

# An Introduction to the Washington Conference Principles on Nazi-Confiscated Art

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Day 4

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**MIAMILAW**  
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# Introduction

## Session 4

**Thursday,  
Jan. 25, 2024**  
12:30-1:50pm

## Procedure and Institutions

Description: Different countries have opted for different solutions as far a procedure and institutions are concerned. The Washington Principles contain some basic procedural safeguards and guidelines. In combination with concepts of natural justice, these sources form an amalgam for a fair and effective procedure.

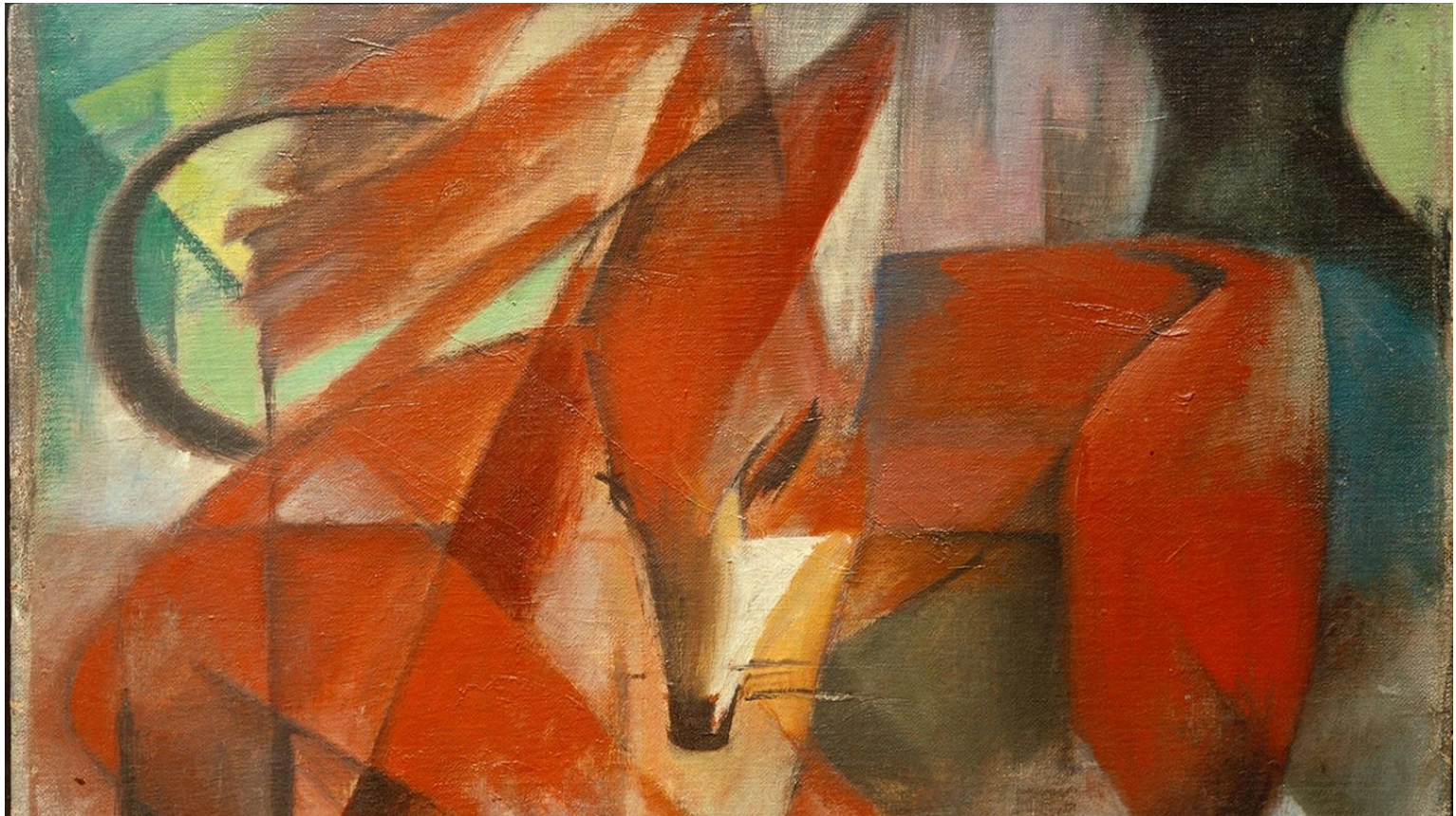
### Reading:

- NL Restitutions Committee, Recommendation regarding Herman Hamburger (RC 1.193), 18 September 2023
- Recommendation of the German Advisory Commission in the case of the Heirs of Kurt and Else Grawi v. Landeshauptstadt Düsseldorf, 18 March 2021
- CIVS, Recommendation No. 5446 M-5446 BCM, 12 February 2021

# Introduction

*Die Füchse*

Franz Marc (1880 – 1916)



# I. Procedure

## 1. Composition

Please note that this is not an official English translation of the original. In the event of divergence in the translated version, the original Dutch text will prevail.

### DECREE ESTABLISHING THE RESTITUTIONS COMMITTEE

Text valid with effect from 24 January 2023 to today

#### Section 3. Composition of the Restitutions Committee

1. The Restitutions Committee shall comprise no more than seven members, including a chair and a deputy chair.
2. The members shall not be employed by the Ministry, nor shall they in any way be otherwise employed under the responsibility of the Minister.
3. The chair and the deputy chair shall be qualified lawyers (“meester in de rechten”).
4. The Restitutions Committee shall include at least one member whose expertise on matters concerning the Second World War constitutes a substantial contribution to the work of the Committee.
5. The Restitutions Committee shall include at least one member whose expertise on matters concerning art history and museums constitutes a substantial contribution to the work of the Committee.
6. The Minister shall appoint the chair, the deputy chair and the other members of the Restitutions Committee for a term not exceeding four years. They may be reappointed once at most, for a further term not exceeding four years.

# I. Procedure

## 2. Scope

### Recommendation 5446 M – 5446 BCM

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*It should be clarified that the nature and quality of the spoliated property preclude any distinction between cultural and so-called material property, with the result that the Commission is obliged to give its ruling in one single opinion.*

# I. Procedure

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## 3. Lodging a Request

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### **Rules of Procedure of the Advisory Commission on the return of cultural property seized as a result of Nazi persecution, especially Jewish property**

**as of 2 November 2016**

#### **Section 3 Lodging a request**

(1) The Commission shall become active if both parties agree to mediation by the Commission and wish to receive and follow the Commission's recommendation, if applicable.

# I. Procedure

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## 4. Gathering Facts and Draft Decision

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### Herman Hamburger - Restitutiecommissie

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#### Chronological overview of the committee's actions and the responses to them

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- In a letter of 13 August 2021, the Applicant asked the Minister to restitute the painting, which is currently in the Museum Catharijneconvent in Utrecht. On 24 September 2021 the RCE, on behalf of the Minister, asked the Committee to advise about this request.
- On 11 February 2022 the Committee asked the ECR to launch an investigation into the facts. The results were recorded in a draft investigation report, which was sent with a letter dated 17 August 2022 to the RCE and the Applicant for additional information and/or comments. The RCE responded to it on 28 September 2022 and the Applicant did so on 12 October 2022. The ECR amended the wording of the draft investigation report with regard to several points on the basis of the responses. The responses to the draft investigation report and a selection of the relevant correspondence were attached to the amended draft version, which was sent to the Committee on 7 November 2022.
- The final investigation report was approved on 2 December 2022. The Applicant did not respond to this, even after a reminder dated 9 February 2023. The RCE responded in an e-mail van 20 December 2022.

# I. Procedure

## 4. Gathering Facts and Draft Decision

### Herman Hamburger - Restitutiecommissie

- On 27 July 2023 the Committee sent its draft recommendation and asked whether the Applicant needed a hearing.
- The RCE responded on 31 July 2023 by making a minor change to the draft recommendation and, as regards a hearing, it stated it would comply with the wishes of the Applicant. In an e-mail of 31 August 2023, the Applicant stated he had no comments on the draft recommendation and had no need for a hearing.

- First Facts, then Assessment?
- Reconciliation?



# I. Procedure

## 5. Other Proceedings

### Recommendation 5446 M – 5446 BCM

*Consequently, the Commission considers that the compensation paid did not fully compensate the damage suffered. Since the compensation paid by the German authorities under the Brüg Act necessarily covered a very large proportion of the artworks, the compensation already paid in this respect should be supplemented. The Commission therefore retains the expert valuations as relevant elements for determining the amounts.*

# I. Procedure

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## 5. Other Proceedings

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### **ASSESSMENT FRAMEWORK FOR THE RESTITUTIONS COMMITTEE**

*This Appendix forms part of Section 4(1) of the Decree establishing a Restitutions Committee.*

#### **§1. Admissibility requirements**

##### **Assessment criteria**

The Restitutions Committee first determines whether the application for restitution:

- a. concerns a case on which the Council for the Restoration of Rights or another court has already issued a substantive ruling;
- b. concerns a case currently pending before a court;
- c. concerns an item the applicant or their legal predecessors have previously renounced any claim to or in respect of which they have already reached a settlement;
- d. concerns a case on which the Restitutions Committee has already issued advice or a binding opinion; or,
- e. in the case of an item not currently in the possession of the State, has not been submitted on behalf of all those with a valid claim to the assets of the original owner.

# I. Procedure

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## 5. Other Proceedings

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### Decision

1. If there is a case as referred to in part b or e, the Restitutions Committee does not handle the application substantively.
2. If there is a case as referred to in part a, c or d, the Restitutions Committee likewise does not handle the application substantively unless there are new facts or circumstances that justify doing so.

## II. Decision

### 1. Narrative

2. Kurt (Denny) Grawi (1877–1944) was persecuted during the National Socialist era, both individually and collectively. Grawi had qualified as a banker and worked at Darmstädter und Nationalbank (Danat-Bank) as a broker with general powers to execute transactions until 1931. After the collapse of Danat-Bank and its merger with Dresdner Bank during the global economic crisis, Grawi lost his job and became an independent entrepreneur. He acquired stakes in various companies and managed the Gesellschaft für den Bau medico-technischer Apparate m.b.H., based in Berlin.

From 1933 onwards, Grawi and his family increasingly suffered as a result from the pressure of National Socialist persecution. Grawi had married the widowed Else Breit, née Schultz (1894–1964), in August 1929. Else Grawi, who was not of Jewish descent, bore the couple two sons: Wolfgang and Peter. Because Else Grawi's deceased first husband Erich Breit (1878–1925) had been of Jewish descent, the two sons were vilified and discriminated against as “first degree half-breeds”. Grawi's younger sister, the actress Irma Neumann, was banned from her profession after 1933. Her resistance activities led to her arrest along with that of her husband on July 22, 1944—her husband was sentenced to three years' imprisonment by the People's Court, while Irma Neumann was deported to Auschwitz. She survived the Holocaust. Grawi's elder sister, Dr. Erna Grawi, was deployed as a forced laborer in armaments factories from 1939; she died from the effects of this work in Berlin at the end of February 1943. Her sister Irma found the body which she secretly disposed of outdoors because she thought a proper burial would be too risky.

## II. Decision

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### 2. Structure / Framework

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#### **Herman Hamburger - Restitutiecommissie**

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Pursuant to section 2 of the assessment framework, the Committee must assess whether it is highly plausible that the painting NK 3401 was the property of Herman Hamburger and on the grounds of section 3 whether it is sufficiently plausible that possession of the painting was lost involuntarily as a result of circumstances directly related to the Nazi regime. To this end the Committee finds as follows:

## II. Decision

### 3. Precedent and Deviations

#### **Recommendation of the Advisory Commission in the case of the heirs of Kurt and Else Grawi vs. Landeshauptstadt Düsseldorf**

a) It is immaterial that a fair price was probably paid for the painting.

#### **ASSESSMENT FRAMEWORK FOR THE RESTITUTIONS COMMITTEE**

##### **§5. Deviation in case of compelling reasons**

Should the particular circumstances provide substantial reason to do so, in exceptional cases the Restitutions Committee may deviate from one or more of the procedures in this assessment framework in order to achieve a just and fair solution as referred to in Article 8 of the Washington Principles.