See Section 48 subsections 1 and 2 of the Cultural Property Protection Act.

13 www.kulturgutschutz-deutschland.de/HandreichungKGSG

14 On restitution for the effects of Nazi injustice, see www.bundesfinanzministerium.de/NS-Unrecht.

efforts of the Federation, Länder and local authorities. Provenance research in Germany now has strong support structures in cultural and academic institutions.

The central point of contact in Germany for those working to implement the Washington Principles is the German Lost Art Foundation in Magdeburg. Using federal funds, the foundation initiates, supports, coordinates and promotes projects that are carried out by museums, archives and libraries to deal with the legacy of Nazi art theft.

Not only public and private institutions, but also private persons may apply to the foundation for funding. Another important task is to pool research results and store them in such a way that other researchers can benefit from them. The Lost Art Database¹⁵ (run by the German Lost Art Foundation) and the Proveana¹⁶ research database are both key resources available to those working to implement the Washington Declaration. These databases support individual researchers and provenance research as a whole.

The Federation, Länder and local authorities consider it essential to deal with the legacy of Nazi art theft, and ever since the Washington Principles and Common Statement were issued, they have taken various measures to support institutions holding cultural property. Institutions have not only benefited from the German Lost Art Foundation. They have also received support and personnel from other sources. Networks of institutions, research associations and centres also help to strengthen provenance research, as do the various databases created for this purpose. While these developments have certainly benefited institutions holding cultural property, provenance research remains a major challenge for most museums and libraries due to the time and resources involved.

Nevertheless, for more than 20 years now, a growing number of museums, libraries, archives, and similar institutions in Germany have been systematically using provenance research methods in order to

¹⁵ Section C.I.

¹⁶ www.proveana.de

find Nazi-looted art. Thanks to provenance research, many works of art, books and archived material in Germany have been identified as Nazi-looted and returned to their rightful owners – or else other just and fair solutions have been found for them.¹⁷

Furthermore, provenance research into Nazi-confiscated art has become established in Germany as a recognized, necessary and indispensable academic subject. It is now particularly well established at universities, with professorships and junior professorships in the subject at universities in Bonn, Hamburg, Munich and Berlin. And throughout Germany there are training programmes¹⁸ aimed at employees of cultural institutions, museum associations and art dealerships, and at freelance provenance researchers.

The community of provenance research has evolved from a small group of researchers to an internationally recognized association of experts. The international Provenance Research Association¹⁹ now has some 300 members in Germany, Europe and the USA. In March 2014, provenance researchers (specializing in library holdings) from Germany and Austria got together to form the “provenance research and restitution association – libraries”.²⁰

The progress made in establishing provenance research in Germany has received international acclaim, as have the results of that research. A great deal has been achieved, and yet the task is still daunting and complex. Dealing with the legacy of Nazi art theft still requires consid-

17 For more information on restitution reporting see Section D. IV. For more information on progress and challenges in implementing the Washington Principles: To mark the 20th anniversary of the Washington Principles, the German Lost Art Foundation organized an international conference in Berlin from 26 to 28 November 2018 (“20 Years Washington Principles: Roadmap for the Future”). Documentation from the conference is available at www.kulturgutverluste.de/Veranstaltungsdoku-20-Jahre-Washingtoner-Prinzipien_en. Information on project funding over the last ten years can be found in Volume 1 of the PROVENIRE series of the German Lost Art Foundation: “Provenance research in German museum collections – Looking back on ten years of project funding”.

18 See for example the programmes offered by the Free University of Berlin: www.fu-berlin.de/wbz/provenienz; at www.bundesakademie.de/programm/museum a training course is offered every year as intensive seminar on “basic provenance research”

19 www.arbeitskreis-provenienzforschung.org

20 www.bibliotheksverband.de/fachgruppen/kommissionen/provenienzforschung-und-provenienzerschliessung/aktivitaeten

erable effort. Provenance research into Nazi-looted art has so far been carried out mainly in museums of art and cultural history. Another research focus is libraries. However, much work remains to be done in identifying Nazi-looted art in museums and collections with other focuses.

More provenance research needs to be done into Nazi-looted art in private collections and private institutions. The funding guidelines of the German Lost Art Foundation²¹ provide for funding in those areas.

²¹ See Section B.II.2.a.

B. Checking and documenting items held in collections – advice on identifying Nazi-confiscated art

I. Checking and documenting items held in collections

In line with the Common Statement, the comprehensive documentation of collections and their origin is one of the core tasks of any institution responsible for holding cultural property. The same is true of checking to what extent it might be necessary to clarify the circumstances under which an item was received or acquired during the Nazi era, and to what extent it might be necessary to carry out further historical research into the circumstances under which the item was acquired or passed from one owner to another.

A passive approach – taking action only in response to information that may come to light – is not enough. Instead, collections should be checked proactively, with a sense of responsibility for dealing with the legacy of Nazi art theft and creating transparency. Furthermore, any information²² about acquisitions of relevant items (i.e. transfers of ownership through purchase, exchange, gift, etc.) should be made accessible. This applies in principle to all items produced prior to 8 May 1945. The relevant period of scrutiny for the holdings of

²² See the guidelines to the standardized recording of provenance information, published by the Provenance Research Association, www.arbeitskreis-provenienzforschung.org/data/uploads/Leitfaden_APFeV_online.pdf

institutions is from 30 January 1933, when the Nazis came to power, until the present day.

The tasks can be summarized as follows:

Publicly owned institutions holding cultural property should be aware of their responsibility to help trace Nazi-confiscated art in their collections (using sources accessible to them and taking into account current research) by identifying potentially relevant items, making information about such items available to the public, especially via the website www.lostart.de²³ of the German Lost Art Foundation, and notifying potentially legitimate owners if appropriate.

If checks reveal that collections contain items that were brought from abroad to Germany during the war, all available information about such items should be passed on to those responsible for the institution in question and then forwarded to the German Lost Art Foundation.²⁴

²³ See Section C.I.

²⁴ For contact information of the German Lost Art Foundation, see Section B.II.2.a.

II. Key questions in tracing Nazi-confiscated art

The following section is a brief introduction to tracing Nazi-looted art. Detailed information on this topic can be found in the **guide**²⁵ published by the German Lost Art Foundation.

1. Casework checklist

- **What?**

Cultural property of unknown, incomplete or uncertain provenance: this refers to all cultural property that changed hands between 1933 and 1945. Even for items acquired after 1945, their provenance between 1933 and 1945 must be thoroughly researched. Clearly, this does not apply to works produced after 1945.

It is worth noting that some items might only have acquired the status of museum pieces or collectors' items in recent years, having attained new cultural significance with the passage of time. But in the Nazi era – the period during which they would have been confiscated – they may have served as practical items, household equipment or tools. For example, household goods, or even vehicles owned by fleeing or deported Jews, which were publicly auctioned under the Nazis, might today be found in exhibitions of everyday items, or in science museums.

In provenance research, it is important to scrutinize available source information (i.e. where the source came from, when it dates from, and why it was produced). It is also important to carefully compare all identifying features of an item in a collection with authentic descriptions or images (e.g. engravings or historical photographs) that may prove its identity. Sometimes, features shown in available sources can

25 Guide to provenance research into identifying cultural property confiscated under the Nazi regime, published by the German Lost Art Foundation together with the German Museums Association, ICOM Deutschland, the Provenance Research Association, the German Library Association, and the “provenance research and restitution association – libraries”, Magdeburg 2019, available at www.kulturgutverluste.de/leitfaden. For further information on the confiscation, storage and transfer of cultural property between 1933 and 1945, see www.lostart.de/modul-provenienzrecherche.

be wrongly recognized in the item being researched, leading to false assumptions about the identity of the piece.

- **Where?**

Acquisitions or changes of ownership on the territory of the German Reich after 30 January 1933, in Austria after 12 March 1938, in the annexed areas of Czechoslovakia after 1 October 1938, and in countries occupied by German forces after the outbreak of World War II, on 1 September 1939. However, even if an item changed hands outside of those territories, it still cannot be ruled out that the item changed hands as a result of Nazi persecution.

- **How?**

- (a) How items were acquired or changed hands

Acquisitions from auctions of items considered in the Nazi era to be of “non-Aryan ownership” (*Judenauktionen*); acquisitions from pawnshops; acquisitions from “central points” or “special and operational offices”. Acquisitions via legal transactions that came about under circumstances related to persecution (the victims in such cases being institutions and private persons facing persecution); such transactions could include buying, exchange or giving (especially in bulk, in closed packages, or of pieces that belonged together as part of a series); they could also have involved goods being sold below market price, acquisitions of large quantities of books and auctioned items, official authorities giving confiscated art to museums, etc. (as “gifts”), and items of uncertain origin received between 1933 and 1945.

- (b) Irregularities in the registration of items held by collections, such as missing or unclear information on the origin of an item, or deviations from usual registration practice.

- **From whom?**

From dealers and auction houses involved in the exploitation of Nazi-confiscated art; from official authorities giving confiscated art to other owners. Clues may be provided by the names of the original owners – especially Jewish owners.

Note that people who lost artworks due to Nazi persecution may have been the holders but not necessarily the owners of those artworks. Thus, when researching the circumstances under which persecuted art dealers were dispossessed of artworks, researchers should check whether those dealers were working on commission for clients. If necessary, further research should be carried out to determine the identity of those clients, to find out if they, as owners of the artworks confiscated, were also victims of Nazi persecution.

It is important that all four questions in the checklist be applied to the entire period between 1933 and 1945 – even for works that were not acquired by the institutions concerned until after 1945.

2. Contacts, project funding

a. German Lost Art Foundation

The German Lost Art Foundation in Magdeburg is the national and international point of contact in Germany for those working to implement the Washington Declaration and the Common Statement.

The Foundation's main focus is on Nazi-looted art. It also investigates cultural assets that were relocated or lost under Soviet occupation and in the former East Germany, and collections from colonial contexts. The German Lost Art Foundation provides funding for provenance research, documents lost art in its Lost Art Database²⁶ (in the form of lost and found reports), and provides other platforms to bring together research results and make them accessible.

The Foundation's provenance research experts can help with all questions relating to **project funding**²⁷ for researchers into Nazi-looted art:

www.kulturgutverluste.de/team_en

In principle, all public institutions of the Federal Republic of Germany – especially museums, libraries and archives – can apply to the German Lost Art Foundation for project funding. Applications are also accepted from privately owned institutions and private persons who hope to find just and fair solutions through their own research into Nazi-looted art, in line with the Washington Principles (provided there is a public interest in supporting them).

In general, the criterion for funding is that an applicant can show there is reason to believe that an item in their possession was at some point confiscated in connection with Nazi persecution. Potential applicants should first check whether there are grounds for their application by requesting a consultation with the Foundation's provenance research experts.

²⁶ See Section C.I.

²⁷ For further information on project funding and the funding guidelines of the German Lost Art Foundation see www.kulturgutverluste.de/foerderbereich-ns-raubgut.

Some public institutions, due to the nature of their tasks or due to staffing levels, may be unable to conduct adequate research into whether they have grounds to apply for funding. Such institutions – as well as privately owned institutions – can request an initial consultation with the Foundation’s provenance research experts. As part of this consultation the provenance research experts, together with the staff of the museum or library in question, inspect the holdings of that institution to see if the artworks, inventories, catalogues, or other internal documentation and sources reveal information to suggest that it is likely – or at least not impossible – that Nazi-confiscated art may be present.

The contact details of the German Lost Art Foundation are as follows:

Deutsches Zentrum Kulturgutverluste

Humboldtstraße 12

39112 Magdeburg

Telephone: +49 391 727 763 0

Fax: +49 391 727 763 6

E-Mail: kontakt@kulturgutverluste.de

Website: www.kulturgutverluste.de

b. Länder and local authorities

The points of contact in the **Länder** are the ministries at federal state level responsible for arts and culture.

The points of contact at the level of **local authorities** are cultural offices or other bodies responsible for arts and culture – and in some cases provenance research groups.

c. Contact and information office

Since January 2020, the German Lost Art Foundation has a contact and information office (or help desk) to advise victims of Nazi art theft and their descendants. Such persons wishing to initiate a search for Nazi-confiscated art can rely on the office for support and information. This service is aimed in particular at people who live outside Germany, who cannot speak German, and who are not familiar with administrative procedures in Germany (especially those associated with the federal structure of art and cultural affairs). All public institutions are expected to refer relevant persons to this support service.

C. Checking items held in collections: Handling the results

It is important to increase awareness of and transparency surrounding cultural property of uncertain provenance or which may have been confiscated from its original owners as the result of Nazi persecution, as doing so is necessary to enable those searching for such property to find the current owners and bring about restitution or other just and fair solutions as recommended in the Washington Principles.²⁸ Institutions holding cultural property should help create transparency by providing access to the results of their searches for Nazi-confiscated cultural property in their collections.²⁹

I. The Lost Art Database

If a check of items held in a collection concludes that cultural property was definitely, probably or potentially Nazi-confiscated, the results of that check should be reported to the German Lost Art Foundation³⁰ to be entered in its Lost Art Database.³¹ This database records cultural property, especially Jewish property, confiscated as the result of persecution under the National Socialist regime.

Museums, libraries and archives are responsible for collecting the data entered in the database. They and/or their funding bodies are responsible for deciding how to handle the results of their research.

²⁸ See Section D.III. on “just and fair solutions”.

²⁹ In compliance with data protection law.

³⁰ See B.II.2.a. for contact information.

³¹ www.lostart.de

Although it is up to the museums, libraries and archives to decide when to report the data collected, in line with the Common Statement of 1999, the results of their research should be reported without delay.³² Negative results should also be reported.³³

Information is entered in and deleted from the Lost Art Database according to the **general principles for the registration and deletion of reports in the Lost Art Database**³⁴ of the German Lost Art Foundation.

Institutions may contact the German Lost Art Foundation for more information about the modalities of reports.

For more information on reporting and statistics on restitutions and other fair and just solutions, see Section D.IV.

II. Connecting Information

To avoid the duplication of effort, and to build up the knowledge base for provenance research, it is helpful, when checks of collections and holdings are carried out, to make available the results of those checks for the research of other cases if possible. The German Lost Art Foundation scientifically processes the information from projects it funds by building up an interconnected, subject-specific digital research infrastructure. Starting in 2020, the Proveana research database³⁵ will support this process. Information from other research projects not funded by the Foundation can be sent to the Foundation for inclusion in its research database.

32 Publicly funded projects, for example those funded by the German Lost Art Foundation, may be subject to public disclosure requirements.

33 In order to gain as complete a picture as possible of efforts by institutions holding cultural property to find and return Nazi-looted art, the German Lost Art Foundation also accepts negative reports. These are reports stating that, despite the necessary research, whether funded by the Foundation or not, the institution found no indication of any Nazi-looted cultural property in its possession at the time of the check.

34 www.kulturgutverluste.de/grundsaeetze_en

35 www.proveana.de

III. Identifying heirs

For some artworks identified as Nazi-confiscated, no claimants with whom a fair and just solution may be found have come forward. Provenance research is sometimes followed by the difficult search for the victims' descendants. It may be possible to identify potential heirs from the information uncovered during provenance research. If not, then institutions and persons should utilize likely sources to identify heirs as far as possible. In the **“Search for heirs”** section of its website,³⁶ the German Lost Art Foundation offers a continuously updated body of knowledge with information on methodology, processes, research possibilities and sources that can be used in the search for heirs.

For museums, collections and private individuals, searching for family members who may live anywhere in the world is often expensive and time-consuming. For this reason, since early 2019 it has been possible to apply for **funding** from the German Lost Art Foundation for projects to search for heirs.

³⁶ www.kulturgutverluste.de/erbenermittlung_en

D. Guidelines for verifying whether a work of art was Nazi-confiscated and for preparing decisions on restitution claims

I. Preliminary remarks

The Common Statement by the Federal Government, the Länder and the national associations of local authorities on the tracing and return of Nazi-confiscated art, especially Jewish property, does not establish any enforceable entitlement to the restitution of cultural goods.³⁷ Taking into account the Washington Principles and the Common Statement, the **decision in each individual case** lies within the **discretion of the institution concerned** or its funding body and will be taken in accordance with the applicable budgetary law provisions where appropriate. The following general information and guidelines are to be examined for each individual case. This is why the following **guidelines** do not constitute a **binding set of legal rules** but merely a recommendation to abide by the guiding principles of post-war restitution policy when examining restitution claims.

However, for the part of Germany that acceded to the Federal Republic in 1990 (acceding territory),³⁸ the Act on the Settlement of Unresolved

³⁷ See Section A.I.

³⁸ The term "acceding territory" refers to the accession of the German Democratic Republic to the Federal Republic of Germany on 3 October 1990. This territory consists of the federal states of Brandenburg, Mecklenburg-Western Pomerania, Saxony, Saxony-Anhalt and Thuringia, as well as the eastern part of the city-state of Berlin, where the Basic Law did not apply before accession.

Property Claims (Vermögensgesetz, VermG) provides for a procedure under administrative law for the restitution of losses between 1933 and 1945 in connection with Nazi persecution; this administrative procedure is conducted by the Federal Office of Central Services and Unresolved Property Issues (BADV) and takes precedence over the voluntary procedure under the Washington Principles/the Common Statement.

The Act on the Settlement of Unresolved Property Claims also covers further types of damage which fall within the jurisdiction of the state offices for the settlement of unresolved property claims.

Any institution receiving a restitution claim must therefore first ascertain whether, with regard to the object concerned, a procedure pursuant to Section 1 (6) of the Act on the Settlement of Unresolved Property Claims is pending with the BADV or the office (with regional responsibility) to deal with unresolved property issues.³⁹

Queries of the BADV should be addressed to the

**Federal Office for Central Services and
Unresolved Property Issues (BADV)**

DGZ-Ring 12

Referat B 1

13086 Berlin, Germany

Tel.: +49 30 18 7030-0

E-mail: poststelle@badv.bund.de with the following subject line:

„Bitte Weiterleitung an Referat B1“

For further information, please refer to the guidelines on cultural assets related to the acceding territory (Erläuterungen zu Kulturgütern mit Bezug zum Beitrittsgebiet) at www.kulturgutverluste.de/beitrittsgebiet_en

³⁹ See Section 3 (5) of the Act on the Settlement of Unresolved Property Claims.

In the territory formerly known as West Germany,⁴⁰ claims can no longer be enforced by law.

Both the restitution law for the territory formerly known as West Germany (Federal Restitution Act) and the restitution law for the acceding territory (Act on the Settlement of Unresolved Property Claims) refrain from defining the acts that resulted in the confiscation of property and that form the basis of restitution claims. Instead, German restitution law refers to the definitions and assumptions (allocation of the burden of proof) contained in the restitution regulations of the Western Allies; in addition, the comments on the following Guidelines refer to decisions of the supreme restitution courts and decisions reflecting German restitution policy.

II. Guidelines

The following questions provide some guidance when examining cases of Nazi-confiscated property and adjudicating restitution claims:

1. Was the claimant or his/her legal predecessor subject to National Socialist persecution on grounds of political opposition to National Socialism or on racial, religious or ideological grounds between 30 January 1933 and 8 May 1945?⁴¹

All provisions related to compensation⁴² for the effects of Nazi injustice are based on the principle that restitution and compensation for damages should go only to those actually entitled to them.

- A claimant's **entitlement/legal** succession to an injured party must be fully documented by certificates of inheritance and letters of authorization.

40 The "territory formerly known as West Germany" refers to the territory that belonged to the Federal Republic of Germany before the accession of the German Democratic Republic to the Federal Republic of Germany on 3 October 1990.

41 See the definition in Section 1 of the Federal Act for the Compensation of the Victims of National Socialist Persecution (BEG); see also Article 1 (1), first sentence of the Berlin Allied Kommandatura's Order No. BK/0 (49) 180 of 26 July 1949.

42 On restitution for the effects of Nazi injustice, see footnote 14.

- The Conference on Jewish Material Claims against Germany Inc. (JCC)⁴³ is to be consulted in cases subject to the Act on the Settlement of Unresolved Property Claims in which the legal successor to an injured Jewish party is a **community of heirs** and the claimant represents this community only in part, because other members of the community or their whereabouts are unknown. The same applies in such cases if provenance research has not identified the legitimate owners.⁴⁴ The JCC is to be informed in all other such cases which are not subject to the Act on the Settlement of Unresolved Property Claims in which members of a community of heirs or their whereabouts are unknown. If the victim of Nazi persecution was not Jewish or was a joint owner along with non-Jewish joint owners,⁴⁵ the fiduciary management of rights must be ensured in another way.⁴⁶
- If the artwork was the property of a **business** at the time the damage occurred, then it should be handed over only in joint ownership to the legal successors of the former shareholders (see the remarks on a community of heirs above) or, in case of subsequent liquidation, to the company in liquidation.
- Nazi persecution of the individual is to be explained; if the injured party was Jewish, the assumption of **collective persecution** applies for the period starting 30 January 1933.⁴⁷

43 Address: Claims Conference, Sophienstraße 26, 60487 Frankfurt/M., www.claimscon.de.

44 See Section C.III. on searching for heirs.

45 Joint ownership (Gesamthandsgemeinschaft) refers to a group of persons who jointly own an asset; each person has an undivided interest in the entire asset but not in individual items.

46 In particular by providing evidence of official curatorship in accordance with sections 1911 and 1913 of the Civil Code (BGB).

47 Berlin Supreme Restitution Court (ORG) in its decisions on restitution law (Neue Juristische Woche (NJW)/Rechtsprechung zum Wiedergutmachungsrecht (RzW), 1956, p. 210).

2. Did the claimant or his/her legal predecessor sustain a loss of property through forced sales, expropriation or in any other form? Who has to bear the burden of proof, i.e. who has to provide evidence showing that the loss was due to persecution by the Nazi regime?

- If the claimant or his/her legal predecessor was persecuted between 30 January 1933 and 8 May 1945 on account of race or for political, religious or ideological reasons, it is necessary to provide **evidence** that the claimant or his/her legal predecessor was the owner of the specific cultural asset in question that was confiscated as the result of Nazi persecution. As a rule, this can be done by presenting sales agreements, invoices, receipts, bills of delivery or certificates of inheritance, wills or dispositions.

However, as stated in no. 4 of the Washington Principles, “consideration should be given to unavoidable gaps or ambiguities in the provenance in light of the passage of time and the circumstances of the Holocaust era”, meaning that claimants often no longer have such evidence.

Special conditions apply to assigning the **burden of proof**, i.e., who is responsible for providing evidence and who must face the consequences if the evidence is insufficient. Under these special conditions, the burden of proof is reversed, meaning that the principle of each party having to present and provide evidence of arguments in its favour does not apply.

- Determining who bears the **burden of proof** depends on distinguishing between assets lost as the result of legal transactions and assets lost as the result of confiscation by state authority.

In the case of assets lost as the result of a legal transaction (purchase, exchange, transfer by way of gift), the claimant may invoke the **statutory presumption** that losses resulting from legal transactions during the period of persecution should be considered cases of un-

justified confiscation.⁴⁸ This presumption means that the institution against which a claim has been made is responsible for proving that the property was not confiscated as the result of Nazi persecution, i.e. that it may have to disprove the presumption; see 3. below.

In the case of artworks lost as the result of state intervention, proof of a causal relation to Nazi persecution can be dispensed with by way of exception, especially for confiscated “**degenerate art**”,⁴⁹ assets subject to restrictions pursuant to the Reich Government **Ordinance on the Export of Works of Art**,⁵⁰ and in some cases to assets subject to forced sales.⁵¹

The burden of proving that state intervention constituted persecution falls to the claimant in very few cases.

- In the absence of concrete records, in individual cases each party can use prima facie evidence to meet the necessary requirement to provide evidence.⁵² **Prima facie evidence** depends on the existence of undisputed/proven facts and historical information indicating that a certain course of events was typical in such cases. The opposing party can cast doubt on prima facie evidence by providing evidence indicating the serious possibility (and not merely asserting) that the course of events was not typical.

48 See Article 3 of the Berlin Allied Kommandatura’s Order No. BK/0 (49) 180; on disproving the statutory presumption, see 3. below.

49 The campaign to confiscate what the Nazis considered “degenerate art” affected all citizens of and legal persons in the Reich whose “degenerate” artworks were held by museums or in public collections; see Berlin Supreme Restitution Court, RzW 1967, p. 299 and 301; Munich Higher Regional Court, RzW 1968, p. 58; Berlin Higher Regional Court, RzW 1965, p. 161; Karlsruhe Higher Regional Court, RzW 1954, p. 225.

50 The ordinance (Verordnung über die Ausfuhr von Kunstwerken) required export permits for artworks listed in the register of cultural property of national significance; the ordinance dated from 1919 and so was not a discriminatory Nazi law. However, it is necessary to check in each individual case whether the law was used to discriminate.

51 See the Federal Court of Justice on bankruptcy auctions not resulting from persecution, RzW 1954, p. 34.

52 Decisions of the supreme restitution courts; see for example Berlin Supreme Restitution Court, RzW 1967, p. 3.

- The statutory presumption applies to transfers by way of gift as well, unless the transfer is a **gift** arising from a moral duty (Anstandsschenkung) based on the personal relationship of the parties involved, or the recipient can rebut the presumption with evidence that the transfer was truly a gift.⁵³
- Clarifying the **identity of the artwork or object** is a crucial issue. In particular in connection with the processing of requests for information about the whereabouts of cultural assets, this means confirming or ruling out the fact that all criteria for identifying the specific object match up: who made it or is thought to have made it; title and/or subject; record and description; size, technique and material used; and, not least, evidence of its provenance. At the same time, it should be taken into consideration that changes may have been made to the object's material substance since it was first lost, such as overpainting, measures of conservation and restoration, changes in format, etc. And experts may have changed the attribution to a particular artist over the intervening decades.

With regard to cultural assets confiscated during the Nazi era as a result of persecution, in order to bring about a “just and fair solution” it is absolutely necessary to ensure that the object in hand is the same one that was confiscated or otherwise lost between 30 January 1933 and 8 May 1945.

For cultural assets which were not created or produced as unique items (statuary, graphic works, objects of the applied arts, objects produced in series), it is possible to establish the identity of a work or object beyond a doubt only if the individual work has features specific to it alone which enable a match with the lost object.

⁵³ Article 4, Berlin Allied Kommandatura's Order No. BK/0 (49) 180; see Täpper in RzW 1953, p. 354.

3. Can the statutory presumption according to which losses that resulted from legal transactions should basically be considered cases of Nazi-confiscated property be disproved by showing

- that the seller received a fair purchase price and
- that he or she was free to dispose of the purchase price as desired;

and (for sales from 15 September 1935 onwards)

- that the legal transaction would have taken place even if there had been no National Socialist rule
- or that the victim's financial interests were safeguarded in a special manner and with substantial success, e.g. by helping him/her to transfer his assets abroad?

Explanatory notes:

- The important date for the **statutory presumption** in the case of losses resulting from legal transactions in view of the causal relationship between persecution and loss of assets is 15 September 1935 (when the Nuremberg laws entered into force). For losses before 15 September 1935, to disprove the presumption, it is sufficient to show that the seller received a fair purchase price and was free to dispose of the purchase price as he or she pleased. Even if the presumption is disproved, however, the claimant is free to present evidence indicating that the loss was due to unjustified confiscation.
- The presumption of unjustified confiscation stands even if the Jewish seller sold the property to a **Jewish buyer**.⁵⁴
- Whether the **purchase price was fair** depends on the objective market value the object would have had at the time of sale had the seller not been subject to persecution. For direct sales of artworks, it

⁵⁴ Supreme Restitution Court/British Zone, RzW 1955, p. 9; Court of Restitution Appeals, RzW 1952, p. 164.

would depend on whether a market price can be found for similar works by the same artist, for example in auction catalogues from around the time of the sale. For auctions on the basis of private deliveries, it must be left to the discretion of the institution concerned whether to view the proceeds of the auction as a fair market price or whether to assume in the individual case in favour of the claimant that, at the time of the loss, prices were generally too low as the result of growing persecution and the subsequent increase in the number of sales.

- Evidence that the seller was **free to dispose** of the purchase price can usually be ruled out for sales within Germany from 14 May 1938⁵⁵ and in any case from 3 December 1938⁵⁶ onwards. Prima facie evidence (see above) that the seller was free to dispose of the purchase price for sales within Germany before 14 May 1938 may be considered.

4. Are there any reasons precluding restitution?

- The **principle of priority** applies. If the same asset was subject to confiscation as the result of persecution more than once, the first person from whom the asset was confiscated has priority.⁵⁷
- The provenance of previous owners must therefore be traced back to 30 January 1933.
- Restitution may be denied if the claimant has used unethical means or has deliberately or as the result of gross negligence provided, commissioned or allowed the provision of inaccurate or misleading information (**fraud**).⁵⁸ The same may be considered if the claimant fails to cooperate in clarifying the matter, even if he or she can reasonably be expected to do so.

55 Restrictions stipulated by “confidential Order No. 64” of 14 May 1938.

56 Section 14 of the regulation on the use of Jewish assets (Verordnung über den Einsatz des jüdischen Vermögens) prohibited Jews in Germany from mortgaging or privately selling artworks priced at more than 1,000 Reichsmarks each. The fifth implementing regulation of 25 April 1941 ended the 1,000-RM threshold.

57 See Section 3 (2) of the Act on the Settlement of Unresolved Property Claims.

58 Analogous to Section 6 a of the Federal Restitution Act.

5. Compensation payments by the Federation, other compensation, considerations

According to Section I of the Common Statement of 14 December 1999:

“This examination includes checking for material compensation already provided. Such a procedure makes it possible to identify the legitimate owners and avoid duplicate compensation”.

In the past, compensation for the dispossession of cultural goods was frequently granted on the basis of the Federal Restitution Act. For this purpose, a query of the BADV archives is recommended. The BADV examines whether any compensation for the art object concerned has already been granted by the Federation.

Queries of the BADV should be addressed to the
Federal Office for Central Services and Unresolved Property Issues (BADV)
DGZ-Ring 12
Referat C2/C3, Rückerstattungsarchiv
13086 Berlin, Germany
Tel.: +49 30 18 7030-0
E-mail: Kunst-BRUEG-Archiv@badv.de

In the context of the Nazi confiscation of cultural property, it is also necessary to consider any purchase prices paid at the time as well as any other compensation paid in private settlements.

The BADV will arrange for the necessary research to be carried out and will make any claims on behalf of the Federation for repayment. An **agreement** with those entitled to restitution should include a statement on all compensation previously received for the loss of the artwork as the result of Nazi persecution and – in the case of compensation paid by the Federation – an **obligation to repay concurrently with the restitution**. The repayment clause is the result of experience with similar restitution processes in the past. If the restitution falls within the scope of the Act on the Settlement of Unresolved Property

Claims,⁵⁹ the office responsible for dealing with such claims stipulates the obligation to repay compensation already received.⁶⁰ A query of the BADV to this effect is unnecessary in these cases, as all state offices for settling unresolved property claims have agreed to include the BADV as standard procedure in these cases.

• Other compensation

In addition to the grounds listed in 4., a situation occasionally arises which may **preclude restitution**: the party entitled to restitution reached a **private settlement** with the holder of the confiscated artwork after 1945 on the basis of the Allies' restitution laws; such settlements allowed the artwork to remain in the possession of the holder if the holder paid compensation to the party entitled to restitution.

Such settlements were typically made before the Federal Restitution Act entered into force in 1957, and no records of them are to be found in the restitution archives of the regional finance offices. If any records exist (of settlements recorded before the restitution chamber of the regional court or of applications withdrawn for such reasons), they will be in the files of the restitution offices.

• Considerations

If a **purchase price** was paid for the artwork in the course of its confiscation as a result of persecution, this raises the question of how this consideration should be repaid. In cases that fall within the scope of the Act on the Settlement of Unresolved Property Claims, the responsible office for the settlement of unresolved property claims stipulates in the notice of restitution the obligation to repay compensation already received, if the legitimate owner actually received this compensation for the loss; monetary amounts given in Reichsmarks should be converted using a ratio of 20 to 1.⁶¹

59 See the explanatory notes on cultural assets related to the acceding territory in the materials on the guidelines at www.kulturgutverluste.de/beitrittsgebiet_en

60 See Section 7a (2), first and third sentences of the Act on the Settlement of Unresolved Property Claims.

61 See Section 7 a (2), first and third sentences of the Act on the Settlement of Unresolved Property Claims.

Cases not covered by the Act on the Settlement of Unresolved Property Claims can be resolved with the help of the principles of restitution law. The prerequisite in these cases as well is that the seller was free to dispose of the purchase price;⁶² amounts given in Reichsmarks will be converted using a ratio of 10 to 1, plus interest of 25%.⁶³

III. Just and fair solutions

According to the Washington Principles of December 1998, where the pre-war owners of art confiscated by the Nazis and not subsequently restituted, or their heirs, can be identified, steps should be taken to achieve “a just and fair solution”, “recognizing this may vary according to the facts and circumstances surrounding a specific case.” The Common Statement by the Federal Government, the Länder and the national associations of local authorities of December 1999 is based on the principle that cultural goods found to have been confiscated by the Nazis should be returned to their rightful former owners or their heirs upon a case-by-case examination.

As the practical experience in recent years has shown, various “just and fair” solutions are conceivable and possible, depending on the circumstances of the individual case. A just and fair solution can be achieved only in concert with the legitimate owners. The difficulties facing the parties when it comes to providing evidence need to be taken into account when striving for a just and fair solution. If possible, claimants should be encouraged to help in clarifying the matter, in particular by providing family documents. It is necessary to examine the claimant’s relevant legitimation, in particular proof of inheritance, to avoid restitution to persons who are not entitled, to the detriment of those who are.

⁶² Article 37, Berlin Allied Kommandatura’s Order No. BK/0 (49) 180.

⁶³ Section 15 (1) and (2) of the Federal Restitution Act; with regard to the different ratio for conversion in the Act on the Settlement of Unresolved Property Claims, it should be noted that that provision differs from the usual conversion ratio of 10 to 1 following the currency reform.

In general, it is recommended that institutions inform or consult the responsible supervisory authority or body and their funding bodies.

As a rule, model solutions for dealing with restitution proceedings may consist in returning or buying back works of art which in most cases were originally Jewish property. If, in negotiations with the heirs, the institution desires to buy the object, the need to allow a certain amount of time for the financing must be taken into account. Offering the claimants to agree on an exchange is also conceivable. Another possible solution might be to conclude a (permanent) loan agreement with the legitimate owners.

One aspect to be considered when seeking a just and fair solution in an individual case may be the fact that an object has been preserved with considerable effort on the part of the museum over an extended period of time and been made accessible to the public.

If the just and fair solution results in the object remaining with the institution, it should also discuss with the heirs or legal successors whether and how future exhibitions of the object could display information about its provenance and the fate of its former owners.

The website of the German Lost Art Foundation also provides information on selected examples of specific solutions for institutions preserving cultural property.⁶⁴ Further examples, publications⁶⁵ and other information may be requested of the Foundation. More examples can be found in a federal database of provenance documentation (*ProvenienzdatenbankBund*)⁶⁶ containing the results of research on federally owned art and decisions on individual applications for restitution.

64 See www.kulturgutverluste.de/loesungen.

65 Many model solutions are documented in the publications of the former Coordination Office for Lost Cultural Assets (Koordinierungsstelle für Kulturgutverluste), especially its volume 1 of papers by institutions of the Federal Republic of Germany on how to deal with cultural goods that were formerly Jewish property (Magdeburg, 2001).

66 www.bva.bund.de/provenienzdatenbankbund

IV. Restitution reporting for museums, libraries and archives in Germany

In the course of implementing the Washington Principles,⁶⁷ institutions holding cultural property in Germany have returned many artworks, books and other cultural property to their rightful owners or have found other just and fair solutions.⁶⁸

Because these solutions were found decentrally among the parties concerned, no reliable and regularly updated overview was available to the public or to researchers to show what progress has been made and offer models for dealing with issues that have not yet been resolved.

To close this gap, since 2018 the German Lost Art Foundation has offered an online form to report restitutions or other just and fair solutions in connection with Nazi-confiscated art. All museums, libraries and archives in Germany are invited to participate. It is enough to enter the information used in press releases and for public relations, as the intention is only to provide an overview, and any protected information about the parties involved can and must remain unaffected.

Private institutions are advised to contribute information as well if they would like to report on restitutions or other just and fair solutions.

Link to the online form at the website of the German Lost Art Foundation (in German only):

www.kulturgutverluste.de/restitutionsmeldung

⁶⁷ See Section A.I., text at annex.

⁶⁸ See Section D.III. on just and fair solutions.

E. The Advisory Commission

The independent Advisory Commission on the return of cultural property seized as a result of Nazi persecution, especially Jewish property, was established in 2003 by the Federation, Länder and national associations of local authorities to mediate in case of disputes over the restitution of Nazi-confiscated cultural property. In this way, the Federation, Länder and national associations of local authorities implemented no. 11 of the Washington Principles,⁶⁹ which encourage nations “to develop national processes to implement these principles, particularly as they relate to alternative dispute resolution mechanisms for resolving ownership issues”.

The Advisory Commission may be called upon by institutions and private persons in case of disputes concerning the restitution of cultural property seized by the Nazis, if both parties agree to mediation by the Commission.⁷⁰

Cases before the Commission are conducted according to its rules of procedure.⁷¹

To resolve differences of opinion, the Commission may make recommendations which are not legally binding. For example, it may recommend restitution of the cultural property or restitution against payment of compensation; it can also recommend that the cultural property remain with the current holder in exchange for compensation payment, or advise against restitution.

⁶⁹ See Section A.I., text at annex.

⁷⁰ Institutions receiving funding from the Federal Government Commissioner for Culture and the Media are required to comply with the wishes of claimants in consultation with the Advisory Commission.

⁷¹ See the annexes and www.beratende-kommission.de/verfahrensordnung_en.

The Commission comprises up to ten members. Members are independent persons with legal, ethical, cultural and historical expertise who do not hold a prominent political office. Members of the Commission act in an honorary capacity. They are appointed by the Federal Government Commissioner for Culture and the Media in agreement with the Standing Conference of the Ministers of Education and Cultural Affairs of the *Länder* (KMK) and the national associations of local authorities. Brief information about the Commission members can be found on the Advisory Commission website.⁷²

The German Lost Art Foundation serves as the secretariat of the Advisory Commission and looks after administrative matters.

Contact: www.beratende-kommission.de

⁷² www.beratende-kommission.de/mitglieder_en

ANNEXES

Washington Conference Principles on Nazi-Confiscated Art⁷³

Released in connection with the Washington Conference on Holocaust-Era Assets, Washington, DC, December 3, 1998

In developing a consensus on non-binding principles to assist in resolving issues relating to Nazi-confiscated art, the Conference recognizes that among participating nations there are differing legal systems and that countries act within the context of their own laws.

Art that had been confiscated by the Nazis and not subsequently restituted should be identified.

1. Art that had been confiscated by the Nazis and not subsequently restituted should be identified.
2. Relevant records and archives should be open and accessible to researchers, in accordance with the guidelines of the International Conference on Archives.
3. Resources and personnel should be made available to facilitate the identification of all art that had been confiscated by the Nazis and not subsequently restituted.
4. In establishing that a work of art had been confiscated by the Nazis and not subsequently restituted, consideration should be made for unavoidable gaps or ambiguities in the provenance in light of the passage of time and the circumstances of the Holocaust era.

⁷³ The principles were translated into German by the Swiss Federal Office for Culture and revised by the Language Services Division of the Federal Ministry of the Interior.

5. Every effort should be made to publicize art that is found to have been confiscated by the Nazis and not subsequently restituted in order to locate its pre-War owners or their heirs.
6. Efforts should be made to establish a central registry of such information.
7. Pre-War owners and their heirs should be encouraged to come forward and make known their claims to art that was confiscated by the Nazis and not subsequently restituted.
8. If the pre-War owners of art that is found have been confiscated by the Nazis and not subsequently restituted, or their heirs, can be identified, steps should be taken expeditiously to achieve a just and fair solution, recognizing this may vary according to the facts and circumstances surrounding a specific case.
9. If the pre-War owners of art that is found to have been confiscated by the Nazis, or their heirs, can not be identified, steps should be taken expeditiously to achieve a just and fair solution.
10. Commissions or other bodies established to identify art that was confiscated by the Nazis and to assist in addressing ownership issues should have a balanced membership.
11. Nations are encouraged to develop national processes to implement these principles, particularly as they relate to alternative dispute resolution mechanisms for resolving ownership issues.

Statement by the Federal Government, the Länder and the national associations of local authorities on the tracing and return of Nazi-confiscated art, especially Jewish property (Common Statement)

In accordance with the requirements of the Allied restitution provisions, the Federal Act on Restitution and the Federal Indemnification Act, the Federal Republic of Germany has fulfilled merited claims on grounds of the confiscation of works of art by the Nazi regime after WW II, and set up the necessary procedures and institutions for enabling persons entitled to such indemnification to enforce their claims vis-à-vis other parties liable to restitution. The claims primarily arose to those who immediately suffered damage and their legal successors or, in case of Jewish assets without heirs or Jewish assets that were not claimed, to the successor organizations established in the Western zones and Berlin. The material restitution was effected either on a case-by-case basis or by global settlement. The restitution law and the general civil law of the Federal Republic of Germany thus finally and comprehensively provide for issues of restitution and indemnification of Nazi-confiscated art, especially from Jewish property.

In the German Democratic Republic (GDR) the compensation pursuant to Allied law of wrongs perpetrated under National Socialism did not go beyond a rudimentary stage. In the course of German reunification, the Federal Republic of Germany has undertaken to apply the principles of the restitution and indemnification law. Nazi-confiscated art was returned or indemnified in accordance with the provisions of the Act on the Settlement of Unresolved Property Claims and the Federal Act for the Compensation of the Victims of National Socialist Persecution (NS-Verfolgtenentschädigungsgesetz). Thanks to the global filing of claims on the part of the Conference on Jewish Material Claims against Germany Inc. (JCC) in its capacity as today's association of successor organizations, claims situated in the accession area with regard to cultural property of Jewish parties having suffered loss have been filed. As formerly in the West German Länder, material indemnification on a case-by-case basis was sought; where this was not possible, compensation was effected by global settlement.

I.

Irrespective of such material compensation, the Federal Republic of Germany declared its readiness at the Washington Conference on Holocaust-Era Assets on 3 December 1998 to look for and identify further Nazi-confiscated cultural property in so far as the legal and factual possibilities allow and, if necessary, take the necessary steps in order to find an equitable and fair solution. Against this background, the decision by the Foundation Board of the Prussian Cultural Heritage Foundation of 4 June 1999 is welcomed.⁷⁴

The Federal Government, the Länder and the national associations of local authorities will bring their influence to bear in the responsible bodies of the relevant statutory institutions that works of art that have been identified as Nazi-confiscated property and can be attributed to specific claimants are returned, upon individual examination, to the legitimate former owners or their heirs, respectively. This examination includes checking for material compensation already provided. Such a procedure makes it possible to identify the legitimate owners and avoid duplicate compensation (e.g. by repayment of compensation already paid).

It is recommended that the relevant institutions negotiate the extent and procedure of return or other material indemnification (e.g. in the form of permanent loans, financial or material equalization) with the clearly identified legitimate former owners or their heirs, respectively.

⁷⁴ See www.preussischer-kulturbesitz.de/schwerpunkte/provenienzforschung-und-eigentumsfragen/eigentumsfragen/umgang-mit-ns-raubgut.html

II.

The German public institutions such as museums, archives and libraries have supported the tracing of Nazi-confiscated art already in the past by means of

1. exploitation of and access to the data research findings and records available to them;
2. investigations in case of concrete inquiries and research, on their own initiative, in case of new acquisitions;
3. search activities in the framework of the institutions' tasks;
4. information on the history of Nazi-confiscated art in collections, exhibitions and publications.

These efforts shall be carried on wherever there is sufficient reason.

III.

Furthermore, the Federal Government, the Länder and the national associations of local authorities consider in accordance with the principles of the Washington Conference setting up a website on the Internet with information on the following:

1. What the institutions involved can do for publicizing art of unclear origin to the extent that it is presumed to have been confiscated by the Nazis.
2. A search list in which claimants may enter the items they are looking for and thus report for investigation by the relevant institutions and the interested public.
3. Information on the transfer abroad of Nazi-confiscated art during or immediately after the war.

4. Establishing a virtual information platform where the interested public institutions and third parties may enter their findings relating to the tracing of Nazi-confiscated art in order to avoid duplicate work on the same subjects (e.g. at which auction was Jewish cultural property of which collection sold?) and make such information available using a full-text search.

IV.

This statement refers to archives maintained by public institutions, museums, libraries and their inventory. The public bodies funding these institutions are called upon to ensure the implementation of these principles by taking decisions to this effect. Institutions under private law and individuals are called upon also to apply the principles and procedures laid down at the Washington Conference.

Accord between the Federation, the federal states and the national associations of local authorities on the establishment of an Advisory Commission

- (1) An independent Advisory Commission shall be established which, if desired, may be jointly called upon in individual cases in which, in connection with the restitution of cultural property seized as a result of Nazi persecution, especially Jewish property, the claimant and the holder of the cultural property seek mediation. 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, upon request for mediation, declare that they 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) At every stage of the procedure it shall be the Commission's task to work towards an amicable settlement. As a result of its work, the Commission may issue recommendations that will be published together with their explanations. Public institutions and private parties are expected to follow these recommendations.
- (3) The Commission shall be composed of up to ten qualified figures with legal, ethical, cultural and historical expertise who do not hold a prominent political office. The Commission members shall be appointed by the Federal Government Commissioner for Culture and the Media in agreement with the Conference of Ministers of Education and Cultural Affairs (KMK) and the national associations of local authorities for a period of ten years (for new members). The Commission members shall work in an honorary capacity.
- (4) The Commission shall adopt its own rules of procedure which will be published.
- (5) The German Lost Art Foundation (Deutsches Zentrum Kulturgutverluste) shall serve as the secretariat of the Advisory Commission and look after administrative matters. A suitable staff member shall assume the role of executive secretary.

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 Common Statement by the Federal Government, the Länder and the national associations of local authorities. The foundation for its activities is the Accord between the Federation, the Länder 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 members.⁷⁵
- (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.
- (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 Guidelines of 2001 in their 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

⁷⁵ Names of the current members can be found at www.kulturgutverluste.de/kommission-mitglieder_en.

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 Common Statement of 1999 and the Guidelines of 2001 for its implementation in their current versions.
- (4) 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.
- (5) The Commission may generally recommend that
 - a. the cultural property should be returned;
 - b. the cultural property should be returned against payment of 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 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.
- (6) The written version of the recommendation and its explanation shall be transmitted to the parties by the secretariat.
 - (7) The secretariat shall publish the recommendation and its explanation on the website of the German Lost Art Foundation.
 - (8) 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

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This brochure has been published as part of the public information efforts
of the Federal Government. It is available free of charge and is not for sale.

These Guidelines are intended to provide orientation for own provenance research on Nazi-confiscated art in public and private museums, collections, libraries and archives. The Guidelines are addressed to those responsible for managing collections of cultural goods and to practitioners in the field of provenance research. They are also a useful reference for those with a general interest in the issue of Nazi-looted art.

This 2019 edition is an update of the 2001 brochure which was last revised in 2007.