

## Explanatory notes on cultural assets related to the acceding territory

If the **mandatory** query of the Federal Office for Central Services and Unresolved Property Issues (BADV)<sup>1</sup> indicates that **an application for restitution has been submitted in accordance with Section 1 (6) of the Act on the Settlement of Unresolved Property Claims (VermG)**, then the following applies:

- The administrative procedure to be carried out by the BADV takes precedence over voluntary restitution pursuant to the Washington Declaration.
- If the rightful Jewish owners or their legal successors have not submitted claims, when claims pursuant to the Act on the Settlement of Unresolved Property Claims are considered, the successor organizations under restitution law constitute the legal successor. If they have not submitted claims, then the Conference on Jewish Material Claims Against Germany, Inc. (JCC) is the legal successor.
- For restitution claims pursuant to the Act on the Settlement of Unresolved Property Claims, the application deadline given in Section 30a of the Act applies; for moveable property, this deadline was 30 June 1993. This deadline constitutes a substantive time limit: that is, any claims pursuant to property law submitted after the deadline have no effect, and the rightful owner's property claims can no longer be taken into account (see Federal Administrative Court decision of 28 March 1996 – 7 C 28/95).

The JCC submitted its claims under property law as global legal successor before the deadline with its letter of 28 June 1993. Because no special formal requirements apply to claims made under property law, if the other conditions for restitution are met, the JCC is entitled to restitution in its own right in every case in which the rightful owners, as Jewish natural persons, or their legal successors did not submit their claims before the deadline. This means that even if no specific claim has been submitted, the JCC may submit a subsequent individual claim, thereby establishing a legal claim to restitution.

- While the administrative procedure is under way, the institution in possession of the cultural asset is not allowed to dispose of it. According to Section 3 (3) of the Act on the Settlement of Unresolved Property Claims, the party that is authorized to dispose of the cultural asset at that time is in particular obligated to refrain from concluding any legal transactions in rem, above all handing over the asset to "just any" claimant.
- That includes restitution to a rightful owner pursuant to the Washington Declaration and the Common Statement.
- The institution or its funding body must be included in the administrative procedure.
- Disposing of the asset in violation of the prohibition on disposal can result in claims for damages. It is therefore also in the institution's best interest to ask the BADV whether an application for restitution has been submitted.
- The administrative procedure concludes with a final and binding decision by the BADV or, if the case has gone before an administrative court, a final and binding decision by the administrative court.

If the **conditions of Section 1 (6) of the Act on the Settlement of Unresolved Property Claims are met**, then the ownership of the cultural asset is restituted by means of a notice from the BADV, and the **case is closed**.

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<sup>1</sup> Before disposing of the cultural asset, the party authorized to carry out such disposal must consult the office for unresolved property issues in which the cultural asset is located to ensure that no such application has been submitted (Section 3 (5) of the Act on the Settlement of Unresolved Property Claims); the responsible office will issue a statement to this effect upon request. In the case of moveable property such as a work of art, however, it must be taken into account that the local responsibility may be doubtful, because various indicators may establish a relation to the acceding territory: the injured party's last place of residence; the place where the work was confiscated; its location until the Act on the Settlement of Unresolved Property Claims entered into force; its current location, if different. The query should therefore be submitted to a state office for settling unresolved property issues or other state office responsible for this task. See the list of offices at [www.badv.bund.de/Behoerdenverzeichnis](http://www.badv.bund.de/Behoerdenverzeichnis).

If former Jewish ownership of cultural assets related to the acceding territory has been established or is likely, it is also a good idea to contact the JCC<sup>2</sup> first of all. The JCC typically reports such cultural assets within the framework of its global claim, after which the relevant office must in any case answer the question of jurisdiction, whether other applications for restitution have been submitted and finally whether the application for restitution is justified.

The JCC established the Goodwill Fund<sup>3</sup> to promote fair compensation for former Jewish original owners and their heirs who did not submit restitution claims before the legal deadline. This compensation was based on the JCC's own entitlement to restitution following its submission of its global claim within the deadline. This fund is now closed. The Act on the Settlement of Unresolved Property Claims also allows the transfer of property claims submitted before the deadline.

If the **conditions of Section 1 (6) of the Act on the Settlement of Unresolved Property Claims are not met**, then the application for restitution is denied and the institution may again dispose of the cultural asset once this decision takes binding effect. In theory, the institution can then conduct its own review pursuant to Section D of the Guidelines.

**If the mandatory query of the BADV indicates that no application for restitution has been submitted, then a review is conducted and a decision made on the institution's own responsibility with the help of the guidelines in Section D.**

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<sup>2</sup> Claims Conference Nachfolgeorganisation, Sophienstraße 26, 60487 Frankfurt/M., [www.claimscon.de](http://www.claimscon.de).

<sup>3</sup> The internal rules of the Claims Conference with regard to Nazi-looted art call for the Claims Conference to hand works of art over to the rightful heirs. The Claims Conference charges no fees or expenses, so that the rightful heirs receive the objects from the Claims Conference free of charge.