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 2025

Federal Government Commissioner
for Culture and the Media

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Foreword

It has been more than 25 years since the Washington Principles (Washington Conference Principles on Nazi-Confiscated Art) were adopted in December 1998. In that time, the Federation, the *Länder* (federal states) and the national associations of local authorities have made broad-ranging efforts to improve their approach to the legacy of Nazi art theft. Germany is not only a signatory to the Washington Principles but also supports the Best Practices for the Washington Conference Principles on Nazi-Confiscated Art (issued in March 2024) and thereby accepts its responsibility to address the legacy of Nazi art theft, whose victims were mainly Jews.

A clear requirement is contained in the Washington Principles and in the Common Statement (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), which was adopted in 1999 to implement the Washington Principles in Germany. That requirement is for public institutions holding cultural property to check their holdings and collections proactively and systematically for items of Nazi-looted cultural property and to return any such items to the rightful owners or their legal successors, or to find other just and fair solutions with those individuals.

In March 2024, with the shared aim of improving the practice of restituting Nazi-looted cultural property, the Federation, the *Länder* and the national associations of local authorities agreed on a fundamental reform of the Advisory Commission, which was established in 2003. This commission is to be replaced by joint arbitration in the form of the Court of Arbitration for Nazi-looted Cultural Property, which is due to begin work on 1 December 2025. It is based on an administrative agreement between the Federation, the *Länder* and the national associations of local authorities which was adopted on 26 March 2025. The Jewish Claims Conference and the Central Council of Jews in Germany were involved in drafting the founding documents for the Court of Arbitration.

The use of arbitration proceedings to resolve restitution disputes over Nazi-looted cultural property is a novel approach, both in Europe and elsewhere. This approach allows considerable improvements to be made to the proceedings themselves and to the standards of decision-making.

For the Federation, the *Länder* and the national associations of local authorities, it was especially important, when drawing up the list of arbitrators, to ensure a balanced selection. The Central Council of Jews in Germany and the Jewish Claims Conference are entitled to propose half of the candidates for the list of arbitrators.

An important aspect of the reform is that victims of Nazi art theft and their legal successors are now allowed to initiate arbitration proceedings unilaterally. Unlike in the past, proceedings will now be possible without the express agreement of the public institution holding cultural property. This is because, prior to the initiation of proceedings, the Federation, the *Länder* and the national associations of local authorities will encourage the submission of "standing offers" or submit such offers directly.

The "Assessment Framework for examining and deciding on the treatment of Nazi-looted cultural property" replaces the "Guidelines for verifying whether a work of art was Nazi-confiscated and for preparing decisions on restitution claims", as set out in earlier versions of this document. The Explanatory Notes on the Assessment Framework also provide important information for practitioners working outside of arbitration proceedings. The Assessment Framework provides comprehensive rules on the provision of evidence and considerable reductions in the burden of proof, thus creating a new procedural basis for the victims of Nazi art theft and their legal successors. This is a crucial step, as cases that remain open today usually contain gaps and ambiguities. For such cases, rules are required in order to reach just and fair solutions.

This revised edition of the Guidelines for implementing the Common Statement was necessitated by the establishment of the Court of Arbitration for Nazi-looted Cultural Property. In addition to containing revisions that reflect the new situation, the current version of the Guidelines also addresses practical requirements. By providing extensive instructions on how just and fair solutions can be found, the Guidelines aim to help public institutions holding cultural property to navigate these often-complex processes.

The Guidelines are not legally binding but do provide valuable pointers and recommendations on how to check for and handle Nazi-looted cultural property. They also provide general help with implementing the Washington Principles, the Best Practices and the Common Statement. The Guidelines are aimed at staff working in public institutions holding cultural property, at provenance researchers and at decision-makers. But the information provided will also be useful for people with no previous experience in this area.

In establishing the Court of Arbitration for Nazi-looted Cultural Property, the Federation, the *Länder* and the national associations of local authorities have created a strong framework for improving the implementation of the Washington Principles and the Common Statement within Germany's federal system. The step of establishing a Court of Arbitration is an expression of the shared intent to achieve just and fair solutions for cases that are still unresolved. The arbitrators have the task of converting abstract rules into arbitration practice. In this endeavour, they face the challenge of finding viable answers to difficult questions in what remains an interdisciplinary field. And it is a field that addresses a dark chapter in German history: the atrocities committed by the Nazi regime. Every just and fair solution achieved helps to address the legacy of Nazi art theft. Still today, more than 80 years after the war, this remains an essential task and duty for the whole of German society.

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A.
Introduction

I. The Washington Principles and the Common Statement

The Washington Conference on Holocaust-Era Assets took place from 30 November to 3 December 1998. During the conference, 44 countries, including Germany, and various non-governmental organisations agreed on principles for dealing with Nazi-looted cultural property that had not been returned to its rightful owners. These principles, known as the Washington Principles, constitute the first political declaration of intent on dealing with Nazi-looted cultural property. However, they do not have any legally binding force but are instead an instrument of soft law. The Washington Principles are therefore essentially a set of recommendations. In 2024, Germany adopted the Best Practices for the Washington Conference Principles on Nazi-Confiscated Art. The Best Practices are recommendations based on more than 25 years of experience in implementing the Washington Principles of 1998.[1] Like the Washington Principles themselves, these Best Practices are not binding under international law.

The basis for the implementation of the Washington Principles in Germany is 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 (known as the Common Statement).[2] The Common Statement, published in December 1999, uses a German term that is broader than "Nazi-confiscated art" (the term used in the Washington Principles). The German term *NS-verfolgungsbedingt entzogenes Kulturgut* translates approximately as "cultural property removed [from owners] as a result of Nazi persecution". According to the Common Statement, public art collections and holdings should be checked for the presence of Nazi-looted items. Any such items identified should be returned to the rightful owners or their legal successors. Alternatively, other just and fair solutions should be reached in cooperation with the owners or their successors in line with the Washington Principles. The Common Statement stresses that the identification and restitution of Nazi-looted cultural property is one of the tasks of our public cultural institutions and their funding bodies. Furthermore, the Common Statement calls upon institutions that are only partially publicly funded and upon private owners to go beyond the usual obligations associated with public funding and to actively help implement the Washington Principles by considering just and fair solutions.

1 See **section F Annex III**. Also available here: https://www.state.gov/office-of-the-special-envoy-for-holocaust-issues/best-practices-for-the-washington-conference-principles-on-nazi-confiscated-art.

2 See **section F Annex II**.

II. Key developments

Since the 1990s, numerous necessary and appropriate measures have been taken to implement the Washington Principles in the spirit of the Common Statement:

- **1994:** The Coordination Office for the Return of Cultural Property was established in Bremen and in 1998 moved to Magdeburg. Initially, the office documented cultural property that had gone missing during the war and was held by German public institutions. Later it became a central service institution for lost art. It was initially funded by the *Länder*, and from 2001 also by the federal level.

- **2000:** The Lost Art Database[3] went online as a measure to implement the Common Statement. To this day, the database publishes lost and found reports (issued by third parties) on Nazi-looted cultural property that went missing during the war. Such items may be held by institutions or private individuals both in Germany and abroad. This upholds the transparency requirement of the Washington Principles[4] and implements point III of the Common Statement.

- **2001:** The first edition of these Guidelines was published. By providing additional information, the Guidelines supported the implementation of tasks resulting from the Common Statement. The Guidelines were revised in 2007, and in 2019 a new edition was published, which has now been revised in 2025.

- **2003:** The Advisory Commission on the return of cultural property seized as a result of Nazi persecution, especially Jewish property[5] was set up under an accord between the Federation, the *Länder* and the national associations of local authorities. The Advisory Commission may be called upon in disputes concerning the restitution of cultural property seized by the Nazis. The Advisory Commission is to be replaced by the Court of Arbitration for Nazi-looted Cultural Property on 1 December 2025 (see section E).

- **2008:** The Bureau for Provenance Research (AfP) was established at the Institut für Museumsforschung (Institute for Museum Research) in Berlin. It was funded by the Federal Government Commissioner for Culture and the Media and the Cultural Foundation of the *Länder*. Until 2015, when it – like the aforementioned Coordination Office – became part of the German Lost Art Foundation, the Bureau served primarily to provide funding for provenance research into Nazi-looted cultural property.

3 See **section D. I.** – Lost Art Database.
4 See nos. 5 and 6 of the Washington Principles.
5 See **section E** – Advisory Commission.

- **Since 2008:** The Cultural Foundation of the *Länder* has helped to investigate Nazi-looted cultural property in public institutions. In particular, it has provided funds for municipal museums to buy back restituted artworks.

- **2009:** The Terezín Declaration[6] was adopted – with Germany as one of the endorsing states – following the international Holocaust-Era Assets Conference in Prague. In the Terezín Declaration, the endorsing states reaffirmed their support for the Washington Principles of 1998.

- **2015:** The German Lost Art Foundation (DZK) was established in Magdeburg under civil law by the Federation, the *Länder* and the national associations of local authorities. It is federally funded and its workspace is provided free of charge by the state of Saxony-Anhalt (the host state). The foundation has helped to meet the ongoing requirement to search for Nazi-looted cultural property and to track it, making it possible for others to find. Its core task[7] is to strengthen, consolidate and expand provenance research, especially into Nazi-looted cultural property.

- **2016:** The Act on the Protection of Cultural Property (*Kulturgutschutzgesetz,* KGSG)[8] entered into force. It contains various rules that help implement the Washington Principles and the Common Statement. It specifically ensures that mechanisms to prevent cultural property being removed from the country do not stand in the way of just and fair solutions.[9] And it introduced strict due diligence obligations[10] to stop cultural property being sold on the private market in Germany if that property is proved to have been stolen under the Nazi regime or suspected, based on principles of provenance research, of having been stolen under the Nazi regime. If cultural property is suspected to have been stolen under the Nazi regime and its provenance has become the subject of investigation (in court or out of court), then potential buyers have a right to inspect the sellers' records.[11] Proof or suspicion of cultural property having been stolen under the Nazi regime should also be taken into account when considering a legally binding commitment to return it.[12] Further information on the Act on the Protection of Cultural Property can be found on the website "Kulturgutschutz Deutschland".[13]

- **2020:** A Help Desk for enquiries about cultural assets seized in the Nazi era was established at the German Lost Art Foundation. The Help Desk is a contact and information office and provides general advice and help with enquiries, especially from abroad, relating to Nazi-looted cultural property, provenance research and just and fair solutions.

6 The text of the Terezín Declaration is available at https://www.state.gov/prague-holocaust-era-assets-conference-terezin-declaration.

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

8 Link to English version of the website: https://www.kulturgutschutz-deutschland.de/EN/Home/home_node.html.

9 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 taken from a previous owner under the Nazi regime and it should be restituted somewhere outside Germany (section 13 (1) and (2) of the Act on the Protection of Cultural Property).

10 See section 44 sentence 1 no. 1 of the Act on the Protection of Cultural Property.

11 See section 48 (1) and (2) of the Act on the Protection of Cultural Property.

12 Giving a legally binding commitment to return an item of cultural property in accordance with section 73 of the Act on the Protection of Cultural Property.

13 The German version of the website provides a practical guide to the Act on the Protection of Cultural Property. The document (called Handreichung für die Praxis) can be downloaded here: www.kulturgutschutz-deutschland.de/HandreichungKGSG.

- **2020:** The Proveana database was set up. The database is a central register in which the German Lost Art Foundation stores information gathered mainly by funded research projects. It is not only an important instrument documenting historical information for provenance research; it also creates transparency regarding cases that are not yet resolved.
- **2024:** The Best Practices for the Washington Conference Principles on Nazi-confiscated Art were published. The Best Practices have been endorsed by 34 countries (as at August 2025).

In 2025, the Court of Arbitration for Nazi-looted Cultural Property began its work. This had been agreed upon by the Federation, the *Länder* and the national associations of local authorities during high-level cultural policy meetings in March and October 2024. The administrative agreement establishing the Court of Arbitration for Nazi-looted Cultural Property came into effect on 26 March 2025, having been signed by the Federation, the *Länder* and the national associations of local authorities.[14]

III. The history of provenance research

Immediately after the Second World War, Nazi-looted cultural property was returned via central collecting points set up by the Western Allies. Later, the allies' restitution law, followed by the Federal Restitution Act (*Bundesrückerstattungsgesetz*), became the legal basis for restitution and compensation.[15] The deadlines for applications specified in those regulations expired decades ago. As a result, for a long time no efforts were made to identify Nazi-looted cultural property in the collections of institutions holding cultural property. Only after the Washington Principles in 1998 did this start to change. In the Common Statement of 1999, the Federation, the *Länder* and the national associations of local authorities undertook to implement the Washington Principles. Since then, public institutions holding cultural property have been obliged to

14 See also **section E**.

15 Further information on restitution for Nazi-perpetrated injustices is available here: www.bundesfinanzministerium.de/NS-Unrecht.

proactively search their collections for Nazi-looted items. If any are found, the institutions are encouraged to find a just and fair solution with the victims of the theft (i.e. the rightful owners) and their descendants. In view of Germany's responsibility for the crimes perpetrated by the Nazi regime, it is a central task of German institutions holding cultural property to engage in a systematic and wholehearted reckoning with the legacy of Nazi art theft.

Since the Washington Principles and the Common Statement were adopted, the conditions for carrying out provenance research, restitutions and other just and fair solutions have continually improved thanks to considerable efforts by the Federation, the *Länder* and the national associations of local authorities. Provenance research in Germany now has strong support structures in cultural and academic institutions.

The German Lost Art Foundation in Magdeburg was established as a central contact point for implementing the Washington Principles. It successfully initiates, supports and coordinates projects to address the legacy of Nazi art theft. It provides federal funding for these projects, which are carried out by various museums, libraries and archives.

Not only public or privately financed institutions, but also private individuals may apply to the German Lost Art Foundation for funding. They can apply for funding to research the provenance of specific works or to reconstruct a collection that was lost as a result of persecution under the Nazi regime.

Another important task of the foundation is to bring together research results and store them in the Proveana[16] database so that they can be accessed by other researchers. The database is intended primarily for provenance researchers and is meant to help avoid the duplication of research efforts. Along with other information, the database contains the final reports of projects funded by the German Lost Art Foundation.

The Proveana database together with the lost and found reports published in the Lost Art Database[17] (also operated by the German Lost Art Foundation) are central resources for the implementation of the Washington Principles. These databases help with specific searches and support the field of provenance research.

The Federation, the *Länder* and the national associations of local authorities place very high importance on addressing the legacy of Nazi art theft by identifying and (if appropriate) returning Nazi-looted cultural property to its rightful owners. Therefore, ever since the adoption of the Washington Principles and the Common Statement, the aforementioned levels of government have continually adopted measures to strengthen provenance research. Provenance research is conducted not only through the systematic funding of projects by the German Lost Art Foundation: for instance, institutions holding cultural property have themselves created many more vacancies for provenance researchers in recent years. Networks of institutions, research associations and coordination offices also help to strengthen research, as do the databases created for this purpose.[18] While these developments

16 The Proveana research database can be accessed here: https://www.proveana.de/en/start.

17 See **section D. I**. The Lost Art Database can be accessed here: https://www.lostart.de/en/start.

18 Information on research options and databases is available here: https://www.proveana.de/en/help/research-options, and here: https://www.proveana.de/de/suche?field[0][0][term]=&field[0][0][type]=all&field[0][op]=AND&filter[type][0]=Literatur&filter[publication_type][0]=Digitale%20Quelle&filter[tag][path]=Datenbank&filter[research_context][0]=NS-verfolgungsbedingt%20entzogenes%20Kulturgut, and here: https://kulturgutverluste.de/en/contexts/nazi-looted-cultural-property#:~:text=Assistance%20with%20Provenance%20Research.

have certainly been embraced by institutions holding cultural property, provenance research remains a challenge for many museums and libraries, especially smaller ones, due to the considerable resources involved.

In recent years, there has been a continual rise in the number of institutions that conduct systematic provenance research to check their collections and holdings for Nazi-looted cultural property. Thanks to provenance research, thousands of works of art, books and other pieces of cultural property have been identified as Nazi-looted cultural property and returned to the rightful owners or their legal successors, or other just and fair solutions have been found.[19] In Germany, the establishment and development of decentralised research infrastructure has thus proved successful. However, the challenges outlined above still remain. For this reason, Germany cannot and will not reduce its efforts to address the legacy of Nazi art theft.

Furthermore, provenance research into Nazi-looted cultural property has become established in Germany a recognised academic subject. Several universities now have professors who focus on issues concerning provenance research. However, work still needs to be done to strengthen and permanently entrench the study of provenance research at universities. Meanwhile, throughout Germany there are further training programmes[20] aimed primarily at staff working in museums or art dealerships.

The world of provenance research has evolved from a small group of researchers into an internationally recognised interdisciplinary association with considerable expertise. In this context, cooperation across different disciplines (especially art history, history and law) is not just desirable but often necessary. The Provenance Research Association[21] is the world's largest association of provenance researchers, with more than 600 members in Germany, elsewhere in Europe, in Israel and the USA. For researchers specialising in library holdings, there is the "provenance research and restitution association – libraries".[22]

The progress made in strengthening provenance research in Germany has received international acclaim, as have the results of that research. Furthermore, in recent years it has been possible to expand provenance research beyond the domain of art museums – for example to technical museums, university collections and city libraries. There is no doubt that a great deal has been achieved, and yet the task remains extensive and complex. Dealing with the legacy of Nazi art theft still requires considerable effort.

In addition to the provenance research carried out on Nazi-looted cultural property held in publicly funded institutions, more such research needs to be carried out on cultural property held in privately funded institutions, and above all in private collections. The funding guidelines of the German Lost Art Foundation provide for funding in those areas.[23]

19 For more information on restitution reporting, see **section D. IV**.

20 Information on further training programmes is published by Freie Universität Berlin: https://www.fu-berlin.de/sites/weiterbildung/weiterbildungsprogramm/pvf/index.html,
and by the Bundesakademie für kulturelle Bildung: https://www.bundesakademie.de/programm, among others.

21 More information on the Provenance Research Association is available here: https://www.arbeitskreis-provenienzforschung.org/en.

22 More information on the "provenance research and restitution association – libraries"
is available here: https://www.bibliotheksverband.de/provenienzforschung-und-provenienzerschliessung.

23 For information on the funding role of the German Lost Art Foundation, see **section B. II. 2. a.**

Experience gained through German and international provenance research in recent years shows that, in spite of intensive research, there are some provenance gaps for the period from 1933 to 1945 which cannot (yet) be closed satisfactorily or become part of provenance documentation. A gap in the provenance chain does not necessarily mean that an object was looted by the Nazis (though it can); nor does it necessarily constitute an objective basis for any such suspicion (though it can). If a gap still cannot be closed, despite considerable effort and highly intensive research, and if there remains a reasonable suspicion that the object was looted by the Nazis, then the institution holding the object must act through its funding body to reach a decision on how to deal with that object, based on research. During this process, it must always be borne in mind that victims of Nazi art theft are often faced with the challenge of proving that an object belonged to them or their ancestors before they were persecuted and forced to flee. This must be borne in mind as part of every provenance assessment conducted in accordance with point 4 of the Washington Principles.

B.

Documenting and checking holdings and collections – advice on identifying Nazi-looted cultural property

I. Documenting holdings and checking them for Nazi-looted cultural property

According to the Washington Principles and the Common Statement, one of the primary tasks of institutions holding cultural property is to document their collections and holdings, providing complete information on the provenance of all individual objects. And it is especially important for institutions to check their collections and holdings for any objects that changed ownership or possession (or are suspected to have changed ownership or possession) during the Nazi era. For such objects, further research is required into the historical circumstances of their acquisition and of any changes in ownership and possession. A passive approach – taking action only in response to information that may come to light – is insufficient. Instead, collections should always be checked **proactively**, with a sense of responsibility for dealing with the legacy of Nazi art theft and creating transparency. Furthermore, institutions should consider making any information[1] on transactions involving relevant items (e.g. changes of ownership through purchase, exchange, giving, etc.) available to the public. This applies in principle to all items that existed prior to 8 May 1945. The relevant period of scrutiny for the holdings of institutions is from 30 January 1933, when the Nazis came to power, until the present day.

The tasks can be summarised as follows:

Institutions holding cultural property are aware of their continuing obligation to support the goal of identifying Nazi-looted cultural property in their collections and holdings while carrying out their regular tasks. Under this approach, institutions identify suspicious items using currently available sources and research results; then, with the help of the Lost Art Database,[2] they make information about such items available to the public in an easily understandable form. If an item is suspected of being Nazi-looted, or if this possibility cannot be ruled out, then the institution is encouraged to conduct further provenance research. People who may be eligible to claim ownership of such an item should be contacted **proactively** and given all available information about that item. This includes searching for the heirs[3] of victims of Nazi art

1 See the guidelines to the standardised recording of provenance information, published by the Provenance Research Association, available here: https://www.arbeitskreis-provenienzforschung.org/arbeitsgruppen/ag-standardisierung/.

2 See **section D. I.** – Lost Art Database.

3 See also **section C. III.**

theft. Private collectors are also requested to make these efforts.

If checks reveal that holdings contain items that were brought to Germany from abroad during the war, all available information about such items should be passed on to the body responsible for the institution in question so that appropriate action can be taken and the information can be forwarded to the German Lost Art Foundation.[4]

II. Advice on identifying Nazi-looted cultural property

The sections below provide a brief overview of key points in identifying Nazi-looted cultural property. An essential part of provenance research is to check the sources of available information. This means examining to whom and to what period the sources can be attributed. It also means considering what their purpose was. It is equally important to carefully compare any identifying features of a relevant item with authentic descriptions or images (e.g. engravings, photographs) of that item from the past. Further details can be found in the guide published by the German Lost Art Foundation.[5]

1. Overview – checking collections and holdings for Nazi-looted cultural property

The following overview explains which items of cultural property in the collections and holdings of relevant institutions should be subjected to closer inspection in terms of their provenance. One key question is that of when an item should be considered Nazi-looted cultural property, and thus when a just and fair solution should be sought in accordance with the Washington Principles. This question is answered in the Assessment Framework for examining and deciding on the treatment of Nazi-looted cultural property. The following overview is directed above all at people and institutions with little or no experience in the field.

4 For contact information of the German Lost Art Foundation, see **section F Annex VIII**.

5 "Provenance research manual to identify cultural property seized due to persecution during the national socialist era", 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 https://kulturgutverluste.de/sites/default/files/2023-06/Manual.pdf?bcsi_scan_6dfde44891f17c0f=0&bcsi_scan_filename=Manual.pdf. For further information on the confiscation, storage and transfer of cultural property between 1933 and 1945, see https://www.proveana.de/en/start.

➤ ***Which items should be checked for their provenance?***

Cultural property of unknown, incomplete or uncertain provenance: this applies to all cultural property that existed prior to 8 May 1945 and changed hands between 1933 and 1945.

Cultural property is thus broadly defined. The term refers to any object, or category of objects, which from today's perspective is considered to have artistic, historical, archaeological, academic, religious or general cultural value.[6] It refers not only to portraits, sculptures, archival documents and books, but also to items that were not originally considered to be works of art, such as furniture, cutlery, cars, technical devices, and other everyday objects.

➤ ***Where did the item change hands?***

Provenance of an item is to be checked if any of the following apply: 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, in the Klaipėda Region of present-day Lithuania (previously Memel Territory) after 23 March 1939, and in countries occupied by German forces after the outbreak of the Second World War on 1 September 1939. Nazi-controlled territory also includes unoccupied territories that were recognised as falling under German responsibility by the Federal Act for the Compensation of the Victims of National Socialist Persecution (*Bundesentschädigungsgesetz,* BEG). Even if an item of cultural property was transferred to an owner outside of this territory, this may nevertheless be considered a loss as a result of persecution under the Nazi regime.[7]

➤ ***How did the item come to be in the collection or institution where it is now held? How did the property change hands?***

This includes any legal transactions – e.g. sales, gifts or auctions – involving persecuted private individuals or companies associated with such individuals. The following acquisition contexts may also be documented in the relevant records:

- acquisitions from pawnshops
- acquisitions from "central points" or "special and operational offices"
- large quantities of items sold at auction or by antiquarian bookshops
- official authorities giving confiscated cultural property to museums, etc. (as "gifts")
- items of uncertain origin received between 1933 and 1945 (for example, items with missing or unclear information concerning their origin, or items with irregularities in their registration).

6 See also **paragraph 4.1.** of the Assessment Framework.

7 See **section C** of these Guidelines and **paragraph 9** of the Assessment Framework for details.

- ***Who sold or confiscated the item?***

  Scrutiny should be given not only to sales by individuals who were subjected to violent Nazi persecution, but also to transactions by art dealers and auction houses involved in the exploitation of Nazi-looted cultural property, and to cases of official authorities giving such property to other parties.

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

2. Contact persons and 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 Principles and the Common Statement. With a board that includes representatives from the Federation, the *Länder* and the national associations of local authorities, the foundation is able to bring academic issues to the attention of policymakers.

The foundation's main focus is on Nazi-looted cultural property. It also considers cultural assets that were relocated or lost under Soviet occupation and in the former East Germany, as well as art that originated from colonial contexts. The German Lost Art Foundation provides funding for provenance research projects and documents lost cultural property in its Lost Art Database (in the form of lost-and-found reports). It also operates the Proveana database, which allows the research community to share knowledge and findings and make them available for others to use.

The foundation's experts on lost cultural property in the 20th century can provide help[8] with all questions relating to project funding[9] for research into Nazi-looted cultural property.

In principle, all public institutions in Germany with cultural property holdings – especially museums, libraries, universities and archives – can apply for project funding. Applications are also accepted from privately financed institutions (such as local history museums) and private individuals who hope to find just and fair solutions through their own research into Nazi-looted cultural property in line with the Washington Principles, provided there is a public interest in supporting their efforts. By providing expertise and financial support, the German Lost Art Foundation helps victims of Nazi art theft and their descendants to reconstruct their lost collections and furnishings.

Publicly financed institutions that may be unable to conduct adequate research, owing to the nature of their tasks or to staffing levels, can request funding for an initial consultation – like their privately financed counterparts. As part of this consultation, provenance researchers work together with the staff of the museum or library in question and scrutinise the holdings of that institution to see whether items, inventories, catalogues or other internal documentation reveal information to suggest that it is certain,

8 Contact information for individual team members is available here: https://kulturgutverluste.de/en/foundation/organisation.

9 For further information on project funding and the funding guidelines of the German Lost Art Foundation, see https://kulturgutverluste.de/en/contexts/nazi-looted-cultural-property/funding-proposals.

likely, or at least not impossible that Nazi-looted cultural property may be present.

The German Lost Art Foundation has a Help Desk – a contact and information office to advise victims of Nazi art theft and their descendants. Such individuals wishing to initiate a search for Nazi-looted cultural property can rely on the Help Desk for support and information. This service is aimed in particular at people who live outside Germany, do not speak German, and/or are unfamiliar with administrative procedures in Germany (especially procedures associated with the federal structure of art and cultural affairs). All public institutions are expected to refer relevant individuals to this support service.[10] Contact information for the Help Desk can be found in **Annex VIII**.

b. The Länder and local authorities

The points of contact in the ***Länder*** are the state-level ministries responsible for arts and culture and, in some cases, the coordinating offices for provenance research of the Länder themselves.

Their contact information can be found in **Annex VIII**.

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.

10 More information is available here: https://kulturgutverluste.de/en/contexts/nazi-looted-cultural-property/help-desk-enquiries-about-nazi-looted-cultural-property.

C.

Verifying whether a work of art was lost as a result of persecution under the Nazi regime and preparing decisions on restitution claims

I. Assessment Framework

for examining and deciding on the treatment of Nazi-looted cultural property ("Assessment Framework") in the version adopted at the High-Level Cultural Policy Meeting of 26 March 2025

The Assessment Framework (**Annex VI**) replaces the "Guidelines for verifying whether a work of art was Nazi-confiscated and for preparing decisions on restitution claims", which were set out in section D of the previous edition of the present Guidelines (new edition 2019). The Assessment Framework refines the previous section D guidelines with the aim of improving restitution practice in Germany. For public institutions holding cultural property, the Assessment Framework is binding and must be consulted for all provenance assessments. The Explanatory Notes on the Assessment Framework (**Annex VII**) are also aimed at institutions holding cultural property and are intended to make the requirements of the Assessment Framework easier to understand in practical terms. The Washington Principles and associated Best Practices are also useful to refer to when applying the Assessment Framework.

Apart from adding rules that had not yet been formulated in the previous section D guidelines, the Assessment Framework contains specific improvements for victims of Nazi art theft and their descendants. These are, for example, set out in paragraph 2 as detailed specifications concerning the provision of evidence and reduction of the burden of proof. In line with the Washington Principles, paragraph 2 of the Assessment Framework recognises that when it comes to assessing the loss of cultural property as a result of persecution under the Nazi regime, gaps or ambiguities are unavoidable in light of the passage of time and the circumstances of the Holocaust era. This makes it clear that the victims of Nazi art theft and their descendants should not be expected to fulfil unrealistic requirements.

II. Overview of key assessment points from the Assessment Framework

Key assessment points from the Assessment Framework are listed below; however, the text of the Assessment Framework and its Explanatory Notes are authoritative:

1. **Entitlement** (paragraphs 3 and 6 of the Assessment Framework)

2. **Object-related factors**

   - Objects covered by the Assessment Framework (paragraph 4.1 of the Assessment Framework)

   - Identity of the object (paragraph 4.2. of the Assessment Framework)

3. **Ownership at the time of loss** (paragraph 5 of the Assessment Framework)

4. **Loss of cultural property as a result of persecution under the Nazi regime**

   - Persecution of the applicant or applicant's predecessor in title as a result of the Nazi regime (paragraph 7 of the Assessment Framework)

   - Loss of cultural property suffered by the applicant or applicant's predecessor in title during the period between 30 January 1933 and 8 May 1945 (paragraph 8.1 of the Assessment Framework):

     - Loss due to sale (mainly paragraphs 8.2 and 8b of the Assessment Framework)
     - Loss as a result of action by government bodies or by private third parties (mainly paragraph 8a of the Assessment Framework)
     - Loss by means of donation or other legal transactions (mainly paragraph 8d of the Assessment Framework)
     - Loss due to sale outside of Nazi-controlled territory (paragraph 9 of the Assessment Framework)

   - A sufficiently close connection between the loss of cultural property and persecution as a result of the Nazi regime (paragraph 8.1 sentence 2 of the Assessment Framework).

III. Identifying heirs

Provenance research is often 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 individuals should utilise potential sources as effectively as possible to identify heirs. In the "Search for heirs" section[1] of its website, the German Lost Art Foundation offers a continuously updated body of knowledge with information on methodology, processes, research possibilities and sources.

Searching for family members who may live anywhere in the world is often expensive and time-consuming for both institutions and private individuals. 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.[2]

IV. Just and fair solutions

1. Finding a just and fair solution

If a provenance check using the Assessment Framework has established that the cultural property in question was lost as a result of persecution under the Nazi regime, the holder of the property is to work together with the identified party eligible for arbitration in order to find a just and fair solution[3] in accordance with the Washington Principles. The main purpose of a just and fair solution is to restitute the cultural property in question.[4] In addition to the restitution of the cultural property, other forms of just and fair solutions are conceivable, in particular if not all the necessary facts can be ascertained and parts of the historical situation remain unclear. No. 8 of the 1998 Washington Principles states that a just and fair solution may vary according to the facts and circumstances surrounding a specific case. Due to Germany's historical responsibility, a just and fair solution should focus on the principle of reconciliation with the victims of

1 This information is available at https://www.proveana.de/en/search-for-heirs.

2 Further information is available at https://kulturgutverluste.de/en/contexts/nazi-looted-cultural-property/funding-proposals and https://www.proveana.de/en/search-for-heirs.

3 Please see **paragraph 10 et seqq.** of the Assessment Framework.

4 Please see **paragraph 11.1** of the Assessment Framework.

the Nazi regime and their descendants. A just and fair solution builds on the research findings available in each case and at the same time reflects individual uncertainties and gaps.

The following list contains examples of just and fair solutions but should not be regarded as exhaustive:

- The cultural property is restituted and subsequently repurchased
- The cultural property is restituted and a (permanent) loan agreement is concluded
- The cultural property is restituted and subsequently sold on the art market (sale proceeds are shared)
- The cultural property remains in the institution and the entitled party receives compensation
- The cultural property remains in the institution (which may be required to include in its exhibition information on the family history and the provenance of the cultural property)

The Assessment Framework provides that decisions made by the Arbitration Panels of the Court of Arbitration for Nazi-looted Cultural Property are not to include direct payments, unless the parties agree on such a payment in an amicable settlement before the Arbitration Panel. Outside the scope of arbitration proceedings, this restriction is irrelevant for fleshing out a just and fair solution. This means that the institutions holding cultural property and the legal successors of victims of Nazi art theft can at any time agree on payments in an amicable setting.

The aim of a just and fair solution must be to provide an outcome that is satisfactory for all parties and helps to address the legacy of Nazi art theft. At the same time, it is important to strike an appropriate balance between the conflicting interests of the parties involved.

The foundation for finding a just and fair solution is already laid when the claimant and the institution holding the cultural property or the owner of the cultural property first get in contact with each other. Germany's historical moral responsibility demands that restitution requests be responded to with transparency and empathy for the fate of the enquirers and their ancestors, and that an atmosphere be created for discussions in which all those involved feel valued and validated in their concerns. When interacting with the victims of Nazi art theft and their legal successors, it is important to take into account that they may have established contact with German institutions many years ago (for example in the context of reparation proceedings after the Second World War) or may be interacting with German institutions for the very first time after the end of the war and persecution. However, if the processing of an individual case is delayed due to unforeseen reasons, communication should not stop and the claimant should periodically be updated about the processing of the case to ensure transparency. Ideally, institutions should reach out proactively to the victims of Nazi art theft and their legal successors who have been identified through continuous systematic research into the provenance of the institutions' collections.

Oftentimes, the circumstances underlying a restitution claim can no longer be fully clarified for a variety of reasons. The Washington Principles state that "gaps or ambiguities in the provenance" are unavoidable in light of the passage of time and the persecution mechanisms of the Nazi regime.[5] Such gaps or ambiguities can include lack of clarity with regard to the status of the owners at the time of loss of the cultural property, the identity of the object or whether a specific transaction would have been concluded even without Nazi persecution.

These gaps can and must be taken into consideration during the decision-making process, but they should not stand in the way of just and fair solutions. There is no general answer to the question of what specific impact a particular gap or ambiguity has on the process of fleshing out a just and fair solution; the impact must be determined by the parties involved based on each individual case. In other words, a just and fair solution is the result of considering all relevant circumstances surrounding a specific case. During this process, the Assessment Framework and its differentiated requirements regarding the standard of proof and reduced burdens of proof take the parties' difficulties in providing evidence into account. This also means that an isolated assessment according to rigid rules is not appropriate and that it is sometimes advisable to simply get as close to clarifying the situation as possible. In addition to the context of each transaction, all possible alternatives should always be thoroughly analysed and considered by weighing up how likely each possibility is. The website of the German Lost Art Foundation also provides information on selected examples of specific solutions for institutions holding cultural property. Further examples, publications and other information may also be requested of the Foundation.

2. Considering federal compensation payments and private settlements

In the past, compensation for the dispossession of cultural property was frequently granted on the basis of the Federal Restitution Act (*Bundesrückerstattungsgesetz,* BRüG). All procedures under the Federal Restitution Act have already been completed. It is recommended to submit a request to the Federal Office for Central Services and Unresolved Property Issues (Bundesamt für zentrale Dienste und offene Vermögensfragen, BADV) at an early stage to access their archives and avoid duplicate compensation. The BADV examines whether any compensation for the cultural property concerned has already been granted by the Federation. If the BADV makes a claim on behalf of the Federal Republic of Germany for repayment, the claim must be taken into account when finding a just and fair solution.[6]

An agreement with the parties entitled to apply for restitution should include a statement on all compensation previously received for the loss of the cultural property as the result of Nazi persecution and – in the case of compensation paid by the Federation – should make the restitution or transfer of ownership of the cultural property subject to the condition precedent of repayment. Such repayment clauses result from contractual arrangements for restitutions. The BADV will immediately notify the institution holding cultural property of the receipt of the payment.

5 See no. 4 of the Washington Principles.

6 Please see **paragraph 12.1** of the Assessment Framework and the Explanatory Notes.

The Act on the Settlement of Unresolved Property Issues (*Vermögensgesetz,* VermG) applies to the part of Germany that acceded to the Federal Republic in 1990 (acceding territory). Any institution holding cultural property which receives a restitution claim that falls within the scope of the Act on the Settlement of Unresolved Property Issues must therefore first ascertain whether a procedure pursuant to the Act on the Settlement of Unresolved Property Issues is pending with the BADV and the competent *Land* office to deal with unresolved property issues. In the event that proceedings have already been resolved under the Act on the Settlement of Unresolved Property Issues, the competent BADV office also stipulates in the notice of restitution the obligation to repay the compensation already received.

Queries 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
Telefon: +49 30 187030-0
E-Mail an: Kunst-BRUEG-Archiv@badv.de

In finding a just and fair solution, consideration must also be given to monetary payments or other forms of compensation resulting from private settlements concluded after 8 May 1945. The question of whether a just and fair solution is precluded due to a private settlement regarding the cultural property in question should be considered regardless of this; please see paragraph 10 of the Assessment Framework for more information.

D.
Checks of items held in collections: Handling the results

Once provenance research, including a legal assessment, has been completed, there are different needs for action depending on the outcome. Just and fair solutions are to be found if it is certain or very likely that the objects in questions were lost as a result of persecution under the Nazi regime (see section C). However, transparency measures are also crucial to document and publicly communicate efforts to address the legacy of Nazi art theft, as well as to support future research. Where provenance has not been clarified, public communication and transparency and thus the identification and traceability of the cultural property are necessary to enable those searching for such property to find the current owners and to bring about restitution or other just and fair solutions[1] as recommended in the Washington Principles. Therefore, institutions holding cultural property should take measures to ensure that the provenance of their holdings is as transparent as possible. This also applies when the examination of the loss as a result of Nazi persecution or the decision on a restitution claim has not yet been completed, but it cannot be ruled out that the cultural property was in fact lost in the aforementioned way.

I. Lost Art Database

If a check of items held in a collection concludes that cultural property has been or may have been lost as a result of persecution under the Nazi regime, or that it cannot be ruled out that cultural property has been lost in that way, the results of the check should be reported to the German Lost Art Foundation[2] to be entered in its Lost Art Database (www.lostart.de/en/start). This database mainly covers cultural property, especially Jewish property, which was lost as a result of persecution under the National Socialist dictatorship. The database is intended to bring together those searching for specific cultural property and the current owners by publishing information in the database, and thus to support them in finding a just and fair solution in accordance with the Washington Principles. Lost Art deliberately provides a straightforward process for reporting cultural property to ensure that cultural property for which the possibility that it was lost as a result of Nazi persecution cannot be ruled out is also proactively included in the database. This means that not only cultural property where thorough provenance research has concluded that it was demonstrably lost as a result of Nazi persecution should be reported to the German Lost Art Foundation for inclusion in the Lost Art Database. This follows from the above-mentioned objective of ensuring a maximum level of transparency of holdings and collections and from the Washington Principles.

1 See **section C. IV**.

2 See **Annex VIII, section F.** for the contact details.

Museums, libraries and archives are responsible for collecting the data entered in the database. The German Lost Art Foundation is also happy to receive reports stating that the institutions have conducted provenance research which has not identified Nazi-looted cultural property among their holdings or collections.[3] 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[4] of the German Lost Art Foundation.

Institutions may contact the German Lost Art Foundation for more information about the modalities of reporting.[5]

II. Sharing research findings and making them available

If provenance research concludes that an object has demonstrably been or may have been lost as a result of persecution under the Nazi regime, or that this cannot be ruled out, the results are subsequently to be made available to the public. For instance, the results should be integrated into permanent presentations or exhibitions, publications, and digital strategies.

Irrespective of this, museums, libraries and archives might be obligated to report and/or publish the research findings (e.g. in the Proveana research database). Such an obligation may arise, for example, from funding-related requirements.

According to the Joint Declaration, research findings are to be shared as soon as possible.

Restitutions of objects or agreements providing other just and fair solutions should always be reported to the German Lost Art Foundation, so that it can enter the data into its list of restitutions.[6]

3 In order to gain as complete a picture as possible of efforts by institutions holding cultural property to find and return Nazi-looted cultural property, the German Lost Art Foundation also accepts reports of provenance research which did not find any Nazi-looted cultural property. 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.

4 The "General principles for the registration and deletion of reports in the Lost Art Database" can be found on https://www.lostart.de/en/report-objects.

5 For more information on reporting and the importance of statistics on successful restitutions and other fair and just solutions, see **section D. IV.**

6 The German Lost Art Foundation also provides an online notification form for this at https://kulturgutverluste.de/en/contexts/nazi-looted-cultural-property/restitutions-notifications.

III. Using the Proveana database: Making information accessible

To avoid redundancies, make effective use of available resources, build up the knowledge base for provenance research and improve the traceability of objects, it is helpful to be able to apply the results of checks of collections and holdings to more than just the individual case if possible.

To this end, the German Lost Art Foundation runs the Proveana[1] research database. Information from other research projects not funded by the German Lost Art Foundation can also be sent to the Foundation for inclusion in its research database.

1 The database can be accessed here: https://www.proveana.de/en/start.

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

In the course of implementing the Washington Principles, institutions holding cultural property in Germany have returned many artworks, books and other cultural property to their rightful owners and have found other just and fair solutions[2]. 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.

To close this gap, the German Lost Art Foundation offers an online form to report returns or other just and fair solutions in connection with Nazi-looted cultural property. When carrying out their tasks, museums, libraries and archives funded under public law in Germany are strongly encouraged to help meet this requirement of transparency by reporting these solutions to the Foundation in this way. Every quarter, the German Lost Art Foundation publishes a brief summary of all returns and other just and fair solutions brought to its attention since the end of the Second World War and the implementation of the Washington Principles.[3] Details on the information to be submitted can be found in the user instructions for restitution reporting.[4] Private institutions are advised to contribute information as well if they would like to report a just and fair solution.

Link to the online form on the website of the German Lost Art Foundation:
https://kulturgutverluste.de/en/contexts/nazi-looted-cultural-property/restitutions-notifications

2 See **section C. III**. for more information.
3 Please see https://kulturgutverluste.de/en/contexts/nazi-looted-cultural-property/restitutions-notifications.
4 Please see https://kulturgutverluste.de/sites/default/files/2025-05/Nutzerhinweise%20Restitutionsmeldung.pdf.

E.
Court of Arbitration for Nazi-looted Cultural Property

I. General Information

In 2024, the Federation, the *Länder* and the national associations of local authorities agreed to transform the Advisory Commission into the Court of Arbitration for Nazi-looted Cultural Property. This reform is intended to enhance the implementation of the Washington Principles of 1998 and the Best Practices adopted in 2024 and thus to improve the restitution of Nazi-looted cultural property. Key changes include the possibility of unilaterally applying for arbitration and the provision of more legal certainty through binding decisions. The Central Council of Jews in Germany and the Conference on Jewish Material Claims Against Germany participated in the reform.

The Court of Arbitration for Nazi-looted Cultural Property, which is due to begin work on 1 December 2025, is based on an Administrative Agreement between the Federation, the *Länder* and the national associations of local authorities (see Annex), which entered into force on 26 March 2025.

Since the Administrative Agreement entered into force, institutions holding cultural property in particular have been required to base their checks on the Assessment Framework rather than on the "Guidelines for verifying whether a work of art was Nazi-confiscated and for preparing decisions on restitution claims". For more information on this, please see section C.

The "standing offers" submitted by the federal, state and local governments and institutions holding cultural property serve as the basis for unilateral appeals. In principle, every institution holding cultural property, including private institutions, may submit standing offers.

Before arbitration proceedings are initiated, a previous procedure is conducted solely between the parties to try to find a just and fair solution in accordance with the Washington Principles. If the parties are unable to find a just and fair solution within the given time limit, arbitration proceedings can be initiated.

The party entitled to apply for arbitration may refer to a standing offer. A model arbitration arrangement is then adapted to the case in question and signed by all parties. The agreement is not of a general nature, but relates to the specific cultural property in question.

The basic documents of the reform such as the Rules of Arbitration governing the arbitration procedure, the Assessment Framework, which is decisive for the decisions made by the Arbitration Panels, and the Explanatory Notes on the Assessment Framework can be found in the Annex and are also available online.[1]

1 See https://www.schiedsgerichtsbarkeit-ns-raubgut.de. The website of the Court of Arbitration for Nazi-looted Cultural Property also provides internal regulations which govern the administration of arbitration proceedings in accordance with the Rules of Arbitration and the functioning of the Executive Committee, the Arbitration Panels and the Service Desk.

II. The arbitration procedure

The arbitration procedure includes the following steps:

➤ Standing offers

The standing offers to conclude an arbitration agreement are published on the website of the Court of Arbitration for Nazi-looted Cultural Property. By making a standing offer, an institution agrees to conduct proceedings before an Arbitration Panel of the Court of Arbitration for Nazi-looted Cultural Property in future and to let the Arbitration Panel make the final decision on the matter without recourse to local proceedings.

➤ Previous procedure

Initially, victims or their descendants reach out to the institution holding a specific cultural property to reach an agreement (previous procedure).

This procedure is conducted between the parties involved before any arbitration proceedings are initiated. However, if the other party is a public institution holding cultural property, the parties can apply for arbitration on the condition that they have conducted the previous procedure (see section 7 of the Rules of Arbitration). The previous procedure consists in the following steps:

- The party entitled to apply for arbitration first contacts the institution holding cultural property to address the matter.
- If the cultural property in question has not yet been inspected, the institution holding cultural property carries out the necessary research and examines the application of the victims of Nazi art theft or of their descendants.
- Alternatively, it is possible that no result was achieved during the previous procedure, for example because the institution has not responded to the application or has apparently not taken or announced any action to examine the application.

If no agreement is reached during the previous procedure, the victims or their descendants who wish to obtain a decision by the Court of Arbitration for Nazi-looted Cultural Property may apply for initiating arbitration proceedings before the Service Desk based on a standing offer (see section 9 (1) of the Rules of Arbitration).

➤ Arbitration agreement

As a next step, an arbitration agreement concerning the cultural property in question is concluded between the two parties; this arbitration agreement constitutes a binding contract between the parties.

A model arbitration agreement can be downloaded on the website of the Court of Arbitration for Nazi-looted Cultural Property.

➤ Arbitration proceedings

- **Initiating arbitration proceedings**
  The party entitled to apply for arbitration must present his or her claim in an application to the Service Desk of the Court of Arbitration. Once the Service Desk has received the application including the necessary information and documents (see section 9 of the Rules of Arbitration), specific arbitration proceedings are prepared.

- **Service Desk**
  The Service Desk of the Court of Arbitration for Nazi-looted Cultural Property manages the proceedings (similarly to a secretariat) and supports the Arbitration Panels.

- **Selection of arbitrators**
  The members of the Arbitration Panel must be selected exclusively from the list of arbitrators referred to in section 3 (1) of the Rules of Arbitration. For each proceeding, an Arbitration Panel consisting of five members is appointed from the list of arbitrators. Each party appoints two arbitrators. In addition, the appointed arbitrators select one chairperson from the list of arbitrators.

- **Pursuit of proceedings**
  The Arbitration Panel sets a time limit for the other party to submit a reply. In addition, the Arbitration Panel holds a case management conference with the parties. The parties themselves and any external authorised representatives should take part in the conference on the management of proceedings.

  The Arbitration Panel is authorised to investigate the underlying facts of the case in addition to the information submitted by the parties and to gather information on its own.

  These steps are usually followed by an oral hearing. Following the last oral hearing or the last written statement accepted, the Arbitration Panel declares by procedural order that the proceedings are concluded.

  Alternatively, the parties can agree to settle the dispute during the arbitration proceedings. In this case, the proceedings end with a settlement.

- **Arbitration award**
  At the end of the proceedings, an arbitration award is issued. The subject of the arbitration award is the decision on just and fair solutions as referred to in paragraph 11 of the Assessment Framework.

  The decision is immediately made available to the public on the website of the Court of Arbitration for Nazi-looted Cultural Property, in anonymised form and on an agreed date if the parties so desire. The decision is published in German and English.

  The Service Desk reports the agreed just and fair solution to the German Lost Art Foundation for entry in its database. Any wish of the parties for anonymisation is respected.

  The parties may challenge the arbitration award according to the rules of the Code of Civil Procedure.

III. Costs

The costs of the Arbitration Panel are not charged to the parties. The parties must only bear the costs they themselves incur. This applies for example to the costs of legal counsel and representation and to travel expenses.

F.
Annex

I: Washington Principles

Principles of the Washington Conference With Respect to Nazi-Confiscated Art

Published in Connection with the Washington Conference on Holocaust-Era Assets, Washington D.C., 3 December 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.

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.

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, cannot 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.

II: Common Statement

Note:
This English translation is provided for informative purposes only. In case of deviations from the German version of this document, the German version shall be considered as the authoritative version.

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 9 December 1999

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 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 organisations established in the Western zones and Berlin.

The material restitution was effected either on a case-to-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 *Vermögensgesetz* (Property settlement Act) and the *NS-Verfolgtenentschädigungsgesetz* (Federal Indemnification Act concerning persons who suffered damage at the hands of the National Socialist regime). 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 organisations claims situated in the accession area with regard to cultural property of Jewish parties having suffered loss. As formerly in the West German *Länder*, material indemnification on a case-to-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.

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 a match with material compensation already provided. Such a procedure allows to identify the legitimate owners and avoid duplicate compensation (e. g. by repayment of compensations already paid).

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

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. providing 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 to provide a website on the Internet with information on the following:

1. What the institutions involved can do for publicising art of unclear origin to the extent that is presumed to have been confiscated by the Nazis.

2. A search list in which every claimant may enter the items he is 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 by way of fulltext retrieval.

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.

III: Best Practices

Best Practices for Washington Conference Principles on Nazi-Confiscated Art

March 5, 2024

On 3 December 1998, 44 states participating in the Washington Conference on Holocaust-Era Assets endorsed the Washington Conference Principles on Nazi-Confiscated Art, which is incorporated by reference herein. These principles were subsequently commented on and clarified in the Vilnius Forum Declaration of October 5, 2000, endorsed by 38 states, the Terezin Declaration of June 30, 2009, endorsed by 47 states, and the 2010 Terezin Guidelines and Best Practices (which recognized the State of Israel's special moral role as a home for the largest number of survivors of the Holocaust (Shoah)).

In recognition of the 25th anniversary of the Washington Conference Principles, the following legally non-binding but morally important best practices clarify and improve the practical implementation of these Principles. As was the case with the Principles, the best practices were drafted with the awareness that there are differing legal systems and that states act within the context of their own laws. Countries will apply the best practices that follow in accordance with national laws.

A.

"Art" refers to the cultural property of victims of the Holocaust (Shoah) and other victims of Nazi persecution, in public or private hands, including but not limited to paintings and other visual and decorative art, sacred scrolls, synagogue and ceremonial objects, as well as libraries, manuscripts, archives, records, and musical instruments belonging to individuals and to Jewish and other communities, organizations, and institutions.

B.

"Nazi-confiscated" and "Nazi-looted" refer to what was looted, confiscated, sequestered, and spoliated, by the Nazis, the Fascists and their collaborators through various means including but not limited to theft, coercion, and confiscation,

and on grounds of relinquishment, as well as forced sales and sales under duress, during the Holocaust era between 1933–45.

C.

Taking into account the specific historical and legal circumstances in each case, the sale of art and cultural property by a persecuted person during the Holocaust era between 1933–45 can be considered equivalent to an involuntary transfer of property based on the circumstances of the sale.

D.

"Just and fair solutions" means just and fair solutions first and foremost for the victims of the Holocaust (Shoah) and other victims of Nazi persecution and for their heirs. In principle, as set out in the Terezin Declaration, the primary just and fair solution is restitution, among other just and fair solutions.

E.

Restitution should be to all lawful beneficiaries and heirs in accordance with a country's usual inheritance law. All pre-War owners who are identified through provenance research or their heirs should be proactively sought by the current possessors for the purpose of restitution.

F.

In case of restitution, current possessors should not seek repayment from the pre-War owners or their heirs of the purchase price of Nazi-confiscated works of art in their collections. Compensation should be tax exempt.

G.

Governments should encourage provenance research and projects to catalogue, digitize and make available on the internet public and private archives, including dealer records. Public and private collections should be encouraged to publish their inventories.

H.

Provenance researchers should have access to all relevant archives and source documents. Provenance research carried out by public or private bodies should be made publicly available on the internet. Where queries are made, as a matter of fairness current possessors in particular should disclose all documentation related to acquisition and provenance to claimants. Provenance research, particularly regarding potential claims, ideally should be conducted by an independent research body to avoid possible conflicts of interest. Such an independent institution should be granted access to all relevant archives whether public or private.

I.

Countries are encouraged to create an independent expert body whose composition may be the states' responsibility, to which unilateral access is available that can adjudicate cases of art and cultural property and arrive at or recommend a binding or non-binding decision (for example, the use of commissions in Austria, France, Germany, Netherlands, and the United Kingdom). Such bodies should have balanced, expert, and representative membership. Use of alternative resolution mechanisms is encouraged to avoid litigation.

J.

Claims handling bodies such as national commissions, museums or other agencies, are encouraged to publish terms of reference and rules of procedure as well as their decisions and recommendations so that the claims process and grounds for decisions are fully transparent to claimants.

K.

To make restitution of art and cultural property that remains in state-owned collections and private hands possible, countries should consider making exceptions to barriers such as regulations against deaccessioning from state collections, statutes of limitations, market overt, usucapion (mode of acquiring title to property by uninterrupted possession of it for a definite period), good faith acquisition, and export bans.

L.

Countries and institutions should maintain and publish online comprehensive information and statistics on research undertaken, works of art that have been identified and restitutions or other fair and just solutions that have been achieved. Information should be published about claims which have been made and that have been resolved, including reasons for the decision, giving due regard to confidentiality.

M.

Countries and institutions should establish central contact points to provide information, advice and help on any query regarding art, records, archives and claims.

N.

There is a recognized urgent need to work on ways to achieve a just and fair solution to the issue of spoliated art and cultural property where pre-War owners or their heirs, both individuals and legal persons cannot be identified, while recognizing there is no universal model for this issue and recognizing the previous Jewish or other ownership of such cultural assets.

O.

Art and cultural property that is determined to have been the property of Jewish communities should be returned to an existing successor community, institution, or organization, and/or a successor organization for the Jewish people as a whole. The objects should not be seen as collection items but as part of the collective memory of the Jewish people. As yet unreturned items that exist in textual form, such as manuscripts, archives, scrolls, and books, should be digitized and made easily accessible over the internet.

IV: Administrative Agreement

Note:
This English translation is provided for informative purposes only. In case of deviations from the German version of this document, the German version shall be considered as the authoritative version.

Administrative Agreement Establishing Joint Arbitration for Disputes Concerning the Return of Nazi-Looted Cultural Property

The Federal Republic of Germany represented by the Federal Government Commissioner for Culture and the Media (BKM),

– hereinafter referred to as the "Federation" –,

and

The *Land* Baden-Württemberg, the Free State of Bavaria, the *Land* Berlin, the *Land* Brandenburg, the Free Hanseatic City of Bremen, the Free and Hanseatic City of Hamburg, the *Land* Hesse, the *Land* Mecklenburg-Western Pomerania, the *Land* Lower Saxony, the *Land* North Rhine-Westphalia, the *Land* Rhineland-Palatinate, Saarland, the Free State of Saxony, the *Land* Saxony-Anhalt, the *Land* Schleswig-Holstein, the Free State of Thuringia

– hereinafter referred to as the "*Länder*" –,

and

the German Association of Cities, the German Association of Counties, the German Association of Towns and Municipalities

– hereinafter referred to as the "national associations of local authorities" –

conclude the following Administrative Agreement:

Preamble

A.

The Federation, the *Länder* and the national associations of local authorities are aware of Germany's historical responsibility for dealing with Nazi-looted cultural property. The Federation, the *Länder* and the national associations of local authorities are therefore committed to implementing the Washington Conference Principles on Nazi-Confiscated Art (hereinafter referred to as the "Washington Principles") of 1998 and reaffirm 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 (hereinafter referred to as the "Common Statement") of 1999.

B.

The Federation, the *Länder* and the national associations of local authorities agreed at the 20th High-Level Cultural Policy Meeting (*Kulturpolitisches Spitzengespräch*) on 13 March 2024 that, in the light of experience gained over the past 20 years, the procedure for the alternative resolution of disputes concerning return issues on nazi-looted cultural property which was established, on the basis of an accord, with the creation of the Advisory Commission on the return of cultural property seized as a result of Nazi persecution, especially Jewish property (hereinafter referred to as the "Advisory Commission") required modification in order to better fulfil the objectives of the Washington Principles.

C.

Under this Administrative Agreement, joint arbitration for disputes concerning the return of Nazi-looted cultural property (hereinafter referred to as "Court of Arbitration for Nazi-looted Cultural Property") is established. The joint arbitration will replace the Advisory Commission and, like the Advisory Commission, will constitute an alternative dispute resolution mechanism as referred to in the Washington Principles. It will act on the basis of a comprehensive, differentiated Assessment Framework and Rules of Arbitration drawn up by the Federation, the *Länder* and the national associations of local authorities. This procedure is open to natural and legal persons under public and private law. Furthermore, the procedure enables parties entitled to apply for arbitration vis-à-vis public institutions holding cultural property to unilaterally apply to the Court of Arbitration for Nazi-looted Cultural Property.

D.

In the Administrative Agreement, the Federation, the *Länder* and the national associations of local authorities agree that the German Lost Art Foundation (Deutsches Zentrum Kulturgutverluste, hereinafter referred to as the "DZK"), which is a foundation with legal capacity under civil law, is the appropriate legal entity for holding the Court of Arbitration for Nazi-looted Cultural Property and its Service Desk. The DZK, which is sponsored jointly by the Federation, the *Länder* and the national associations of local authorities, has special professional expertise based on its experience and knowledge in the field of researching and dealing with Nazi-looted cultural property.

E.

As agreed at the 20th High-Level Cultural Policy Meeting on 13 March 2024, the Federation and the *Länder* intend, in a second step, to conclude a state treaty between the Federation and the *Länder*, and including the local authorities, to govern the joint arbitration established in this Administrative Agreement.

With this in mind, the Federation, the *Länder* and the national associations of local authorities agree as follows:

Section 1 – Subject

The subject of this Administrative Agreement is the establishment of the Court of Arbitration for Nazi-looted Cultural Property (*Schiedsgerichtsbarkeit NS-Raubgut*) and the creation of the possibility of unilateral application for arbitration. To this end, institutional arbitration and a Service Desk will be created whose legal entity is the DZK, which has its seat in Magdeburg. The seat of the Service Desk and the place of arbitration will be located in Germany. The specific location will be determined later.

[see section 2 of the Rules of Arbitration in Annex 1, attached]

Section 2 – Tasks and the establishment of arbitration

(1) The Court of Arbitration for Nazi-looted Cultural Property has the task of bringing about, independently and impartially, an amicable settlement or a binding decision according to the Rules of Arbitration and an Assessment Framework in the case of disputes concerning the return of Nazi-looted cultural property.

(2) Parties may be natural or legal persons. The procedure is explicitly open to disputes involving private individuals and private institutions holding cultural property.

(3) The Rules of Arbitration and the Assessment Framework are based in particular on the Washington Principles of 1998, the Joint Declaration of 1999, the Terezin Declaration of 2009 and the Best Practices for the Washington Conference Principles on Nazi-confiscated Art of 2024.

(4) The Service Desk has the task of impartially supporting and administering the arbitration proceedings.

(5) The Federation, the *Länder* and the national associations of local authorities actively support the implementation of the Administrative Agreement. In particular, by means of their representatives on the DZK Foundation Board, they bring about the necessary decisions to establish the DZK as the legal entity for the arbitration for Nazi-looted cultural property and the Service Office. The independence of the arbitration panels and the arbitrators is ensured. Further details of the procedure are governed by the Rules of Arbitration.

(6) The Rules of Arbitration in Annex 1 apply to arbitration at the Court of Arbitration for Nazi-looted Cultural Property. Any amendments to the Rules of Arbitration are mutually agreed by the Contracting Parties at a High-Level Cultural Policy Meeting.

(7) The arbitration panels of the Court of Arbitration for Nazi-looted Cultural Property decide solely on the basis of the Assessment Framework in Annex 2, to the exclusion of the law applicable to rules on conflict of laws and in particular without regard to any pleas of limitation or forfeiture. Any amendments to the Assessment Framework are mutually agreed by the Contracting Parties at a High-Level Cultural Policy Meeting.

Section 3 – The possibility of unilateral application for arbitration

(1) No later than three months after this Administrative Agreement enters into force, the Federation and the *Länder* make a "standing offer" to conclude an arbitration agreement.

(2) Through their participation in the legal entities of other bodies holding cultural property, the Federation and the *Länder* will seek to ensure that, no later than six months after the Administrative Agreement enters into force, these bodies make a standing offer to conclude an arbitration agreement.

(3) With the support of the relevant *Länder* vis-à-vis their state-level associations, the national associations of local authorities will actively seek to ensure that the legal entities of local-level bodies holding cultural property make a standing offer to conclude an arbitration agreement.

(4) Standing offers are made using the model in Annex 3. Standing offers are to be submitted to the Service Desk. The Service Desk keeps a list of all standing offers and publishes this list on its website. It provides a form in accordance with the applicable provision of the Code of Civil Procedure (*Zivilprozessordnung*, ZPO) for private individuals to conclude an arbitration agreement.

(5) In cases in which the legal entity of an institution holding cultural property or a private individual has not made an offer to conclude an arbitration agreement, the Service Desk must make suitable efforts to bring about the conclusion of an arbitration agreement if there are applications to conduct arbitration proceedings from parties entitled to apply for such proceedings. Further details are governed by the Rules of Arbitration.

Section 4 – Financing

(1) Arbitration proceedings are free of charge to the parties, with the exception of costs they themselves incur.

(2) The costs are borne by the Federation until 31 December 2025; starting 1 January 2026, the Federation and the *Länder* each bear half of the costs. The *Länder's* share of the costs are divided among the *Länder* according to the Königstein formula. The obligations arising from this Administrative Agreement are subject to the provision of budget funds by the parliaments.

Section 5 – Entry into force and duration of the Administrative Agreement

(1) The Administrative Agreement enters into force when it has been signed by all Parties to the Agreement.

(2) The Administrative Agreement may be terminated by the Federation and each *Land* and each national association of local authorities by giving written notice to the other Parties to the Administrative Agreement two years in advance, with the termination entering into force at the end of the second calendar year, but not before five years have elapsed since the Administrative Agreement entered into force. The Standing Conference of Ministers of Education and Cultural Affairs of the *Länder* in the Federal Republic of Germany is to be notified of the termination at the same time.

(3) The Administrative Agreement expires when the final period of notice has elapsed if the Federation or at least six *Länder* have terminated it. The Administrative Agreement expires as well if the DZK is dissolved or suspended. In these cases, the Federation, *Länder* and the national associations of local authorities make the necessary arrangements, at least six months before the Administrative Agreement expires, to assume and continue the Court of Arbitration for Nazi-looted Cultural Property, or to dissolve and to end it.

(4) If one or more *Länder* terminate the Administrative Agreement without the Administrative Agreement ceasing to be in force under subsection 2 as a result, the Federation and the *Länder* will, at least six months before the period of notice for termination ends, make an arrangement concerning the further funding for the Court of Arbitration for Nazi-looted Cultural Property.

(5) Termination by a national association of local authorities does not render the Administrative Agreement invalid. If all national associations of local authorities terminate the Administrative Agreement, it remains in force between the Federation and the *Länder*.

(6) A state treaty between the Federation and the *Länder* may replace the Administrative Agreement in due course. The transitional provisions needed in this case will be governed by the state treaty.

Section 6 – Transitional provisions

(1) On the day before the Service Desk begins its work, the agreement between the Federation, *Länder* and the national associations of local authorities of 2003, in the new version of 2016, to establish an Advisory Commission on the return of cultural property seized as a result of Nazi persecution, especially Jewish property, becomes invalid. The Advisory Commission and its Office cease their operations at that time.

(2) Any proceedings of the Advisory Commission which have not yet been resolved at that time are transferred to the Court of Arbitration for Nazi-looted Cultural Property, if both parties declare their consent vis-à-vis the Service Desk. Otherwise, each party may unilaterally initiate new proceedings under the conditions of the Rules of Arbitration.

Section 7 – Amendments to the Administrative Agreement and additional agreements

Any amendments to this Administrative Agreement must be made in writing. The same applies to changes to the formal requirements in sentence 1.

Section 8 – Evaluation

The Federation, the *Länder* and the national associations of local authorities, together with the Central Council of Jews in Germany and the Jewish Claims Conference, will evaluate the arbitration procedure established by this Administrative Agreement. The evaluation will be conducted as soon as ten arbitration awards on just and fair solutions under the Rules of Arbitration have been issued and no later than three years after arbitration was established.

Section 9 – Supplementary Clause

(1) If individual provisions of this Administrative Agreement are or become completely or partially invalid or inapplicable, or if this Administrative Agreement contains a gap, this will not affect the validity of the remaining provisions. In such a case, the Federation, the *Länder* and the national associations of local authorities are obligated to participate in creating provisions to bring about a result with legal effect which is as close as possible in law or fact to the result intended by the invalid or inapplicable provision.

(2) If provisions of this Administrative Agreement need to be interpreted or added to, the interpretation or the addition must be carried out in a way that does the best possible justice to the content and purpose of this Administrative Agreement. In the process, the arrangement which the participants would have made when concluding this Administrative Agreement if they had recognised the need for interpretation or addition should apply.

V: Rules of Arbitration

Note:
This English translation is provided for informative purposes only. In case of deviations from the German version of this document, the German version shall be considered as the authoritative version.

Court of Arbitration for Nazi-looted Cultural Property (Schiedsgerichtsbarkeit NS-Raubgut) Rules of Arbitration

Preamble

The Federation, the *Länder* and local authorities remain committed to implementing the Washington Conference Principles on Nazi-looted Art and reaffirm 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. Public institutions holding cultural property accept responsibility for implementing these declarations by researching the collections in question and returning the cultural property identified as Nazi-looted cultural property.

In recognition of the historical responsibility and in the desire for good relations now and in the future, as well as to reinforce the implementation of the Washington Principles in Germany, the Federation, the *Länder* and the national associations of local authorities have provided for arbitration panels for Nazi-looted cultural property for cases in which returns remain in dispute following a previous procedure. The arbitration panel is an Alternative dispute resolution mechanism as referred to in the Washington Principles. Arbitration is open to those who have the cultural property in question at their disposal, including also in particular private institutions holding cultural property and private individuals, who are expressly encouraged to accept their responsibility.

Arbitration strengthens the positions of the victims and their descendants, who may unilaterally appeal to the arbitration panel following an unsuccessful previous procedure. The Central Council of Jews in Germany and the Jewish Claims Conference, together with the Federation, the *Länder* and national associations of local

authorities, will jointly draw up a list of arbitrators on the basis of parity. Each party may select two arbitrators from this list.

The arbitration panel will not only make a recommendation; it will issue a decision having final and binding effect which is based on the binding Assessment Framework. The arbitration panel should at all times during the procedure endeavour to reach an amicable settlement. The persecution of the victims is to be accorded the proper attention and respect.

Section 1 – Scope of application

(1) These Rules of Arbitration apply to arbitration proceedings in accordance with the Administrative Agreement establishing the "Court of Arbitration for Nazi-looted Cultural Property" of the Federation,the *Länder* and national associations of local authorities. They therefore apply to claims that cultural property was lost between 30 January 1933 and 8 May 1945 as the result of persecution under the Nazi regime on racist, political, religious or ideological grounds or as a victim on grounds of sexual orientation, and the cultural property is located in Germany when the arbitration proceedings begin.

(2) The Rules of Arbitration in the version applicable at the time the claim is submitted apply to the arbitration proceedings.

Section 2 – Seat

(1) The legal entity for the institutional arbitration and its Service Desk is the German Lost Art Foundation (DZK), which has its seat in Magdeburg. The Service Desk is located in Berlin.

(2) The parties may determine the place of arbitration (*Schiedsort*) within the Federal Republic of Germany. In the absence of an agreement between the parties on the place of arbitration within the Federal Republic of Germany, the arbitration panel will determine the location; also in this case, for any proceedings before the Court of Arbitration for Nazi-looted Cultural Property the place of arbitration must be located within the federal territory. Irrespective of this, the parties may agree on a different venue to hold arbitration proceedings within the Federal Republic of Germany; in the absence of such an agreement, the arbitration panel will determine the venue within the federal territory.

(3) The responsible higher regional court as referred to in section 1062 of the Code of Civil Procedure (*Zivilprozessordnung*, ZPO) is the Frankfurt (Main) Higher Regional Court; this applies in particular in the cases of section 12 (3) and section 14 of the Rules of Arbitration and to section 1059 of the Code of Civil Procedure. This does not apply to section 1062 (4) of the Code of Civil Procedure (responsible local court).

Section 3 – List of arbitrators

(1) For arbitration proceedings according to these Rules of Arbitration, a list of arbitrators is available which is binding for the parties.

(2) The Federal Government Commissioner for Culture and the Media, the *Länder* and the national associations of local authorities, as well as the Central Council of Jews in Germany and the Jewish Claims Conference nominate candidates for the list of arbitrators. These candidates must be judges or qualified to hold judicial office or have an equivalent international legal qualification

as can be established by appropriate evidence. Candidates who are not judges must also demonstrate that they have multiple years of professional experience in alternative dispute resolution. In addition, persons with expertise in German 20th-century history, with a specialisation in National Socialism, or with expertise in researching the provenance of Nazi-confiscated cultural property are to be nominated.

(3) The Federal Government Commissioner for Culture and the Media, the *Länder* and the national associations of local authorities appoint the selected arbitrators to a term of five years. This term may be renewed once by proposal for a further period of five years. If a current proceeding is not concluded within the arbitrator's term of office, the arbitrator's term of office does not end until the proceeding is concluded. The principles for selecting arbitrators and for their compensation are given in Annexes 1 and 2.

Section 4 – Executive Committee

(1) The Federal Government Commissioner for Culture and the Media, the *Länder* and the national associations of local authorities, in agreement with the Central Council of Jews in Germany and the Jewish Claims Conference, appoint an Executive Committee from the list of arbitrators referred to in section 3 to a term of five years. The Executive Committee is made up of a President and a Vice-President. Their appointment may be renewed.

(2) The President represents the Court of Arbitration in public, for example by participating in conferences and responding to media enquiries, and by acting as contact person for other restitution committees. The Vice-President represents the President in the event of her or his absence.

Section 5 – Service Desk

The Service Desk assists the parties before an arbitration panel is constituted and accompanies the proceedings in accordance with these Rules of Arbitration. The duties of the staff of the Service Desk include in particular screening incoming postal and electronic mail and filing them with the correct proceedings, as well as checking incoming applications and supporting documents for completeness. The Service Desk ensures that deadlines are met, takes notes, arranges for the necessary translations, manages the gathering of information according to section 20 (3) and sends out the decisions. The Service Desk keeps the files and oversees access to the files which is granted to the parties upon application. The Service Desk assists the Executive Committee with its tasks of representation. Details are governed by internal regulations.

Section 6 – Parties

(1) Parties to proceedings are the party entitled to apply for arbitration and the other party.

(2) Natural and legal persons, partnerships and their legal successors who claim the loss of cultural property in accordance with section 1 (1) are entitled to apply for arbitration. However, natural and legal persons and partnerships which have the cultural property at their disposal at the time of application, for example private collectors; galleries; and public institutions holding cultural property, in particular archives, libraries and museums, may also apply for arbitration.

(3) Public institutions holding cultural property as referred to in these Rules of Arbitration may be the institutions themselves or, if they do not have legal capacity, their legal entities.

Section 7 – Previous procedure

(1) If the other party is a public institution holding cultural property, arbitration proceedings are initiated on the condition that the party entitled to apply for arbitration first refered to the institution holding cultural property and the parties did not achieve a result concerning this application. No result is achieved if, within 20 months of the first time the institution holding cultural property is contacted,

a) the institution has not made a decision concerning the application,

b) the parties have not reached an amicable settlement, or

c) the institution holding cultural property has denied the application.

(2) It is the equivalent of a previous procedure in which no result is achieved as referred to in subsection (1) if the institution holding cultural property

a) does not respond to the application within three months or

b) has apparently not taken or announced any action within six months to examine the application.

(3) No previous procedure is needed if the institution holding cultural property informs the party entitled to apply for arbitration that it chooses to forgo one.

Section 8 – Arbitration agreement

(1) By making a "standing offer", the institution holding cultural property commits to concluding an arbitration agreement in the specific individual case. If a standing offer to conclude an arbitration agreement has been made, this offer is published on the website of the Court of Arbitration for Nazi-looted Cultural Property and a corresponding arbitration agreement is made available in a German and an English version. The party entitled to apply for arbitration may accept the offer by completing and signing the arbitration agreement provided. The arbitration agreement is to be sent to the Service Desk in paper or digital form.

(2) If the institution holding cultural property has not made a standing offer to conclude an arbitration agreement, both parties must agree to arbitration by concluding an arbitration agreement. For this purpose, an arbitration agreement in a German and an English version is available to the parties on the website of the Court of Arbitration for Nazi-looted Cultural Property.

(3) If no arbitration agreement has been concluded at the time of application, the Service Desk will seek to bring about an arbitration agreement by asking the other party to agree to arbitration in the specific case and to conclude the arbitration agreement.

Section 9 – Initiating arbitration proceedings

(1) The party entitled to apply for arbitration must present her or his claim in an application to the Service Desk. The application must contain

a) the names and addresses of the parties;

b) the names and addresses of a counsel of the party entitled to apply for arbitration;

c) a specific claim;

d) facts and circumstances on which this claim may be based, in particular information about the cultural property in question, the original title, and the circumstances of the loss of property due to persecution as a result of the Nazi regime as referred to in the Assessment Framework;

e) an explanation of the formal entitlement to apply for arbitration if the party entitled to apply for arbitration is not the victim of persecution him- or herself;

f) if the claim is made vis-à-vis a public institution holding cultural property, a description of the previous procedure in which no result was achieved, or of the institution's decision to forgo such a procedure; and

g) a copy of the arbitration agreement or the request that the Service Desk bring about such an agreement with the other party.

(2) The application is to be accompanied by documents and other information which make a claim at least appear to be possible according to the Assessment Framework. The application and supporting documents may be submitted to the Service Desk in paper or digital form. The Service Desk checks whether the information and the supporting documents are complete. If the application is incomplete or if documents are lacking, the Service Desk asks the party entitled to apply for arbitration to supply the missing information within a certain time limit.

(3) The Service Desk should defer the application for a reasonable amount of time to allow the parties to conclude the previous procedure, if it was not concluded in accordance with section 7 because

a) ongoing provenance research has not yet been completed or

b) the party entitled to apply for arbitration has not yet presented the necessary documents to the institution holding cultural property.

(4) The Service Desk forwards the application to the other party without undue delay.

Section 10 – Composition of the arbitration panel

(1) The arbitration anel must be made up exclusively of members from the list of arbitrators referred to in section 3 (1).

(2) Each arbitration panel consists of five members from different disciplines. It consists of three judges or jurists who are qualified to hold judicial office or who have an equivalent international legal qualification, as can be established by appropriate evidence, and in the latter two cases, who have multiple years of professional experience in alternative dispute resolution; and of two persons with expertise in German 20th-century history, with a specialisation in National Socialism, or with expertise in researching the provenance of Nazi-looted cultural property.

Section 11 – Impartiality and independence of arbitrators, disclosure obligations

(1) The members of the arbitration panel must be impartial and independent with regard to the parties.

(2) The arbitrators selected must inform the Service Desk without undue delay that they accept the office of arbitrator and confirm that they are impartial, independent and available for the duration of the arbitration proceedings. They must disclose all facts and circumstances which, when viewed objectively, could cause reasonable doubt on the part of the parties as to their impartiality or independence. The Service Desk informs the parties and forwards them the statements and disclosures.

(3) All arbitrators have the continuing obligation, for the entire duration of the arbitration proceedings, to disclose all relevant facts and circumstances referred to in subsection (2) to the parties, the other arbitrators and the Service Desk without undue delay.

Section 12 – Appointment of arbitrators

(1) In notifying the parties of the start of proceedings, the Service Desk asks each party to appoint two arbitrators from the list of arbitrators referred to in section 3 (1) within four weeks. For this purpose, the Service Desk provides the parties with the list of arbitrators. Each party appoints one arbitrator who is a jurist in accordance with the requirements in Annex 1 of these Arbitration Rules and one arbitrator who has expertise in German 20th-century history, with a specialisation in National Socialism, or with expertise in researching the provenance of Nazi-looted cultural property. If one party is made up of multiple parties, it only has the right to appoint arbitrators jointly. Each party is bound by its appointment of arbitrators as soon as its selection has been received by the Service Desk.

(2) The Service Desk may extend the time limit given in subsection (1) on request. If the Service Desk has not received one party's appointment within this time limit, the Service Desk asks the party again to provide its appointment within a certain time limit. If the party does not send its appointment to the Service Desk within the extended time period, then the head of the Service Desk selects the arbitrators by drawing lots.

(3) Within 21 days of being requested by the Service Desk, the appointed arbitrators choose from the list of arbitrators a chairperson to direct the proceedings. The chairperson should ideally be a judge; alternatively, the chairperson may be a jurist who is qualified to hold judicial office in Germany. If the four arbitrators are unable to agree on a chairperson within the time limit given in sentence 1, the chairperson is to be chosen by the competent higher regional court at the request of one of the parties.

(4) The arbitration panel is constituted when all arbitrators have been appointed and their chairperson has been chosen. The Service Desk informs the parties that the arbitration panel has been constituted.

Section 13 – Rejection of an arbitrator

An arbitrator may be rejected only if there are circumstances which give rise to reasonable doubt as to the arbitrator's impartiality or independence. The Service Desk is to be informed of the rejection and the reason for it within 14 days

of the parties' being informed that the arbitration panel has been constituted according to section 12 (4) or of becoming aware of the reason for rejection. A party may reject an arbitrator whom it has appointed only on grounds which the party became aware of only after the selection. If the arbitrator does not resign her or his office as arbitrator, or if the other party opposes the rejection, the arbitration panel makes a decision on the rejection without the participation of the arbitrator in question.

Section 14 – Impossibility to act of an arbitrator

If an arbitrator is unable, whether de jure or de facto, to perform her or his functions, or if she or he does not perform her or his functions within a reasonable period of time for other reasons, her or his mandate as arbitrator is terminated when she or he resigns or when the parties agree to terminate her or his mandate. If the arbitrator does not resign, or if the parties cannot agree to terminate her or his mandate, each party may apply to the competent higher regional court for a decision on the termination of office.

Section 15 – Appointment of a substitute arbitrator

If the office of an arbitrator is terminated under section 13 or section 14, a substitute arbitrator is to be appointed. The substitute arbitrator is appointed according to section 12.

Section 16 – Replies and other submissions by the parties

(1) The arbitration panel sets a time limit for the other party to submit a reply. When setting a time limit, the date of the other party's receipt of the application is to be taken appropriately into account. The arbitration panel decides on the form for transmitting written materials.

(2) During the arbitration proceedings, each party may alter or add to its submissions unless the arbitration panel does not allow this due to delay without a satisfactory excuse.

Section 17 – Language of proceedings

(1) Arbitration proceedings are conducted in the German language.

(2) Documents, expert opinions and other written evidence in other languages may be submitted. The arbitration panel will arrange for any necessary translations.

Section 18 – Procedural rules

(1) The arbitration panel should at every stage of the proceedings seek to encourage an amicable settlement of the dispute or of individual points of dispute.

(2) It is to be ensured throughout the entire proceedings that both parties have the same level of information. All written pleadings, documents and other communications presented to the arbitration panel by one party are to be brought to the attention of the other party; all expert opinions and other written evidence on which the arbitration panel may base its decision are to be brought to the attention of both parties.

(3) Each party must be given sufficient opportunity to respond to submissions made by the other party. The arbitration panel decides at its discretion on preclusions.

Section 19 – Pursuit of proceedings

(1) Soon after it is constituted, as a rule within 21 days, the arbitration panel must hold a case management conference with the parties. The parties themselves and any external counsel should take part in the case management conference. The chairperson decides at her or his discretion whether parties may take part in the conference via video and audio transmission.

(2) At the case management conference, the arbitration panel discusses with the parties in particular the schedule for the proceedings, including setting a date for the oral hearing and whether expert witnesses should be consulted.

Section 20 – Obtaining information

(1) The purpose of obtaining information is to establish the facts relevant for a decision on the specific object of dispute and to describe the general persecution of the party entitled to apply for arbitration or of the original owner.

(2) The arbitration panel is authorised to investigate the underlying facts of the case in addition to the information submitted by the parties.

(3) Unless otherwise agreed by the parties, the arbitration panel may appoint one or more experts to provide an opinion on certain issues to be determined by the arbitration panel, for example concerning provenance or to clarify matters of inheritance law. Further, it may request a party to provide the expert with all useful information or to submit or make available for inspection all documents or objects relevant for the proceedings. After submitting her or his written or oral report, the expert must take part in an oral hearing if so requested by one of the parties or if the arbitration panel considers it to be necessary. During the hearing, the parties may ask the expert questions and have their own experts make statements on the disputed issues. The Service Desk transmits results of provenance research in particular to the German Lost Art Foundation for entry in the Proveana database.

Section 21 – Hearing for oral argument

(1) Unless the parties agree otherwise, the proceedings before the arbitration panel are conducted as an oral hearing. The chairperson decides at her or his discretion whether to allow participation via video and audio transmission.

(2) If the parties agree and explicitly so desire, the public is allowed to attend the hearing.

Section 22 – Participation and decisions of the arbitration panel

(1) As a general rule, the arbitration panel meets with all members in attendance. In agreement with both parties, the participation of one arbitrator may be waived in a justified individual case. This does not apply to the session in which the arbitration award is voted on.

(2) All decisions of the arbitration panel are made with the majority of votes of all its members.

(3) If an arbitrator refuses to participate in a vote, the remaining arbitrators may conduct

the vote without that arbitrator unless the parties have agreed otherwise.

(4) The parties are to be informed in advance of the intention to vote on the arbitration award without the participation of the arbitrator who refuses to vote. With regard to other decisions, the parties are to be informed after the fact of the refusal to vote.

(5) The chairperson may decide on her or his own on individual procedural issues if the parties or other members of the arbitration panel have authorised him or her to do so.

Section 23 – Documenting the proceedings

(1) Minutes of every hearing for oral argument will be recorded. The minutes will be signed by the chairperson.

(2) A file will be opened for every proceeding. This file contains in particular all information, statements, applications, reports and minutes pertaining to the proceedings. The parties may inspect the file. All minutes of the arbitration panel's internal discussions are excluded from this right of inspection.

Section 24 – Default

(1) If the other party fails to respond to the application within the time limit provided in section 16, the arbitration panel may nonetheless continue the arbitration proceedings. The other party's failure does not constitute acceptance of the actual submission by the party entitled to apply for arbitration.

(2) If a party fails to appear at a hearing for oral argument or fails to submit a document as evidence within the set time limit, the arbitration panel may continue the proceedings and issue its arbitration award on the basis of the information presented.

(3) The failure is disregarded if the arbitration panel finds that it is excused. Moreover, the parties may agree on other consequences for failure.

Section 25 – Concluding order

Following the last hearing for oral argument or the last written pleadings accepted, the arbitration panel declares by procedural order that the proceedings are concluded. After it has done so, written pleadings, evidence and substantiating materials may only be submitted if they are likely to fundamentally alter the facts of the case as established by the arbitration panel. The arbitration panel decides on this matter at its discretion.

Section 26 – Settlement

If the parties agree to settle the dispute during the arbitration proceedings, the arbitration panel ends the proceedings. Upon application, the arbitration panel records the settlement in the form of an arbitration award using the agreed wording, as long as the terms of the settlement do not violate public policy. Such an arbitration award has the same effect as any other arbitration award in the matter.

Section 27 – Issuing the arbitration award

(1) The subject of the arbitration award is the decision on just and fair solutions as referred to in no. 11 of the Assessment Framework.

(2) The decision contains, in a standard form and structure, a description of the general course of the proceedings, the facts of the

case, the parties' applications and submissions, and a reasoned assessment. The arbitration panel is obligated to provide understandable and substantive reasons for its arbitration award. The reasoning must address all relevant submissions by the parties. The persecution of the party entitled to apply for arbitration or of the original owner is to be accorded the proper attention and respect.

(3) Before the arbitration award is issued, it is communicated to each of the parties in order to give them an opportunity to point out within five working days any inaccuracies or errors in the established facts of the case.

(4) The arbitration award has the effect on the parties of a final and binding court judgment.

(5) After the arbitration award has been issued, the parties may nonetheless agree on an arrangement derogating from the arbitration award, as long as no application for a declaration of the arbitration award's enforceability has been made.

Section 28 – End of the arbitration proceedings

(1) The arbitration proceedings end with the final arbitration award or with a decision of the arbitration panel pursuant to subsection (2).

(2) The arbitration panel ends the arbitration proceedings by a decision (decision to end proceedings) if

a) the party entitled to apply for arbitration withdraws the application, unless the other party objects and the arbitration panel recognises the other party's legitimate interest in the final resolution of the dispute; or

b) the parties agree to end the proceedings; or

c) the parties cease to pursue the proceedings despite being called on by the arbitration panel to do so, or continuing the proceedings has become impossible for another reason.

(3) The decision to end proceedings is issued without prejudice to the right of a party to re-assert its claims.

Section 29 – Publication of the arbitration award

(1) The arbitration award is immediately communicated to the parties. An English translation will be prepared if one of the parties so requests. The translation is purely informational in nature and does not have the effect of an arbitration award.

(2) The decision is immediately made available to the public on the website of the Court of Arbitration for Nazi-looted Cultural Property, in a depersonalised form and on an agreed date if the parties so desire. The decision is published in German and English.

(3) The Service Desk reports the just and fair solution found to the German Lost Art Foundation for entry in its database. The parties' wish for depersonalisation is respected.

Section 30 – Review procedure

The parties may challenge the arbitration award according to the rules of the Code of Civil Procedure.

Section 31 – Costs

The parties do not incur any costs by referring a case to the arbitration panel. The costs of the arbitration panel are not charged to the parties. The parties must bear any costs they themselves incur. This applies for example to the costs of legal counsel and representation.

Section 32 – Application of applicable procedural law

Unless otherwise provided for in these Rules of Arbitration, the Code of Civil Procedure applies, including the provisions on arbitration proceedings in sections 1029 to 1065 of the Code of Civil Procedure. The chairperson otherwise directs the proceedings at her or his discretion.

Section 33 – Publication of the Rules of Arbitration

These Rules of Arbitration are published on the website of the Court of Arbitration for Nazi-looted Cultural Property. A non-binding English translation is published there as well.

VI: Assessment Framework

Note:
This English translation is provided for informative purposes only. In case of deviations from the German version of this document, the German version shall be considered as the authoritative version.

Assessment Framework for examining and deciding on the treatment of Nazi-looted cultural property

Preamble

Bearing in mind the horrors of the Nazi regime and the lasting impacts of its vast and immeasurable injustice, Germany acknowledges its historical responsibility to ensure justice for the victims and subsequent generations.

In this spirit, Germany committed in a Common Statement in 1999 to implementing the Washington Principles of 1998, which name the art theft of the Nazi regime and call for the identification of Nazi-looted cultural property and for just and fair solutions. More than a quarter-century after the landmark decision to end the Nazi looting of cultural property by returning such property to its rightful owners, and in recognition of what the Federation, the *Länder* and the national associations of local authorities have so far achieved, a legal procedural framework will now counter the injustice of the Nazi looting of cultural property. This framework also respects the Best Practices for the Washington Conference Principles on Nazi-confiscated Art. This binding Assessment Framework replaces the non-binding "Guidelines" for implementing the Common Statement. The arbitration panel and institutions holding cultural property are required to apply this Framework as the basis for all of their examinations and understandable, justified decisions. The Framework constitutes the material basis for the arbitration proceedings, which may be initiated by unilateral appeals and the decisions of which are binding.

The injustice of National Socialism emanated from an unjust state which turned against those whom it was obligated to protect as its citizens. That is why the state and its institutions today

have a special obligation to acknowledge this injustice committed by the state and to remedy it with just and fair solutions. Private owners of cultural property who commit to the principles and procedures set out in the Common Statement and this Assessment Framework accept this historical responsibility for the community. Private individuals and institutions organised under private law are encouraged and called on to join in committing to the principles and procedures set out in the Common Statement and this Assessment Framework.

Acknowledging injustice, ensuring compensation and achieving *Rechtsfrieden* are the guiding principles of every examination and decision.

Chapter I – General provisions

1 – Scope of application

1.1 This Assessment Framework applies to cases in which the loss of cultural property between 30 January 1933 and 8 May 1945 as the result of persecution under the Nazi regime on racial, political, religious or ideological grounds or as a victim on grounds of sexual orientation is claimed.

1.2 This Assessment Framework is independent of the location where the loss of the cultural property occurred if the cultural property is located in Germany when the arbitration proceedings are initiated.

1.3 This Assessment Framework is the basis for arbitration proceedings in accordance with the Administrative Agreement establishing the "Court of Arbitration for Nazi-looted Cultural Property" of the Federation, the *Länder* and the national associations of local authorities. The version of the Assessment Framework in force at the time of decision applies.

2 – Provision of evidence and reduction of the burden of proof

2.1 Unless otherwise specified, the parties bear the burden of proof for providing the facts in their favour. Both parties must give each other full access to the documents and sources available to them.

2.2 When clarifying the conditions for a just and fair solution, consideration is to be given to the fact referred to in no. 4 of the Washington Principles that gaps or ambiguities in the provenance are unavoidable in light of the passage of time and the circumstances of the Holocaust era. This means in particular that

1. indirect forms of evidence have a special significance. In particular, the parties may present possible scenarios, may rely on circumstantial evidence and attempt to reconstruct a course of events which cannot be proved in detail by referring to the historical context;

2. parties may use prima facie evidence. Prima facie evidence depends on the existence of undisputed or proven facts and historical information indicating that a certain course of events was typical in such cases;

3. statutory declaration in lieu of an oath are admissible;

4. to be convincing, certainty is not required if it has been determined that a high level of probability suffices.

2.3 For the purposes of this Assessment Framework,

1. "certainty" means a degree of assurance which is usable for practical purposes and silences doubts without fully ruling them out;

2. "high level of probability" means a lesser degree of assurance than certainty. This degree of assurance requires that, taken together, the facts, circumstantial evidence and hypotheses, despite remaining gaps or doubts, speak convincingly in favour of accepting the particular historical facts of the case. This degree of assurance arises out of the comparison of all possible constellations, the consideration of the facts presented on the basis of historical sources, research findings and known or typical historical processes as well as circumstantial or prima facie evidence in the course of selecting the most likely scenario.

3 – Formal entitlement to apply for arbitration

3.1 A just and fair solution may be requested by a natural or legal person who claims that cultural property was lost between 30 January 1933 and 8 May 1945 as the result of persecution under the Nazi regime on racial, political, religious or ideological grounds or as a victim on grounds of sexual orientation. The same applies if

1. the application is made by a sole successor in title *mortis causa*;

2. the application is made jointly by all members of an undivided community of heirs;

3. the application is made by a single member of an undivided community of heirs on behalf of the members of an undivided community of heirs, if all members have agreed on this. Evidence of such an agreement is to be provided. This applies accordingly to persons entitled to shares of an enterprise;

4. the application is made jointly by all persons entitled to shares of a legal person under private law or a partnership which pursued primarily economic purposes (enterprise).

3.2 The successor organisation of a legal person or an association of persons not primarily oriented on economic purposes which was dissolved or was forced to dissolve may request a just and fair solution if the organisation's statutes conform to those of its predecessor, the organisation performs the functions or tasks of its predecessor or pursues its purposes as specified in the statutes of its predecessor.

Chapter II – General requirements

4 – Definition of cultural property; identity of the object

4.1 The movable object claimed must constitute cultural property. To constitute cultural property, an object or collection of objects must today be assessed as possessing artistic, historical, archaeological, scientific, religious or general cultural value. This object must be the same object whose loss between 30 January 1933 and 8 May 1945 is claimed (identity of the object).

4.2 There must at least be a high level of probability that the object is the same object whose loss is claimed. The other party must assist in investigating the object's identity.

5 – Ownership

5.1 The cultural property must, at the time of its loss between 30 January 1933 and 8 May 1945, have been the property of the party entitled to apply for arbitration or of her or his predecessor in title.

5.2 If, at the time of its loss between 30 January 1933 and 8 May 1945, the cultural property was in the possession of the party entitled to apply for arbitration or of her or his predecessor in title, their ownership of the cultural property is presumed. If they were in possession before 30 January 1933, possession is presumed to have continued within the time period referred to in sentence 1 unless there are circumstances indicative of its loss. The continuance of possession is presumed in particular if the loss occurred not long after the latest (demonstrated) possession prior to 30 January 1933. The other party may disprove this. The presumption does not apply to merchandise among the commercial assets of a dealer.

5.3 There must be at least a high level of probability that ownership existed.

5.4 The provisions of the applicable law may be referred to in order to clarify ownership status at the time of loss.

5a – Special cases of ownership

5a.1 If an object of cultural property was transferred as security, as a rule the guarantor is to be treated as the owner if, due to persecution, she or he was, with a high level of probability, prevented in law or in fact from servicing a secured debt and lost the collateral for this reason. If only the person who transferred the object of cultural property as security was persecuted, as a rule she or he is to be treated as the owner if she or he was unable due to persecution to claim her or his rights under the security agreement. In both cases, special circumstances may justify a different assessment.

5a.2 Goods on commission of a dealer are not to be treated as the property of the dealer but rather of the person who consigned them. Merchandise among the commercial assets of a dealer is to be considered the equivalent of private property.

5a.3 If, at the time of its loss, the cultural property was the property of a legal person or a partnership, this legal person or partnership is to be treated as the owner of the cultural property.

6 – Entitlement to a just and fair solution

6.1 The previous owner of the cultural property is entitled to a just and fair solution. The same applies

1. to a person who claims the succession in title *mortis causa* of the previous owner;

2. to a person who claims entitlement to shares in an enterprise; and

3. to a successor organisation of a legal person or an association of persons not primarily oriented on economic purposes which was dissolved or was forced to dissolve if the organisation's statutes conform to those of its predecessor, the organisation performs the functions or tasks of its predecessor or pursues its purposes as specified in the statutes of its predecessor.

6.2 Succession in title *mortis causa* is to be proven. The requirement to present certificates of inheritance is to be waived if succession in title *mortis causa* can be proved by other means. The same applies accordingly to persons entitled to shares of a legal person or a partnership. When applying for arbitration, the provisions of the applicable law may be referred to in order to clarify succession in title *mortis causa*.

Chapter III – Special requirements

7 – Persecution as a result of the Nazi regime

7.1 The person entitled to apply for arbitration or her or his predecessor in title must have been persecuted between 30 January 1933 and 8 May 1945 on racial, political, religious or ideological grounds or as a victim on grounds of sexual orientation.

7.2 For the period between 30 January 1933 and 8 May 1945, the assumption of collective persecution applies to persons who, under Nazi law, were persecuted as Jews or as "half-breeds in the first degree" (*Mischling 1. Grades*) and to members of the Sinti and Roma ethnic groups. The same applies to their spouses who were not persecuted, as long as the marriage existed as a community of shared fate and persecution or the couple's children needed to be cared for. The assumption that spouses who did not belong to the groups subjected to collective persecution were persecuted may be disproved by the other party by means of special circumstances in the individual case.

7.3 Evidence of individual persecution is to be provided.

8 – Forms of loss; sufficiently close connection (hinreichend enger Zusammenhang)

8.1 The person entitled to apply for arbitration or her or his predecessor in title must have suffered the loss of cultural property as the result of action by government bodies or by private third parties or as the result of a legal transaction in the period between 30 January 1933 and 8 May 1945. A sufficiently close connection between the loss and the persecution as a result of the Nazi regime is required.

8.2 A sufficiently close connection is presumed in the case of loss resulting from a legal transaction by a person subjected to collective persecution. A sufficiently close connection is presumed in the case of a legal transaction by a person subjected to individual persecution if the legal transaction occurred during the period of persecution. The presumption of a sufficiently close connection applies as well to legal transactions between persons subjected to persecution. This presumption may be disproved subject to the requirements in the cases of 8b to 8d.

8.3 In the case of legal transactions by dealers, a sufficiently close connection is presumed if a consideration of all the circumstances does not provide any indication of the orderly continuation of ordinary business transactions. Orderly business transactions ceased at the latest when the dealer was permanently expelled from the Reich Chamber of Visual Arts (*Reichskammer der bildenden Künste*).

8.4 In case of a person subjected to persecution who did not permanently flee Nazi-controlled territory and who sold cultural property outside of Nazi-controlled territory, as a rule a fair purchase price and the ability to freely dispose of the purchase price as desired is assumed.

8a – Loss as the result of action by state bodies or by private third parties

8a.1 In the case of cultural property lost as the result of action by state bodies in the period between 30 January 1933 and 8 May 1945, as a rule a sufficiently close connection exists between the loss and persecution as a result of the Nazi regime. The general rule on the distribution of the burden of proof therefore plays a subordinate role.

8a.2 In exceptional cases, a sufficiently close connection between the loss and persecution as a result of the Nazi regime may not exist. This may be shown by the following indicators in particular:

1. restrictions pursuant to the government ordinance on the export of artworks of 11 December 1919 (*Verordnung über die Ausfuhr von Kunstwerken*, Reich Law Gazette p. 1961), if this ordinance was not applied in a discriminatory way in the individual case;

2. compulsory sales by public auction, if these were not connected to the persecution of the owner of the cultural property; or

3. loans of cultural property seized by government bodies as part of the "Entartete Kunst" ("degenerate art") campaign. This does not apply if, due to persecution, the owner was denied the possibility of restitution or compensation that owners who were not persecuted sometimes received.

8a.3 In the case of cultural property lost as the result of action by private third parties, a sufficiently close connection between the loss and persecution as a result of the Nazi regime exists if the loss was enabled or facilitated by the persecution of the owner. The same applies to cultural property lost in other ways.

8b – Sale prior to 15 September 1935

8b.1 In the case of cultural property lost as a result of a sale prior to 15 September 1935, the presumption of a sufficiently close connection between the loss and persecution as a result of the Nazi regime may be disproved if the person subjected to persecution

1. received a fair purchase price and

2. was free to dispose of the purchase price as desired.

8b.2 The purchase price is in principle fair if it corresponds to the value that the cultural property would have had at the time of sale if it had been sold by a person not subjected to persecution (objective market value). The approximate objective market value is to be determined with the help of comparable values from legal transactions by persons who were not subjected to persecution and involving comparable cultural property under comparable market conditions such as place, time and type of sale.

8b.3 The ability to freely dispose of the purchase price as desired must have existed at the time the legal transaction was concluded and completed. This ability is lacking in particular if the purchase price had to be used to pay special discriminatory fees, or if access to the seller's bank account was blocked as the result of discriminatory regulations. People persecuted as Jews under Nazi law lost the ability to freely dispose as a rule after 14 May 1938.

8b.4 The other party bears the burden of proof for disproving the presumption of a sufficiently close connection between the loss of cultural property and persecution as a result of the Nazi regime. If this presumption is disproved, the person entitled to apply for arbitration may present facts which nonetheless indicate a sufficiently close connection. This presentation may rely in particular on evidence that the seller agreed to the legal transaction due to coercion in the individual case or to a wrongful act in connection with the persecution.

8c – Sale after 15 September 1935 by a person subjected to collective persecution

8c.1 In the case of cultural property lost as a result of a sale on or after 15 September 1935 by a person subjected to collective persecution, the presumption of a sufficiently close connection between the loss and persecution as a result of the Nazi regime may be disproved if the person

1. received a fair purchase price and was able to freely dispose of the purchase price as desired, and

2. the main substance of the legal transaction would have been concluded even if the Nazi regime had not existed, or if

3. the buyer successfully demonstrated a special respect for the seller's property interest.

8c.2 The main substance of the legal transaction would have been concluded even if the Nazi regime had not existed, provided that the persecution had no effect on the decision to sell, on the purchase price or on the choice of a particular means of payment. This may be indicated in particular by the following:

1. the seller had seriously considered selling the cultural property already before 30 January 1933, or

2. the sale was part of the distribution of an estate.

8c.3 The successful demonstration of special respect for the seller's property interest requires exceptional good faith on the part of the buyer. This can be assumed in particular if the transfer of assets took place abroad and the seller received payment despite foreign exchange regulations. The payment of a fair purchase price alone is not a sufficient demonstration.

8c.4 The other party bears the burden of proof for disproving the presumption of a sufficiently close connection between the loss of cultural property and persecution as a result of the Nazi regime.

8d – Loss by means of donation and other legal transactions

8d.1 The presumption of a sufficiently close connection between the loss of the cultural property and persecution as a result of the Nazi regime generally applies to donations as well. This presumption does not apply if the personal relationship between the parties gives reason to believe that the cultural property was given away as a donation for decency (*Anstandsschenkung*). The other party has the option of demonstrating that there was no connection between the donation and the persecution as a result of the Nazi regime.

8d.2 The same applies accordingly to the loss of cultural property by means of other legal transactions.

9 – Loss due to sale outside of Nazi-controlled territory

9.1 In the case of cultural property sold outside of Nazi-controlled territory by a person subjected to collective persecution who permanently fled Nazi-controlled territory, a direct connection between the loss and persecution as a result of the Nazi regime is required. This connection is not presumed. Nazi-controlled territory is the territory of the German Reich on or after 30 January 1933, of Austria on or after 12 March 1938, of the annexed areas of Czechoslovakia on or after 1 October 1938, of the Memel territory on or after 23 March 1939 and of countries occupied by German forces after the Second World War began on 1 September 1939. Nazi-controlled territory also includes territory which was not occupied by German forces but was under Nazi influence, as was recognised in the Federal Act for the Compensation of the Victims of National Socialist Persecution (*Bundesentschädigungsgesetz,* BEG).

9.2 The direct connection is to be determined by evaluating all of the circumstances of the sale. This evaluation of all of the circumstances should in particular consider the following:

1. whether there was a direct temporal connection (by 8 May 1945 at the latest) between the loss resulting from a sale and flight as a result of persecution, and

2. whether the seller was unable to receive a fair purchase price and/or to freely dispose of the purchase price as desired due to flight as a result of persecution. Denial of permission to work or a precarious residence permit in particular may be relevant factors which prevented the seller from participating in the market on equal terms. With regard to the ability to freely dispose of the purchase price as desired, it may be necessary to consider the seller's need to use the proceeds of the sale to secure her or his own refugee status.

Chapter IV – Decision

10 – Grounds for precluding a just and fair solution

A just and fair solution may be ruled out if the person entitled to apply for arbitration or her or his predecessor in title reached a private settlement on the basis of the Allies' restitution laws which allowed the cultural property to remain in the possession of the possessor in exchange for payment or other compensation. A private settlement does not constitute grounds for precluding a just and fair solution if the settlement appears to be blatantly inequitable.

11 – Just and fair solution

11.1 If the requirements under Chapter II and Chapter III for a just and fair solution are met, returning the cultural property to the person entitled to apply for arbitration takes precedence.

11.2 Particularly in the case of incomplete facts, a just and fair solution may consist in the following:

1. the cultural property is sold and the proceeds are divided; or

2. the cultural property remains in the possession of its current possessor or owner and is only displayed in public together with an explanation of its provenance and the circumstances of its loss.

A just and fair solution may also consist in a modification, addition to or combination of nos. 1 and 2. Solutions consisting in a direct monetary payment are ruled out. Such solutions may nonetheless be allowed if the parties agree in an amicable settlement before the arbitration panel on a consensual resolution of the dispute.

11.3 If, at the time of its loss, the cultural property was the property of an enterprise, the just and fair solution may be brought about

1. in the event of additional liquidation, vis-à-vis the enterprise in liquidation, or

2. vis-à-vis joint ownership to the successors in title of the former shareholders.

In the case of shares in a legal person or a partnership, a just and fair solution must consider the shared entitlements according to the applicable company law.

11.4 If the same cultural property was lost more than once in temporal succession in connection with persecution as a result of the Nazi regime, only the first person who suffered the loss is to be considered in a just and fair solution (principle of priority).

11.5 If the requirements for a just and fair solution are not met, the application for arbitration is to be denied. If the application is denied, the general fate of the person subjected to persecution that has come to light is to be recorded and honoured.

12 – Other provisions

12.1 If the just and fair solution involves returning the cultural property to the person entitled to apply for arbitration, this solution is to be checked against material restitution already paid according to the Federal Act for the Settlement of the Monetary Restitution Liabilities of the German Reich and Legal Entities of Equal Legal Status (*Bundesrückerstattungsgesetz,* BRüG). In order to avoid duplicate compensation, an enquiry should be directed to the Federal Office for Central Services and Unresolved Property Issues (BADV). If the BADV files a claim for repayment on behalf of the Federation, this claim is to be considered in reaching a just and fair solution.

12.2 Monetary payments and other compensation based on private settlements are to be considered as well. By way of exception, significant expenses by the other party may be considered.

12.3 The German Lost Art Foundation (DZK) is to be informed of every just and fair solution for entry in its database of restitution reports.

VII: Explanatory Notes on the Assessment Framework

Note:
This English translation is provided for informative purposes only. In case of deviations from the German version of this document, the German version shall be considered as the authoritative version.

Explanatory Notes on the Assessment Framework for examining and deciding on the treatment of Nazi-looted cultural property

Introduction

The Assessment Framework, as Annex 2 to the Administrative Agreement establishing the Court of Arbitration for Nazi-looted Cultural Property, replaces the *Guidelines for verifying whether a work of art was Nazi-confiscated and for preparing decisions on restitution claims* offered by the *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* ("Guidelines"), of December 1999 (new version 2019) and develops them further. In addition to including such provisions, which were previously not accounted for in the Guidelines, the Assessment Framework offers concrete improvements for parties entitled to apply for arbitration in proceedings before an Arbitration Panel of the Court of Arbitration for Nazi-looted Cultural Property.

The Explanatory Notes on the Assessment Framework are aimed primarily at those involved in the previous procedure. They are intended to make the Framework's requirements easy to understand and apply in practice. For this reason, it is recommended

that provenance researchers maintain a dialogue with legal professionals when applying the Assessment Framework. The previous procedure is particularly important for finding just and fair solutions.

The Assessment Framework deliberately avoids the terminology of arbitration law and therefore the terms "plaintiff" and "respondent". This underlines the particular sensitivity of the procedure's subject matter.

Arbitration proceedings are generally subject to the legal framework of section 1025 et seq. of the Code of Civil Procedure (*Zivilprozessordnung*, ZPO) as an alternative dispute resolution mechanism. Unlike proceedings before a state court, arbitration proceedings offer far greater flexibility. In particular, decisions can be based on a non-governmental legal framework in arbitration agreements. The Assessment Framework constitutes such a set of rules.

In addition to the general principles of legal methodology – particularly interpretation based on the wording, structure, meaning and purpose of a provision – a comparison of standards can be used to interpret the Assessment Framework. The same applies to the Washington Principles and the Best Practices published in 2024. These provide valuable guidance on how to apply the Assessment Framework. In establishing that cultural property had been lost as a result of persecution under the Nazi regime, consideration should be made for unavoidable gaps or ambiguities in the work's provenance in light of the passage of time and the circumstances of the Holocaust era.

Chapter I – General provisions

1 *Scope of application*

1.1 This Assessment Framework applies to cases in which the loss of cultural property between 30 January 1933 and 8 May 1945 as the result of persecution under the Nazi regime on racial, political, religious or ideological grounds or as a victim on grounds of sexual orientation is claimed.

1.2 This Assessment Framework is independent of the location where the loss of the cultural property occurred if the cultural property is located in Germany when the arbitration proceedings are initiated.

1.3 This Assessment Framework is the basis for arbitration proceedings in accordance with the Administrative Agreement establishing the "Court of Arbitration for Nazi-looted Cultural Property" of the Federation, the *Länder* and the national associations of local authorities. The version of the Assessment Framework in force at the time of decision applies.

Re 1 (Scope of application)

Re 1.1

The persecution under the Nazi regime defined in paragraph 1.1 continues to use the term "racial" when it actually means persecution on "racist" or "racial ideological" grounds. The choice of terms here expresses a remembrance policy commitment to face historical realities by rejecting any relativisation of the injustice involved. Although legislation on restitution and compensation included this particular reason for persecution, persecution on grounds of sexual orientation was largely excluded. The Assessment Framework therefore goes further than its historical predecessors.

Re 1.2

According to paragraph 1.2, the scope of the Assessment Framework remains open if the cultural property is located within the federal territory when the application is made. Therefore, a change in location during ongoing proceedings does not mean that arbitration based on the Assessment Framework would be excluded (perpetuatio fori).

This does not contradict sections 73 to 76 of the Act on the Protection of Cultural Property (*Gesetz zum Schutz von Kulturgut,* KGSG), as arbitration proceedings cannot be initiated if there is a conflict with third party rights. For example, this applies to cultural property for which the relevant authority has made a legally binding commitment to return it in the context of loans with foreign institutions holding cultural property.

Re 1.3

The Assessment Framework obliges arbitrators to make decisions in the respective arbitration proceedings. However, due to the decentralised nature of provenance research and decisions relating to Nazi-looted cultural property in Germany, the Assessment Framework is also intended for institutions holding cultural property, as well as the property's owners and other relevant parties.

2 *Provision of evidence and reduction of the burden of proof*

2.1 Unless otherwise specified, the parties bear the burden of proof for providing the facts in their favour. Both parties must give each other full access to the documents and sources available to them.

2.2 When clarifying the conditions for a just and fair solution, consideration is to be given to the fact referred to in no. 4 of the Washington Principles that gaps or ambiguities in the provenance are unavoidable in light of the passage of time and the circumstances of the Holocaust era. This means in particular that

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1. indirect forms of evidence have a special significance. In particular, the parties may present possible scenarios, may rely on circumstantial evidence and attempt to reconstruct a course of events which cannot be proved in detail by referring to the historical context;

2. parties may use prima facie evidence. Prima facie evidence depends on the existence of undisputed or proven facts and historical information indicating that a certain course of events was typical in such cases;

3. statutory declarations in lieu of an oath are admissible;

4. to be convincing, certainty is not required if it has been determined that a high level of probability suffices.

2.3 For the purposes of this Assessment Framework,

1. "certainty" means a degree of assurance which is usable for practical purposes and silences doubts without fully ruling them out;

2. "high level of probability" means a lesser degree of assurance than certainty. This degree of assurance requires that, taken together, the facts, circumstantial evidence and hypotheses, despite remaining gaps or doubts, speak convincingly in favour of accepting the particular historical facts of the case. This degree of assurance arises out of the comparison of all possible constellations, the consideration of the facts presented on the basis of historical sources, research findings and known or typical historical processes as well as circumstantial or prima facie evidence in the course of selecting the most likely scenario.

Re 2 (Provision of evidence and reduction of the burden of proof)

The rules on the provision of evidence and on the reduction of the burden of proof in paragraph 2 of the Assessment Framework are crucial to finding just and fair solutions in accordance with the Washington Principles, over 80 years after the end of the Nazi regime. They address no. 4 of the Washington Principles. In an effort to find just and fair solutions in accordance with the Washington Principles and their Best Practices, an Arbitration Panel of the Court of Arbitration for Nazi-looted Cultural Property must not impose unachievable requirements for evidence. It must also decide with due regard for the victims of Nazi looting of cultural property, bearing in mind the often-limited evidence available.

In accordance with no. 4 of the Washington Principles, in establishing that some cultural property was lost due to persecution under the Nazi regime, consideration should be made for unavoidable gaps or ambiguities in provenance in light of the passage of time and the circumstances of the Holocaust era and the fact that, as a result, parties

entitled to apply for arbitration may have difficulty providing evidence. With this in mind, the Assessment Framework aids in the provision of evidence: *prima facie* evidence is admissible as an indirect form of evidence (paragraph 2.2). In addition, a "high level of probability" is established as a standard of proof for important questions (paragraph 2.3).

In arbitration proceedings based on the Assessment Framework, Arbitration Panels can decide how to gather evidence in accordance with no. 4 of the Washington Principles. This is also true given that, unlike the procedure of strict evidence provided for in the Code of Civil Procedure, the Federal Government, the *Länder* and the national associations of local authorities have decided to allow statutory declarations in lieu of an oath as admissible evidence. The aim is to better address the evidence available to victims of Nazi art theft and their descendants, more than 80 years after the end of the Nazi regime.

Re 2.1

The rules on the provision of evidence and on the reduction of the burden of proof are crucial to the Assessment Framework. Paragraph 2.1 sentence 1 of the Assessment Framework assumes that, as a rule, both parties are responsible for providing proof of facts in their favour. Examples of evidence that parties may provide include documents such as sales contracts, invoices, receipts, catalogues, letters, emails, photographs or any other types of written documents. They may also name witnesses and provide statutory declarations. In the interest of those persecuted under the Nazi regime and their successors in title, the Assessment Framework deviates in key areas from the principle of the burden of proof of civil procedure.

Parties entitled to apply for arbitration must provide three types of evidence:

- proof that they belong to a group of collectively persecuted persons or proof of individual Nazi persecution,
- proof of a loss of property during the period of persecution, and
- proof of the party's entitlement to a just and fair solution (*Aktivlegitimation*), which is usually demonstrated by showing that one is the successor in title.

In accordance with paragraph 5.3, a loss of property includes proof of ownership between 30 January 1933 and 8 May 1945, which also encompasses the identity of the object. Please refer to paragraph 2 and 4 for questions concerning the provision of evidence and the reduction of the burden of proof as well as the identity of the object. If this evidence is accepted, parties entitled to apply for arbitration in the event of legal losses incurred within Nazi-controlled territory benefit from the presumption of a sufficiently close connection to persecution as a result of the Nazi regime, as determined by the Assessment Framework. In the event of loss as a result of action by government bodies or by private third parties, the burden of proof was largely reduced in favour of parties entitled to apply for arbitration.

According to sentence 2, both parties are subject to a disclosure obligation, which aims to address any potential information gaps. This includes source material such as archival documents, records of any markings on the back of the object, or proof that one is a lawful heir, etc. The responsible Arbitration Panel is authorised to ensure that all documents and information on the object and its context are submitted. It does so by encouraging both parties to provide any information to which they have access. The aim is to swiftly and comprehensively clarify the facts in

the interests of those who were persecuted under the Nazi regime and their successors in title.

Re 2.2

According to no. 4 sentence 1 of the Washington Principles, in conjunction with paragraph D of the Best Practices, the Assessment Framework fully takes this into account, thereby reducing the burden of proof. Sentence 2 cites examples for this.

Paragraph 2.2 (2) of the Assessment Framework also provides for prima facie evidence: in cases where the facts are incomplete, those that are certain can be used to reconstruct a course of events that usually occurs in such cases. This form of evidence is particularly useful for presenting extrinsic facts.

Paragraph 2.2 (3) also expressly permits statutory declarations in lieu of an oath as a form of evidence. The Arbitration Panel, which is not authorised to accept statutory declarations in lieu of an oath, requests them from the responsible state court in accordance with the provisions of the Code of Civil Procedure.

Re 2.3

Paragraph 2.3 defines the degrees of assurance which form the basis of the Assessment Framework.

The "high level of probability" in paragraph 2.3 (2) of the Assessment Framework constitutes an independent standard of proof which is deliberately lower than the models set forth in civil procedure law. The persecution that was suffered by the parties entitled to apply for arbitration often makes it very difficult to provide full proof.

3 *Formal entitlement to apply for arbitration*

3.1 A just and fair solution may be requested by a natural or legal person who claims that cultural property was lost between 30 January 1933 and 8 May 1945 as the result of persecution under the Nazi regime on racial, political, religious or ideological grounds or as a victim on grounds of sexual orientation. The same applies if

1. the application is made by a sole successor in title *mortis causa*;

2. the application is made jointly by all members of an undivided community of heirs;

3. the application is made by a single member of an undivided community of heirs on behalf of the members of an undivided community of heirs, if all members have agreed on this. Evidence of such an agreement is to be provided. This applies accordingly to persons entitled to shares of an enterprise;

4. the application is made jointly by all persons entitled to shares of a legal person under private law or a partnership which pursued primarily economic purposes (enterprise).

3.2 The successor organisation of a legal person or an association of persons not primarily oriented on economic purposes which was dissolved or was forced to dissolve may request a just and fair solution if the organisation's statutes conform to those of its predecessor, the organisation performs the functions or tasks of its predecessor or pursues its purposes as specified in the statutes of its predecessor.

Re 3 (Formal entitlement to apply for arbitration)

Paragraph 3 sets out the requirements for initiating and examining a just and fair solution in line with the Washington Principles. Unlike paragraph 6, this paragraph only addresses issues of admissibility. This paragraph is included in the regulatory system of the Assessment Framework because it also forms the basis for examination in institutions holding cultural property outside of arbitration proceedings. In institutions holding cultural property, the examination under paragraph 3 is usually followed by the examination under paragraph 6.

Re 3.1

Sentence 1 provides rules for cases where the party entitled to apply for arbitration today is also the party who lost the cultural property during the Nazi regime, although these cases are rare due to the passage of time. Sentence 2 contains provisions for cases where these are different parties, which is more the norm.

In the absence of representation of unknown co-heirs, or in cases where individual heirs do not wish to act as a party, one or multiple co-heirs can make use of the instruments of inheritance law.

Re 3.2

The statutes, functions or tasks of a successor organisation must correspond to those of a legal person or association of persons not primarily oriented towards economic purposes and which has been dissolved or forced to dissolve.

However, "successor organisations" are not limited to Jewish institutions that maintain the tradition and/or content of a legal person or an association of persons which was dissolved or forced to dissolve. The same applies to Masonic lodges and political parties. Unregistered associations are also considered to be associations of persons.

If there are several possible "successor organisations", the decision is made according to reasonable discretion. In making a decision, the historical circumstances and the degree to which the organisation's statutes, functions, tasks and purposes conform to those of its predecessor are taken into consideration.

Chapter II – General requirements

4 *Definition of cultural property, identity of the object*

4.1 The movable object claimed must constitute cultural property. To constitute cultural property, an object or collection of objects must today be assessed as possessing artistic, historical, archaeological, scientific, religious or general cultural value. This object must be the same object whose loss between 30 January 1933 and 8 May 1945 is claimed (identity of the object).

4.2 There must at least be a high level of probability that the object is the same object whose loss is claimed. The other party must assist in investigating the object's identity.

Re 4 (Definition of cultural property, identity of the object)

Re 4.1

According to paragraph 4.1 sentences 1 and 2, the concept of cultural property in the Assessment Framework is to be interpreted as broadly as possible and independently of any original inventory. In addition to paintings, prints, sculptures, books and archival materials, cultural property can include objects from the applied arts and crafts, furniture, musical instruments and everyday utensils. Judaica and other religious objects also fall under the definition of the term.

Clarifying the identity of an object means confirming the fact that all criteria for identifying the specific object match up. Criteria for the clarifying the identity of an object primarily include, but are not limited to:

- who made it or is thought to have made it,
- title and/or subject,
- dimensions, technology and material,
- date of creation/production,
- recording and description, and
- characteristics/evidence of provenance.

It should be taken into consideration that changes may have been made to the object's material substance since it was first lost or damage done to this substance. Changes to the material substance include

- overpainting,
- measures of conservation and restoration,
- changes in format or size, and
- damage.

Information on the object's title or who is thought to have made the object may also have changed. For an object of cultural property which was not produced as a unique item, it is possible to establish the identity of the object only if the object has features specific to it alone (e.g. damage) or if there is information available which enables a match with the lost object.

Re 4.2

The party entitled to apply for arbitration is responsible for proving that they or their legal predecessor are the rightful owner of the cultural property in question. This also involves establishing that the object in hand is the same one that was lost between 30 January 1933 and 8 May 1945 due to persecution as a result of the Nazi regime. In practice, examining the identity of the object will often take precedence over the actual question of ownership, as there is usually a pressing need for examination in the institutions holding cultural property. Paragraph 2.1 sentence 2 also provides for a duty of disclosure in this regard.

The responsible Arbitration Panel is tasked with ensuring that all documents relating to the object and its context are presented by encouraging both parties to produce any information to which they might have access. If and as far as it is relevant to the procedure and legally permissible, such information may include, but is not limited to, the following:

- high-resolution photographs – in the case of a painting: front and back, with and without frame; for other objects: front, back, sides, bottom, etc.;
- condition reports and all related documentation;
- reports on stamps, labels or other identifiers;
- restoration documentation and related documents;
- curatorial files and related documents as well as archival documents;
- inventory and loan documents, and corresponding registers;
- acquisition files and related correspondence;
- loan and exhibition files, including information on loans and exhibitions;
- internal and published documentation, including auction catalogues, museum inventories, exhibition catalogues, collection history, specialist journals, etc.;
- meeting documents and minutes of the institution's management board and supervisory bodies;
- directors' files, including internal and external correspondence;
- correspondence with owners/collectors/art dealers/auction houses, etc.;
- correspondence with funding institutions; and
- correspondence with local and state authorities.

There must be at least a high level of probability with regard to the identity of the object (paragraph 4.2 sentence 1). Certainty is therefore not required, raising the need to weigh up and evaluate conflicting opinions from the research community, for example on copyright issues. The criterion of a "high level of probability" thus makes it easier for parties entitled to apply for arbitration to provide evidence, and it also provides clarity regarding the examination practices of institutions holding cultural property.

The obligation to cooperate in determining the identity of the object, as set out in paragraph 4.2 sentence 2, does not alter the burden of proof on the part of the parties entitled to apply for arbitration as set out in paragraph 2.1 sentence 1. It is primarily directed at institutions holding cultural property. Similarly to the right to demand disclosure, the obligation of institutions holding cultural property to cooperate is intended to enable the party entitled to apply for arbitration to present as many facts as possible.

5 *Ownership*

5.1 The cultural property must, at the time of its loss between 30 January 1933 and 8 May 1945, have been the property of the party entitled to apply for arbitration or of her or his predecessor in title.

5.2 If, at the time of its loss between 30 January 1933 and 8 May 1945, the cultural property was in the possession of the party entitled to apply for arbitration or of her or his predecessor in title, their ownership of the cultural property is presumed. If they were in possession before 30 January 1933, possession is presumed to have continued within the time period referred to in sentence 1 unless there are circumstances indicative of its loss. The continuance of possession is presumed in particular if the loss occurred not long after the latest (demonstrated) possession prior to 30 January 1933.

The other party may disprove this. The presumption does not apply to merchandise among the commercial assets of a dealer.

5.3 There must be at least a high level of probability that ownership existed.

5.4 The provisions of the applicable law may be referred to in order to clarify ownership status at the time of loss.

Re 5 (Ownership)

Re 5.1

Paragraph 5.1 of the Assessment Framework stipulates that, at the time of loss, the cultural property must have been owned by the party entitled to apply for arbitration (option 1). However, due to the passage of time, the party entitled to apply for arbitration will usually no longer be the original owner. In this case, ownership by the legal predecessor is decisive (options 2 and 3).

The period between 30 January 1933 and 8 May 1945 is specified as the relevant period for establishing ownership. Of course, ownership may have been acquired prior to 30 January 1933; in this instance, it is assumed that it was acquired within the aforementioned period. Where applicable, the principle of priority (paragraph 11.4) must be observed in cases where an object was acquired after 30 January 1933.

Re 5.2

Paragraph 5.1 Sentence 1 establishes a rule of presumption in favour of parties entitled to apply for arbitration, since possession of the cultural property at the time of loss between 30 January 1933 and 8 May 1945 justifies a presumption of ownership. See paragraph 5.3 for means of evidence relating to possession.

According to paragraph 5.1 sentence 4, however, the presumption of ownership in paragraph 5.1 sentence 1 may be disproved. This possibility is intended to cover situations in which cultural property was temporarily in someone's possession for a specific purpose (e.g. as a loan or for safekeeping).

The possibility to disprove the presumption of ownership serves solely to determine the actual owner of the cultural property. The presumption of continued possession under paragraph 5.1 sentences 2 and 3 can also be disproved.

Merchandise, commercial assets and other ownership situations involving dealers:

Even under Allied law, special provisions applied to the restitution of goods sold through trade. Article 19 of Law No. 59: Restitution of Identifiable Property (United States Military Government, United States Area of Control, Germany), corresponding to Article 15 of Law No. 59: Restitution of Identifiable Property to Victims of Nazi Oppression of 26 July 1949 (British Occupation Zone), and Article 16 of BK/O (49) 180 of the Allied Kommandatura Berlin on the Restitution of Identifiable Property to Victims of Nazi Repression Berlin Restitution Order (REAO), excluded from restitution objects acquired "in the course of ordinary and usual business transactions". This provision was intended to protect everyday business dealings. However, this did not apply to all property. Religious objects were excluded from this provision, as was property which was acquired from private ownership if such property was an object of unusual artistic, scientific, or sentimental personal value, or was acquired at an auction, or at a private sale in an establishment engaged to a considerable extent in the business of disposing of looted property.

In addition, a complex constellation often arises: a claimed object of cultural property may be commissioned, or it may originate from the property of the enterprise or dealer themselves. In the latter case, the rights of partners may also be relevant. With this in mind, particular care must be taken in transactions involving (art) trade to ensure that the relevant source material is as extensive as possible. This mainly applies to the dealer, who must provide the restitution and compensation files in addition to the gallery's files, for example customer files and sales books. If there are indications of a private consignment, the relevant restitution and compensation files must also be consulted. If, after considering this material, it is still not possible to clearly distinguish between goods on commission and merchandise, a "high level of probability" can be used as the degree of assurance to make this distinction.

The term "dealer" primarily refers to individuals involved in the art trade. However, it also encompasses individuals not exclusively engaged in the sale of artworks, including those who run antique shops.

Re 5.3

For proof of ownership between 30 January 1933 and 8 May 1945, the lesser standard of proof of a "high level of probability" applies (paragraph 2.3 (2)). Paragraph 5.3 therefore takes into account the challenges faced by parties entitled to apply

for arbitration in providing evidence due to the passage of time and the unique circumstances of the Holocaust era.

Ownership can be proven by historical documents such as sales contracts, invoices, receipts or delivery notes. Other evidence of ownership may be found in private documents such as letters, inventory cards of collections, exhibition catalogues with lists of lenders, auction catalogues with lists of consignors, photographs, and other information. Statutory declarations in lieu of an oath may also be admissible.

If there is not at least a high level of probability of ownership, the application must be rejected.

Re 5.4

Where legal provisions are relevant to clarifying the ownership of cultural property for which a just and fair solution is required, paragraph 5.4 permits the application of relevant legislation. This is necessary because, according to the model arbitration agreement, the Assessment Framework is the only basis for decision-making. In individual cases, this must be identified in accordance with the provisions of private international law.

5a *Special cases of ownership*

5a.1 **If an object of cultural property was transferred as security, as a rule the guarantor is to be treated as the owner if, due to persecution, she or he was, with a high level of probability, prevented in law or in fact from servicing a secured debt and lost the collateral for this reason. If only the person who transferred the object of cultural property as security was persecuted, as a rule she or he is to be treated as the owner if she or he was unable due to persecution to claim her or his rights under the security agreement. In both cases, special circumstances may justify a different assessment.**

5a.2 **Goods on commission of a dealer are not to be treated as the property of the dealer but rather of the person who consigned them. Merchandise among the commercial assets of a dealer is to be considered the equivalent of private property.**

5a.3 **If, at the time of its loss, the cultural property was the property of a legal person or a partnership, this legal person or partnership is to be treated as the owner of the cultural property.**

5a (Special cases of ownership)

Paragraph 5a covers special cases of ownership which regularly occur in practice. Some of these cases are newly introduced provisions (paragraph 5a.1) and some simply clarifications describing the legal reality (paragraphs 5a.2 and 5a.3).

Re 5a.1

Paragraph 5a.1 contains a separate provision for dealing with ownership by way of security. Ownership by way of security exists when an object of cultural property is transferred to another person as collateral to secure a debt such as a loan. This transfer of ownership is based on a security agreement, according to which ownership is upon full payment of the debt to revert to the person who transferred the object of cultural property as security. When transferred as security, the cultural property becomes the legal property of the collateral taker, but remains under the beneficial ownership of the collateral provider. Paragraph 5a.1 sentence 1 clarifies that it is primarily the collateral provider who is to be treated as the owner in this constellation. However, since the prioritisation of beneficial ownership deviates from German property law, it is contingent on certain requirements:

- First, there must be a high level of probability that the collateral provider, for legal or factual reasons, was prevented from servicing the secured debt due to persecution. Such legal or factual circumstances can be manifold, such as the freezing of the bank account used to pay off the debt or a termination of employment. These circumstances make it financially impossible to fully settle the debt.

- Second, the collateral provider must have lost the cultural property for this reason. There are to be no high standards imposed in this regard. The aim is merely to exclude cases where the loss of cultural property was not a result of persecution under the Nazi regime.

Paragraph 5a.1 sentence 2 applies in cases where only the collateral taker was persecuted. According to the security agreement, this person is entitled and obliged to sell the cultural property transferred as security if the secured debt is not serviced. The proceeds from the sale enable them to avoid any financial loss.

Due to this possibility, paragraph 5a.1 sentence 2 stipulates that the collateral taker must not have been prevented from adequately exercising their rights under the security agreement as a result of persecution. This would be the case if the object of cultural property could not be sold due to flight, or if the proceeds were not paid to the person who took the object of cultural property as collateral.

Paragraph 5a.1 sentence 3 contains an exception to these two constellations: special circumstances may justify a different assessment. One special circumstance that may be taken into account is if the person who took the object of cultural property as collateral was compensated for their financial loss in another way, for example if the secured debt was repaid in full by the collateral provider after 8 May 1945. A different assessment may also be justified if both parties to the transfer were persecuted.

Re 5a.2

Paragraph 5a.2 is intended to provide clarification and specifies the basic ownership requirement (paragraph 5.1) in cases where dealers are involved. For an explanation of the term “dealer”, please refer to the explanations on paragraph 5.2 sentence 5.

Paragraph 5a.2 sentence 1 merely clarifies the legal reality. Because goods on commission of a dealer are legally owned by the person who consigned them, that person must be treated as the owner. This applies to both private sales and auctions.

Paragraph 5a.2 sentence 2 expressly does not apply to goods on commission. Rather, "merchandise among the commercial assets" refers to cultural property under a dealer's commercial ownership. As a rule, this ownership of merchandise is to be treated the same as private cultural property owned by the dealer.

Re 5a.3

Paragraph 5a.3 is also intended as clarification. According to this paragraph, legal persons and partnerships are to be treated as owners if the cultural property was under their ownership at the time of loss. The purpose of this provision is to ensure that legal owners, including Jewish congregations, lodges, foundations and other institutions, as well as trading companies, are involved in a just and fair solution.

If these owners no longer exist when the application for arbitration is made, the following distinction is made for successors in title:

- For enterprises (i.e. legal persons under private law or partnerships pursuing primarily economic purposes), formal entitlement to apply for arbitration is derived from paragraph 3.1 (1) and (2); entitlement to a just and fair solution is derived from paragraph 6.1 (2); and shared entitlement to a just and fair solution is derived from paragraph 11.3 sentences 1 and 2.

- For legal persons or associations of persons not primarily pursuing economic purposes, entitlement to apply for arbitration is derived from paragraph 3.2, and entitlement to a just and fair solution is derived from paragraph 6.1 (3). If there are no successor organisations, (shared) entitlement to a just and fair solution may be derived from paragraph 11.3 sentence 2.

6 *Entitlement to a just and fair solution*

6.1 The previous owner of the cultural property is entitled to a just and fair solution. The same applies

1. to a person who claims the succession in title *mortis causa* of the previous owner;

2. to a person who claims entitlement to shares in an enterprise; and

3. to a successor organisation of a legal person or an association of persons not primarily oriented on economic purposes which was dissolved or was forced to dissolve if the organisation's statutes conform to those of its predecessor, the organisation performs the functions or tasks of its predecessor or pursues its purposes as specified in the statutes of its predecessor.

6.2 Succession in title *mortis causa* is to be proven. The requirement to present certificates of inheritance is to be waived if succession in title *mortis causa* can be proved by other means. The same applies accordingly to persons entitled to shares of a legal person or a partnership. When applying for arbitration, the provisions of the applicable law may be referred to in order to clarify succession in title *mortis causa*.

Re 6 (Entitlement to a just and fair solution)

Paragraph 6 is based on the principle that a just and fair solution should only benefit the party who is actually entitled to one. Unlike the formal entitlement to apply for arbitration set out in paragraph 3, this is not an examination of admissibility; rather, it is a substantive requirement for achieving a just and fair solution in accordance with the Washington Principles and their Best Practices. In practice, however, the two areas of examination are likely to overlap frequently in the work of institutions holding cultural property outside arbitration proceedings.

Re 6.1

Paragraph 6.1 sentence 1 establishes the principle that the previous owner of the cultural property is entitled to a just and fair solution. However, given the passage of time, this is now the exception rather than the rule.

Therefore, paragraph 6.1 sentence 2 is far more relevant in practice.

Paragraph 6.1 (1) sets out the heirs' right to a just and fair solution when claiming succession in title *mortis causa* of the previous owner. Paragraph 6.1 (2) refers to shareholders in an enterprise – i.e. a

legal person under private law – which primarily pursued economic purposes. Entitlement to a just and fair solution can also be claimed through a combination of Paragraph 6.1 (1) and (2), for example if a person is the successor in title to a shareholder. Although paragraph 6.1 (1) and (2) refer to individual persons, several parties will usually be entitled to a just and fair solution.

For an explanation of the term "successor organisation" used in paragraph 6.1 (3), please refer to paragraph 3.2. That paragraph also explains how a decision is made in cases where more than one "successor organisation" applies for arbitration.

Re 6.2

According to paragraph 6.2 sentence 1, evidence of succession in title *mortis causa* is required with certainty as a degree of assurance. This stricter standard of proof, which is more demanding than that required for establishing the identity and ownership of an object, serves to reliably identify those actually entitled to a just and fair solution, while avoiding restitution to anyone who is not entitled.

Paragraph 6.2 sentence 2 contains a reduction of the burden of proof in favour of the party entitled to apply for arbitration in line with the Act on the Settlement of Unresolved Property Issues (*Vermögensgesetz,* VermG). Wills, in particular, may provide an alternative means of proving succession in title *mortis causa*.

Where legal provisions are relevant to clarifying succession in title *mortis causa*, sentence 4 permits the application of relevant legislation. This is necessary because, according to the model arbitration agreement, the Assessment Framework is the only basis for decision-making. This is to be identified on a case-by-case basis in accordance with the provisions of private international law. In this respect, the date of the application for arbitration is decisive, as entitlement to a just and fair solution must already exist when proceedings are initiated. This ensures that all those who are entitled to apply for arbitration receive a legal hearing in the arbitration proceedings.

Chapter III – Special requirements

7 Persecution as a result of the Nazi regime

7.1 The person entitled to apply for arbitration or her or his predecessor in title must have been persecuted between 30 January 1933 and 8 May 1945 on racial, political, religious or ideological grounds or as a victim on grounds of sexual orientation.

7.2 For the period between 30 January 1933 and 8 May 1945, the assumption of collective persecution applies to persons who, under Nazi law, were persecuted as Jews or as "half-breeds in the first degree" (Mischling 1. Grades) and to members of the Sinti and Roma ethnic groups. The same applies to their spouses who were not persecuted, as long as the marriage existed as a community of shared fate and persecution or the couple's children needed to be cared for. The assumption that spouses who did not belong to the groups subjected to collective persecution were persecuted may be disproved by the other party by means of special circumstances in the individual case.

7.3 Evidence of individual persecution is to be provided.

Re 7 (Persecution as a result of the Nazi regime)

Chapter II addresses preliminary questions and general requirements (including the definition of cultural property and ownership). The individual paragraphs in Chapter III directly refer to the condition of persecution under the Nazi regime and therefore contain specific conditions for a just and fair solution.

Re 7.1

Paragraph 7.1 details the possible grounds for persecution between 30 January 1933 and 8 May 1945. Regarding the grounds for persecution, please refer to the explanatory notes on paragraph 1.1. Persecution within the meaning of the Assessment Framework concerns cases where either the party entitled to apply for arbitration was persecuted themselves (option 1) or their legal predecessor was persecuted (options 2 and 3). Due to the amount of time that has elapsed, options 2 and 3 are becoming more prevalent.

Re 7.2

Paragraph 7.2 follows the principle of distinguishing between collective and individual persecution under the restitution laws. When it comes to providing evidence, the presumption of collective persecution works in favour of the party entitled to

apply for arbitration: for such parties, it is not necessary to provide evidence of individual persecution, as belonging to a collectively persecuted group is sufficient. The presumption of collective persecution under the Nazi regime applies to the entire period between 30 January 1933 and 8 May 1945.

Paragraph 7.2 sentence 1 extends the definition of collectively persecuted groups to include "half-breeds in the first degree" (*Mischling 1. Grades*) within the meaning of the Nazi regime's antisemitic and racist law and to members of the Sinti and Roma ethnic groups.

Paragraph 7.2 sentence 2 extends the presumption of collective persecution to include, under certain conditions, spouses of persons referred to in sentence 1. The presumption of persecution also applies to spouses who themselves were not persecuted, for example because they were considered "Aryan", provided the marriage existed as a community of shared fate and persecution (option 1). This community generally ended upon the death of the collectively persecuted spouse or upon the married couple's divorce. If the couple's children needed to be cared for after this point in time, the presumption of collective persecution continues to apply after this point (option 2).

According to sentence 3, the presumption of collective persecution in the case of spouses who were not persecuted themselves may be substantively disproved by special circumstances in the individual case. "Special circumstances" may be present if the spouse considered "Aryan" had brought children into the marriage, and persecution had no repercussions after the end of the community of shared fate and persecution. Providing substantiated disproof is the other party's responsibility

Re 7.3

Paragraph 7.3 clarifies that evidence is to be provided in order to prove the individual persecution of a person not subjected to collective persecution.

8 *Forms of loss; sufficiently close connection (hinreichend enger Zusammenhang)*

8.1 The person entitled to apply for arbitration or her or his predecessor in title must have suffered the loss of cultural property as the result of action by government bodies or by private third parties or as the result of a legal transaction in the period between 30 January 1933 and 8 May 1945. A sufficiently close connection between the loss and the persecution as a result of the Nazi regime is required.

8.2 A sufficiently close connection is presumed in the case of loss resulting from a legal transaction by a person subjected to collective persecution. A sufficiently close connection is presumed in the case of a legal transaction by a person subjected to individual persecution

if the legal transaction occurred during the period of persecution. The presumption of a sufficiently close connection applies as well to legal transactions between persons subjected to persecution. This presumption may be disproved subject to the requirements in the cases of 8b to 8d.

8.3 In the case of legal transactions by dealers, a sufficiently close connection is presumed if a consideration of all the circumstances does not provide any indication of the orderly continuation of ordinary business transactions. Orderly business transactions ceased at the latest when the dealer was permanently expelled from the Reich Chamber of Visual Arts (*Reichskammer der bildenden Künste*).

8.4 In case of a person subjected to persecution who did not permanently flee Nazi-controlled territory and who sold cultural property outside of Nazi-controlled territory, as a rule a fair purchase price and the ability to freely dispose of the purchase price as desired is assumed.

Re 8 (Forms of loss; sufficiently close connection [hinreichend enger Zusammenhang])

Paragraph 8 introduces two specific conditions of Chapter III. These are the loss of cultural property and the sufficiently close connection between the loss and persecution as a result of the Nazi regime. paragraph 8 sets out the general approach and leads to paragraphs 8a to 8d, which each address specific forms of loss.

For a definition of the term "Nazi-controlled territory", please see paragraph 9.1 sentences 3 and 4.

Re 8.1

Paragraph 8.1 sentence 1 sets out the requirement that the loss of cultural property must have occurred in the period between 30 January 1933 and 8 May 1945. "Loss" means that cultural property ceases to be among a person's assets.

The terminology used for the different types of loss is defined more precisely; for example the (overly narrow) terms "expropriation" (*Enteignung*) and "sale under duress" (*Zwangsverkauf*) are replaced by the terms "action by government bodies" (*Zugriff durch staatliche Stellen*) and "legal transaction" (*Rechtsgeschäft*). Legal transactions in this context mainly concern sales and donations. Loss which occurred in other ways is now defined more clearly as the result of "action by private third parties" and maintained as a catch-all provision (paragraph 8a.3 sentence 2). A more detailed explanation of the different types of loss can be found in paragraphs 8a to 8d.

According to sentence 2, a sufficiently close connection between the loss and persecution as a result of the Nazi regime is required. In addition to a causal connection, the sufficiently close connection requires an evaluation decision in line with the conditions stated in paragraphs 8 to 8d.

In the provisions of the Assessment Framework, the concept of the sufficiently close connection replaces the concept of the "*NS-verfolgunsbedingter Entzug*". This was necessary because previously the requirement that the loss had to be a result of persecution was tailored to losses that occurred within Nazi-controlled territory and there were no sufficiently differentiated assessment criteria available for other situations. This change will not result in any disadvantages for parties eligible to apply for arbitration.

Re 8.2

In cases of loss due to a legal transaction, the party entitled to apply for arbitration can refer to the provision under which a sufficiently close connection between the loss and persecution as a result of the Nazi regime is presumed. This presumption has the effect that responsibility for disproving this connection in accordance with paragraph 8.2 sentence 4 lies with the other party.

Paragraph 8.2 sentence 1 stipulates that the provision on presumption applies unreservedly to legal transactions by persons subjected to collective persecution. paragraph 8.2 sentence 4 applies to possible refutations.

In the case of persons subjected to individual persecution, the provision on presumption applies with restrictions. This is because, according to paragraph 8.2 sentence 2, there must also be a temporal connection between the legal transaction and the persecution. Unlike in paragraph 8.2 sentence 1, the presumption is subject to certain restrictions, which is why the historic context is particularly important. This restriction is intended to exclude cases where, for example, the sale occurred in 1933 but individual persecution began in 1936. Paragraph 8.2 sentence 4 applies to possible refutations.

Paragraph 8.2 sentence 3 clarifies that the provision on presumption also applies to legal transactions between persons subjected to persecution.

Paragraph 8.2 sentence 4 regulates that paragraphs 8b to 8d apply for disproving the presumption of a sufficiently close connection between the loss of cultural property by legal transaction and the persecution as a result of the Nazi regime in cases covered by paragraph 8.2. Cases regulated there are final.

Re 8.3

In the case of legal transactions by dealers, paragraph 8.3 contains special provisions that differ from the provision on presumption contained in paragraph 8.2. Sentence 1 sets out that a sufficiently close connection is not presumed if there are indications that, at the time of the legal transaction, the dealer continued ordinary and orderly business transactions despite Nazi persecution. This is because it is part of the job profile of these dealers to buy and sell cultural property. For this reason, the "indications" must meet stringent criteria; a mere assertion does not suffice. Here, too, the other party must use a wide range of sources to prove the orderly continuation of business transactions. This could include evidence from historical research, evidence relating to the dealer's specific transaction in question and personal memories of the merchant, as well as files on restitution and compensation. It could also be advisable to obtain an expert opinion on the historical circumstances. If sufficient indications have been presented to the Arbitration Panel, the party entitled to apply for arbitration can refute these. Arbitration Panels of the Court of Arbitration for Nazi-looted Cultural Property have to take into account, for the benefit of the victims of Nazi-looting of cultural property, that arbitration law is based on the principle of limited judicial

investigation (*beschränkter Untersuchungsgrundsatz*). For an explanation of the term "dealer", please refer to the explanatory notes on paragraph 5.2 sentence 5.

Paragraph 8.3 sentence 2 stipulates a time limit: orderly business transactions ceased at the latest with the dealer's expulsion from the Reich Chamber of Visual Arts (*Reichskammer der bildenden Künste*), which is to be assessed on a case-by-cases basis. For legal transactions after the final expulsion, the provision on presumption from 8.2 applies without exception.

Re 8.4

Paragraph 8.4 refers to the refutation of the provision on presumptions of paragraph 8.2 by means of the criteria of "fair purchase price" and the ability to "freely dispose" of the proceeds of the sale. Regarding the ability to "freely dispose" of the proceeds of the sale, please refer to the explanatory notes on paragraph 8b.3. For specific provisions regarding the loss of cultural property sold outside of Nazi-controlled territory by a person subjected to collective persecution who permanently fled Nazi-controlled territory, please refer to paragraph 9. Paragraph 8.4 covers cases in which cultural property was taken outside of Nazi-controlled territory and sold there by persons subjected to persecution who themselves did not leave or only temporarily left Nazi-controlled territory. The party entitled to apply for arbitration may demonstrate that this was not the rule but an exception. In the evaluation of evidence, an overall assessment is to be conducted.

8a *Loss as the result of action by state bodies or by private third parties*

8a.1 In the case of cultural property lost as the result of action by state bodies in the period between 30 January 1933 and 8 May 1945, as a rule a sufficiently close connection exists between the loss and persecution as a result of the Nazi regime. The general rule on the distribution of the burden of proof therefore plays a subordinate role.

8a.2 In exceptional cases, a sufficiently close connection between the loss and persecution as a result of the Nazi regime may not exist. This may be shown by the following indicators in particular:

1. **restrictions pursuant to the government ordinance on the export of artworks of 11 December 1919 (*Verordnung über die Ausfuhr von Kunstwerken, Reich Law Gazette p. 1961*), if this ordinance was not applied in a discriminatory way in the individual case;**

2. **compulsory sales by public auction, if these were not connected to the persecution of the owner of the cultural property; or**

3. **loans of cultural property seized by government bodies as part of the "*Entartete Kunst*" ("degenerate art") campaign. This does not apply if, due to persecution, the owner was denied the possibility of restitution or compensation that owners who were not persecuted sometimes received.**

8a.3 In the case of cultural property lost as the result of action by private third parties, a sufficiently close connection between the loss and persecution as a result of the Nazi regime exists if the loss was enabled or facilitated by the persecution of the owner. The same applies to cultural property lost in other ways.

Re 8a (Loss as the result of action by state bodies or by private third parties)

Paragraph 8a covers all forms of loss other than legal transactions. Primarily, this concerns loss as the result of action by state bodies. Action by private third parties is only of secondary importance. Because there are no specific provisions on presumptions for these forms of loss, paragraph 8a describes the conditions for a sufficiently close connection between the loss and persecution as a result of the Nazi regime.

Re 8a.1

The term "state bodies" has a broad definition and covers, in particular, agencies of the National Socialist German Workers' Party (NSDAP), its sub-organisations, and associated organisations and institutions; see also paragraph9.1 sentences 3 and 4. Action by state bodies includes actions carried out for the state bodies by their members, for example members of the Gestapo.

Paragraph 8a.1 sentence 1 contains a reduction of the burden of proof in favour of parties entitled to apply for arbitration; a sufficiently close connection between the loss of the cultural property and the persecution as a result of the Nazi regime is generally presumed. This takes account of the particular immediacy of the actions of bodies that acted on behalf of the Nazi state. If, for example, the cultural property of a person subjected to collective persecution was confiscated by the Gestapo, the sufficiently close connection is evident and does not require any further justification.

In addition, paragraph 8a.1 sentence 2 clarifies that, regarding the sufficiently close connection, as a general rule, the burden of proof for providing the facts in their favour lies with the party entitled to apply for arbitration (paragraph 2.1 sentence 1). Due to the relationship between the rule and the exception in sentence 1, the burden of proof is to be applied in a similar fashion to the provision on presumptions in the case of loss due to a legal transaction.

Re 8a.2

Paragraph 8a.2 is an exception to 8a.1, as stated in paragraph 8a.2 sentence 1.

Paragraph 8a.2 sentence 2 includes provisions for constellations that, as an exception, require the party entitled to apply for arbitration to provide more evidence to prove the sufficiently close connection between the loss and persecution as a result of the Nazi regime.

The ordinance named under paragraph 8a.1 (1) dates from 1919 so was not passed as a discriminatory law during the Nazi regime. The obligation to obtain an export licence for the export of

cultural property that was included in the list of valuable national artworks was often applied in a discriminatory manner. Cases need to be examined individually.

For example, compulsory sales by public auction under paragraph 8a.1 (2) were not connected to the persecution of the owner of the cultural property if they were the result of insolvency due to the global economic crisis. However, boycott actions by the Nazi regime against a company that later went bankrupt indicate such a connection. Abusive behaviour by the creditor or the person buying at auction is not a necessary condition. Cases need to be examined individually in the context of the Nazi regime.

The campaign against "degenerate art" (*Entartete Kunst*) mentioned under paragraph 8a.1 (3) concerned all German nationals and domestic legal entities in Germany whose cultural property which was regarded as "degenerate" was held in museums or public collections. If, due to persecution, the owner was unable to take steps to receive restitution or compensation, this could be discriminating against owners not subjected to persecution. Cases need to be examined individually.

Re 8a.3

Paragraph 8a.3 sentence 1 provides rules for cases of cultural property lost as the result of action by private third parties; it therefore does not concern action taken by the owner of the cultural property. Rather, it covers cases where theft or embezzlement, for example, were enabled or facilitated by persecution, e.g. following deportation or displacement and the resultant abandonment of the home. A final judgment (for action that resulted in the loss of cultural property) is not required.

Cases that would otherwise not be covered are provided for in paragraph 8a.3 sentence 2 under loss which occurred "in other ways".

8b *Sale prior to 15 September 1935*

8b.1 In the case of cultural property lost as a result of a sale prior to 15 September 1935, the presumption of a sufficiently close connection between the loss and persecution as a result of the Nazi regime may be disproved if the person subjected to persecution

1. received a fair purchase price and

2. was free to dispose of the purchase price as desired.

8b.2 The purchase price is in principle fair if it corresponds to the value that the cultural property would have had at the time of sale if it had been sold by a person not subjected to persecution (objective market value). The approximate objective market value is to be determined with the help of comparable values from legal transactions by persons who were not subjected to persecution and involving comparable cultural property under comparable market conditions such as place, time and type of sale.

8b.3 The ability to freely dispose of the purchase price as desired must have existed at the time the legal transaction was concluded and completed. This ability is lacking in particular if the purchase price had to be used to pay special discriminatory fees, or if access to the seller's bank account was blocked as the result of discriminatory regulations. People persecuted as Jews under Nazi law lost the ability to freely dispose as a rule after 14 May 1938.

8b.4 The other party bears the burden of proof for disproving the presumption of a sufficiently close connection between the loss of cultural property and persecution as a result of the Nazi regime. If this presumption is disproved, the person entitled to apply for arbitration may present facts which nonetheless indicate a sufficiently close connection. This presentation may rely in particular on evidence that the seller agreed to the legal transaction due to coercion in the individual case or to a wrongful act in connection with the persecution.

Re 8b (Sale prior to 15 September 1935)

Paragraph 8b sets out the assessment procedure regarding the refutation of the provision on presumptions in the case of loss due to sale before 15 September 1935.

Re 8b.1

The presumption of a sufficiently close connection between the loss and persecution as a result of the Nazi regime, which is required under paragraph 8b.1, results from paragraph 8.2. Sales constitute one of several possible forms of legal transaction.

Paragraphs 8b and 8c set out the applicable facts constituting refutation. The date of the sale determines which of the paragraphs applies: the relevant cut-off date is 15 September 1935, when the Nuremburg Laws entered into force.

To disprove the presumption for sales before 15 September 1935, it is sufficient to show that the seller received a fair purchase price (paragraph 8b.1 (1)) and was free to dispose of the proceeds as they pleased (paragraph 8b.1 (2)). For legal transactions outside of Nazi-controlled territory by persons subjected to persecution who did not leave this territory permanently, special provisions under paragraph 8.4 apply.

Re 8b.2

According to paragraph 8b.2 sentence 1, the objective market value of the cultural property determines in principle whether the purchase price is fair.

Paragraph 8b.2 sentence 2 explains that this is a hypothetical value which can only be estimated approximately. For example, auction catalogues published around the time the loss occurred can be referred to in the case of sales by private agreement and auctions based on private consignments of cultural property. Based on these comparative values, it is possible to calculate the average market value of pieces by the artist in question.

Re 8b.3

Paragraph 8b.3 sentence 1 specifies the timeframe relevant to the question of whether the proceeds were freely available: this includes both the time of conclusion of the legal transaction and the time of its completion. In this context, "completion" means the completion of all activities in connection with the legal transaction, especially receipt of the cultural property or purchase price by the parties involved. The time this took must be checked in each case.

Special discriminatory fees within the meaning of paragraph 8b.3 sentence 2 include the Reich Flight Tax (*Reichsfluchtsteuer*), the Jewish Property Levy (*Judenvermögensabgabe*) and the Dego Levy (*Dego-Abgabe*).

The cut-off date of 14 May 1938 contained in paragraph 8b.3 sentence 3 works in favour of parties entitled to apply for arbitration because the proceeds of sales were not, as a general rule, freely available after this date. The "General Confidential Order No. 64" of 14 May 1938 (*Allgemeiner vertraulicher Erlass Nr. 64*) was applied only to people considered Jewish under the Nazi regime's antisemitic and racist legislation. The relationship between the rule and the exception is therefore not applicable to persons subjected to collective or individual persecution on other grounds.

Additional data can also be relevant when determining whether the proceeds of the sale were freely available. People persecuted as Jews under Nazi law who were legal residents of Germany were banned under section 14 of the ordinance on the use of Jewish assets (*Verordnung über den Einsatz jüdischen Vermögens*) of 3 December 1938 (Reich Law Gazette p. 1709) from pawning or privately selling artworks worth more than 1,000 Reichsmarks. After the adoption of the fifth ordinance to implement the ordinance on the use of Jewish assets of 25 April 1941 (Reich Law Gazette p. 218), the minimum value of 1,000 Reichsmark was abolished.

Re 8b.4

According to paragraph 8b.4 sentence 2, if the other party is successful in disproving the presumption, the party entitled to apply for arbitration nevertheless remains at liberty to present facts that demonstrate a sufficiently close connection between the loss and persecution as a result of the Nazi regime. Examples of this can be found in paragraph 8b.4 sentence 3. This helps the cases of persons subjected to individual persecution as these are not covered by paragraph 8c.

8c *Sale after 15 September 1935 by a person subjected to collective persecution*

8c.1 In the case of cultural property lost as a result of a sale on or after 15 September 1935 by a person subjected to collective persecution, the presumption of a sufficiently close connection between the loss and persecution as a result of the Nazi regime may be disproved if the person

1. received a fair purchase price and was able to freely dispose of the purchase price as desired, and

2. the main substance of the legal transaction would have been concluded even if the Nazi regime had not existed, or if

3. the buyer successfully demonstrated a special respect for the seller's property interest.

8c.2 The main substance of the legal transaction would have been concluded even if the Nazi regime had not existed, provided that the persecution had no effect on the decision to sell, on the purchase price or on the choice of a particular means of payment. This may be indicated in particular by the following:

1. the seller had seriously considered selling the cultural property already before 30 January 1933, or
2. the sale was part of the distribution of an estate.

8c.3 The successful demonstration of special respect for the seller's property interest requires exceptional good faith on the part of the buyer. This can be assumed in particular if the transfer of assets took place abroad and the seller received payment despite foreign exchange regulations. The payment of a fair purchase price alone is not a sufficient demonstration.

8c.4 The other party bears the burden of proof for disproving the presumption of a sufficiently close connection between the loss of cultural property and persecution as a result of the Nazi regime.

Re 8c (Sale after 15 September 1935 by a person subjected to collective persecution)

Paragraph 8c sets out the assessment procedure regarding the refutation of the provision on presumptions in the case of loss due to sale after 15 September 1935. The facts constituting refutation only apply to persons subjected to collective persecution. In the case of sales of cultural property after 15 September 1935 by persons subjected to individual persecution, only the facts constituting refutation which are stated in paragraph 8b apply.

Please refer to the explanatory notes on paragraph 8b.1 for information on the structures of paragraphs 8b and 8c as well as on the date of 15 September 1935.

Re 8c.1

To disprove the presumption for sales after 15 September 1935 by a person subjected to collective persecution, it must initially be shown that the seller received a fair purchase price and was free to dispose of the proceeds as they pleased (paragraph 8c.1 (1)). In addition, it must be demonstrated that the main substance of the legal transaction would have been concluded even if the Nazi regime had not existed (paragraph 8c.1 (2)) or that the buyer demonstrated a special respect for and successfully safeguarded the seller's property interests (paragraph 8c.1 (3)).

Regarding paragraph 8c.1 (1), please refer to the explanatory notes on paragraphs 8b.1 to 8b.3.

Re 8c.2

Paragraph 8c.2 sentence 1 describes the areas that constitute the "main substance" of the legal transaction and must be free from the influence of the Nazi regime. In addition to the decision to sell in itself, this includes the setting of the sale price and the choice of a particular payment method.

Paragraph 8c.2 sentence 2 provides two examples of indications that a legal transaction was not influenced by persecution.

Re 8c.3

Paragraph 8c.3 sentence 1 requires exceptional good faith on the part of the buyer.

The example in paragraph 8c.3 sentence 2 presumes that the buyer was involved in transferring the assets abroad and that the seller actually received full payment.

In relation to paragraph 8c.3 sentence 1, sentence 3 clarifies that payment of an appropriate sale price alone does not fulfil the conditions for a fact constituting refutation.

Re 8c.4

Paragraph 8c.4 emphasises and clarifies the allocation of the burden of proof.

The party entitled to apply for arbitration does not have the option to put forward additional facts supporting a sufficiently close connection (see paragraph 8b.4 sentence 2). This is because, as part of the refutation, the other party has to prove that the seller would have concluded the main substance of the legal transaction even if the Nazi regime had not existed. Facts that indicate a sufficiently close connection with persecution as a result of the Nazi regime therefore already rule out the refutation of the presumption.

8d *Loss by means of donation and other legal transactions*

8d.1 **The presumption of a sufficiently close connection between the loss of the cultural property and persecution as a result of the Nazi regime generally applies to donations as well. This presumption does not apply if the personal relationship between the parties gives reason to believe that the cultural property was given away as a donation for decency (*Anstandsschenkung*). The other party has the option of demonstrating that there was no connection between the donation and the persecution as a result of the Nazi regime.**

8d.2 **The same applies accordingly to the loss of cultural property by means of other legal transactions.**

Re 8d (Loss by means of donation and other legal transactions)

Paragraph 8d applies to loss by any legal transaction other than sale. Among such transactions, donations are the most significant, which is why one paragraph is devoted solely to them.

Re 8d.1

Paragraph 8d.1 sets out the assessment procedure for refutations of the provision on presumptions in the case of loss due to donations.

Paragraph 8d.1 sentence 1 clarifies that the presumption of a sufficiently close connection between the loss and persecution as a result of the Nazi regime which is stated in paragraph 8.2 generally also applies to donations.

In the case of donations for decency (*Anstandsschenkung*), paragraph 8d.1 sentence 2 deviates from this principle. Gifts are regarded as donations for decency if, according to the standards of their social circles, the donor would have lost their standing had they not given the gift. Examples of donations for decency include birthday or wedding gifts and gifts on the occasion of religious holidays. It must be examined in each individual case whether the gift was reasonable.

In addition to providing evidence that the gift was a donation for decency, the other party can, under paragraph 8d.1 sentence 3, disprove the presumption of a sufficiently close connection between the loss of the cultural property and persecution as a result of the Nazi regime. In this case, it is necessary to prove that the gift would have been made without the presence of these circumstances, for example through evidence that the transfer was truly a gift.

Re 8d.2

Paragraph 8d.2 sets out that the provisions on donations apply accordingly to other legal transactions. This mainly concerns the presumption of a sufficiently close connection between the loss and persecution as a result of the Nazi

regime, and the option for the other party to disprove it. In the refutation, the special features of the respective legal transaction can be taken into consideration, for example the equal value of services in the case of exchanges.

9 *Loss due to sale outside of Nazi-controlled territory*

9.1 In the case of cultural property sold outside of Nazi-controlled territory by a person subjected to collective persecution who permanently fled Nazi-controlled territory, a direct connection between the loss and persecution as a result of the Nazi regime is required. This connection is not presumed. Nazi-controlled territory is the territory of the German Reich on or after 30 January 1933, of Austria on or after 12 March 1938, of the annexed areas of Czechoslovakia on or after 1 October 1938, of the Memel territory on or after 23 March 1939 and of countries occupied by German forces after the Second World War began on 1 September 1939. Nazi-controlled territory also includes territory which was not occupied by German forces but was under Nazi influence, as was recognised in the Federal Act for the Compensation of the Victims of National Socialist Persecution (*Bundesentschädigungsgesetz*, BEG).

9.2 The direct connection is to be determined by evaluating all of the circumstances of the sale. This evaluation of all of the circumstances should in particular consider the following:

1. whether there was a direct temporal connection (by 8 May 1945 at the latest) between the loss resulting from a sale and flight as a result of persecution, and

2. whether the seller was unable to receive a fair purchase price and/or to freely dispose of the purchase price as desired due to flight as a result of persecution. Denial of permission to work or a precarious residence permit in particular may be relevant factors which prevented the seller from participating in the market on equal terms. With regard to the ability to freely dispose of the purchase price as desired, it may be necessary to consider the seller's need to use the proceeds of the sale to secure her or his own refugee status.

Re 9 (Loss due to sale outside of Nazi-controlled territory)

Paragraph 9 sets out the special conditions of fair and just solutions in the case of the sale of cultural property outside of Nazi-controlled territory.

Re 9.1

Paragraph 9.1 sentence 1 provides the basic principles for dealing with cultural property that was lost due to sale outside of Nazi-controlled territory (*Fluchtgut*).

- Paragraph 9 applies in cases where persons who permanently fled Nazi-controlled territory sold cultural property that was located outside of Nazi-controlled territory. If, at the time of the sale, the cultural property was still in Nazi-controlled territory, paragraphs 8, 8b and 8c apply. The same paragraphs apply in cases where the persons subjected to persecution had not permanently fled Nazi-controlled territory. The special provisions under paragraph 8.4 are to be taken into account.

- In contrast to sales within Nazi-controlled territory, a sufficiently close connection is not enough. Instead, a direct connection is required. This differentiation is needed because paragraph 9 has special requirements: the connection between the loss and persecution as a result of the Nazi regime must be direct enough for the place where the loss occurred to become less relevant.

Paragraph 9.1 sentence 2 includes another difference to sales within Nazi-controlled territory: For the direct connection, there is no provision on presumptions. Instead, all of the circumstances are evaluated. The party entitled to apply for arbitration presents the facts. This, too, follows from the different situations within and outside of Nazi-controlled territory. Not every sale in the countries of emigration can automatically be regarded as a direct result of the Nazi regime.

Paragraph 9.1 sentences 3 and 4 define the temporal and geographical scope of Nazi-controlled territory.

Re 9.2

In order to take into account the special circumstances of the sale, paragraph 9.2 sentence 1 specifies that the direct connection is to be determined through an evaluation of all of the circumstances. This evaluation allows the case to be split into its individual components, which can then be evaluated.

According to paragraph 9.2 sentence 2, the essential elements of the evaluation are the direct temporal connection between the sale and flight as a result of persecution (paragraph 9.2 (1)) and the (lack of the) possibility of achieving a fair sale price and ability to freely dispose of the proceeds paragraph 9.2 (2)).

Paragraph 9.2 (1) intentionally contains no provisions on determining the immediacy of the temporal connection.

Paragraph 9.2 (2) lists situations in which flight as a result of persecution could have impacted the fairness of the sale price (paragraph 9.2 sentence 1) and the ability to freely dispose of the proceeds (paragraph 9.2 sentence 2). In relation to fair sale price and the ability to freely dispose of the proceeds, please also refer to paragraph 8b.3.

Chapter IV – Decision

10 *Grounds for precluding a just and fair solution*

A just and fair solution may be ruled out if the person entitled to apply for arbitration or her or his predecessor in title reached a private settlement on the basis of the Allies' restitution laws which allowed the cultural property to remain in the possession of the possessor in exchange for payment or other compensation. A private settlement does not constitute grounds for precluding a just and fair solution if the settlement appears to be blatantly inequitable.

Re 10 (Grounds for precluding a just and fair solution)

The provision in paragraph 10 applies before a decision is made and contains grounds for precluding a just and fair solution.

According to paragraph 10 sentence 1, a settlement without the involvement of a government agency (private settlement) which was concluded based on the Allies' restitution laws after 8 May 1945 may rule out a just and fair solution in the case of the cultural property in question. This is the case if the cultural property remained with the possessor in exchange for payment or other compensation.

Such private settlements were generally concluded before the Federal Restitution Act (*Bundesrückerstattungsgesetz,* BRüG) entered into force in 1957. They are not included in the restitution archives of the regional finance offices but instead in the files of the reparations offices (in the case of a settlement before a "Chamber of Reparations" (*Wiedergutmachungskammer*) or in cases where applications have been withdrawn). In individual cases, these provisions also apply to private settlements concluded outside of reparations procedures.

Paragraph 10 sentence 2 breaks with the general preclusive effect of such private settlements if the settlement appears to be blatantly inequitable. This wording is to clarify that the legal certainty (*Rechtsfrieden*) achieved through the settlement can only be broken as an exception. This includes, for example, situations in which the previous owner saw no alternative to a settlement because he or she did not, as a result of persecution, have the necessary evidence, which meant that legal proceedings were unlikely to be successful.

Under paragraph 10 sentence 2, a settlement may be blatantly inequitable if its content does not conform to the standards of the applicable law, i.e. if there are deviations to the disadvantage of the then-owners. Provided they are applicable according to private international law, sections 138 and 242 of the Civil Code (*Bürgerliches Gesetzbuch,* BGB), in particular, can be used to interpret the settlement.

11 *Just and fair solution*

11.1 If the requirements under Chapter II and Chapter III for a just and fair solution are met, returning the cultural property to the person entitled to apply for arbitration takes precedence.

11.2 Particularly in the case of incomplete facts, a just and fair solution may consist in the following:

1. the cultural property is sold and the proceeds are divided; or

2. the cultural property remains in the possession of its current possessor or owner and is only displayed in public together with an explanation of its provenance and the circumstances of its loss.

A just and fair solution may also consist in a modification, addition to or combination of nos. 1 and 2. Solutions consisting in a direct monetary payment are ruled out. Such solutions may nonetheless be allowed if the parties agree in an amicable settlement before the arbitration panel on a consensual resolution of the dispute.

11.3 If, at the time of its loss, the cultural property was the property of an enterprise, the just and fair solution may be brought about

1. in the event of additional liquidation, vis-à-vis the enterprise in liquidation, or

2. vis-à-vis joint ownership to the successors in title of the former shareholders.

In the case of shares in a legal person or a partnership, a just and fair solution must consider the shared entitlements according to the applicable company law.

11.4 If the same cultural property was lost more than once in temporal succession in connection with persecution as a result of the Nazi regime, only the first person who suffered the loss is to be considered in a just and fair solution (principle of priority).

11.5 If the requirements for a just and fair solution are not met, the application for arbitration is to be denied. If the application is denied, the general fate of the person subjected to *persecution* that has come to light is to be recorded and *honoured*.

Re 11 (Just and fair solution)

According to no. 8 of the Washington Principles, in cases where the pre-war owners that was confiscated by the Nazis and has not been returned can be identified, or their heirs can be identified, just and fair solutions are to be found, "recognizing this may vary according to the facts and circumstances surrounding a specific case". Section I of the Common Statement of December 1999 is based on the principle that cultural property that has been identified as lost as a result of persecution under the Nazi regime and which can be attributed to specific claimants should be returned, upon individual examination, to the "legitimate former owners or their heirs".

Paragraph 11, which sets out the provisions for just and fair solutions, is based on these explanations.

Re *11.1*

Paragraph 11.1 clarifies that, provided the relevant requirements are met, a just and fair solution is generally the return of the cultural property in question.

Re 11.2

Under paragraph 11.2, there are options for a just and fair solution other than the return of the cultural property.

Paragraph 11.2 sentence 1 clarifies that the options of paragraph 11.2 (1) and (2) are relevant in cases where the facts cannot be fully established. The procedure must have led to the conviction that, despite incomplete facts, the conditions for a just and fair solution are met. The wording "are divided" does not necessarily mean that the proceeds are split into two equal parts.

Paragraph 11.2 sentence 2 expands the range of just and fair solutions to include modifications, additions to or combinations of the options in paragraph 11.2 sentence 1.

Paragraph 11.2 sentences 3 and 4 clarify that a just and fair solution by arbitration award can only consist in a direct monetary payment if this solution is based on an amicable resolution (e.g. a settlement) before the arbitration panel. In the first instance, this applies to the arbitration proceedings because budgetary and Land constitutional provisions preclude an arbitration award that recognises monetary payments. This arrangement can serve as a model for other decision-making bodies, in particular because it also covers monetary payments to the other party by the party entitled to apply for arbitration.

Re 11.3

Paragraph 11.3 sentence 1 contains a provision for cultural property that was owned by an enterprise at the time of its loss.

If legal provisions prove decisive when establishing the shared entitlements in a legal person or a partnership, paragraph 11.3 sentence 2 opens up the possibility of resorting to the applicable company law. This is to be identified on a case-by-case basis in accordance with the provisions of private international law.

Re 11.4

Paragraph 11.4 clarifies that the principle of priority applies. In order to identify or rule out the first person who suffered the loss, the provenance of the cultural property in question is to be traced to 30 January 1933 if possible.

Re 11.5

Paragraph 11.5 sentence 1 states when an application is to be denied.

If the application is denied, paragraph 11.5 sentence 2 provides that the general fate of the person subjected to persecution or of his or her legal predecessor is to be honoured appropriately in the decision.

12 *Other provisions*

12.1 If the just and fair solution involves returning the cultural property to the person entitled to apply for arbitration, this solution is to be checked against material restitution already paid according to the Federal Act for the Settlement of the Monetary Restitution Liabilities of the German Reich and Legal Entities of Equal Legal Status (*Bundesrückerstattungsgesetz*, BRüG). In order to avoid duplicate compensation, an enquiry should be directed to the Federal Office for Central Services and Unresolved Property Issues (BADV). If the BADV files a claim for repayment on behalf of the Federation, this claim is to be considered in reaching a just and fair solution.

12.2 Monetary payments and other compensation based on private settlements are to be considered as well. By way of exception, significant expenses by the other party may be considered.

12.3 The German Lost Art Foundation (DZK) is to be informed of every just and fair solution for entry in its database of restitution reports.

Re 12 (Other provisions)

Re 12.1

Section I of the Common Statement of December 1999 already provides for "a match with material compensation already provided". This is to avoid duplicate compensation (*Doppelentschädigungen*) which could lead to unjustified inequality in the treatment of persons persecuted under the Nazi regime. Material (monetary) reparations that have already been made do not preclude a just and fair solution.

In arrangements outside of arbitration proceedings, an agreement on the return of cultural property between the party entitled to apply for arbitration and the other party should include a statement on any payments already made in compensation for the loss of the cultural property. In the case of monetary reparations by the Federal Government, the requirement for the party entitled to apply for arbitration to repay these is to be recorded step-by-step against the return of the cultural property.

Re 12.2

Paragraph 12.2 sentence 1 concerns cases where it is decided that the cultural property is to be returned despite a private settlement after 8 May 1945. In these cases, monetary payments and other compensation are to be considered when reaching a just and fair solution in order to avoid duplicate compensation.

Examples of significant expenses according to paragraph 12.2 sentence 2 include costs the other party has incurred for complex but necessary refurbishment of the cultural property in question. By limiting this to exceptions, the provision clarifies that such costs can only be considered if the expenses in the individual case were significant.

Re 12.3

Paragraph 12.3 stipulates that every just and fair solution must be reported to the German Lost Art Foundation (DZK). This is intended to make the decisions taken in Germany on Nazi-looted cultural property more transparent.

VIII: Contact details

Contact details of the German Lost Art Foundation

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For questions related to the Lost Art Database:
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Contact details of the coordinating offices for provenance research or the responsible bodies at state level – as at 20 October 2025

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The Guidelines are aimed at staff working in institutions holding cultural property, at provenance researchers and at decision-makers. However, the information provided will also be useful for people with no previous experience in this area.

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