

Please note this is an unauthorised translation of the original Dutch text "*Reglement werkwijze Restitutiecommissie 2023*". In case of divergence in the translated version, the original Dutch text prevails.

Restitutions Committee Procedural Regulations 2023

The Restitutions Committee,

Having regard to the provisions in article 4, paragraph 6 of the Decree Establishing the Restitutions Committee,

Decides to amend the Restitutions Committee Procedural Regulations 2021, which were adopted on 12 July 2021 and which came into effect on 15 July 2021, as follows:

Article 8, point 2, now reads:

"2. The advice or binding opinion is signed by the chair or vice-chair and another member of the Restitutions Committee.

Note

Article 8, point 2 is thus amended such that the advice or binding opinion is signed by members of the Restitutions Committee, and not by the secretary. This is being done to bring the procedure more into line with standard practice in the case of a binding opinion or arbitration, in which co-signing by a secretary is not normal.

Article 11, point 1, now reads:

"1. The District Court of The Hague is exclusively competent to rule on disputes about the binding force on the parties of a binding opinion.

Note

Amending 'Dutch courts' to 'the District Court of The Hague' is intended to clarify to which Dutch court a dispute about the binding force on the parties of a binding opinion issued by the Restitutions Committee can be submitted. Questions about whether Dutch courts have jurisdiction if an applicant lives abroad will no longer arise because the generally applicable cardinal rule is that Dutch courts have jurisdiction because the *respondent* (State, province, local authority, foundation or private individual) will always have their domicile or normal place of residence in the Netherlands.

Article 11, point 2, now reads:

"2. The binding opinion can only be nullified on the grounds of provisions in article 7:904, paragraph 1, of the Dutch Civil Code"

Note

The second point is intended to clarify the yardstick used for deciding what the competent court is on the basis of article 11, point 1.

A third point is added to article 11. It reads

"3. The right to institute proceedings with the aim of nullification lapses two months after the day on which the binding opinion was sent."

Note

The addition of a third point removes a possible ambiguity in the current article 11, point 2 about the moment at which the term of two months starts. It was drafted this way to bring

these regulations more into line with the way provided for the nullification of arbitration awards (article 1064a, paragraph 2 of the Dutch Code of Civil Procedure).

Concluding provision; coming into force

This amendment comes into force on 6 October 2023 and is applicable from that date to, among other things, the requests for advice or a binding opinion current at that time. It and its notes are on the Restitutions Committee's website.

Adopted by the Restitutions Committee on 6 October 2023.

Full text 2023

With effect from 6 October 2023 the Restitutions Committee Procedural Regulations read as follows:

Article 1. Definitions

1. The terms used in these regulations are defined as follows:
 - a. Expertise Centre: The Restitution of Items of Cultural Value and the Second World War Expertise Centre of the NIOD Institute for War, Holocaust and Genocide Studies;
 - b. parties: the applicant or applicants and the holder;
 - c. application: restitution application;
 - d. applicant: the person applying for restitution of the item of cultural value;
2. The other definitions in the Decree Establishing the Restitutions Committee also apply to these regulations.

Article 2. Assessment of Whether the Application is Admissible for Substantive Handling

1. The Restitutions Committee first of all assesses on the grounds of §1 of the appendix to the Decree Establishing the Restitutions Committee whether the application is admissible for substantive handling.
2. If the item of cultural value is not held by the Dutch State, there is a requirement prior to substantive handling that, at the request of the Restitutions Committee, both parties declare within four weeks that they accept these regulations, the appendix to the Decree Establishing the Restitutions Committee and the Restitutions Committee's opinion about the application as binding. The Restitutions Committee may extend this period.

Article 3. Further Handling in Writing

1. As soon as the Restitutions Committee handles the application substantively, it gives the parties the opportunity to give an explanation and submit additional information within six weeks.
2. The Committee may at any point during the handling:
 - a. obtain information independently;
 - b. have the Expertise Centre conduct an investigation;
 - c. give the parties the opportunity to provide a response within a specified period;
 - d. require a party to provide within a specified period additional information or documents, such as a certificate of inheritance.

Article 4. Sending Documents and Copies

1. In principle all documents and copies are sent exclusively in digital form. A party may request a paper version.
2. The Restitutions Committee sends copies of documents it receives from a party or sends to a party to the other party.

3. If the applicant or applicants have designated a third party as representative, the Restitutions Committee sends all documents or copies to the representative as well as to the applicants using their e-mail addresses as known to the Restitutions Committee.
4. Point 3 does not apply if:
 - a. an applicant tells the Restitutions Committee that he or she no longer wishes to receive documents or copies, or
 - b. if there are multiple applicants, they prefer documents or copies to be sent to only one or some of them.

Article 5. Investigation

1. The Expertise Centre records the results of the investigation that it conducts on the Restitutions Committee's instructions in an overview of the facts.
2. The Expertise Centre may require a party to provide additional information or documents for the purposes of the investigation within a period to be specified. It may extend the period.
3. The Expertise Centre first of all prepares a draft overview of the facts, which it sends directly to the parties.
4. They may submit their written response to it to the Expertise Centre within six weeks.
5. The Restitutions Committee invites the Expertise Centre to a meeting to discuss the draft overview of the facts, including any amendments, and the responses received.
6. Steps that the Expertise Centre takes as a result of this meeting are accounted for in the Expertise Centre's final overview of the facts, which the Expertise Centre sends to the Restitutions Committee.
7. The Restitutions Committee sends it to the parties immediately.
8. They may submit their written response to it to the Restitutions Committee within six weeks.
9. The Restitutions Committee is the focal point for questions in connection with the investigation at the start of and during the Expertise Centre's investigation.
10. The Restitutions Committee may furthermore consult witnesses or experts or have an investigation conducted by experts it designates. The Restitutions Committee may send the report of such an investigation to the parties, who may respond to it within two weeks.

Article 6. Hearing

1. In principle, during its handling of an application the Restitutions Committee may also conduct a hearing, if necessary more than once.
2. It invites the parties and the Expertise Centre to it as soon as possible after the period specified in article 5, eighth or tenth point, or after the extended period pursuant to article 8a.
3. It may decide not to conduct a hearing if:
 - a. both parties see no need for one, or
 - b. on the grounds of article 2, the application is apparently not admissible for substantive handling.
4. The parties may send documents to the Restitutions Committee no later than two weeks before the hearing.
5. The hearing is attended on behalf of the Restitutions Committee by at least three of its members. The hearing is chaired by the chair or the vice-chair or, if they are not able to attend, by one of the other members.
6. It is desirable that the applicant or at least one of the applicants attends the hearing in person, even if a third party has been designated as representative.
7. The Restitutions Committee may permit the parties to have witnesses or experts attend the hearing in person and speak at it provided that their names and addresses are supplied no later than two weeks before the hearing.

8. The parties and their representatives may be given the opportunity to participate in the hearing by means of a digital video link. They may also request that for the witnesses or experts referred to in point 6.
9. The hearing is minuted and the minutes are sent to the parties.

Article 7. Sending the Draft Advice or Draft Binding Opinion

1. Before the Restitutions Committee adopts its advice or finalizes its binding opinion about the application, it sends a draft of it to the parties:
 - a. within six weeks after the hearing or, if there is more than one hearing, within six weeks after the last of them, or
 - b. if the parties decide not to have a hearing, six weeks after the period specified in article 5, eighth or tenth point, or after the extended period pursuant to article 8a.
2. It gives the parties the opportunity to respond to the draft in writing within six weeks.

Article 8. Sending the Advice or Binding Opinion

1. The Restitutions Committee adopts the advice or binding opinion within six weeks after the period specified in article 7, second point, or after the extended period pursuant to article 8a, unless it considers there is need for further consultation with the parties or for additional research by the Expertise Centre.
2. The advice or binding opinion is signed by the chair or vice-chair and another member of the Restitutions Committee.
3. The Restitutions Committee sends its advice exclusively to the Minister.
4. It sends its binding opinion to the parties, with a copy to the Minister.

Article 8a. Extending or Reducing a Period

A period specified in or pursuant to these regulations may, if necessary, be extended by an equal period, or, if necessary, be reduced.

Article 9. Handing Over the Item of Cultural Value and the Parties' Costs

If the Application concerns an item of cultural value not held by the Dutch State:

- a. the handing over takes place at its location, unless the Restitutions Committee decides otherwise.
- b. the costs incurred by the parties themselves with regard to the handling of the application and the implementation of the binding opinion are to be borne by the parties, unless the Restitutions Committee decides otherwise

Article 10. Publication of the Advice or Binding Opinion

The Restitutions Committee publishes its advice or binding opinion on its website or in some other way, if necessary anonymizing personal details, unless a party has compelling reasons why that should not be done.

Article 11. Competent Court in the Case of a Binding Opinion

1. The District Court of The Hague is exclusively competent to rule on disputes about the binding force on the parties of a binding opinion.
2. The binding opinion can only be nullified on the grounds of provisions in article 7:904, paragraph 1, of the Dutch Civil Code.
3. The right to institute proceedings with the aim of nullification lapses two months after the day on which the binding opinion was sent.

Article 12. Liability

The chair, the vice-chair, the members, the secretary and other Restitutions Committee staff are not liable for any actions or omissions with regard to an application the parties have submitted to the Restitutions Committee.

Article 13. Confidentiality

Without prejudice to articles 4, 7, 8 and 10, the Restitutions Committee is obliged to keep confidential all information relating to the parties that it has taken note of during the handling of the application.

Article 14. Objection and Exemption

1. A party may object to a member of the Restitutions Committee on the basis of facts or circumstances that might make the formation of an impartial opinion difficult.
2. The chair decides about allowing the objection. If the objection concerns the chair, the vice-chair decides. The parties are informed about the decision.
3. A member of the Restitutions Committee may claim exemption on the basis of facts or circumstances as referred to in point 1. The member is obliged to do so if the chair is of the opinion that the said facts and circumstances relating to that member exist.

Article 15. Unforeseen

The Restitutions Committee decides in a case not provided for in these regulations on the basis of reasonableness and fairness.

Article 16. Short Title

These regulations are cited as Restitutions Committee Procedural Regulations 2023

Article 17. Withdrawal of Previous Regulations

1. The regulations for the binding opinion procedure in accordance with article 2, paragraph 2 and article 4, paragraph 2 of the Decree Establishing the Advisory Committee on the Assessment of Restitution Applications for Items of Cultural Value and the Second World War were withdrawn on 22 April 2021 by a decree of 12 April 2021.
2. The regulations referred to in the first point remain applicable to applications submitted before 22 April 2021 for the restitution of an item of cultural value not held by the Dutch State, unless both parties have requested application of the Decree Establishing the Restitutions Committee and the Restitutions Committee Procedural Regulations 2021.

Article 18. Coming into Force

1. This amending decree comes into effect on 6 October 2023.

Contact details and further information, including the [Regulations as applicable since 15 July 2021](#) and the associated notes, are on the Restitutions Committee's website: www.restitutiecommissie.nl/en.