



*Please note this is an indicative translation of the original German text “Geschäftsordnung Unabhängige Kommission der Stiftung für Kunst, Kultur und Geschichte zur Klärung NS-verfolgungsbedingter Ansprüche”, dated 24 April 2023. In case of divergence in the translated version, the original German text prevails.
Terms and Definitions relate to Swiss legislation and practice.*

Rules of Procedure for the Independent Commission of the Stiftung für Kunst, Kultur und Geschichte for Clarifying Claims Resulting from Nazi Persecution

April 24, 2023

The board of the Foundation for Art, Culture, and History (*Stiftung für Kunst, Kultur und Geschichte*, hereafter “Foundation”),

based on the deed of foundation of July 19, 2019, the Organizational Regulations of the Foundation of April 4, 2023, and the document “Principles of the Stiftung für Kunst, Kultur und Geschichte (SKKG) in dealing with the loss of cultural assets due to Nazi persecution” of January 10, 2023,

hereby enacts the following Rules of Procedure of the Independent Commission SKKG (hereafter “the Commission”):

Preamble

The National Socialist regime persecuted countless people in Europe, depriving them of their personal rights and property, forcing them to flee, imprisoning them in camps, mistreating, and murdering them. In 1998, the Washington Conference found that there were still cultural assets that were lost by persons – including many Jews – as a result of Nazi persecution, but which have not yet been restituted. The signatory states of the resulting principles, including Switzerland, have undertaken to investigate this injustice and, wherever possible, to find a just and fair solution with respect to the relevant objects identified.

The Foundation regards its collection as a legacy and part of the common heritage, and is committed to disclosing all provenances and proactively evaluating any legal claims. To deal with any questions raised concerning cultural assets lost due to Nazi persecution, the Foundation has appointed the Commission as an independent commission to clarify Nazi persecution-related claims. The Commission’s objective is to find just and fair solutions to questions concerning cultural assets lost due to Nazi persecution.

In order to achieve its objectives, the Foundation’s board has appointed an in-house specialist team (hereafter “SKKG Provenance Research”) that is directed by an external project management (hereafter “Head of SKKG Provenance Research”), which is charged with the scientific clarification of the provenance of corresponding cultural assets and which continuously provides the results of its work to the Independent Commission SKKG.

In its document “Principles of the ‘Stiftung für Kunst, Kultur und Geschichte (SKKG)’ in dealing with the loss of cultural assets due to Nazi persecution” of January 10, 2023, the Foundation defined the guidelines for the Commission; these guidelines are further elaborated by the present Rules of Procedure.



I. General

Art. 1 Mandate

¹ The board of the Foundation (hereafter the “Board”) hereby appoints the Commission as an external commission which acts independently of instructions, for the investigation of and decision-making regarding cultural assets of the Foundation that were lost by its owners between 1933 and 1945 due to Nazi persecution (“loss of cultural assets due to Nazi persecution”), with the aim of obtaining just and fair solutions. The Commission acts independently and is committed to the “Washington Principles on Nazi-Confiscated Art” of 1998, the “Terezin Declaration” of 2009, the “ICOM Code of Ethics for Museums” of 2004, and the “Principles of the *Stiftung für Kunst, Kultur und Geschichte (SKKG)* in dealing with the loss of cultural assets due to Nazi persecution” of January 10, 2023. The focus lies on the unconditional restitution of the cultural asset in question.

² The “Terezin Declaration” of 2009 applies the definition of *Nazi-Confiscated and Looted Art* to all losses suffered by victims of the Holocaust (Shoah) and other victims of Nazi persecution, including theft, coercion and confiscation, and on grounds of relinquishment as well as forced sales and sales under duress, occurring during the Holocaust era between 1933-45 and as an immediate consequence thereof.

³ The Commission decides *ex aequo et bono* within these guidelines. The aim is to find a solution that is for all concerned to the highest degree persuasive and appropriate.

⁴ The Foundation undertakes to accept as binding and to implement settlement agreements and positive decisions, i.e. decisions in which the Commission directs the restitution of the cultural asset and/or other just and fair solutions.

⁵ The Commission has access to the files of the SKKG Provenance Research at any time and may produce copies of them.

⁶ The Commission must at all times maintain its independence and impartiality towards the parties to the proceedings and the Foundation.

⁷ Within the framework of these Rules of Procedure, the Commission regulates its proceedings itself.

⁸ Legally enforceable claims against the Foundation are conditional upon conclusion of a notarized agreement between the Foundation and the relevant claimant(s) (Article 19 below).

Art. 2 Parties to the proceedings

¹ The parties to the proceedings are the Foundation’s management (hereafter referred to as the “Management of the Foundation”) and the legal successor(s) of the former owner(s) (hereafter referred to as the “Claimants”).

² “Legal successor” means the legal representative, heir, successor or assign of a person who has thereby succeeded into the rights and obligations of the original owner by will, operation of law, or other legally binding regulations.

³ If there are several claimants, they may participate in the proceedings individually or jointly.



Art. 3 Appointment and presidency

¹ The members of the Commission, including its President, are appointed in accordance with the provisions of the Organizational Regulations.

² The President directs the work and represents the Commission externally.

³ The members of the Commission and the President shall be entitled to appropriate compensation as well as reimbursement of their travel and accommodation expenses and other out-of-pocket expenses. The Board shall issue detailed regulations on fees and expenses.

Art. 4 Recusal and resignation

¹ Members of the Commission must recuse themselves in the event of bias or conflict of interest. They are obliged to do so if the President determines that relevant facts or circumstances manifest the bias of a member or members of the Commission.

² Unless the Foundation has issued guidelines on conflicts of interest, the grounds for recusal pursuant to Article 47, Paragraph 1 of the Swiss Civil Procedure Code (SR 272) will apply *mutatis mutandis*.

³ A party to the proceedings or a member of the Commission may submit a written, reasoned motion that a member should recuse themselves on the grounds of facts or circumstances that could make it difficult to form an impartial opinion. The President will decide on the motion. If the motion concerns the President, the Commission will decide by a two-thirds majority. The parties to the proceedings shall be informed of the outcome of these determinations.

⁴ In the event of serious breaches of trust (e.g. breach of the confidentiality clause or serious conflicts of interest) on the part of a member, the Commission may, at the request of the President, decide to propose to the Board that the member concerned be recalled. At the same time, the Commission shall propose a replacement member to the Board.

⁵ The Commission may, by a two-thirds majority, propose to the Board that the President shall be removed and replaced. The Commission shall propose a replacement candidate to the Board.

Art. 5 Commission Office

¹ The Commission has its own secretariat (hereafter referred to as the “Commission Secretariat”), which reports directly to and takes instructions from the President.

² Article 4, Paragraphs 1 and 2 (Recusal) apply *mutatis mutandis*.

II. Organization and conduct of meetings

Art. 6 Forms and frequency of meetings

¹ The Commission meets at the invitation of the President. As a rule, four meetings are held per year. These can be held physically, electronically or in hybrid form.

² Any member may submit a reasoned request to the President to convene a meeting.

³ Meetings are chaired by the President or, if the President is unable to do so, by another member of the Commission in accordance with the decision of the members present.



⁴ The language of the proceedings is German. At the request of the Claimants, a translation of the reports prepared by the Commission into another language may be arranged and an interpreter may be appointed for a hearing.

Art. 7 Quorum

¹ The Commission is quorate once the majority of its members are present. It adopts its resolutions by a simple majority of the members present, unless these Rules of Procedure provide otherwise.

² The President has the casting vote in the event of a tie.

Art. 8 Agenda

Resolutions on items on the agenda which have not been brought to the attention of the members by written notice (including fax or email) at least 10 days prior to the meeting may only be passed with the consent of all members.

Art. 9 Circular resolutions

¹ The Commission may also adopt resolutions via circulation (in writing or electronically), unless at least one member requests oral deliberation.

² Circular resolutions require unanimity to be valid.

Art. 10 Confidentiality

¹ The meetings, deliberations, decisions, hearings, and minutes of the Commission are confidential.

² The Commission will treat as confidential any personal information of a Claimant that becomes known to it in the course of the proceedings.

Art. 11 Minutes

¹ The decisions of the Commission will be recorded in the minutes by the secretary appointed for that purpose by the members present. The minutes must be signed by the president and the secretary of the meeting.

² The minutes and circular resolutions are kept by the Commission Secretariat for the duration of the existence of the Commission.

³ The files shall subsequently be transferred to the Foundation's archives. The conditions for the transfer of the files are defined in separate regulations between the Commission and the Foundation (Archive Regulations).

III. Working methods

Art. 12 Requirements for initiating proceedings

The Commission opens a formal procedure under Article 13 et seq. in the following cases:

- a) At the request of a Claimant or Claimants alleging loss due to Nazi persecution; or
- b) At the request of the Head of SKKG Provenance Research based on the results of the SKKG Provenance Research; or
- c) In all cases of a possible loss due to Nazi persecution that the Commission wishes to take up on its own initiative.

Art. 13 Initiation of proceedings

¹ Applications from Claimants (Article 12, Paragraph 1, Subsection a – hereafter a “Claim”) must be submitted in writing to the Commission Secretariat, setting out the facts of the case, together with copies of all referenced documents. This includes, to the extent they can be provided, documentation of the original ownership, the circumstances of the loss due to Nazi persecution, and, if applicable, the legal succession. The Claimants must declare that, to the best of their knowledge, the Claim contains all relevant facts and sources known to them, and that they accept the Commission's Rules of Procedure as the basis for the proceedings. If the request is made by a representative, the representative's authority must be proved.

² The Head of SKKG Provenance Research must submit a case to the Commission (Article 12, Paragraph 1, Subsection b) if indications of a loss due to Nazi persecution have emerged during the course of provenance research. Paragraph 1 shall apply *mutatis mutandis* to the submission of the application.

³ In justified cases, the Commission may itself select objects from the collection to be submitted to the Head of SKKG Provenance Research for investigation and, if during the course of the provenance research in the Commission's view indications of a loss due to Nazi persecution arise, initiate proceedings in this regard (Article 12, Paragraph 1, Subsection c).

⁴ In all the above cases, the Commission informs all parties of the opening of proceedings, notifies them of the documents submitted, and invites them to comment and to submit their own or additional documentation.

⁵ In the opening of proceedings, the focus is on preliminarily verifying (i) the identity of the claimed cultural asset with the cultural asset in the Foundation's collection, as well as (ii) the Claimants' previous ownership position and the legal succession, as applicable.

⁶ At this preliminary phase of the proceedings, the Commission will determine whether there is sufficient documentation to identify the cultural asset and whether the position of the Claimant(s) as former owner(s) or as legal successor(s) is conclusively established.

⁷ If there is any doubt as to the fulfilment of one of these conditions, the Commission shall instruct the Head of SKKG Provenance Research to carry out further investigations or submit questions to the Head of SKKG Provenance Research for clarification (or both). It may invite the Claimants to amend their request in accordance with Article 13, Paragraph 1.

⁸ If in the view of the Commission the claimed cultural asset is not identical with the cultural asset in the Foundation's collection pursuant to Paragraph 5 (i), the Commission shall dismiss the proceedings and inform the parties to the proceedings thereof in writing with a brief statement of the reasons (decision pursuant to Article 16, Subsection b below).

⁹ If the previous ownership or legal succession of the Claimant(s) cannot be verified, the Commission may exclude the relevant person(s) from the proceedings at any time. The



Commission shall notify the parties to the proceedings thereof in writing with a brief statement of the reasons (decision in accordance with Article 16, Subsection b below).

¹⁰ If no Claimant in accordance with Article 13, Paragraph 9 or Article 12, Subsection b or c can be verified, but there are indications of a loss due to Nazi persecution, the Commission may continue the proceedings without a Claimant. If, despite reasonable efforts, no Claimants can be identified within a suitable period of time, the proceedings shall be continued by the Commission with the Management of the Foundation as the sole party to the proceedings, to the extent that and as long as no Claimants are available. In this case, the procedural provisions of these Rules of Procedure shall apply *mutatis mutandis*.

Art. 14 Assessment phase

¹ If the proceedings continue after completion of the preliminary phase, the Commission shall examine all documents submitted regarding the circumstances of the acquisition, the loss, and any further information relating provenance. For this purpose, it may commission the Head of SKKG Provenance Research with further investigations or also conduct its own investigations, and may itself interview Claimants, other parties, external experts and third parties or cause such persons to be interviewed.

² Upon completion of this examination, the Commission shall prepare a draft report on the established facts and invite all parties to the proceedings to comment.

³ If at any time during the examination phase the Commission concludes that a hearing, in whatever form, would be helpful in forming the views of the parties to the proceedings and in the Commission reaching a decision, it may conduct such hearings separately or jointly with all parties to the proceedings, as the Commission, in its sole discretion, deems appropriate.

Art. 15 Settlement negotiation and closing report

¹ The Commission may invite the parties to the proceedings to a settlement hearing at any time, with the aim of reaching an agreement between the parties to the proceedings already during the examination phase.

² If an agreement is reached, the Commission shall dismiss the proceedings by issuing a ruling to that effect in writing.

³ If no agreement can be reached, the Commission shall draft a reasoned decision.

Art. 16 Substantive decision options

In reaching its decision, which binds the Foundation, the Commission, on the basis of the best of its knowledge and belief, must either:

- a) Advise the unconditional restitution of the cultural asset and/or another just and fair solution; or
- b) Determine the non-existence of the conditions for a loss due to Nazi persecution and/or of insufficient proof of the Claimants' legal entitlement.



Art. 17 Draft decision

¹ The Commission shall send the draft decision to the parties to the proceedings for comments.

² If no new facts or documents justifying changes to the draft decision are received within a reasonable deadline set by the Commission, the Commission shall make its final decision in accordance with the draft.

³ If new facts or documents are received within the deadline which, in the view of the Commission, could justify changes to the draft decision, the examination phase shall be reopened.

Art. 18 Decision

¹ The decision of the Commission must include all essential elements in accordance with Article 19. The Commission will take into account whether, in the same matter, any third parties may still submit claims to the Foundation as per Article 1 (e.g. due to an obligation to make restitution or indemnification).

² Each Claimant must notify the Commission whether they agree with the reasoned decision within the deadline set by the Commission. The Claimant's notification is irrevocable and binding.

³ If a Claimant does not agree with the Commission's decision, they shall not be limited in their options, if any, to enforce their claims in any other way.

Art. 19 Notarized agreement for the implementation of the decision

¹ If a Claimant or, in the case of more than one Claimant, all Claimants agree with the Commission's decision, or if a settlement is agreed at an earlier stage of the proceedings, the implementation will be conclusively regulated by a notarized agreement between the Foundation and the Claimants. The execution of the notarized agreement is condition precedent for the crystallisation of the Claimants' respective legal rights.

² The implementation of the decision or the settlement agreement, as the case may be, is the responsibility of the Management of the Foundation.

Art. 20 Publication

¹ Upon completion of the procedure, the Commission shall publish:

- a) in the case of an agreement pursuant to Article 15, Paragraph 2, the closing report, including the agreed solution; and
- b) in all other cases, the decision and its reasoning, taking into account the principles set out in the remainder of this Article.

² The report of the Head of SKKG Provenance Research, the relevant sources and other documents, as well as the provenance of the cultural asset resulting from the proceedings shall be published together with the closing report (Paragraph 1, Subsection a) or the decision (Paragraph 1, Subsection b).

³ The Commission must comply with the statutory provisions on personality rights and data protection in all publications. Personal information and other data worthy of protection shall be anonymized upon the request of any party to the proceedings. The Commission may anonymize or summarize its reasoning.

⁴ The publication shall be made electronically in German and in English.



IV. Final provisions

Art. 21 Costs

¹ The costs of the Commission's activities will be borne by the Foundation. This includes costs for internal and external research, expert opinions and translations. The Foundation will also bear the costs of the notarized agreement, if any.

² The Board must adopt an annual budget appropriate to the activities of the Commission, which is administered by the Commission. The Commission shall submit a corresponding application in each case.

³ All costs incurred by any Claimants and by third parties designated by them in connection with bringing an action before the Commission to prove their succession and attend hearings must be borne by the Claimants.

Art. 22 Liability

The President, the members of the Commission and the employees of the Commission Secretariat are not liable for any acts or omissions with respect to proceedings under these Rules of Procedure.

Art. 23 Amendments

¹ Amendments by the Commission to these Rules of Procedure require a two-thirds majority and must be submitted to the Board for adoption.

² If the Board deems an amendment to be necessary, it must seek the opinion of the Commission.

Art. 24 Publication of the Rules of Procedure

The Foundation must publish the Rules of Procedure in effect from time to time on the Foundation's website.

Art. 25 Entry into force

The Rules of Procedure come into force once they are adopted by the Board.