

# striving for justice

Pursue justice and justice alone.  
(Deuteronomium 16:20)

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# 1. Foreword

*My great-grandmother owned an entire building on Nieuwe Herengracht; my grandfather owned an entire building on Herengracht. Both their houses were full of paintings and art. Both their houses were completely looted. [...] Most of my family were murdered, including my two sisters, my grandfather, uncles, aunts, nieces and nephews.*

– Avraham Roet (born 1928)

In October 1945, on the instructions of General Eisenhower, twenty-six paintings were returned to the Netherlands by aeroplane. They included precious works by Rembrandt, Rubens and Steen, which had been removed from our country by the occupying forces during the Second World War. After the liberation, the Americans found these works in art repositories that had belonged to Göring and Hitler. It had been Hitler's dream to see his loot hanging in his *Führermuseum* in Linz one day, which he had planned to open in 1951. The US shipment of October 1945 was of great significance: it was the starting signal for the recovery of countless artworks from Germany that had been stolen from their mainly Jewish owners by the Nazis during the occupation.

These artworks stood – and continue to stand – for something far greater than their material value alone. Looted art has become an important symbol of what was taken away from Jewish citizens during the war: not only their property, but also their rights as citizens, their dignity as human beings and – in the vast majority of cases – their lives as well. Now, more than seventy-five years after the end of the Second World War, this art represents one of the last tangible opportunities for the original owners or their heirs to seek legal redress for those injustices.

In the decades immediately following the initial and imperfect post-war restoration of justice, the government paid little attention to the provenance of the thousands of items that were left in museums and state collections, unreturned to their original owners. The promise of that first hopeful shipment in 1945 remained unfulfilled.

It was not until the 1990s that there was an international realisation that the manner in which this recovered art had been dealt with was, at best, unsatisfactory. For this reason, in 1998, 44 countries including the Netherlands signed the Washington Conference Principles on Nazi-Confiscated Art (or 'Washington Principles'). The aim of the Washington Principles was to promote investigations into artworks looted by the Nazis and restitution to their rightful owners.



Exhibition for potential applicants, including paintings, drawings and rugs, held in the Rijksmuseum in Amsterdam, 20 April-9 June 1950.

The Restitutions Committee – which was established in the Netherlands several years later to assess claims from original owners and their heirs – faces a task that is momentous and complex in equal measure. After all, perhaps the most important aspect of that task is, paradoxically, to remedy an injustice so breathtakingly enormous that it is impossible to make amends for.

No matter how great the symbolic and emotional value of the objects that were looted, this value pales into insignificance when placed alongside the scale of that historical crime. Nevertheless, for many of the relatives, those objects are all that remains. All this means that restitution policy is a highly charged subject. At the same time, the situation is further complicated by the fact that not only the emotional and historical significance of these cultural objects appears to have increased over time, but also their monetary value.

This means that the stakes have grown higher, both for the original owners and the current owners – which are often museums, which sometimes acquired the works at a time when establishing provenance had a much lower priority and which have taken care of those works for several decades.

As the stakes have grown higher, the extent to which the restitution process has become a legal process has inevitably increased too. This presents those responsible for implementing policy on restitutions with a second difficult paradox. Because if the main goal is legal redress, the proper and careful application of the law is essential. This necessitates a careful determination of facts. But this can be challenging even when the facts in question occurred recently, let alone when those facts occurred over eighty years ago. In addition, despite the best of intentions, ‘good law’ will involve more legal discussions, more intervention by lawyers and legal specialists, and therefore more paperwork and bureaucracy.

The fact that a number of those involved say that they have regularly been confronted with legal proceedings and a bureaucracy that in their eyes have been inaccessible, opaque and painfully slow, is one of the findings underscored in the recommendations presented here. From the many interviews that the Advisory Committee has held with those involved, it has emerged that restitution policy should be oriented more towards humanity, transparency and goodwill. After all, one of the primary goals of that policy should still be – bearing in mind the Washington Principles – to return items which were taken to their original owners or their next of kin. As with any legal framework, this policy has a moral element. What remains at stake for the rightful owners of the items in question is recognition by the Dutch government of the unimaginable injustice that was done to them or to their forebears. Such an acknowledgement of history is of the utmost importance, not only to the victims and survivors of the occupation, but to society as a whole.

## 2. Executive summary

The Minister of Education, Science and Culture, Ingrid van Engelshoven, asked the Council for Culture to evaluate Dutch policy on the restitution of cultural objects lost during the Second World War and to make recommendations for improvements. This request stemmed from a promise that her predecessor had made to the Dutch House of Representatives in 2016. The council established a committee to prepare its advice. To this end, the evaluation committee studied policy documents, conducted a survey and examined publications (including academic publications) on this subject. It also held interviews with relevant national and international organisations and stakeholders. The committee looked at policy with respect to the inventory of looted artworks and the tracing of heirs, communication regarding restitution policy, the assessment framework applied and the requests procedure. In doing this, it made constant reference to the Washington Principles – the internationally accepted, moral and ethical basis for restitution policy.

On the basis of its evaluation, the evaluation committee has concluded the following:

- The original ‘extended restitution policy’, as recommended by the Ekkart Committee in the early 2000s, should continue to provide the basis for restitution policy today.
- Partly as a result of this, Dutch restitution policy has been a role model for other countries, but that reputation has been undermined by a limited number of requests for restitution that have been rejected in recent years.
- Systematic research into the provenance of artworks looted by the Nazis and into their original owners (or their heirs) has come to a halt since 2007, which runs contrary to the Washington Principles.
- The balancing of interests, as set out in the Decree Establishing the Restitutions Committee and its elaboration in the regulations of that committee, has in some cases detracted from the pursuit of justice and legal redress.
- Restitution policy is set out in various advisory memoranda as well as a multitude of letters from successive ministers, which means that it lacks transparency.
- The work of the Restitutions Committee meets with general approval, but there are also some serious criticisms.
- The procedure that results in an opinion or decision regarding restitution is often too formalistic in nature.



- Given the often high degree of emotional investment of applicants in the requests for restitution submitted, the manner in which those applicants are handled is sometimes perceived as lacking in empathy.
- The provision of information about Dutch restitution policy is inadequate because none of the organisations involved considers it their responsibility to inform the applicants about that procedure.

On the basis of the above, the evaluation committee makes the following recommendations:

- Resume systematic research into the provenance of artworks in the Netherlands Art Property Collection (usually known as the NK Collection, for *Nederlands Kunstbezit*) and into the original owners and their heirs. Update the relevant databases and trace rightful owners wherever possible. Ensure that archives that are relevant to research into provenance are as accessible as possible.
- Incorporate a clear and unambiguous assessment framework into the Decree Establishing the Restitutions Committee which, in accordance with the Washington Principles, focuses clearly on restitution or arriving at alternative solutions.
- Improve the manner in which applicants are treated and communication regarding restitution procedures, and change the procedure to make it less formalistic and, where necessary, to allow scope for the Restitutions Committee to take up a more mediatory position.
- Establish a helpdesk that falls under the responsibility of the minister and that ensures that information is provided, both passively and actively, regarding restitution policy at home and abroad.

The evaluation committee takes the view that no termination date should be set for the Dutch restitution policy at this time.

### 3. The history of Dutch restitution policy and the structure of these recommendations

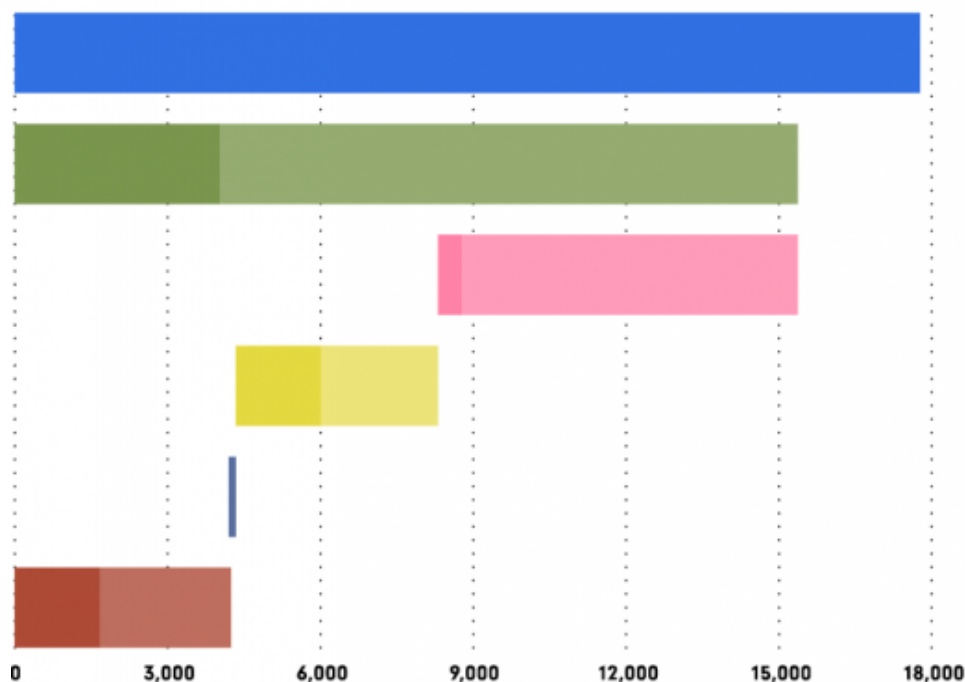
#### The history of Dutch restitution policy

During the occupation, the Nazis shipped artworks that belonged to persecuted population groups to Germany on a large scale.<sup>[1]</sup> In some cases, artworks were simply seized or looted, while in others their owners were forced to sell them or they were sold so that the owners could use the proceeds to escape. The German occupiers also purchased artworks in the Netherlands during the occupation in the regular manner.<sup>[2]</sup> After the war, the Allies returned a large number of cultural objects from Germany to the Netherlands. These included paintings, sculptures, prints, ceramics, furniture, carpets and other valuable objects, which were taken into the custody of the Dutch state on the understanding that they would, where appropriate, be returned to their rightful pre-war owners. This task was entrusted to the Netherlands Art Property Foundation (*Stichting Nederlands Kunstbezit*, SNK), which returned a number of items to their original owners or their heirs in the late 1940s and early 1950s.

Report forms were used for this: anyone who had lost works of art or had information about works of art that had fallen into the hands of the enemy was required to report this to the SNK. Based on information from other sources, such as the records of the Liro bank, the SNK also created ‘internal report forms’, which supplemented the requests received from the original owners. In addition, the SNK organised three exhibitions at which recovered artworks could be viewed by potential original owners.<sup>[3]</sup> In the years immediately after the war, approximately 450 paintings were returned to their original owners, along with a few dozen other artworks and several thousand objects that were produced as part of a series.<sup>[4]</sup> In the 1950s, around 4,000 objects were auctioned, including around 1,700 paintings, as well as ceramics, items made from precious metals, drawings, books and the like.<sup>[5]</sup>

The remaining works were placed in the ‘Netherlands Art Property Collection’ (usually known as the NK Collection), as part of the National Art Collection.<sup>[6]</sup> Many items in the NK Collection are currently stored in the repository of the Cultural Heritage Agency of the Netherlands (*Rijksdienst voor het Cultureel Erfgoed*, RCE), but some items have also been placed in museums, embassies or other government buildings. Particularly during the decades immediately following the war, this collection was not always looked after properly and much of the negligence dating from that period cannot be mended. All this has ensured that, according to the current inventory, approximately one hundred items are missing and the location of over four hundred other works has yet to be investigated.<sup>[7]</sup>

## Restitution before 2000



### Objects reported as missing, 1947

- >17,727 <sup>[1]</sup>  
Not all the objects registered were sold unwillingly. Many lost objects belonging to Jewish owners were never reported missing.

### Objects recovered from Germany

- Recovered <sup>[2]</sup>
  - approx. 4,000 paintings
  - 400 rugs, thousands of items of furniture, tens of thousands of craftwork objects, shipments of books
- Restituted 1945-1953 <sup>[3]</sup>
  - 450 paintings
  - many hundreds of pieces of applied art, thousands of objects that were part of a series, hundreds of crates of books
- Auctioned 1950-1953 <sup>[4]</sup>
  - 1,700 paintings
  - 100,000 books, 2,300 other pieces of art, an unknown number of craftwork objects
- Restituted on an incidental basis 1953-2000 <sup>[5]</sup>
  - 100 other objects
- Still in the NK Collection in 1999 <sup>[6]</sup>
  - Total: > 4,200
  - approx. 1,615 paintings <sup>[7]</sup>
  - approx. 2,585 other objects

1. 'Betwist Bezit' [Contested Ownership], p. 43.
2. Exact number unknown; 'Roof en Restitutie' [Looting and Restitution], p. 108.
3. Exact number unknown; 'Betwist Bezit' [Contested Ownership], pp. 128-129.
4. Exact number unknown; 'Betwist Bezit' [Contested Ownership], pp. 243, 245, 255.
5. Exact number unknown; 'Roof en Restitutie' [Looting and Restitution], p. 117.
6. Origins Unknown Agency Sub Report, October 1999, p. 5.  
Different numbers are reported by different sources; they all add up to at least 4,000 objects.
7. Electronic inventory of the NK Collection of the Cultural Heritage Agency of the Netherlands, based on books containing inventories dating from 1953.

At the end of the 1990s, the issues of Nazi theft and the post-war restoration of justice at home and abroad came to the fore once again. At an international conference, 44 countries, including the Netherlands, signed the Washington Conference Principles on Nazi-Confiscated Art. These eleven principles provide guidance for states to investigate looted artworks and return them to their rightful owners. The Washington Principles were further amended in 2009 in the Terezín Declaration (see appendix).

In 1998, the ‘Origins Unknown’ (*Herkomst Gezocht*) Committee was established in the Netherlands. This committee, chaired by Professor Rudi Ekkart, was tasked firstly with supervising research into the provenance of the works in the NK Collection and, secondly, to make recommendations on future restitution policy. Based on the initial findings of the committee, the government concluded that legal redress had not yet taken place properly according to the applicable standards: it characterised some restitution procedures as ‘formalistic, bureaucratic and cold, and in some respects even contrary to the regulations that were applicable at the time’.<sup>[8]</sup>

## Washington Conference Principles on Nazi-Confiscated Art (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 Council 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 given to 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 to 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, can not 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.

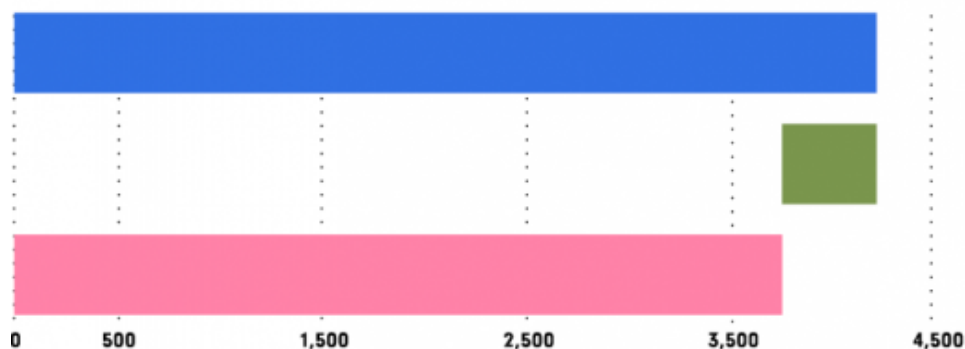
After the first series of recommendations from the Ekkart Committee in 2001, the then minister responsible, Rick van der Ploeg, decided to establish the Restitutions Committee (RC) to advise on restitution requests from potential owners and their heirs.

The first task of the RC is to advise the minister on the restitution of items that are currently in the possession of the Dutch state. These may be claimed items that are part of the NK Collection or other cultural heritage objects in the possession of the Dutch state. When the RC was established, the assessment framework for its opinions was drawn up on the basis of Ekkart's recommendations and the minister's policy instructions. Together, this body of documents constituted 'government policy' or the 'extended restitution policy'.

Secondly, the RC makes decisions<sup>[9]</sup> about items that are not part of the National Art Collection. If an object is not part of the National Art Collection, the applicant and the current owner (often a municipality, province or non-profit organisation that has entrusted the object to the care of a museum) can jointly submit an application for a binding opinion on restitution. Both parties agree in advance that they will accept the opinion issued by the RC. For binding opinions of this kind, the RC applies the standards of 'reasonableness and fairness', as set out in Article 2, paragraph 5 of the Decree Establishing the Restitutions Committee. In 2007, the RC drew up regulations in which it formulated the considerations that it can take into account when making a decision based on 'reasonableness and fairness'.

The Origins Unknown Agency project, which arose from the research work of the Origins Unknown Committee and which focused on research relating to the NK Collection, was completed in 2004 and the project was discontinued in 2007. The database containing the results of its work remains available online. Other provenance research has been conducted into the involuntary dispossession of property due to the actions of the Nazis. Between 2009 and 2018, the museums affiliated with the Museum Association, with the support of the Ministry of Education, Culture and Science, undertook an examination of their collections to identify objects or artworks whose provenance could indicate looting, confiscation, forced sale or other suspicious circumstances between 1933 and the end of the Second World War. The investigation found that the museums own or care for 173 objects that are of dubious provenance of this kind.<sup>[10]</sup> At the Rijksmuseum, the collection of acquisitions dating from the period after 1933 is so large that research is still ongoing there.

## Restitution 2001-2020



### NK Collection

- >4,200: In NK Collection in 2001<sup>[1]</sup>  
approx. 300 of which consist of multiple objects
- 462: Restituted since 2002<sup>[2]</sup>
- >3,750: Still in NK Collection  
approx. 13% are missing or current location unknown<sup>[3]</sup>



### Museum collections

- 173: Works with suspicious provenance in 2018  
representing a total of 343 objects<sup>[4]</sup>
- 6: Restituted
- 167: Still in museum collections  
Including 3 objects from the NK Collection

1. Origins Unknown Agency Sub Report, October 1999, p. 5. Different numbers are reported by different sources; they all add up to at least 4,000 objects.
2. Some of these objects have been allocated but the objects have not been handed over yet.
3. Electronic inventory of the NK Collection of the Cultural Heritage Agency of the Netherlands, based on books containing inventories dating from 1953.
4. [www.musealeverwervingen.nl](http://www.musealeverwervingen.nl)

During the approximately twenty years that the Restitutions Committee has been working on requests from potential original owners and their heirs, two important changes have taken place in its procedures and organisation.

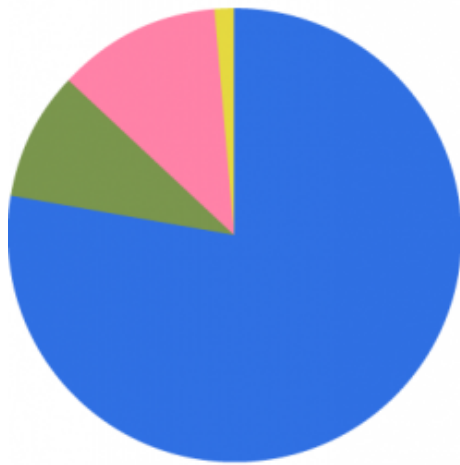
1. In 2012, a committee of the Council for Culture chaired by Rudi Ekkart issued advice regarding the policy frameworks on the basis of which items from the NK Collection and from the rest of the National Art Collection are restituted. Following that advice, the then minister responsible, Halbe Zijlstra, decided that:
  - from 17 July 2012 onwards, requests for the restitution of objects from the National Art Collection (excluding the NK Collection) would be assessed according to the standards of reasonableness and fairness;
  - from 30 June 2015 onwards, requests for the restitution of objects from the NK Collection would also be assessed according to the standards of reasonableness and fairness. The minister noted, however, that ‘the fact that a particular object is part of the NK Collection will be assigned particular weight’.<sup>[11]</sup> In short, since 30 June 2015, the standards of reasonableness and fairness have been part of the assessment framework for *all* requests for restitution.
  
2. In 2018, the Restitutions Expertise Centre (*Expertisecentrum Restitutie*, ECR) was established at the NIOD (Netherlands Institute for War, Holocaust and Genocide Studies), which carries out research and public tasks with respect to restitution policy. These tasks had previously been carried out by the Origins Unknown Agency, the Restitutions Committee and the Museum Association. The then minister, Jet Bussemaker, took this decision following a report by Bureau Berenschot on the organisational structure of Dutch restitution policy.<sup>[12]</sup> Since the establishment of the Restitutions Expertise Centre, the RC can instruct the centre to carry out research into provenance in case of restitution requests. The Restitutions Expertise Centre reports its findings to the RC, which then incorporates these into its opinion on the restitution of the items that have been claimed. In her letter, the minister also announced that restitution policy would be evaluated in 2020.

National and international respondents told the evaluation committee that Dutch restitution policy had enjoyed an excellent reputation for many years. Both the thorough research that is conducted into provenance and the possibility of submitting requests for restitution to the RC are exemplary from an international perspective.<sup>[13]</sup> However, these respondents also emphasised that this good reputation has been undermined in recent years. The policy changes made between 2012 and 2015 played a role in this, as did a number of cases in which no restitution occurred without sufficient grounds in the opinion of those respondents.<sup>[14]</sup>



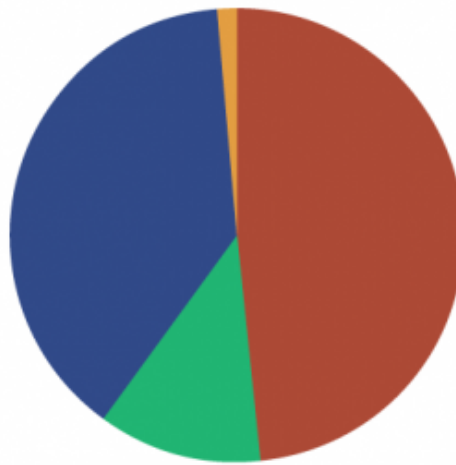
## Restitution 2001-2020

Total number of requests per collection



- 163: Total
- 127: NK Collection (78%)
- 15: National Art Collection, non-NK (9%)
- 19: Other collections/binding opinions (12%)
- 2: Unauthorised (1%)

Total number of requests granted and declined



- 163: Total
- 79: Total granted (48%)
- 19: Total granted in part or declined in part (12%)
- 63: Total declined (39%)
- 2: Unauthorised (1%)

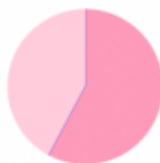
Number of requests per collection



- NK Collection**
- 127: Total
- 59: Granted (46%)
- 19: Granted in part or declined in part (15%)
- 49: Declined (39%)



- National Art Collection, non-NK**
- 15: Total
- 9: Granted (60%)
- 6: Declined (40%)



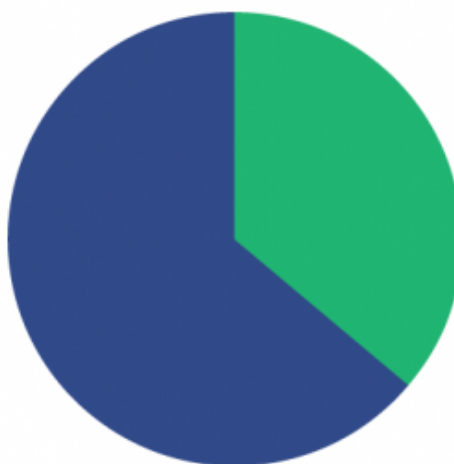
- Other collections/binding opinions**
- 19: Total
- 11: Granted (58%)
- 8: Declined (42%)

Total number of objects per collection



- 1,620: Total
- 1,144: NK Collection (71%)
- 456: National Art Collection, non-NK (28%)
- 20: Other collections/binding opinions (1%)

Total number of objects granted and declined



- 1,620: Total
- 588: Total granted (36%)
- 1,032: Total declined (64%)

Number of objects per collection



- NK Collection**
- 1,144: Total
- 462: Granted (40%)
- 682: Declined (60%)

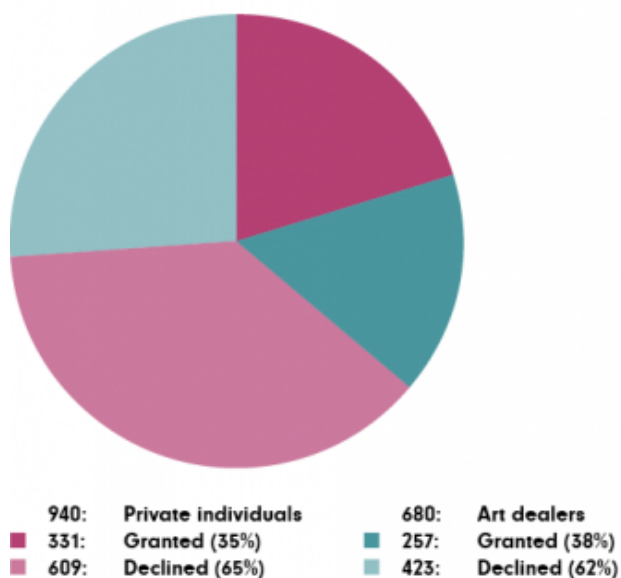


- National Art Collection, non-NK**
- 456: Total
- 113: Granted (25%)
- 343: Declined (75%)

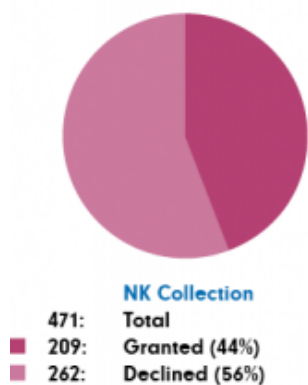


- Other collections/binding opinions**
- 20: Total
- 13: Granted (65%)
- 7: Declined (35%)

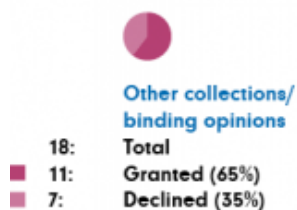
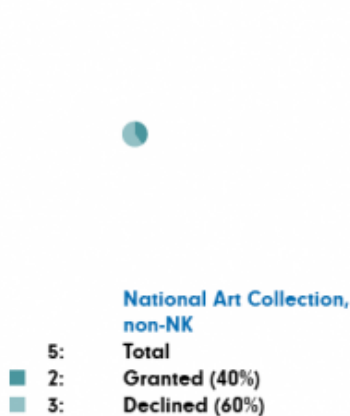
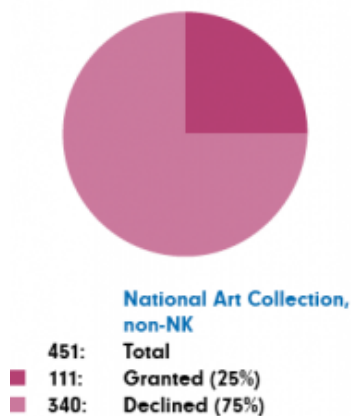
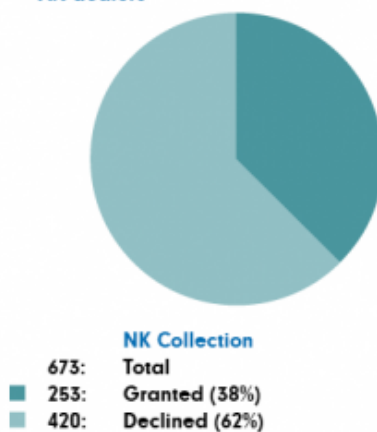
Total number of objects from private individuals or art dealers



Private individuals



Art dealers



## The structure of these recommendations

In the subsequent chapters, the evaluation committee analyses each component of the restitution policy in turn, and makes recommendations for improvements to policy. Chapter 4 focuses on research into provenance and the identification of heirs. In chapter 5, the committee evaluates the policy frameworks applied by the RC to arrive at its opinions. Chapter 6 focuses on communication and the way in which applicants are treated within the context of restitution policy. Chapter 7 examines the information that is provided about restitution policy in greater detail. Chapter 8 summarises the committee's main conclusions, and is followed by a coda.

## 4. Research into provenance and the identification of heirs

### Introduction

In her request for advice, the minister noted that the first two pillars of restitution policy are the inventory of looted art and the identification of possible heirs to items in the NK Collection. These two pillars are consistent with the first seven Washington Principles. These principles set out the case for an inventory of artworks looted by the Nazis, ensuring that access is granted to archives for provenance research, the publication of the findings of that research, and encouraging original owners (or their heirs) to submit requests for restitution. The Terezín Declaration also points out the enormous importance of ‘intensified systematic provenance research’.

Discussions with the Museum Association, the Restitutions Expertise Centre, Rudi Ekkart and the Ministry of Education, Culture and Science revealed that these two pillars of restitution policy are currently not – or only very rarely – put into practice. We will now take a closer look at each individual area in turn.

### Provenance research

Since the Origins Unknown Agency completed its research in 2004, there has been no systematic research into the provenance of items in the NK Collection. In the view of the evaluation committee, this situation is undesirable. The committee has ascertained that the database for the NK Collection needs to be updated in a number of respects: <sup>[15]</sup>

- For part of the collection, only the provenance history of the works from 1940 onwards has been researched. However, for a complete overview of artworks involuntarily dispossessed by the Nazis, it is essential to include the whole period of 1933 to 1945 in this research.
- Visually distinctive objects that are easier to recognise (mainly paintings) deserve additional research in particular, including the backs of these works. For pieces that are less visually distinctive (such as most prints, tiles, carpets, crockery and furniture), provenance research does not usually result in a determination of ownership.
- The database for the NK Collection does not currently include research reports and opinions issued by the RC. Neither has the database yet been adapted to international research and databases, archives and other sources that are now accessible, nor to recent studies of major art collections, such as those of Adolf Hitler and Hermann Göring.

- The database of report forms needs to be completed and updated; these forms have not yet been digitised and made accessible due to a lack of time.
- To date, there is no database of works that were restituted between 1945 and 1952 or for works auctioned between 1949 and 1953.
- Finally, the ‘Domestic Department’ of the Netherlands Art Property Foundation has not yet been researched. This is a collection of objects that were confiscated from collaborators and suspected collaborators in the Netherlands. However, it currently appears that this collection includes few cultural objects that were the property of persecuted population groups.<sup>[16]</sup>

The research into provenance that was part of the Museum Acquisitions project was completed at the end of 2018.<sup>[17]</sup> Museums now have responsibility for continuing this provenance research. However, interviews with stakeholders revealed that not all museums are approaching this in a systematic manner. The evaluation committee takes the view that this research also deserves a boost, where necessary. Museums require support in order to carry out such research, particularly now that museums may not give it the highest priority due to the coronavirus crisis. In addition, the committee recommends a single point of contact to provide support to museum staff.

### Identification of heirs

Ever since the Origins Unknown Agency was wound up, likely original owners and their heirs have no longer been actively addressed. The evaluation committee views this as regrettable and favours making this a core task within Dutch restitution policy once again. This would be consistent with the seventh of the Washington Principles: ‘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’.

Such research into heirs could yield new results, because more archives have been made accessible to the public in the past fifteen years and digitisation means that ever more information can be accessed. On the basis of the Washington Principles, it is very clear that the Dutch government should assume responsibility for this work. This would boost the number of requests for restitution and lead to the restitution of items that ended up in collections after the Second World War, but which should be returned to their rightful owners.

The evaluation committee also recommends providing support for the museums that are caring for objects taken during the Nazi era, so that they can trace the original owners or their heirs. The provenance research carried out by Museum Acquisitions provides the starting point for this. These individuals urgently need to be identified and traced: as the years pass, the generation that had a direct connection with the lost objects or their original owners is dying out. The importance of this is also emphasised in the Terezín Declaration, which was endorsed by the Netherlands.

## Accessibility of archives

In the Washington Principles and the Terezín Declaration, great importance is attached to ensuring that archives are made accessible so that research into provenance can be carried out as effectively as possible. Interviews with the Restitutions Expertise Centre revealed that for some years now, the centre's researchers have encountered obstacles that impede quick and easy access to archives.<sup>[18]</sup> According to the Restitutions Expertise Centre, the introduction of the General Data Protection Regulation (GDPR) has led to a great deal of confusion and uncertainty. As a result, archives and other institutions are more reluctant to make information available. The Archives Act, which is to be revised imminently, could provide for an exception, so that provenance research in the context of restitution is not impeded by the GDPR.

## Conclusions

The evaluation committee has ascertained that systematic research into items that are part of the NK Collection and into the original owners and their heirs has not been carried out since 2007. At that time, the research done by the Origins Unknown Agency had not yet been fully completed, and new knowledge and opportunities now justify the continuation of that research. It is also important that the knowledge thus acquired is also updated systematically on the basis of the latest sources. All of this would also be consistent with the Washington Principles and the Terezín Declaration. For this reason, the evaluation committee recommends that this research be resumed in a systematic manner, with priority being given to the aforementioned elements and, where possible, to restitution requests from elderly persons, for whom legal redress is of the greatest importance. This would require additional human resources, but the committee views this research as a vital part of ensuring that justice is done. Museums that wish to trace original owners and their heirs should also be given the financial support which they need to do this.

At the request of the evaluation committee, the Restitutions Expertise Centre has made a broad estimate of the costs of resuming research regarding the items in the NK Collection. That cost is expected to amount to approximately 3 million euro over a four-year period.<sup>[19]</sup>

The evaluation committee would argue that – in accordance with the Washington Principles and the Terezín Declaration – access to archives for the purposes of provenance research should be facilitated wherever possible. The committee urges the government to remove any legal restrictions and policy obstacles.

## 5. The policy frameworks applied by the Restitutions Committee

### Introduction

In this section, we consider ‘the restitution mechanism based on opinions issued by the Restitutions Committee, including case-related research into provenance’, as the minister described this in her request for advice. In particular, we will examine the policy frameworks that underlie the opinions issued by the Restitutions Committee. To this end, we will begin by focusing on the Washington Principles themselves. We will then analyse the policy frameworks that currently constitute the basis of the opinions issued by the RC. We will discuss both the ‘national policy’, as it is referred to, and the ‘standards of reasonableness and fairness’. We will also consider alternative forms of legal redress. We will conclude by presenting a proposal for a new assessment framework.

### The Washington Principles and an international comparison

Principles 8, 10 and 11 of the Washington Principles pertain specifically to policies that relate to the handling and evaluation of restitution requests. The Netherlands, the United Kingdom, France, Germany and Austria are the only countries to have established a restitution committee as described in principle 11. In accordance with principle 10 regarding ‘balanced membership’, the Restitutions Committee is made up of lawyers, historians with knowledge of the Second World War and individuals with knowledge of art history or the museum sector.<sup>[20]</sup>

The Washington Principles state that restitution policy should strive for ‘a just and fair solution, recognising this may vary according to the facts and circumstances surrounding a specific case’ (principle 8). The phrase ‘recognising this may vary according to the facts and circumstances surrounding a specific case’ gives countries some leeway in interpreting the concept of ‘a fair and just solution’. In short, this provision is open to interpretation, and does not preclude balancing the interests of the applicant with those of the current owner. The committee therefore takes the opinion that the assessment framework that is currently applied by the Restitutions Committee is not in itself contradictory to the Washington Principles – contrary to what critics may claim.<sup>[21]</sup>

In her request for advice, the Minister requested a comparison between Dutch restitution policy and the restitution policies of other countries. On the basis of a literature study and discussions with experts, the evaluation committee compared Dutch policy with restitution policy in Germany, France, the United Kingdom and Austria, the only four other countries that have an active restitution policy.<sup>[22]</sup> However, the committee is of the view that, due to the legal, historical and cultural context, policy in these countries differs



to such an extent from the Netherlands' policy, that a detailed discussion of all the differences and similarities would shed little light.<sup>[23]</sup> The evaluation committee has taken the internationally accepted Washington Principles as the frame of reference for its evaluation and has therefore assessed Dutch restitution policy chiefly using that standard.

### National policy

According to the Decree Establishing the Restitutions Committee, Article 2, paragraph 4, the 'national policy' (also referred to as the 'expanded restitution policy') provides the basis for opinions issued regarding objects that are part of the National Art Collection outside the NK Collection (until 19 July 2012) and objects that are part of the NK Collection (until 30 June 2015).

In the explanatory notes to the 2001 Decree Establishing the Restitutions Committee, the then minister wrote that the frameworks that the committee would base its opinions on were to be determined by the relevant policy lines, as well as by Ekkart's recommendations and the government responses that would follow.<sup>[24]</sup> There are now a total of fifteen documents that form the basis for the policy framework of the Restitutions Committee.<sup>[25]</sup> These documents consist of recommendations made by the Ekkart Committee as well as government responses from various ministers, which are generally broadly accepting of those recommendations but sometimes introduce provisos or more significant changes. In the opinion of the evaluation committee, the recommendations of the Ekkart Committee provide a good basis for decisions regarding ownership and dispossession, but have never resulted in one single document in which the assessment framework applied by the Restitutions Committee is set out. The evaluation committee is of the opinion that such an assessment framework would lead to an improvement in accessibility and transparency.

### Standards of reasonableness and fairness

In the 2001 Decree Establishing the Restitutions Committee, Article 2, paragraph 5, the State Secretary identified the standards of reasonableness and fairness as the assessment framework for opinions that do not relate to items in the National Art Collection. These opinions are not issued to the Minister of Education, Culture and Science (who represents the state as the legal owner of the National Art Collection); rather, they are issued by the RC with respect to disputes between individuals who have been dispossessed of cultural objects or their heirs on the one hand, and current owners (a municipality, province, foundation or private individual, for instance) on the other.

The concepts of 'reasonableness and fairness' have a long history and were introduced as early as 17 September 1944 in the Decree on the Restoration of Legal Transactions. The Decree Establishing the Restitutions Committee does not elaborate on this legal concept, but it is likely that it refers to the 'just and fair solution' cited in principle 8 of the Washington Principles.<sup>[26]</sup> The RC describes the assessment framework which it applies with respect to such opinions in the following manner:

‘The Committee advises on the basis of reasonableness and fairness as a benchmark. This means that first of all an assessment is made of whether the requirements have been met for establishing that it is highly likely that the original owner was indeed the owner and that it is sufficiently plausible that he or she lost possession of the artwork involuntarily as a result of circumstances directly related to the Nazi regime. Advising on the basis of the benchmark of reasonableness and fairness furthermore provides scope to take into account how the current owner acquired the object and other circumstances and to weigh up the interests of the different parties involved.’<sup>[27]</sup>

Which circumstances and interests are to be deemed relevant is set out by the RC in its own regulations:

‘The Committee issues an opinion on the basis of reasonableness and fairness, and may, in any event, take the following into consideration:

- a. internationally and nationally accepted principles, such as the Washington Principles, and the government’s policy guidelines concerning the restitution of looted art in so far as they are applicable;
- b. the circumstances in which possession of the work was lost;
- c. the extent to which the applicant has endeavoured to recover the work;
- d. the circumstances in which the owner acquired the work and the inquiries the owner made prior to acquiring it;
- e. the significance of the work to the applicant;
- f. the significance of the work to the owner;
- g. the significance of the work to public art collections.’<sup>[28]</sup>

These regulations were drafted by the RC itself and were accepted as its guiding principles by the Minister of Education, Culture and Science in 2008.<sup>[29]</sup>

In these regulations, the RC also specifies that it will issue only *binding* opinions, although the Decree Establishing the Restitutions Committee does not set this down. The parties involved must agree to this in advance. If a party fails to respect the binding opinion issued, the other party may enforce compliance in a civil court. As noted in chapter 3, from 17 July 2012 until 1 July 2015 the standards of reasonableness and fairness also apply to objects in the National Art Collection excluding the NK Collection, and from 1 July 2015 onwards to items in the NK Collection as well. Therefore, with effect from 1 July 2015 all requests have been assessed using this assessment framework.

### **Standards of reasonableness and fairness with respect to the NK Collection**

Objects in the NK Collection were recovered by the Allies from Germany after the war. There can therefore be no doubt that they were taken during the war. They were handed over to the Dutch state by the Allies with the explicit instructions to return them to their rightful owners or their heirs wherever possible.<sup>[30]</sup> With the passage of time, the state has become the legal owner of the NK Collection; nevertheless, in view of the instructions that accompanied

their transfer, the post-war restoration of justice, the Washington Principles and the restitution policy that has been in place since 2001, the Dutch state has a moral obligation to trace the original owners, or their heirs, and return these objects.

In the opinion of the evaluation committee, with respect to objects of such provenance, it would be inappropriate to balance the interests of the original owners and their heirs against the interests of any other parties.

The committee takes the view that, in accordance with the 2001-2004 Ekkart Committee recommendations, the only two applicable criteria with respect to pieces in the NK Collection should be original ownership and involuntary dispossession. The RC itself has stated that, despite the revised policy that has applied since 2015, it does not balance the interests involved with respect to cases involving the NK Collection:

‘The balancing of interests applied by the committee is rooted in the Washington Principles and is specified in the Decree Establishing the Restitutions Committee. This principle has been applied ever since the committee was established, but not with respect to requests relating to the NK Collection. In an amendment to the Decree Establishing the Restitutions Committee in 2012, it was stipulated that this balancing of interests may also apply in cases relating to the NK Collection from 2015 onwards, but since that amendment the interest of the Dutch state as the current ‘owner’ has never played a role in the opinions issued by the committee.’<sup>[31] [32]</sup>

The evaluation committee endorses the position taken by the Restitutions Committee in this regard. For the sake of clarity, however, it is undesirable that written documents regarding government policy (or the implementation thereof) are worded differently. The evaluation committee therefore recommends that the expanded restitution policy for NK cases (as applied prior to 1 July 2015) be explicitly reinstated in order to ensure consistency between government policy and its implementation by the Restitutions Committee.

### **Standards of reasonableness and fairness with respect to non-NK cases and cases involving binding opinions**

The evaluation committee has closely examined the list of circumstances and interests listed in Article 3 of the regulations of the Restitutions Committee. The Committee notes that these are of differing weight and that they offer the parties involved little insight into the way in which the RC arrives at its decisions. For the purpose of the proposed assessment framework, the Committee does not consider all the circumstances and interests as equally relevant. More details on this point are provided below.

The inclusion of the first aspect – ‘internationally and nationally accepted principles, such as the Washington Principles, and the government’s policy guidelines concerning the restitution of looted art in so far as they are applicable’ – is justifiable in the view of the evaluation committee. After all, the Washington Principles provide the guiding framework for restitution policy

and, together with other principles and policies, they provide a natural framework for the RC to work within.

The evaluation committee considers the way in which the second aspect is applied – ‘the circumstances in which possession of the work was lost’ – to be part of the assessment of whether ‘there is a sufficient degree of plausibility that he or she [the original owner] was the owner of the artwork and was dispossessed of that artwork as a result of circumstances directly related to the Nazi regime’. If involuntary dispossession is deemed plausible with respect to this assessment, a more detailed investigation of those circumstances should no longer be necessary. If, on the other hand, involuntary dispossession is not deemed plausible with respect to this assessment, then the restitution request should be rejected.

The evaluation committee views it as inappropriate to consider the third aspect – ‘the extent to which the applicant has endeavoured to recover the work’ – as part of its deliberations. Stories from survivors and others involved indicate that in the decades immediately following the Second World War, Jewish survivors of the war had very little opportunity to do this, or were unable to prioritise the tracing of artworks that belonged to them or to their families.<sup>[33]</sup> The experiences that they had been through were so traumatic and the prevailing mentality in Dutch society at that time was so unsympathetic to their plight that such efforts – or the lack thereof – should not carry any weight.

The evaluation committee view the fourth aspect – ‘the circumstances in which the owner acquired the work and the inquiries the owner made prior to acquiring it’ – as a relevant aspect. The committee believes that good faith<sup>[34]</sup> on the part of the current owner may play a role in the assessment of acquisition. In the absence of such good faith, the request for restitution may be granted unconditionally (provided that the requirements relating to original ownership and involuntary dispossession have been met). If the item in question was acquired in good faith, this may play a role in the ultimate nature of the opinion issued, although in the Committee’s view it should never lead to an outright rejection. In such a situation, either full allocation may take place or mediatory solution may be sought. The evaluation committee will return to this point later in this chapter.

The evaluation committee regards it as inappropriate for the fifth aspect – ‘the significance of the work to the applicant’ – to continue to be taken into consideration. Such a criterion does not serve the goal of providing legal redress for the injustice done to victims.

The evaluation committee regards it as inappropriate for the sixth aspect – ‘the significance of the work to the owner’ – to continue to be taken into consideration. Often that owner is the Dutch state, a municipality, province or foundation, which has given custody of the object to a museum. Although the evaluation committee recognises the importance of museums as public places where cultural heritage is displayed, legal redress for an injustice takes precedence in this instance.

Finally, the evaluation committee regards it as inappropriate for the seventh aspect – ‘the significance of the work to public art collection’ – to continue to be taken into consideration. In Dutch cultural policy, the assessment of the importance of cultural objects to the public art collection is stipulated by the Heritage Act.<sup>[35]</sup> If a public owner wishes to dispose of an object when there is a possibility that that object deserves protection, an independent committee is required to assess whether or not this is the case, on the basis of established criteria.<sup>[36]</sup> This aspect should therefore no longer be a consideration in restitution policy.<sup>[37]</sup>

### **Procedure for issuing a binding opinion**

In drawing up its regulations, the RC opted not to issue opinions on matters that do not involve objects in the National Art Collection, but rather to issue binding opinions. As the name implies, binding opinions are legally binding on the parties involved in a similar way to court judgments. For this reason, the procedure for reaching binding opinions must meet stricter requirements than procedures which lead simply to ‘opinions’. ‘The procedure must meet high standards of diligence, which are expressed in the principles of civil procedural law. In particular, the principle of a fair hearing, which is strictly applied by civil courts when reviewing a binding opinion, means that the procedure takes longer and is more complex than if the RC had not opted for a binding opinion’, writes the RC in a memorandum in which it argues that the evaluation committee should recommend that it no longer issue binding opinions.<sup>[38]</sup> The evaluation committee has considered this issue in great detail and sought advice from Professor Ruth de Bock, professor of civil justice at the University of Amsterdam and advocate general at the Supreme Court.<sup>[39]</sup> Although the committee takes note of the RC’s arguments for no longer issuing binding opinions, it believes it to be very important that applicants are provided with the certainty that current owners are bound by the opinion of the RC in cases where the RC grants a restitution request. The committee is therefore of the opinion that the binding opinion procedure should be continued.

The evaluation committee believes that it would be possible to make certain aspects of the procedure less strict than is currently the case. For example, it would be possible to hear the parties separately, provided that this is done with full transparency and a number of procedural guarantees are also in place.<sup>[40]</sup> Hearing each party separately may, under certain circumstances, benefit investigations in relation to a settlement. Even in cases where no settlement is likely, it could provide an insight into the options for a mediatory decision if the binary choice between granting or rejecting the request is not the most appropriate way forward. In the opinion of the committee, the latter situation may arise when a current owner acquired an object in good faith (see also next section).

The evaluation committee understands from the RC that oral proceedings (in the presence of both parties) seldom take place. The evaluation committee considers it desirable for oral proceedings to take place in every case in principle, in part to give the parties ample scope to make their cases. Professor de Bock also points out that parties are, in principle, entitled to oral proceedings, even though that right is not absolute.<sup>[41]</sup>

### Mediatory solutions

Within the assessment framework, in accordance with the standards of reasonableness and fairness, the RC not only has the option to recommend on whether or not an object should be restituted, but also the option of an alternative form of legal redress. The RC cites a number of these alternatives in its regulations (see Regulations in appendix, Article 11), such as the restitution of a work in exchange for an agreed quid pro quo, or the rejection of the request under the condition that the current owner exhibits the work along with a statement of its provenance and original owner. The evaluation committee will henceforth refer to such solutions as ‘mediatory solutions’ or ‘mediatory decisions’. In practice, the RC has seldom recommended mediatory solutions or made mediatory decisions.<sup>[42]</sup>

In interviews with the evaluation committee, the RC stated that such mediatory solutions are, in practice, seldom appropriate because the party submitting the request is almost always focused exclusively on restitution. For this reason, the RC seldom considers the option of a mediatory solution in practice.

The evaluation committee wonders whether the RC could take a more active approach on this point. Although the evaluation committee recognises that applicants will often be aiming for restitution, in many cases it is reasonable to assume that they may be interested in a mediatory solution if they are informed that unconditional restitution is unlikely. Furthermore, a mediatory decision may sometimes be the most appropriate solution, given all the circumstances, even if the applicant is not completely satisfied with this.

The evaluation committee takes the view that the scope for mediatory solutions will vary between collections (NK Collection, National Art Collection other than the NK Collection, other collections including museum collections). The restitution of works in the NK Collection should never be conditional. Once the original ownership and the involuntary dispossession of such an object have been ascertained, the RC can, in the view of the evaluation committee, only recommend that the object in question be returned (as is currently the case). However, where a case concerns an object that is not in the NK Collection and the current owner has acquired that object in good faith, mediatory solutions may offer an appropriate path forward. The evaluation committee has formulated examples of such mediatory solutions in the new assessment framework.

### Acquisition in good faith

The standards by which good faith is assessed have become stricter over time. In the 1960s, museums could purchase objects without conducting any thorough research into their ownership and provenance during the 1933-1945 period; today, such a passive approach is no longer socially and legally acceptable. The evaluation committee takes the opinion that central government or local government should, under certain circumstances, refrain from relying on arguments of ‘acquisition in good faith’. This is the case when the circumstances of the acquisition and the research conducted by the owner at the time of the acquisition fail to meet contemporary standards of good faith. The interviews held by the evaluation committee with museum directors show that they take the same view on this matter: art that is likely to have been stolen should not remain in their collection.

### A new assessment framework

In view of the considerations set out above, the evaluation committee proposes a new assessment framework. That assessment framework meets the following requirements:

- it is a transparent framework that is based on factors that determine unambiguously whether certain criteria have been met or not (as in a ‘decision tree’);
- the assessment framework is based on the recommendations of the 2001-2004 Ekkart Committee;
- in line with the Ekkart recommendations of 2004, a distinction is made between original owners who were private individuals and those who were art dealers;
- it is therefore applicable to all types of items and collections; that is to say, items belonging to private individuals as well as to art dealers, items in the NK Collection, non-NK items in the National Art Collection and items belonging to other current owners (such as municipalities, provinces and foundations);
- it is to be confirmed by the minister and incorporated into the Decree Establishing the Restitutions Committee, replacing all the existing documentation that forms the RC’s policy framework;
- there are two absolute requirements for restitutions: the applicant must be the original owner or heir of the original owner; and involuntary dispossession must have occurred.
- if it can be demonstrated that the current owner acquired an object that is not part of the NK Collection in good faith, this may be a reason to pursue a mediatory solution or to take a mediatory decision.

In view of the above, the evaluation committee recommends that the minister stipulates in the Decree Establishing the Restitutions Committee that the Restitutions Committee issues its opinions on the basis of this framework. If the minister wishes to amend the proposed assessment framework, the evaluation committee recommends that these amendments should also be included in the assessment framework and not only be set out in letters to the Dutch House of Representatives. This will prevent policy from once again becoming scattered across multiple different documents.

The evaluation committee informs the minister that she will need to decide whether and to what extent this assessment framework will apply to ongoing cases and cases already settled.



## The assessment framework

The purpose of this assessment framework is to achieve just and fair solutions in relation to requests for restitution, as referred to in principle 8 of the Washington Conference Principles on Nazi-Confiscated Art of 3 December 1998 (the ‘Washington Principles’).

1. The Restitutions Committee assesses whether the request concerns a settled case. If the request concerns a settled case, the committee will assess whether new evidence has come to light. If no new evidence has come to light, the committee will not consider the request. <sup>[1]</sup>
2. If the request does not concern a settled case, or a settled case in which there is new evidence, the committee will assess whether it is highly plausible that the party requesting restitution is the original owner or heir of the original owner of the object. If this is not the case, the committee will recommend or decide against the request for restitution.
3. If it is highly plausible that the party requesting restitution is the original owner or heir of the original owner of the object, the committee will assess whether it is also sufficiently plausible that the original owner was involuntarily dispossessed of the item in question due to circumstances directly relating to the Nazi regime. Here, depending on the capacity of the original owner, the committee will apply the following criteria.
4. If the original owner is a private person who belonged to a persecuted population group, involuntary dispossession will be assumed if dispossession occurred in the Netherlands after 10 May 1940, in Germany after 30 January 1933 or in Austria after 13 March 1938, unless there is express evidence to the contrary.
5. If the original owner is an art dealer who belonged to a persecuted population group, involuntary dispossession will be assumed if there are sufficiently plausible indications of involuntary dispossession. Such indications include:
  - a post-war report of theft, confiscation or forced sale. In the absence of a report, or if that report is only an internal report, plausible indications of theft or confiscation should be considered as grounds for restitution, where with regard to art dealers belonging to a prosecuted population group the threatening general circumstances are to be taken into account;
  - direct sale to representatives of the Nazis or to collaborators condemned as such after the war under threat of reprisals;
  - sales in which a promise to supply passports or letters of safe-conduct was part of the transaction;
  - sale at a price that was significantly lower than the market value at the time;
  - sale by a ‘Verwalter’ unless it can be demonstrated that the original owner received the full proceeds of the sale or explicitly waived the rights to those proceeds after the war.

In cases where there are sufficient indications that an object was not part of an art dealer's commercial collection but was part of his or her private collection, requests for restitution will be handled in accordance with the standards for private art property.

6. If the original owner was not part of a persecuted population group, the applicant must plausibly demonstrate the involuntary nature of the dispossession.
7. Involuntary dispossession can also be assumed, regardless of where and when it occurred, in cases occurring after 30 January 1933 in which it is sufficiently plausible that the original owner was no longer disposing of the object freely due to circumstances directly related to the Nazi regime, for example because the owner required the proceeds to fund an escape from the Nazis.
8. If the involuntary nature of the dispossession is not sufficiently plausible after application of the criteria described in points 4 to 7 above, the committee will recommend or decide against the request for restitution.
9. If the involuntary nature of the dispossession is sufficiently plausible after application of the criteria described in points 4 to 7 above, and the object is part of the NK Collection, the committee will recommend in favour of the request for restitution.
10. If the involuntary nature of the dispossession is sufficiently plausible after application of the criteria described in points 4 to 7 above, but it concerns an object that is not part of the NK Collection, the committee will assess whether the current owner, in view of the circumstances of his or her acquisition of the object and the pre-acquisition research conducted by him or her, was not aware – and, by the prevailing standards at the time of acquisition, would not have been expected to be aware – that the original owners of the object had been involuntarily dispossessed of it due to circumstances directly relating to the Nazi regime (hereinafter: acted in good faith with regard to provenance).<sup>[2]</sup>
11. If the owner did not act in good faith with regard to the provenance of the object when acquiring the object, or if he or she waives a defence based on good faith, the committee will recommend or decide in favour of the request for restitution.
12. If the owner acted in good faith with regard to provenance when acquiring the object, the committee will assess the extent to which the request for restitution will nevertheless be granted; the committee may still recommend or decide in favour of unconditional restitution, but it may also recommend or decide in favour of a mediatory solution, provided that this can be regarded as a just and fair solution as referred to in principle 8 of the Washington Principles. Such mediatory opinions or decisions may include, for example: (i) restitution under appropriate conditions, including financial conditions; (ii) restitution under the condition that the object remains accessible to the public in some way or for a certain period or

periods of time; (iii) no restitution, but the current owner must offer the applicant appropriate financial compensation, (iv) no restitution, but the current owner must display a statement regarding the provenance of the object and name of the original owner alongside the object.

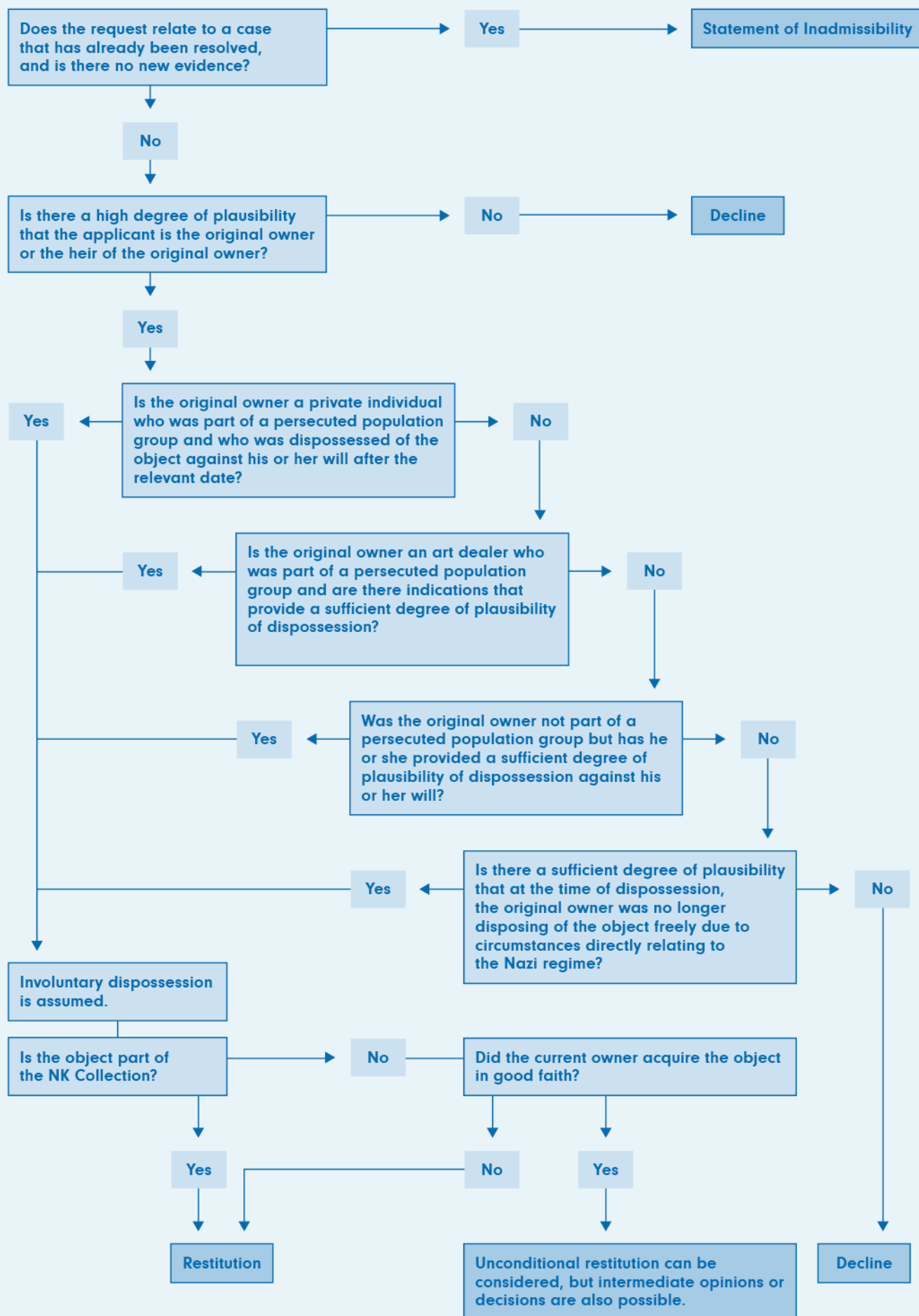
13. In cases where the specific details of a case provide compelling reasons to do so, the Restitutions Committee may, by way of exception, deviate from one or more elements of this assessment framework, so as to ensure that the recommendation or decision is just and fair as referred to in principle 8 of the Washington Principles.

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The evaluation committee does not recommend changes to the concepts of 'settled case' and 'new evidence', as recommended by the Ekkart Committee and adopted by the government. This assessment framework maintains the interpretations of the 2001-2004 Ekkart Committee recommendations given by the Restitutions Committee, provided that those interpretations do not conflict with this assessment framework.

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This concerns what the owner knew or should have known at the time of the acquisition, which, in principle, is to be assessed according to the standards that applied at that time. However, the evaluation committee is of the opinion that the central government or local government should refrain from relying on arguments of 'acquisition in good faith' in cases where acquisition would not be acceptable if contemporary standards were applied.



## 6. The implementation of restitution policy: the provision of information and the handling of requests

One of the main conclusions regarding the restitution policy pursued in the immediate post-war period is that, in the minister's words, it was too 'formalistic, bureaucratic and cold'. The establishment of the Restitutions Committee was a way for the government to interpret restitution policy afresh. In accordance with the Washington Principles, the new policy serves to redress injustices.

The evaluation committee wished to find out more about the implementation of the policy and to what extent the people who submit restitution requests feel satisfied with it. To this end, the committee discussed this subject with stakeholders, including applicants, the lawyers who were supporting them and national and international organisations that represent applicants' interests. It also asked applicants who had submitted a request in recent years to complete a questionnaire.

In the questionnaire, the evaluation committee asked applicants about their experiences of the implementation and handling of restitution policy by the organisations involved (the Restitutions Committee, the Restitutions Expertise Centre and the Ministry of Education, Culture and Science, which also includes the Cultural Heritage Agency of the Netherlands).<sup>[43]</sup>

The questions related to the accessibility of information, interaction with the organisations involved, the duration of the procedures and the way in which the procedure was resolved.

The interviews and the questionnaire revealed that there are strongly diverging views on the implementation of restitution policy. Some applicants expressed great satisfaction with every aspect of their experiences with restitution policy, but there are also respondents who were very dissatisfied. It is therefore not possible to draw any clear conclusions from the interviews and the questionnaire.

The evaluation committee takes the view that the way in which applicants experience the process is nevertheless very significant, given that the aim of the policy is to ensure that justice is done. The committee regrets that, in addition to positive opinions expressed, there were also a number of serious complaints about the way in which the applicants had been treated. The current policy is perceived by several respondents as bureaucratic and too legalistic. The latter finding is all the more remarkable, because at the time the government opted specifically for a form of legal redress based on morality rather than one based on law.

The evaluation committee takes the view that the implementation of restitution policy could be improved in a number of areas. The overarching principle is that applicants and the painful family histories on which requests for restitution are based should be handled with understanding. This has implications for the manner in which applicants are treated and the communication with applicants, which could be more empathetic. No matter how careful the RC's considerations may be, inappropriate communication or treatment will undermine confidence in the way that the RC implements restitution policy. The way in which procedures are organised could also be improved.

The evaluation committee makes the following recommendations with regard to the implementation of policy:

- Improve the RC's communication with applicants during the procedure, so that they are kept better informed about the progress of the investigation. Improve the capacity of the RC's secretariat so that it is better able to handle communications.
- Improve the RC's external communication. The wording of opinions could be formulated in more accessible language. The tone and clarity of the wording should be reviewed. The evaluation committee would support the inclusion of a summary written in language that is easy for non-legal specialists to understand.
- If possible, prioritise applicants who are the original owners of objects, or their children, since they are likely to be of advanced age. Restitution as a form of legal redress will have the highest moral priority for this group.
- Improve the procedures concerning provenance research. There should be better coordination between the Restitutions Committee and the Expertise Centre, so that research can be conducted in a more targeted manner and completed more swiftly, without compromising on the separation of duties and responsibilities or on the independence and integrity of the research. Through periodic consultation with the Restitutions Expertise Centre, the RC can indicate which areas research should focus on.<sup>[44]</sup>
- Arrange for a draft of the opinion to be presented to the parties involved, and allow them to submit a response to this. This would create an extra opportunity for applicants to provide input within the procedure, and the RC could respond to this input when issuing its final opinion. The evaluation committee believes that such an extra opportunity to air both sides of the argument would be a more suitable approach than allowing applicants to appeal against an opinion issued by the RC. Many of those involved whom the committee has spoken with argued in favour of an opportunity for appeal. However, the evaluation committee is of the opinion that an appeal procedure would require an independent committee and that appeals would take too long.<sup>[45]</sup>

- Take steps to encourage museums to communicate as transparently as possible regarding restitution cases by providing information in the museums and on their websites about the provenance of objects that were lost during the Nazi era and are now part of the National Art Collection or their own collection.

## 7. The provision of information concerning restitution policy

Since 2018, case-related provenance research has been carried out by the Restitutions Expertise Centre, part of the NIOD (Netherlands Institute for War, Holocaust and Genocide Studies), which in turn is part of the KNAW (the Royal Netherlands Academy of Arts and Sciences). According to the Decree Establishing the Restitutions Committee of 20 September 2018, the Expertise Centre also has a role to play in the provision of information, ‘which is to be designed clearly as a separate information point and which will specifically accommodate the activities of the current Origins Unknown Agency and the information activities of the Museum Association’.<sup>[46]</sup>

The evaluation committee notes that the NIOD is currently responsible for some of the information provided as it responds to a steady stream of inquiries from interested parties, including applicants and museums. The NIOD also helps the Centre to carry out research. It does not approach stakeholders proactively, and a number of activities previously undertaken by the Museums Association are not part of its remit. In interviews with the evaluation committee, the NIOD stated that playing an active role in approaching stakeholders and carrying out tasks on behalf of the museum sector would conflict with its task of conducting independent and neutral research into the facts relevant to individual restitution cases on behalf of the RC.

The evaluation committee recognises that the NIOD has two roles that are difficult to reconcile: on the one hand, it is responsible for establishing and maintaining communication with individuals who may submit restitution requests, and on the other hand it is responsible for conducting independent research into the provenance and ownership of objects. Due to this combination of roles, there is a risk that the independence and thus the credibility of the NIOD as a research institute may be undermined.

The evaluation committee has ascertained that the provision of information is currently inadequate in various respects:

- There are websites for the various databases and policy-making and executive bodies (the Ministry of Education, Culture and Science, the Restitutions Expertise Centre, the RC, the Cultural Heritage Agency of the Netherlands, Museale Verwervingen [Museum Acquisitions], Origins Unknown), but there is no single location that brings together all the information about restitution policy in its entirety.
- The Origins Unknown website ([herkomstgezocht.nl](http://herkomstgezocht.nl)) is outdated and incomplete (see chapter ‘Research into provenance and the identification of heirs’).



- At the moment, little or no contact is made with potential original owners or their heirs.
- Little or no information is actively provided at home or abroad to raise awareness of Dutch restitution policy.
- Support for individuals who are considering submitting a restitution request is currently inadequate.

In order to resolve these issues, the evaluation committee recommends that a helpdesk be set up along the lines of the Origins Unknown Agency, in order to provide information about restitution policy both actively and passively. Its field of activity should extend to other countries, with the support of Dutch embassies.

On the one hand, this helpdesk would provide (partly by means of a website in multiple languages) all information regarding restitution policy and would also be able to answer questions from interested parties; on the other hand, the helpdesk should actively provide information about Dutch restitution policy at home and abroad and actively contact original owners or their heirs. The helpdesk could also field restitution requests from applicants. A new, updated database providing access to both the NK Collection and museum acquisitions could also be provided by this helpdesk. The organisations involved in the implementation of restitution policy should take responsibility for ensuring that this database is well-designed and kept updated.

In the opinion of the evaluation committee, the helpdesk could best be accommodated within the Cultural Heritage Agency of the Netherlands (RCE). Because the RCE is part of the Ministry of Education, Culture and Science, the minister would then have direct responsibility for the active and effective provision of information regarding restitution policy. Other countries which have restitution committees provide good examples of such helpdesks. The *Deutsches Zentrum Kulturgutverluste* has had its own helpdesk since 2020, for example, offering advice and assistance regarding the restitution of artworks looted by the Nazi regime.<sup>[47]</sup>

The creation of an information point would mean that implementation of restitution policy would be carried out by a trio of bodies, each with its own clear role:

#### The Restitutions Expertise Centre

The scientific research centre housed within the NIOD, conducting research into provenance and next of kin at the request of the Restitutions Committee or of applicants and current owners who jointly wish to know more about the provenance of an object, and also at its own initiative (new structural provenance research into objects in the NK Collection).

### The Restitutions Committee

An independent committee that (a) advises the minister on requests for restitution of objects in the National Art Collection (including the NK Collection), and (b) issues binding opinions to applicants and current owners regarding restitution requests for objects that are not part of the National Art Collection.

### A restitutions helpdesk

A facility housed at the Cultural Heritage Agency of the Netherlands, providing information about restitution policy both actively and passively. This helpdesk would improve the accessibility and awareness of restitution policy in the Netherlands and abroad.

## 8. Conclusions and recommendations

The restitution of cultural objects looted during the Nazi occupation is fraught with challenges. The aim of Dutch restitution policy is to provide some form of redress for the injustices that were committed, particularly to persecuted population groups (primarily Jewish people, but also Roma and Sinti people). Looting, and more broadly involuntary dispossession, is only a part of that injustice, which took place within a wider context of Nazi discrimination, exclusion, persecution, dehumanisation and, ultimately, genocide. The original owners were victims of much more than just looting.

The organisation and implementation of restitution policy should therefore be sensitive to the plight of the original owners and their heirs who have submitted requests for restitution. From the interviews that the evaluation committee has conducted with applicants, it appears that redress for injustice is a fundamental part of their motivation for submitting requests for restitution. If such a request is rejected, this is an emotional blow to the next of kin, reawakening memories of wartime suffering. Restitution policy should therefore be organised and implemented in the most sensitive manner possible.

The evaluation committee concludes that the principles of Dutch restitution policy, as formulated by the Ekkart Committee between 2001 and 2004, continue to provide an adequate foundation. However, the committee also argues for the review and intensification of current Dutch restitution policy, so that the Washington Principles can be fully implemented and legal redress can take place as efficiently and effectively as possible. Based on an analysis of the policy, publications and discussions with stakeholders and academics, the committee makes the following recommendations:

1. **Resume systematic research into the provenance of artworks in the NK Collection and into the original owners and their heirs. Update the databases and trace rightful owners wherever possible.**

The research carried out by the Origins Unknown Agency, which was completed in 2004 and halted in 2007, should be updated and supplemented using current research methods and with the help of new research, publications and newly accessible archives. Museums should also be enabled to complete and update the provenance research for Museum Acquisitions. Tracing original owners and their heirs is essential whenever new information on suspicious provenance emerges. The longer the government postpones this, the fewer of those directly involved will be alive to benefit from this.

2. Add a clear and unambiguous assessment framework to the Decree Establishing the Restitutions Committee which, in cases involving likely original owners and involuntary dispossession, is oriented clearly towards restitution.

The opinions and decisions of the Restitutions Committee should be based on an unambiguous assessment framework that provides maximum transparency regarding the judgements issued by the committee.

This assessment framework should not include a balancing of interests.

This assessment framework should follow the recommendations of the 2001-2004 Ekkart Committee (the expanded restitution policy) and be laid down by the government. Objects in the NK Collection must be returned unconditionally to the original owners or their heirs in cases where involuntary dispossession is plausible. For objects that are not part of the NK Collection, the RC may, in cases where original ownership and involuntary dispossession are plausible but the current owner acquired the object in good faith, also propose a mediatory solution, provided that the injustice caused by the dispossession is meaningfully redressed.

However, the evaluation committee is of the opinion that in cases where the Dutch government or a local government is the current owner, the committee should refrain from relying on arguments of ‘acquisition in good faith’.

3. Improve the treatment of applicants and communication regarding restitution procedures, and make the procedures less formalistic.

Despite the care taken by the RC, inappropriate communication or treatment can undermine confidence in the way that the RC implements restitution policy. The evaluation committee therefore calls for a more empathetic attitude when implementing restitution policy. Transparency in procedures may also improve trust. Transparency should be ensured in relation to the procedures that are followed and the way in which the committee arrives at its opinions. The opportunity to respond to a draft decision or opinion may help improve transparency, enabling the applicant and the current owner to present their perspectives. Museums should also be encouraged to communicate as clearly as possible about restitution cases and any looted artworks that they may be displaying or have custody of, under all circumstances.

4. Establish a helpdesk at the Cultural Heritage Agency of the Netherlands to ensure that information is provided regarding restitution policy at home and abroad, both passively and actively.

The helpdesk can provide a place for potential applicants, researchers, journalists and other interested parties to ask any questions they have about restitution policy. The helpdesk can also actively provide information regarding restitution policy in the Netherlands and abroad, and seek to establish contact with original owners or their heirs. The helpdesk should also have a website in various languages to bring together all the available information regarding restitution policy and the organisations involved.

The website should refer visitors to an updated database for the NK Collection and museum acquisitions.

## 9. Coda

The restitution policy is not currently bound by a time limit. In 2004, the Ekkart Committee recommended that the restitution policy come to an end on 4 April 2007. However, there was significant criticism at both the national and international levels regarding the imposition of a closing date, and the idea was dropped. That date also proved premature because a large number of requests were submitted after it had passed.<sup>[48]</sup> In 2012, the then Secretary of State wrote that ‘ending the opportunity to submit requests can only be considered if there is international consensus on this’.<sup>[49]</sup> In 2016, Minister Jet Bussemaker stated that ‘the end point of this policy is not yet in sight’.<sup>[50]</sup> The evaluation committee agrees with this view that no end date should be set for Dutch restitution policy at this time. The evaluation committee hopes and expects that if its advice is followed and research into provenance and original owners (and their heirs) is intensified as a result, after several years the number of requests for restitution will decrease considerably after a possible initial increase.

Inevitably, sooner or later, the question will arise of what should be done with pieces in the NK Collection that have not been returned to their original owners – the so-called ‘heirless artworks’. There will, for example, be objects for which no restitution request will ever be submitted (because it is difficult to determine ownership of objects that are not unique items, such as prints, furniture or crockery). The evaluation committee believes that it is important for the government to start considering today what will be done with these pieces in the NK Collection. Naturally, the possibility of a restitution request one day being submitted must also be considered.

The evaluation committee recommends that at some point in the future, the NK Collection (or parts thereof) are transferred to a Dutch heritage organisation that focuses specifically on Jewish culture and history, on the basis of conditions and an administrative structure that have yet to be determined. As has also been suggested by Jewish community organisations, this option would ensure that these objects could still be viewed in the future. Displaying the dispossessed personal belongings of those murdered or persecuted under the Nazi regime would serve as a reminder to future generations of the dire consequences of the Second World War and the genocide.

## End notes

1

In addition to Jews, other population groups were also persecuted, including Roma and Sinti (Dutch government, letter from the State Secretary for Education, Culture and Science to the Dutch House of Representatives, 2001, 16 November, p. 1). Some requests have also been submitted by persons who were not part of a persecuted population group.

2

Despite the fact that not *all* the recovered objects (and therefore not all the objects in the current NK Collection) were looted, the evaluation committee will henceforth use the term NK Collection specifically to refer to objects that were involuntarily dispossessed due to the actions of the Nazi regime, and which therefore qualify for a request for restitution.

3

Eelke Muller and Helen Schretlen, *Betwist bezit* [Contested Ownership], 2002, p. 78.

4

Idem, p. 129.

5

Idem, pp. 243, 244, 255, 304 n113.

6

Strictly speaking, this entails museum objects belonging to the state, which are defined as follows in Section 1.1 of the Heritage Act: 'Cultural property of special interest that is owned by the State or the care of which has been entrusted to the State'. In this context, however, this entails cultural objects that are formally owned by the State, regardless of their importance. Henceforth, the evaluation committee will use the term 'National Art Collection' to refer to objects that are formally owned by the state.

7

NK Collection list, received from RCE.

8

Dutch government, letter from the Minister of Education, Culture and Science to the Dutch House of Representatives, 14 June 2000, p. 4.

9

Items that are not part of the National Art Collection are subject to a binding opinion as defined by Section 7:900 paragraph 2 of the Dutch Civil Code. In those cases, the RC does not issue a binding opinion but takes a decision, as the text of the law makes clear. This difference is taken into account in the terminology used here.

10

Three of these objects are part of the NK Collection.

11

Dutch government, letter from the Minister of Education, Culture and Science to the Dutch House of Representatives, 22 June 2012, p. 5.

12

Bureau Berenschot, *Een toekomstgericht restitutiebeleid. Over een duurzame, transparante en onomstreden organisatie rondom restituties* [A forward-looking restitution policy. On a sustainable, transparent and non-controversial way of organising restitutions], 2016.  
Also see: Dutch government, letter from the Minister of Education, Culture and Science to the Dutch House of Representatives, 4 October 2016.

13

Wesley A. Fisher and Ruth Weinberger, *Holocaust-Era Looted Art: A Current World-Wide Overview*, 2014.

14

This criticism of Dutch restitution policy was demonstrated by, for example, Stuart Eizenstat's speech 'Where Are We Today?' at a conference held in Berlin on 26-28 November 2018 entitled '20 Years of the Washington Principles: A Roadmap for the Future'.  
Also see: Wesley Fisher and Anne Webber, 'Schande dat deze roofkunst in het museum mag blijven hangen' [It is a scandal that these looted artworks are still on display in museums], *NRC Handelsblad*, 7 December 2018.

15

The evaluation committee consulted the Restitutions Expertise Centre and Rudi Ekkart on this point.

16

This finding emerged from interviews with Charlotte van Rappard-Boon and Rudi Ekkart.

17

[www.musealeverwingen.nl](http://www.musealeverwingen.nl)

18

The Restitutions Expertise Centre sent a separate memorandum to the evaluation committee on this subject.

19

See appendix for a broad estimate.

20

Dutch government, Minister of Education, Culture and Science, 'Decree Establishing the Restitutions Committee', 20 September 2018.

21

See, for example, Wesley Fisher and Anne Webber, 'Schande dat deze roofkunst in het museum mag blijven hangen' [It is a scandal that these looted artworks are still on display in museums], *NRC Handelsblad*, 7 December 2018.

22

A recent comprehensive comparison has been provided in e.g. Charlotte Woodhead, *Implementing Recommendation 3 of the 2017 London Conference Action Plan*, 2019. Other relevant literature has been included in the bibliography.

23

Some notable differences between Dutch policy and policy in the other countries mentioned include the moral-policy (rather than legal) design of Dutch restitution policy, the special status of the NK Collection and the separate treatment of art dealers, which only features in Dutch policy.



24

Dutch government, Minister of Education, Culture and Science, 'Decree Establishing the Restitutions Committee', 20 September 2018.

25

Restitutions Committee, Annual Report, 2019, p. 77.

26

The Council for Culture also linked the standards of reasonableness and fairness to the Washington Principles in its 2012 recommendations: Council for Culture, *Advies restitutiebeleid* [Advice on Restitution Policy], 2012, p. 2.

27

General text in paragraph 5.2 of binding opinion cases, under '5. The Committee's Task', for example in opinion RC 3.180.

28

Restitutions Committee, Regulations regarding the opinions procedure, Article 3. See appendix.

29

Restitutions Committee, Annual Report, 2008, p. 5.

30

The Netherlands Art Property Foundation previously had custody of these recovered objects, and one of its core tasks was to 'trace and return "all artworks, book collections and archives that have left our country since 10 May 1940", regardless of whether this occurred by means of sale, theft or confiscation'. Eelke Muller and Helen Schretlen, *Betwist bezit* [Contested Ownership], 2002, p. 14.

31

Restitutions Committee, Annual Report, 2018, p. 6.

32

This is also evident from the only opinion that the RC has issued on an object from the NK Collection submitted to the minister after 30 June 2015 (the Lierens case, RC 1.169, 21).

33

See e.g. Eelke Muller and Helen Schretlen, *Betwist bezit* [Contested Ownership], 2002 and Gerard Aalders, *Berooid* [Penniless], 2001.

34

'Good faith on the part of a person, a requirement for any legal acquisition, is absent not only if he or she knew the deeds or rights to which that good faith should relate, but also if he or she ought to have known them under the circumstances. The impossibility of conducting research does not preclude that a person who had good grounds for scepticism can be regarded as someone who ought to have known the facts or the law.' (Dutch Civil Code 3:11)

35

Dutch government, Heritage Act, 2016.

36

One committee that may possibly be asked to work on this is the Protection Worthiness Assessment Committee, which was established by the Netherlands Museum Register on the basis of chapter 4 of the Guidelines for Disposing of Museum Objects (*Leidraad Afstoten Museale Objecten*, LAMO, version dated 2016).

37

The Netherlands is the only country that explicitly mentions the interest of the owner or the public art collection as an element in the balancing of interests by its Restitutions Committee. In the UK there have been some cases in which this factor was considered, but in the end it played no role in the ruling. In Germany, the *Beratende Kommission* did issue a recommendation this year which referred to the importance of an object to a museum. The French and Austrian restitution committees have not taken these interests into account in any way in their policies or statements. See: Charlotte Woodhead, *Implementing Recommendation 3 of the 2017 London Conference Action Plan*, 2019, pp.26-27; [www.beratende-kommission.de](http://www.beratende-kommission.de), recommendation of 1 July 2020.

38

Restitutions Committee, Memorandum from the Restitutions Committee for the Evaluation Committee on Restitution Policy, 19 August 2020.

39

For the advice of Professor de Bock, see appendix.

40

See the advice of Professor de Bock, specifically point 14.

41

See the advice of Professor de Bock, points 5 and 6.

42

One exception was a binding opinion issued in 2008, in which the Zeeuws Museum was required to return the painting 'A Prayer Before Supper' by Jan Toorop to the heirs of the original owner, even though in the opinion of the RC the work had been acquired by the museum in good faith in 1981. The RC stipulated that the heirs were to reimburse the museum for the indexed purchase price paid and that, in the event of any proposed sale of the work, they would offer the painting to the museum first (Opinion of the Restitutions Committee RC 3.45). In addition, in two opinions on paintings that were the property of Richard Semmel, the RC decided that the current owners were not required to return the paintings, but that the respective museums (Centraal Museum and De Fundatie) were to 'draw attention to the history of the works' and to former owner Richard Semmel and the fate of his collection by means of a notice placed alongside the painting, in publications, at exhibitions and so forth' (Opinions of the Restitutions Committee RC 3.128 and RC 3.131). Other cases in which the RC has imposed additional conditions include the opinions issued by the Restitutions Committee RC 3.48, RC 3.93 and RC 3.95.

43

The survey was sent to 37 individuals involved in 20 cases handled since 2014 in relation to which an opinion had been issued. Those involved in ongoing cases were not surveyed. One of the twenty cases has been investigated by the Restitutions Expertise Centre. The committee received thirteen responses, most likely relating to thirteen different cases. For the questionnaire and the results, see appendix.

44

The minister could indemnify the Restitutions Expertise Centre against the costs of legal defence in the event that a third party were to seek to hold the Centre liable for procedural inaccuracies. The evaluation committee believes, after seeking legal advice, that the chance of the Restitutions Expertise Centre being sued successfully is limited, provided there is no question of deliberate actions or gross negligence on the part of the Centre.

45

The evaluation committee notes that complaints about the implementation of restitution policy are handled by the National Ombudsman. See <https://www.nationaleombudsman.nl/nieuws/2010/ombudsman-pleit-voor-ruimere-rol-restitutiecommissie-bij-strijd-om-koenigscollectie>.

46

Dutch government, Minister of Education, Culture and Science, 'Decree Establishing the Restitutions Committee', 20 September 2018, p. 5.

47

<https://www.kulturgutverluste.de/Webs/DE/HelpDesk/Index.html>

48

Dutch government, letter from the State Secretary for Education, Culture and Science to the Dutch House of Representatives, 22 June 2012, p. 4.

49

Dutch government, letter from the State Secretary for Education, Culture and Science to the Dutch House of Representatives, 22 June 2012, p. 5.

50

Dutch government, letter from the Minister of Education, Culture and Science to the Dutch House of Representatives, 4 October 2016, p. 3.

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# Appendices

## List of persons interviewed

People and institutions which, in the context of the advisory report, have been heard at the request of the committee or at their own request.

A number of respondents submitted additional notes to the committee in which they provided more details regarding their positions.

### Restitution Committee

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Saskia Cohen-Willner  
Jaap Koster  
Jan van Kreveld  
Dick Oostinga  
Els Swaab  
Deputy chairperson  
Claartje Wesselink  
Jaap Cohen  
Advisor  
Eric Idema  
Secretary

Irene Asscher-Vonk  
Chairperson of the Board  
of the Museum Association

Hester Bergen  
Applicant

Gert-Jan van den Bergh  
Partner (lawyer) Bergh  
Stoop & Sanders

Bente Bergmans  
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Evelien Campfens  
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Rudi Ekkart  
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Charles Esche  
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Sjarel Ex  
Director, Museum Boijmans  
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Wesley Fisher  
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Ralph Keuning  
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Cultural Heritage Agency,  
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## Composition of the committee

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Director of the Museum  
Association

Ronny Naftaniel  
Vice-chairperson,  
Central Jewish Consultation

Peter Nicolai  
Lawyer

Tabitha Oost  
Lecturer and researcher,  
University of Amsterdam

James Palmer  
Director, Mondex  
Corporation

Charlotte van Rappard-Boon  
Director, CollectieConsult,  
former head of the Cultural  
Heritage Inspectorate

Avraham Roet  
Holocaust survivor

Corwin van Strien  
Policy Officer, International  
Cultural Cooperation,  
Ministry of Foreign Affairs

Lion Tokkie  
Applicant

Arjen Uijterlinde  
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Cultural Cooperation,  
Ministry of Foreign Affairs

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Art in Europe

Matthias Weller  
Professor of Civil Law,  
Art and Cultural Property  
Law, University of Bonn

Rein Wolfs  
Director, Stedelijk Museum  
Amsterdam

Charlotte Woodhead  
Researcher, University  
of Warwick

*The evaluation committee also  
received documentation from  
the following persons who were  
not heard:*

Dick Schonis  
Lawyer

Olaf Ossmann  
Lawyer

### Members of the Committee for the Evaluation of the Restitution Policy for Cultural Heritage Objects from the Second World War

Jacob Kohnstamm  
Chairperson  
Former politician, director  
and coordinating chairperson  
of the Regional Review  
Committees for Euthanasia

Lennart Booij  
Member of the Council  
for Culture, cultural  
entrepreneur

Hagar Heijmans  
Partner at McKinsey  
& Company

Nina Polak  
Writer and journalist

Rob Polak  
Lawyer and writer

Emile Schrijver  
Director of the Jewish Cultural  
Quarter, General Director of  
the Jewish Historical Museum  
and Professor by Special  
Appointment of the History  
of Jewish Cultural Heritage

Henny Troostwijk  
State Council,  
Council of State

Pieter Bots  
Secretary

Nádine Youhat  
Policy advisor

## Results of survey on satisfaction with Dutch restitution policy

### General information

The Committee asked claimants to complete a survey about their experiences of the Dutch Restitution Policy. This survey was sent to individuals involved in 20 cases that have been handled since 2014 and on which advice was issued.

The survey was sent out through three channels:

- the RCE, for cases that involved items from the national collection;
- the notary of the RCE, for cases that have been concluded. The notary has contact details for several parties (namely all entitled dependents) and not just the claimants themselves;
- the RC, for cases involving binding advice;

The respondents were able to choose between a survey in Dutch or English, because not all the claimants speak Dutch. The survey was drawn up using an online tool, which the respondents could log in to. The survey was distributed on 6 July 2020, and the deadline for completion was 31 July 2020. A reminder was sent to respondents on around 20 July 2020. The results of the survey have been treated confidentially.

### Overview of respondents

#### *Number of respondents*

RCE	8 cases	8 persons
Notary	4 cases	21 persons
RC	8 cases	3 persons
		5 lawyers/representatives

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<b>Total</b>	<b>20 cases</b>	<b>37 respondents</b>
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#### *Number of responses*

Dutch-language survey	7 responses
English-language survey	6 responses

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<b>Total</b>	<b>13 responses</b>
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In view of the answers given, it is unlikely that different respondents were involved in the same case. Based on this assumption, 13 different sets of responses were received (i.e. 65%), based on 20 cases.

**Overview of questions: combined answers in Dutch and English**

Many respondents explained their answers. The evaluation committee has chosen to include a representative selection of these answers, while also ensuring that information cannot be traced back to specific applicants.

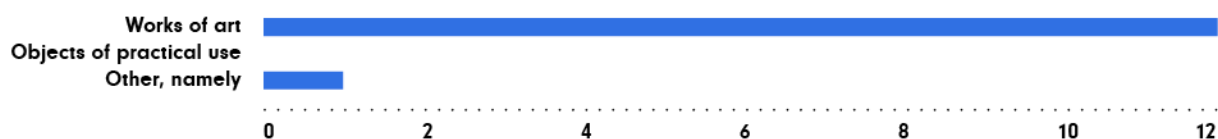
**Question 1: How did you become aware that you might be an heir of the owner of objects that have been looted during the Naziregime?**

- “My own research.”*
- “Reports in the media.”*
- “My family was aware of this.”*

**Question 2: Why did you decide to file a request?**

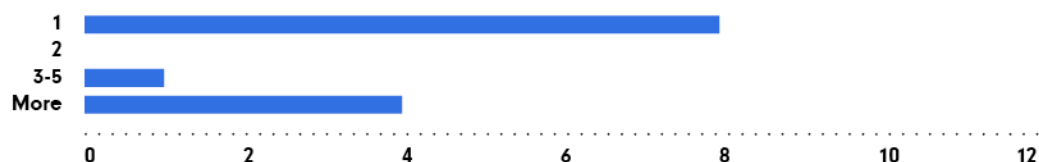
- “Sense of justice; the desire to reverse a tiny part of the injustice done to the Jews during WWII.”*
- “Out of a sense of responsibility for the former property of the applicant's parents.”*
- “It was self-evident: recovering property that had wrongly ended up in the hands of other people.”*
- “It belonged to my grandparents.”*

**Question 3: What kind of object(s) have you claimed?**

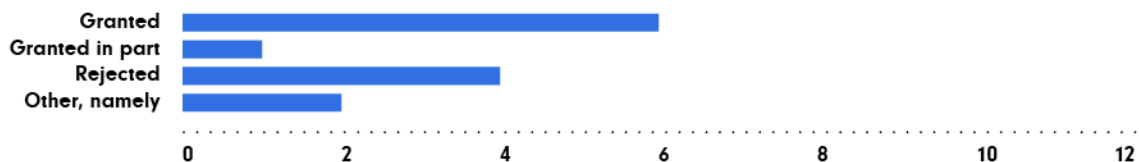


*“Ceramics, some brass, bronze, glass.”*

**Question 4: How many objects have you claimed?**



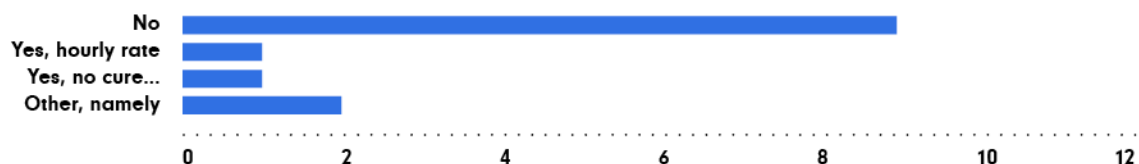
**Question 5: Has your claim been granted or rejected?**



*"Partly still under consideration."*

*"Only one item returned."*

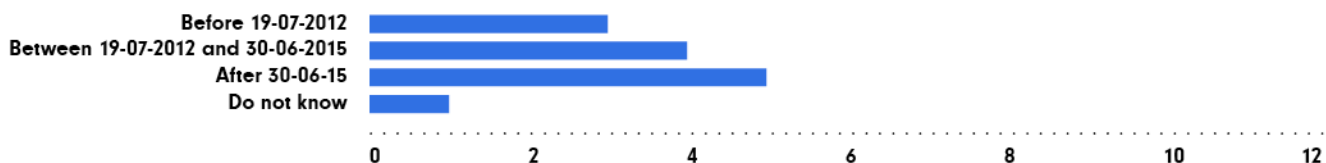
**Question 6: Did you use a lawyer?**



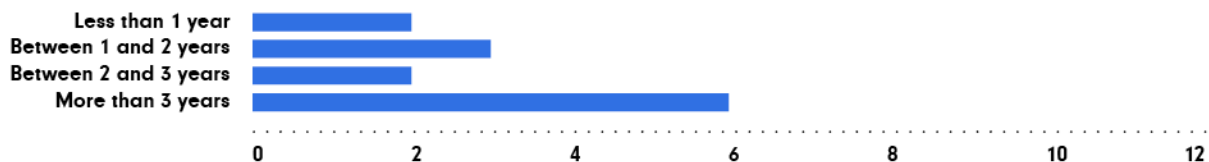
*"Not initially, but after years of inactivity I did appoint a firm of lawyers."*

*"Not initially, then at first a lawyer on the base of a reduced rate, en finally another lawyer more or less on the base of no cure, no pay."*

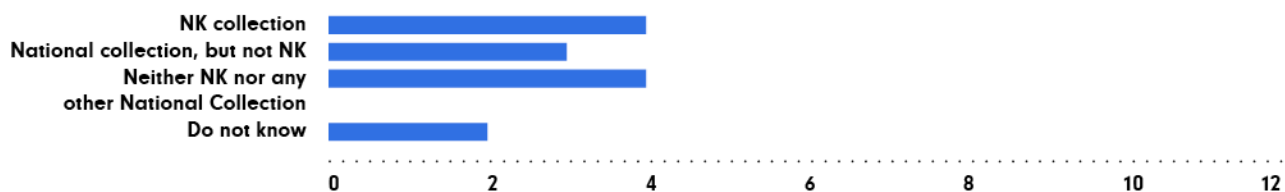
**Question 7: When did you file your request?**



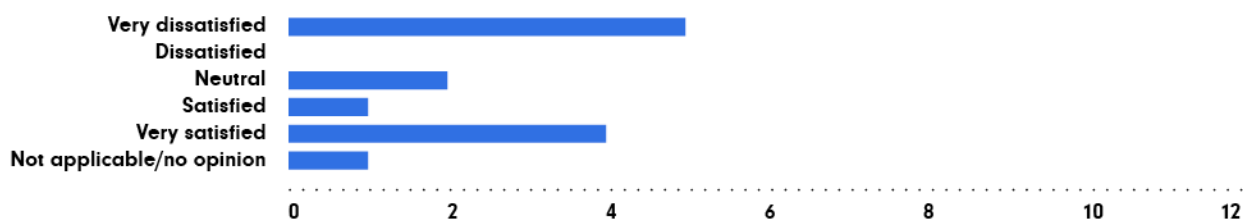
**Question 8: How much time did the procedure take from the intake of the Ministry of OCW until the moment the advice was given by the Restitution Committee?**



**Question 9: What collections did the object(s) belong to?**



**Question 10: Are you satisfied with the accessibility of the information about the restitution policy, the procedures and other things concerning your claim?**



*“We were not kept updated properly. The process was halted for one year due to organisational issues. Discussions about this with an interim secretary resulted in no clarity and no progress. When the case was handled, the procedure was unclear.”*

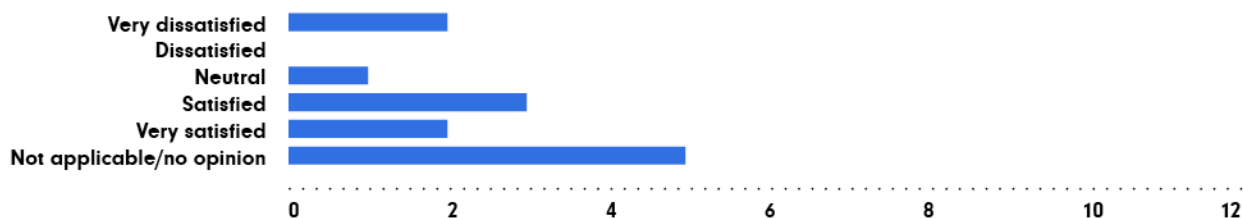
*“Everything involved a great deal of unresponsive bureaucracy.”*

*“Clear information about the policy and clarity regarding the procedure to be followed.”*

*“The committee carried out good research.”*

*“The committee focused only on retaining the objects and took an inordinate length of (costly) time to achieve this. Many employees of the Dutch government are paid a lot of money to ensure that as many works of art as possible remain Dutch property.”*

**Question 11: Are you satisfied with the intake?**

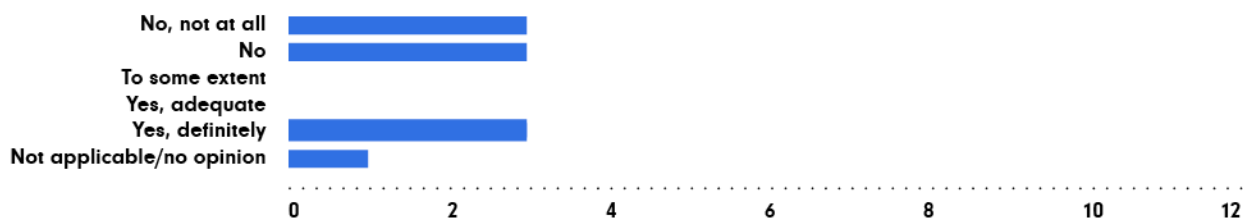


*“The obstinacy was unimaginable.”*

*“We are dissatisfied because we were not given a complete picture of the criteria used by the Restitution Committee.”*

*“The intake was done with care.”*

**Question 12: Did you get correct information beforehand about the procedure, for instance about the length of time, the research, the chances et cetera?**

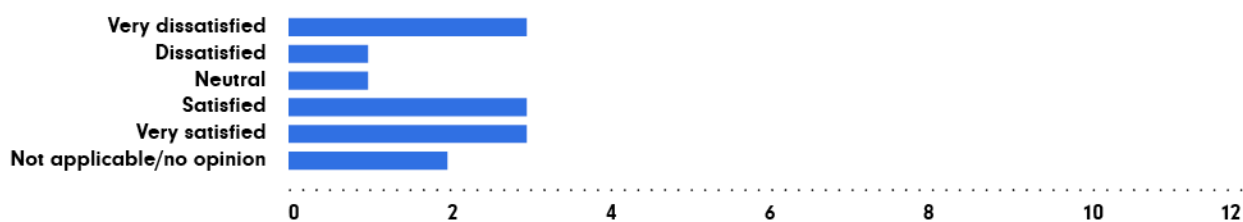


*“The picture we had was only accurate to a limited extent, due to uncertainty regarding the steps to be taken and the chance of success.”*

*“It is opaque. There is no researcher or supervisor on your side, while the state covers itself in every way.”*

*“We were not informed by the Restitution Committee about many aspects of the procedure.”*

**Question 13: Are you satisfied with your contact with the Restitution Committee?**

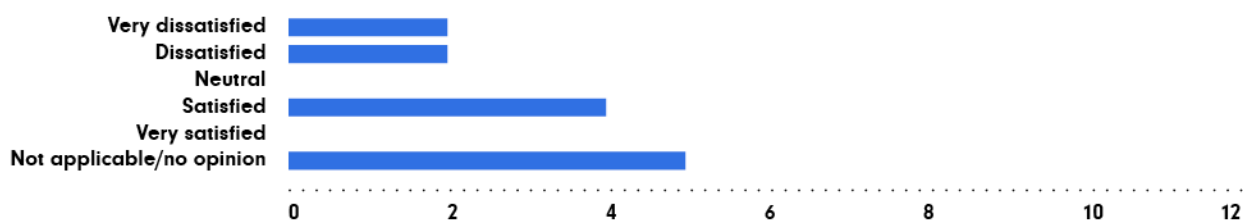


*“Very careful and thorough preparation of the summary of facts, with extensive review of draft versions among the applicants.”*

*“Questions are not answered substantively; the secretary acts as a kind of gatekeeper, which seems very bureaucratic.”*

*“Arrogant, obstructive, bureaucratic and absolutely unwilling to cooperate.”*

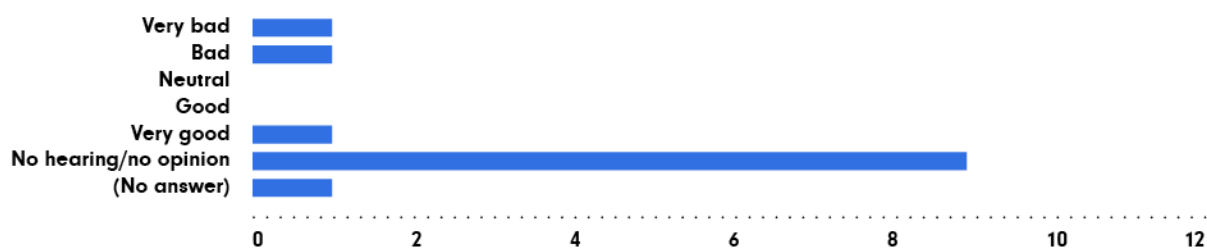
**Question 14: Are you satisfied with the contact with the Ministry of Culture?**



*“Very bureaucratic and non-committal.”*

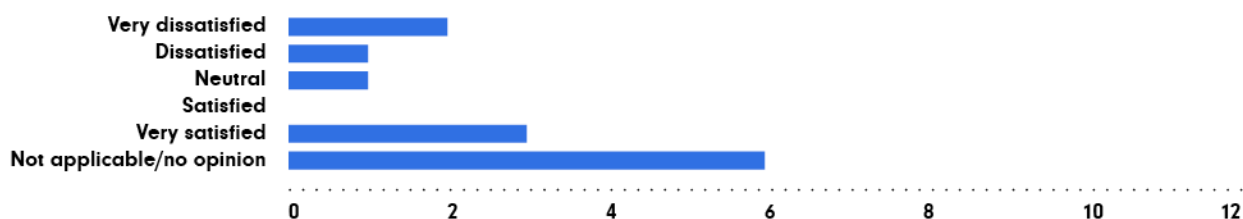
*“Questions are answered very late and not in a substantive way. Or we are sent from pillar to post.”*

**Question 15: If there was a hearing by the Restitution Committee, how did you experience this contact?**



*“There was no room for the human side. We quickly got the feeling that the committee had already formed its opinion.”*

**Question 16: Are you satisfied with the contact with the representatives/administrators of the object(s) (for instance a museum)?**

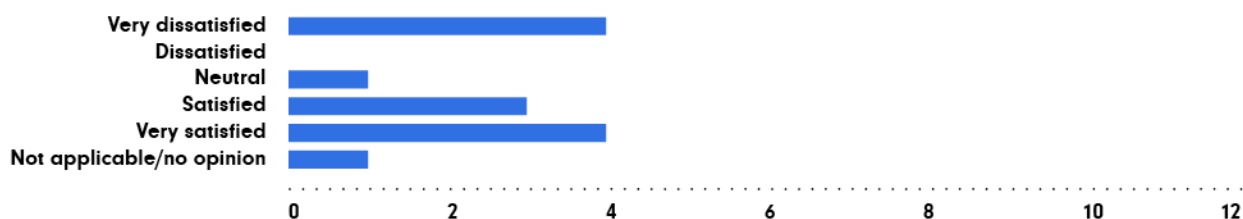


*“Only considered their own interests and not the interests of the applicant.”*

*“The [relevant museum], where the art object was located, was cooperative in every way.”*

*“The representatives and administrators of the museum concerned acted with particular care and empathy.”*

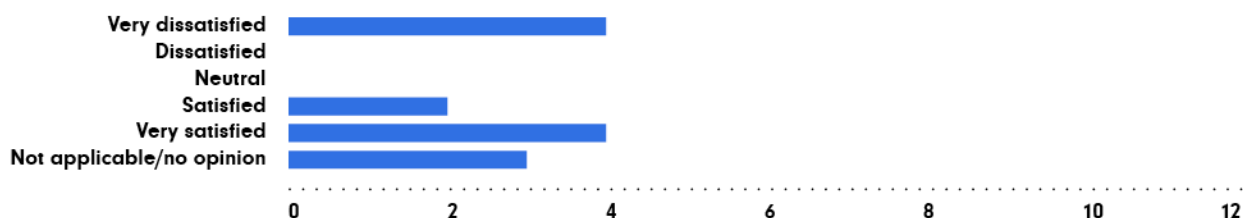
**Question 17: Are you satisfied with the explanation that the Restitution Committee has given in its advice?**



*“A very carefully argued consideration of the interests of the parties involved.”*

*“The argumentation was inadequate and illogical. Illogical because they emphasised the assumptions that were less logical in the argumentation more than the assumptions that were more logical, and as a result it was an open-ended judgment.”*

**Question 18: Are you satisfied with the settlement of the procedure, for instance the decision of the Minister, the procedure with the notary and possible restitution?**



*“The legal proceedings took a long time.”*

*“Following the Minister’s decision, it required a great deal of encouragement on my part to persuade the Cultural Heritage Agency of the Netherlands to actually transfer ownership of a number of works of art.”*

*“I think they did their best.”*

*“Completely biased and focused on retaining objects.”*

**Question 19: Do you have recommendations regarding how the organisations (Ministry of Culture, the Restitution Committee, the Expertise Center) facilitate claimants?**

*“Let go of bureaucracy and formalistic nonsense and create a climate in which claimants are not sitting in the dock defending themselves. In addition, claimants should be able to complain to the minister about procedural matters if the committee is not properly complying with the rules. There should also be more clarity about the management of the Expertise Center with regard to deadlines and other procedural regulations.”*

*“The members should not have links with the museums. [...] Greater understanding of the fact that not everyone will have kept paperwork dating from 1940. Certainly not in a case where the owner of the paintings was himself murdered by the Germans. Those paintings certainly do not belong to the Dutch state!”*

*“There would be much to be said for claimants not ending up in a kind of maze after a claim has been granted.”*

**Question 20: Do you want to give advice to the committee that evaluates the restitution policy?**

No relevant comments.



**Request for advice on policy regarding the restitution  
of artworks looted during the Second World War,  
17 December 2019**

Datum 17 december 2019  
Betreft Adviesaanvraag voor beleidsevaluatie restitutie roofkunst Tweede Wereldoorlog

Geachte Raad,

Dit jaar en volgend jaar herdenken we dat de Tweede Wereldoorlog 75 jaar geleden is beëindigd. Tijdens de Tweede Wereldoorlog zijn op grote schaal kunstobjecten en cultuurgooederen van veelal Joodse eigenaren geroofd. Het huidige restitutiebeleid is in 2001 opgesteld om het materiële onrecht dat de vervolgingslachtoffers is aangedaan te herstellen.

Het beleid kent zijn oorsprong in de jaren negentig van de vorige eeuw toen naoorlogs rechtsherstel, nationaal en internationaal, weer volop in de belangstelling kwam te staan. De toenmalige regering stelde daarop een commissie in, de Commissie Herkomst Gezocht, die vanaf 1997 tot 2004 onderzoek begeleidde naar de herkomst van de zogenaamde NK-collectie (na de Tweede Wereldoorlog uit Duitsland gerecupereerde objecten die de Staat in beheer nam tot deze gerestitueerd werden). De commissie kreeg tevens de opdracht om aanbevelingen aan de regering te doen over het te voeren restitutiebeleid. De commissie concludeerde dat het naoorlogse rechtsherstel formalistisch, bureaucratisch en kil was geweest. Dit leidde in 2001 tot een verruimd restitutiebeleid en de oprichting van de Adviescommissie Restitutieverzoeken Cultuurgooederen en Tweede Wereldoorlog (hierna: Restitutiecommissie) om advisering over restitutieverzoeken zo onafhankelijk mogelijk te laten plaatsvinden. Het restitutiebeleid was langs drie pijlers vormgegeven:

1. De inventarisatie van roofkunst;
2. De identificering van mogelijke erfgenamen van de NK-collectie;
3. Het teruggavemechanisme via advisering door de Restitutiecommissie inclusief zaakgebonden herkomstonderzoek.

Na een advies van uw Raad van 25 januari 2012 werd in dat jaar aangekondigd dat het verruimde restitutiebeleid in 2015 aangepast zou worden. Met deze aanpassing hanteert de Restitutiecommissie één afwegingskader voor alle objecten waarvoor een restitutieverzoek wordt ingediend. Ten slotte is in 2018 het Expertisecentrum Tweede Wereldoorlog en Restitutieverzoeken bij het NIOD opgericht.

Sinds de start van het verruimde restitutiebeleid heeft de Restitutiecommissie 156 adviezen uitgebracht. Van de 156 adviezen betreffen 93 adviezen een gehele of

gedeeltelijke toewijzing van het restitutieverzoek. In totaal is er tot en met 2018 geadviseerd om circa 460 objecten te restitueren aan (nabestaanden van) rechthebbenden.

Het verruimde restitutiebeleid werd internationaal als een belangrijke vooruitgang in de implementatie van de *Washington Principles* (1998) en de *Terezín Declaration* (2009) gezien.<sup>1</sup> Tegelijkertijd is in de afgelopen jaren een aantal keer maatschappelijke onrust ontstaan over de vraag of het restitutiebeleid nog voldoet in de huidige vorm. In 2016 heeft mijn ambtsvoorganger de Kamer toegezegd dat het beleid en de organisatiestructuur omtrent restitutie van roofkunst in 2020 geëvalueerd zal worden. Daarom verzoek ik u om een adviescommissie in te stellen met als opdracht:

- Het evalueren van het huidige beleid omtrent geroofde kunst uit de Tweede Wereldoorlog met oog voor de juridische en morele aspecten.
- Het adviseren over mogelijke verbeteringen van het beleid.

Voor de uitvoering van deze opdracht verwacht ik dat u gesprekken zult voeren met betrokken partijen.

Hoewel mijn ambtsvoorganger de Kamer heeft toegezegd dat zowel het beleid als de organisatiestructuur rondom de restitutie van roofkunst wordt geëvalueerd, vind ik het te vroeg om de organisatiestructuur in 2020 al te evalueren. De betrokken organisaties, te weten de Restitutiecommissie en het Expertisecentrum, hebben immers pas het afgelopen jaar de reorganisatie afgerond. Wel kan de commissie reflecteren op de beleidskeuzes die ten grondslag liggen aan de huidige organisatiestructuur.

Ik verzoek de commissie bij haar evaluatie van het beleid in ieder geval de volgende aspecten te betrekken:

- De relatie van het Nederlandse beleid tot de internationale leidraad, de *Washington Principles*.
- Een vergelijking van het Nederlandse beleid met het restitutiebeleid in het buitenland, in het bijzonder in landen met een vergelijkbaar restitutiebeleid.
- De toegankelijkheid en bekendheid van het restitutiebeleid, met oog voor het leed van de slachtoffers en de dialoog met hun erfgenamen.
- Het gebruik van en de behoefte aan andere vormen van individueel rechtsherstel.
- De drie pijlers van het beleid en de vraag of deze nadere inspanning behoeven.
- De relatie van het beleid ten opzichte van ontwikkelingen in het veld van erfgoed en restitutie. Denk bijvoorbeeld aan het adviesrapport van de commissie Pechtold dat onlangs verschenen is.

Graag ontvang ik van de Raad voor 1 oktober 2020 het advies over het restitutiebeleid, waarna ik met een reactie aan de Kamer zal komen.

Met vriendelijke groet,

de minister van Onderwijs, Cultuur en Wetenschap,

Ingrid van Engelshoven

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<sup>1</sup> Wesley A. Fisher en Ruth Weinberger, *Holocaust-Era Looted Art: A Current World-Wide*

## The Restitution Committee's regulations for binding opinion procedures

### ADVIESCOMMISSIE RESTITUTIEVERZOEKEN CULTUURGOEDEREN EN TWEDE WERELDOORLOG

Please note this is an unauthorised translation of the original Dutch text "*Reglement inzake adviesprocedure in het kader van artikel 2, tweede lid, en artikel 4, tweede lid, Besluit adviescommissie restitutieverzoeken cultuurgoederen en Tweede Wereldoorlog*". In case of divergence in the translated version, the original Dutch text prevails.

#### Regulations for opinion procedure under article 2, paragraph 2 and article 4, paragraph 2 of the Decree Establishing the Advisory Committee on the Assessment of Restitution Applications for Items of Cultural Value and the Second World War

##### Definition

###### Article 1

The terms used in these regulations are defined as follows:

- a. the Committee: the Advisory Committee on the Assessment of Restitution Applications for Items of Cultural Value and the Second World War pursuant to the Decree Establishing the Advisory Committee on the Assessment of Restitution Applications for Items of Cultural Value and the Second World War (hereinafter the Decree Establishing the Restitutions Committee);
- b. the Secretariat: the Secretariat as referred to in article 5 of the Decree Establishing the Restitutions Committee;
- c. the Minister: the Minister of Education, Culture and Science;
- d. the Ministry: the Ministry of Education, Culture and Science;
- e. the work: the item or items of cultural value, as referred to in article 2, paragraph 2 of the Decree Establishing the Restitutions Committee, that is or are the subject matter of the dispute;
- f. the applicant: the person applying for restitution of the work;
- g. the owner: the current owner, other than the State of the Netherlands;
- h. the parties: the applicant and the owner;
- i. the Expertise Centre: the Second World War and Restitution Applications Expertise Centre of the NIOD Institute for War, Holocaust and Genocide Studies.

##### Task

###### Article 2

1. At the request of the Minister, the Committee has the task of giving an opinion to the parties about disputes concerning the return of the work.
2. The Committee does this by issuing a binding opinion within the meaning of Article 7:900 of the Dutch Civil Code (contract of settlement) or by promoting a settlement between the parties.

###### Article 3

The Committee issues an opinion on the basis of reasonableness and fairness and may, in any event, take the following into consideration:

- a. internationally and nationally accepted principles such as the Washington Principles and the government's policy guidelines concerning the restitution of looted art in so far as they are applicable;
- b. the circumstances in which possession of the work was lost;
- c. the extent to which the applicant has endeavoured to recover the work;
- d. the circumstances in which the owner acquired the work and the inquiries the owner made prior to acquiring it;
- e. the significance of the work to the applicant;



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- f. the significance of the work to the owner;
- g. the significance of the work to public art collections.

### **Admissibility**

#### **Article 4**

- 1. The Committee can declare an application inadmissible if:
  - a. it concerns a dispute regarding which one of the parties has already instituted proceedings before a court, or
  - b. this is a dispute on the substance of which a court has already given a decision, or
  - c. the applicant has previously explicitly relinquished his or her rights to the work at issue, or
  - d. it emerges that the applicant does not represent all those entitled to the assets of the supposed original owner of the work.
- 2. The Committee declares an application to be inadmissible if the Committee has already issued a binding opinion about the dispute, unless both parties request a new binding opinion on the grounds of new facts or circumstances that justify a new assessment of the dispute.

### **The Hearing of Disputes**

#### **Article 5**

- 1. The application is submitted to the Minister and may be addressed to the Committee.
- 2. Both parties request the Minister to submit their dispute to the Committee in accordance with article 2, paragraph 3 of the Decree Establishing the Restitutions Committee.
- 3. After the Minister has presented the dispute to the Committee, it will hear the dispute after the parties have stated in writing that they accept these regulations and that they accept the opinion to be issued by the Committee as binding.
- 4. If the parties, after a request to that effect, have not complied with the stipulation referred to in paragraph 3 within four weeks, the dispute will not be heard.
- 5. The Committee may extend the periods.
- 6. The chair decides which Committee members will issue the binding opinion.

#### **Article 6**

- 1. The Committee sends both parties these regulations and notifies them in writing that it has received the request for an opinion from the Minister.
- 2. The Committee gives the parties the opportunity to provide an explanation concerning their viewpoint within six weeks and to provide the Committee with further information.
- 3. In their explanation, each of the parties can express the wish that:
  - a. the Committee has further investigation conducted by the Expertise Centre, if desired, of specified items, and
  - b. there is a hearing.
- 4. The Committee may decide at any point during the process that:
  - a. there will be a hearing;
  - b. the Committee will obtain information itself and/or have further investigation conducted by the Expertise Centre;
  - c. the parties will be given the opportunity to respond within six weeks and/or
  - d. the applicant and/or the owner will provide further documents or information, such as a certificate of inheritance, within a period to be set by the Committee.
- 5. The Committee may extend the periods.

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**Article 7**

1. Should the Committee decide that it will itself have further investigation conducted by the Expertise Centre, it will instruct the Expertise Centre to prepare an overview of the facts.
2. The Committee sends the overview of the facts to the parties. The parties may respond to it in writing within a period of six weeks.
3. Should the Committee decide to hear witnesses or experts or have an investigation conducted by one or more experts it designates, it will then suffice for the Committee to send the report concerned to the parties, to which they may respond within a period of two weeks.
4. The Committee may extend the periods.

**Article 8**

1. Should the Committee decide that a hearing is to take place, it sets the place, day and time and informs the parties accordingly.
2. The Committee may allow the parties to bring witnesses or experts and have them heard. The names and addresses of such persons are to be given to the Committee at least two weeks before the hearing.
3. In regard to the planned hearing, the parties may send documents to the Committee up to four weeks beforehand at the latest.

**Article 9**

The Committee sends copies of the documents it receives from a party to the other party.

**Article 10**

If the parties reach a settlement, the Committee will record its contents in the form of a binding opinion.

**Opinion**

**Article 11**

Among other things the Committee may recommend that:

- a. the work be handed over to the applicant;
- b. the work be handed over to an impartial third party on behalf of all those entitled to the assets of the former owner, if necessary subject to the provisions of an arrangement about the associated costs;
- c. the work be handed over for a consideration, to be specified, to be paid by the applicant to the owner;
- d. the work be handed over to the applicant subject to further provisions;
- e. rejection of the request for restitution;
- f. rejection of the request for restitution, subject to the obligation on the owner to exhibit the work stating the provenance and the original owner;
- g. rejection of the request for restitution, subject to the specification of a consideration to be paid by the owner to the applicant;
- h. rejection of the request for restitution subject to further provisions.

**Article 12**

1. The Committee's chair or vice-chair and the secretary sign the opinion, which is sent to the parties with a copy to the Minister.
2. The Committee's chair may correct evident errors and/or evident calculation or writing errors in the opinion, either of his or her own accord or in response to a written request from one of the parties submitted no later than two weeks after the opinion was sent.
3. The parties are informed in writing of any changes or corrections.

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**Article 13**

1. The handing over takes place where the work is located, unless the Committee decides otherwise.
2. Any costs incurred by the parties themselves with regard to the handling of the dispute and the implementation of the opinion are to be borne by the parties, unless the Committee decides otherwise.

**Confidentiality, objection and exemption**

**Article 14**

Without prejudice to the provisions in articles 9, 12 and 16, the Committee is obliged to treat as confidential all information relating to the parties of which it has become cognizant during the handling of the dispute.

**Article 15**

1. One or both parties may object to a member of the Committee on the basis of facts or circumstances that might make the formation of an impartial opinion difficult.
2. Having regard to the provisions in article 4 of the Decree Establishing the Restitutions Committee, the chair decides about allowing an objection. If the objection concerns the chair, the vice-chair decides.
3. A member of the Committee may claim exemption in respect of a dispute on the basis of facts or circumstances as referred to in the first paragraph. The member is obliged to do so if the Committee's chair is of the opinion that the said facts and circumstances do indeed exist in his or her case.
4. The parties are informed of the decision as referred to in the second paragraph.

**Publication**

**Article 16**

The Committee may publicize its opinion, if necessary by anonymizing personal details, unless one of the parties has compelling reasons why that should not be done.

**Liability**

**Article 17**

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

**Reversal**

**Article 18**

1. The Dutch courts are exclusively competent to rule on disputes about the binding force on the parties of a binding opinion issued by the Committee.
2. The Committee's binding opinion may only be reversed if it has been submitted to the ordinary court for review within two months after the opinion was sent to the parties. This relates exclusively to review as referred to in Title 15 of Book 7 of the Dutch Civil Code. The opinion becomes irreversible if the decision is not submitted to the ordinary court within the said period.



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**Unforeseen**

Article 19

The Committee decides in all cases not provided for in these regulations on the basis of the yardsticks of reasonableness and fairness.

**Transitional and final provisions**

Article 20

1. These regulations will be published on the Committee's website.
2. The regulations will take effect as soon as they have been published.
3. The regulations as sent to the parties will apply to any cases being considered at the time the regulations take effect.

Article 21

These regulations were adopted at the Committee meeting on 3 December 2007 and amended at the meetings on 12 January 2009, 19 September 2011, 27 January 2014, 12 November 2018 and 28 January 2019.

## Terezín Declaration (2009)

(extract)

Upon the invitation of the Prime Minister of the Czech Republic we the representatives of 46 states listed below met this day, June 30, 2009 in Terezín, where thousands of European Jews and other victims of Nazi persecution died or were sent to death camps during World War II. We participated in the Prague Holocaust Era Assets Conference organized by the Czech Republic and its partners in Prague and Terezín from 26-30 June 2009, discussed together with experts and non-governmental organization (NGO) representatives important issues such as Welfare of Holocaust (Shoah) Survivors and other Victims of Nazi Persecution, Immovable Property, Jewish Cemeteries and Burial Sites, Nazi- Confiscated and Looted Art, Judaica and Jewish Cultural Property, Archival Materials, and Education, Remembrance, Research and Memorial Sites. We join affirming in this.

### **Terezín Declaration on Holocaust Era Assets and Related Issues**

- Aware that Holocaust (Shoah) survivors and other victims of Nazi persecution have reached an advanced age and that it is imperative to respect their personal dignity and to deal with their social welfare needs, as an issue of utmost urgency,
- Having in mind the need to enshrine for the benefit of future generations and to remember forever the unique history and the legacy of the Holocaust (Shoah), which exterminated three fourths of European Jewry, including its premeditated nature as well as other Nazi crimes,
- Noting the tangible achievements of the 1997 London Nazi Gold Conference, and the 1998 Washington Conference on Holocaust-Era Assets, which addressed central issues relating to restitution and successfully set the stage for the significant advances of the next decade, as well as noting the January 2000 Stockholm Declaration, the October 2000 Vilnius Conference on Holocaust Era Looted Cultural Assets,
- Recognizing that despite those achievements there remain substantial issues to be addressed, because only a part of the confiscated property has been recovered or compensated,
- Taking note of the deliberations of the Working Groups and the Special Session on Social Welfare of Holocaust Survivors and their points of view and opinions which surveyed and addressed issues relating to the Social Welfare of Holocaust Survivors and other Victims of Nazi Persecution, Immovable Property, Nazi Confiscated Art, Judaica and Jewish Cultural Property, Holocaust Education, Remembrance and Research, which can be found on the weblink for the Prague Conference and will be published in the Conference Proceedings,
- Keeping in mind the legally non-binding nature of this Declaration and moral responsibilities thereof, and without prejudice to applicable international law and obligations,



1. Recognizing that Holocaust (Shoah) survivors and other victims of the Nazi regime and its collaborators suffered unprecedented physical and emotional trauma during their ordeal, the Participating States take note of the special social and medical needs of all survivors and strongly support both public and private efforts in their respective states to enable them to live in dignity with the necessary basic care that it implies.
2. Noting the importance of restituting communal and individual immovable property that belonged to the victims of the Holocaust (Shoah) and other victims of Nazi persecution, the Participating States urge that every effort be made to rectify the consequences of wrongful property seizures, such as confiscations, forced sales and sales under duress of property, which were part of the persecution of these innocent people and groups, the vast majority of whom died heirless.
3. Recognizing the progress that has been made in research, identification, and restitution of cultural property by governmental and non-governmental institutions in some states since the 1998 Washington Conference on Holocaust-Era Assets and the endorsement of the Washington Conference Principles on Nazi-Confiscated Art, the Participating States affirm an urgent need to strengthen and sustain these efforts in order to ensure just and fair solutions regarding cultural property, including Judaica that was looted or displaced during or as a result of the Holocaust (Shoah).
4. Taking into account the essential role of national governments, the Holocaust (Shoah) survivors' organizations, and other specialized NGOs, the Participating States call for a coherent and more effective approach by States and the international community to ensure the fullest possible, relevant archival access with due respect to national legislation. We also encourage States and the international community to establish and support research and education programs about the Holocaust (Shoah) and other Nazi crimes, ceremonies of remembrance and commemoration, and the preservation of memorials in former concentration camps, cemeteries and mass graves, as well as of other sites of memory.
5. Recognizing the rise of Anti-Semitism and Holocaust (Shoah) denial, the Participating States call on the international community to be stronger in monitoring and responding to such incidents and to develop measures to combat anti-Semitism.

#### **Nazi-Confiscated and Looted Art**

Recognizing that art and cultural property of victims of the Holocaust (Shoah) and other victims of Nazi persecution was confiscated, sequestered and spoliated, by the Nazis, the Fascists and their collaborators through various means including 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 and as an immediate consequence, and

Recalling the Washington Conference Principles on Nazi-Confiscated Art as endorsed at the Washington Conference of 1998, which enumerated a set of voluntary commitments for governments that were based upon the moral principle that art and cultural property confiscated by the Nazis from Holocaust (Shoah) victims should be returned to them or their heirs, in a manner consistent with national laws and regulations as well as international obligations, in order to achieve just and fair solutions,

1. We reaffirm our support of the Washington Conference Principles on Nazi-Confiscated Art and we encourage all parties including public and private institutions and individuals to apply them as well,
2. In particular, recognizing that restitution cannot be accomplished without knowledge of potentially looted art and cultural property, we stress the importance for all stakeholders to continue and support intensified systematic provenance research, with due regard to legislation, in both public and private archives, and where relevant to make the results of this research, including

ongoing updates, available via the internet, with due regard to privacy rules and regulations. Where it has not already been done, we also recommend the establishment of mechanisms to assist claimants and others in their efforts,

3. Keeping in mind the Washington Conference Principles on Nazi-Confiscated Art, and considering the experience acquired since the Washington Conference, we urge all stakeholders to ensure that their legal systems or alternative processes, while taking into account the different legal traditions, facilitate just and fair solutions with regard to Nazi-confiscated and looted art, and to make certain that claims to recover such art are resolved expeditiously and based on the facts and merits of the claims and all the relevant documents submitted by all parties. Governments should consider all relevant issues when applying various legal provisions that may impede the restitution of art and cultural property, in order to achieve just and fair solutions, as well as alternative dispute resolution, where appropriate under law

### **Judaica and Jewish Cultural Property**

Recognizing that the Holocaust (Shoah) also resulted in the wholesale looting of Judaica and Jewish cultural property including sacred scrolls, synagogue and ceremonial objects as well as the libraries, manuscripts, archives and records of Jewish communities, and

Aware that the murder of six million Jews, including entire communities, during the Holocaust (Shoah) meant that much of this historical patrimony could not be reclaimed after World War II, and

Recognizing the urgent need to identify ways to achieve a just and fair solution to the issue of Judaica and Jewish cultural property, where original owners, or heirs of former original Jewish owners, individuals or legal persons cannot be identified, while acknowledging there is no universal model,

1. We encourage and support efforts to identify and catalogue these items which may be found in archives, libraries, museums and other government and non-government repositories, to return them to their original rightful owners and other appropriate individuals or institutions according to national law, and to consider a voluntary international registration of Torah scrolls and other Judaica objects where appropriate, and
2. We encourage measures that will ensure their protection, will make appropriate materials available to scholars, and where appropriate and possible in terms of conservation, will restore sacred scrolls and ceremonial objects currently in government hands to synagogue use, where needed, and will facilitate the circulation and display of such Judaica internationally by adequate and agreed upon solutions.

## Advies aan de Evaluatiecommissie restitutiebeleid

Prof. mr. dr. R.H. de Bock  
hoogleraar civiele rechtspleging aan de UvA en advocaat-generaal bij de Hoge Raad  
Den Haag, 28 oktober 2020

### Inleiding

Op verzoek van de Evaluatiecommissie restitutiebeleid bespreek ik in dit advies de volgende twee kwesties:

- I. Is het mogelijk dat de Restitutiecommissie (hierna: de commissie) partijen afzonderlijk hoort, dus niet in elkaars aanwezigheid, nu er aanwijzingen zijn dat partijen daar soms prijs op stellen en dit wellicht kan bijdragen aan een versterking van de schikkingstaak die de commissie heeft?
- II. Hoe moet de verhouding tussen de commissie en het expertisecentrum worden gekwalificeerd? Hoe kan worden bereikt dat er in voorkomende gevallen tussentijdse afstemming met de commissie en partijen plaatsvindt over het onderzoek dat het expertisecentrum uitvoert?

### Ad I Het horen van een partij buiten aanwezigheid van de wederpartij

1. De beslissing die de commissie geeft in de geschillen die aan haar worden voorgelegd, is een bindend advies (art. 2 van het Reglement). In de wet is niet vastgelegd hoe een bindend adviesprocedure moet worden ingericht; dat is in beginsel aan partijen overgelaten. Dat betekent dat de commissie in haar reglement zelf kan bepalen hoe de procedure verloopt. Vóór aanvang van de procedure wordt aan partijen gevraagd om het reglement te aanvaarden (art. 5 lid 3 van het Reglement).
2. Als voordeel van een bindend adviesprocedure wordt doorgaans gezien dat de procedure minder formeel is dan een procedure bij de rechter of een arbitrale procedure, juist omdat in de wet niet is vastgelegd hoe de procedure moet worden ingericht. Wel geldt dat naarmate het bindend advies meer het karakter van rechtspraak heeft, strengere eisen aan zowel de totstandkoming van de beslissing als de motivering daarvan moeten worden gesteld.<sup>1</sup> In dit geval zal moeten worden aangenomen dat de bindend adviesprocedure neigt naar rechtspraak, nu de procedure tamelijk formeel is ingericht, het over eigendomsrechten gaat en er voor beide partijen grote belangen op het spel kunnen staan.
3. Een bindend advies geldt als een vaststellingsovereenkomst als bedoeld in art. 7:900 BW. Een bindend advies kan door de rechter nietig worden verklaard als het advies in strijd is met dwingend recht *en bovendien* naar inhoud of strekking in strijd komt met de goede zeden of de openbare orde (art. 7:902 BW). Een bindend advies kan ook worden vernietigd als gebondenheid daaraan in verband met inhoud of de wijze van haar

<sup>1</sup> Vgl. HR 20 mei 2005, ECLI:NL:HR:2005:AS5890, NJ 2007/114 (*Gem. Amsterdam/Honnebier*), waarin dit is overwogen ten aanzien van de *motivering* van de beslissing van het bindend advies.



totstandkoming naar maatstaven van redelijkheid en billijkheid onaanvaardbaar is (art. 7:904 lid 1 BW). Uit de rechtspraak van de Hoge Raad volgt dat bij de beantwoording van de vraag of een partij haar wederpartij aan een bindend advies mag houden als aan de totstandkoming daarvan procedurele fouten zijn gemaakt, mede van belang is of, en zo ja in welke mate, door de procedurefout *nadeel* aan de wederpartij is toegebracht.<sup>2</sup> In de literatuur wordt door de meeste auteurs echter aangenomen dat als het ernstige totstandkomingsgebrek vaststaat, ervan uit mag worden gegaan dat dit voor de inhoud van de beslissing gevolgen heeft gehad en dat de partij die zich op het bindend advies beroept, aannemelijk moet maken dat het totstandkomingsgebrek *geen* inhoudelijk nadeel aan de wederpartij heeft toegebracht.

4. Het beginsel van hoor en wederhoor is een fundamenteel beginsel van procesrecht en een van de belangrijkste aspecten van het recht op een eerlijk proces (art. 6 EVRM). Het beginsel geldt in feite voor alle procedures, of het nu gaat om een procedure bij de rechter of om een buitengerechtelijke procedure, zoals een arbitrale procedure, een bindend adviesprocedure of een procedure bij een geschillencommissie.
5. Het beginsel van hoor en wederhoor heeft verschillende elementen. Zo moet een partij de gelegenheid krijgen om haar zaak aan de rechter te presenteren, moet een partij beschikken over alle informatie waarop de rechter zijn beslissing baseert en heeft zij het recht om te reageren op die informatie (het recht op tegenspraak). Daarmee wordt voorkomen dat de rechter eenzijdig wordt voorgelicht. Hoor en wederhoor houdt ook in dat een partij in beginsel het recht heeft op een mondelinge behandeling van het geschil. Als er zo'n mondelinge behandeling plaatsvindt, moet de rechter partijen in elkaars aanwezigheid horen. Ook dat dient ter voorkoming van een eenzijdige voorlichting van de rechter.
6. Het recht op een mondelinge behandeling is echter niet absoluut. Zo volgt uit de rechtspraak van het EHRM dat een partij afstand kan doen van het recht om op een mondelinge behandeling gehoord te worden, op voorwaarde dat dit (i) vrijwillig en (ii) ondubbelzinnig gebeurt, en (iii) dat er geen vragen van openbare orde spelen die een mondelinge behandeling noodzakelijk maken.<sup>3</sup>
7. Vanwege het fundamentele karakter van het beginsel van hoor en wederhoor zal dit beginsel ook in de bindend adviesprocedure in acht moeten worden genomen. Schending van het beginsel kan leiden tot vernietiging van het advies door de rechter. Dat zal met name aan de orde zijn als het bindend advies is uitgesproken aan de hand van informatie waarover een van beide partijen zich niet heeft kunnen uitlaten.<sup>4</sup> In zo'n

<sup>2</sup> Zie onder meer HR 20 mei 2005, ECLI:NL:HR:2005:AS5890, NJ 2007/114 (*Gem. Amsterdam/Honnebier*); HR 24 maart 2006, ECLI:NL:HR:2006:AV1706, NJ 2007/11 m.nt. H.J. Snijders (*Meurs/Newomij*).

<sup>3</sup> Zie onder meer EHRM 26 juli 2011, no. 58222/09 (*Juričič*), § 87.

<sup>4</sup> Rechtbank Midden-Nederland 10 december 2014, ECLI:NL:RBMNE:2014:6833 (*Waner-Kaufmann/gem. Utrecht*).

geval wordt al snel aangenomen dat voldaan is aan het hiervoor genoemde ‘nadeelvereiste’.

8. De inachtneming van het beginsel van hoor en wederhoor hoeft echter niet te betekenen dat er een absoluut verbod rust op de mogelijkheid voor de commissie om met partijen afzonderlijk te spreken. Er zijn verschillende situaties te noemen waarin een partij wordt gehoord buiten aanwezigheid van de wederpartij.
9. In de procedure bij het Klachteninstituut financiële dienstverlening (Kifid) is de mogelijkheid opgenomen dat met een partij wordt gesproken buiten aanwezigheid van de wederpartij. Ook in de procedure bij het Kifid wordt door het klachteninstituut een bindend advies gegeven, mits partijen daarmee hebben ingestemd (art. 38.3 Kifid-reglement). Daarmee is de aard van de procedure in grote mate vergelijkbaar met die bij de Restitutiecommissie. De mogelijkheid om een partij afzonderlijk te horen is opgenomen met het oog op het bereiken van een schikking tussen partijen, zo blijkt uit het reglement. Die bepaling luidt als volgt (mijn onderstreping):<sup>5</sup>

*“Artikel 21 De procedure bij bemiddeling*

*21.1 Bemiddeling geschiedt in een door de Geschillencommissie te bepalen vorm.*

*Bemiddeling kan plaatsvinden in elk stadium van de behandeling. De functionaris die bij de Geschillencommissie betrokken is bij de bemiddeling kan eenzijdig met partijen communiceren als dit voor de bemiddeling wenselijk geacht wordt.*

*21.2 De Geschillencommissie kan in verband met de bemiddeling aan partijen vragen nadere gegevens te verstrekken of te reageren op de inbreng van de andere partij.*

*Partijen krijgen de gelegenheid kennis te nemen van hetgeen de andere partij bij de bemiddeling onder de aandacht van de Geschillencommissie heeft gebracht.*

*21.3 De functionaris die bij de Geschillencommissie betrokken is bij de bemiddeling kan, indien kennisneming van stukken door een partij de persoonlijke levenssfeer of gerechtvaardigde bedrijfsbelangen van een ander onevenredig zou schaden, bepalen dat deze kennisneming is voorbehouden aan een gemachtigde die advocaat of arts is, of die daarvoor van de Commissie bijzondere toestemming heeft gekregen.”*

10. Op grond van art. 23 van het Kifid-reglement kan de Geschillencommissie partijen uitnodigen voor een bemiddelingsbijeenkomst, met als doel een minnelijke regeling te beproeven. Verder houdt art. 24 van het Kifid-reglement het volgende in:

*“Artikel 24 Interne vertrouwelijkheid bemiddeling*

*24.1 De Geschillencommissie neemt kennis van de inlichtingen die tijdens de bemiddeling zijn verkregen, tenzij een partij laat weten dat zij niet wil dat de Geschillencommissie van bepaalde inlichtingen kennisneemt.*

<sup>5</sup> Zie het Reglement Geschillencommissie financiële dienstverlening (Kifid) van 1 april 2017, te vinden op de website van het Kifid.



*24.2 De functionaris bij de Geschillencommissie die heeft bemiddeld bij een Klacht, is niet meer betrokken bij de eventuele voortgezette behandeling van dezelfde Klacht door de Geschillencommissie, als er vertrouwelijke informatie in de zin van artikel 24.1 is gedeeld tijdens de bemiddeling.*

*24.3 Een lid van de Geschillencommissie dat de bemiddelingsbijeenkomst als bedoeld in artikel 23 heeft geleid, is niet betrokken bij de eventuele voortgezette behandeling van de Klacht door de Geschillencommissie.”*

11. Hieruit leid ik af dat de functionaris die heeft bemiddeld bij een klacht – en in dat kader eenzijdig met partijen heeft gesproken –, niet meer betrokken is bij de zaak als die toch wordt voortgezet, omdat geen overeenstemming is bereikt.
12. Ook als in een rechterlijke procedure een deskundigenonderzoek wordt gelast, kan de deskundige met elke partij apart spreken.<sup>6</sup> De Leidraad deskundigen in civiele zaken voorziet in die mogelijkheid (zie onder 98).<sup>7</sup> Vereist is dan wel dat de wederpartij wordt geïnformeerd over de uitkomsten van het gesprek en de gelegenheid krijgt om daarop te reageren. Bovendien moet in het deskundigenbericht melding worden gemaakt dat en waarom een bijeenkomst met één partij heeft plaatsgevonden.
13. Verder kan in een rechterlijke procedure een partij buiten aanwezigheid van de wederpartij worden gehoord, als zij een beroep doet op de vertrouwelijkheid van bepaalde informatie en de rechter zich een oordeel moet vormen over de gegrondheid van dat beroep (art. 22 lid 6 Rv). In zo’n geval geldt dat als de rechter besluit dat geen sprake is van vertrouwelijke informatie, het een partij vrij staat om die informatie toch niet in het geding te brengen omdat zij die niet wil delen met de wederpartij. De procedure kan dan niet door die rechter worden voortgezet, omdat hij informatie heeft waarover de wederpartij niet beschikt.
14. Aan de hand van de besproken gevallen en de rechtspraak van het EHRM kunnen m.i. zeven randvoorwaarden worden geformuleerd waaraan moet zijn voldaan, om de commissie met een partij te laten spreken buiten aanwezigheid van de wederpartij:
  - (i) voor beide partijen moet duidelijk zijn dat de commissie de mogelijkheid heeft om met een partij te spreken buiten aanwezigheid van de wederpartij (door opname van die mogelijkheid in het reglement);
  - (ii) beide partijen moeten ermee instemmen dat de commissie in een concreet geval gebruik maakt van deze mogelijkheid (niet alleen door aanvaarding van het reglement maar door hiermee ook specifiek in te stemmen; partijen moeten hierop worden gewezen in de uitnodigingsbrief voor de zitting waarop eenzijdig wordt gehoord);

<sup>6</sup> HR 12 februari 1993, ECLI:NL:HR:1993:ZC0860, NJ 1993/234 (*Fernandes/Oostdam*).

<sup>7</sup> Leidraad deskundigen in civiele zaken, te vinden op [www.rechtspraak.nl](http://www.rechtspraak.nl). Zie voor een toepassing bijvoorbeeld Rechtbank Noord-Holland 1 maart 2018, ECLI:NL:RBNHO:2018:2702, JA 2018/142 m.nt. M.E. Franke en R.W.M. Giard.

- (iii) daarbij moet partijen ook op de mogelijkheid worden gewezen dat tijdens zo'n eenzijdig gesprek vertrouwelijke informatie met de commissie wordt gedeeld, en moet hen vooraf worden gevraagd daarmee akkoord te gaan, op voorwaarde dat de commissie die informatie niet ten grondslag zal leggen aan haar beslissing;
  - (iv) het moet een partij vrijstaan om er níet mee in te stemmen dat eenzijdige gesprekken plaatsvinden, maar voor het overige wel de procedure bij de Restitutiecommissie te voeren (dus geen 'alles of niets-');
  - (v) van de eenzijdige gesprekken moet een verslag worden opgemaakt, waarin in ieder geval de informatie moet zijn vastgelegd die de commissie wellicht mede ten grondslag wil leggen aan haar oordeel;
  - (vi) de wederpartij moet in de gelegenheid worden gesteld te reageren op het verslag;
  - (vii) het afzonderlijk horen van partijen komt niet in de plaats van de gewone mondelinge behandeling, maar als een *extra* mogelijkheid. In het reglement zou kunnen worden opgenomen dat de commissie dat doet in het kader van de bemiddelende rol die zij óók heeft.
15. Het belangrijkste bezwaar tegen het afzonderlijk spreken met partijen is dat dit een risico vormt voor de onpartijdige oordeelsvorming van de beslisser (rechter, bindend adviseur, tuchtrechter).<sup>8</sup> De beslisser krijgt dan immers informatie van een partij die – zelfs onbedoeld – een rol kan spelen bij de uiteindelijke oordeelsvorming, zonder dat de wederpartij daarop heeft kunnen reageren.
16. Om die reden is in de hiervoor besproken gevallen degene die een partij eenzijdig hoort, niet meer betrokken bij het nemen van de uiteindelijke beslissing. Als die constructie wordt gevolgd, zou het eenzijdig horen van een partij moeten worden opgedragen aan een lid van de commissie dat geen deel uitmaakt van de samenstelling die het bindend advies uitbrengt. Hieraan is echter een groot nadeel verbonden: de informatie die van partijen is verkregen, staat dan niet ter beschikking van de commissieleden ten overstaan van wie de mondelinge behandeling plaatsvindt, en kan dus ook niet gebruikt worden om partijen bij die gelegenheid naar een schikking te leiden. Daarmee wordt het beoogde doel dus niet bereikt, tenzij daarvoor een *andere* mondelinge behandeling wordt belegd (zoals bij het Kifid). Dit lijkt mij echter geen aantrekkelijke optie omdat de procedure dan nog complexer wordt.
17. Dat pleit ervoor om de mogelijkheid van het eenzijdig horen van een partij toch in handen van de commissieleden te leggen die het advies zullen uitbrengen. Gegeven het feit dat niet voorgeschreven is hoe een bindend adviesprocedure precies moet verlopen

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<sup>8</sup> Tot op zekere hoogte wordt dit bezwaar ook wel geuit tegen mediationtrajecten waarin de mediator met partijen afzonderlijk spreekt. Daar ligt het accent echter iets anders, omdat geen sprake is van beslissingsbevoegdheid van de mediator over de rechtspositie van partijen. Als problematisch wordt dan vooral gezien dat door het voeren van afzonderlijke gesprekken de rol van de mediator te groot wordt (de mediator weet immers meer dan partijen), ten kosten van de autonomie van partijen. Zie A.F.M. Brenninkmeijer e.a. (red.), *Handboek Mediation*, Den Haag 2013, par. 9.3.4.



**Aanvullend advies Evaluatiecommissie restitutiebeleid**

prof. mr.dr. R.H. de Bock

Den Haag, 29 oktober 2020

1. Voor wat betreft de vrees voor een eventuele aansprakelijkheidsstelling van het expertisecentrum is het volgende op te merken. Uit de rechtspraak van de Hoge Raad volgt dat een door de rechter ingeschakelde deskundige aansprakelijk kan zijn als zijn onderzoek niet voldoet aan de maatstaf van art. 198 Rv.<sup>1</sup> Art. 198 Rv lid 1 bepaalt dat de deskundige die zijn benoeming heeft aanvaard, verplicht is de opdracht 'onpartijdig en naar beste weten te volbrengen'. De Hoge Raad heeft deze norm zo ingevuld, dat aan een door de rechter ingeschakelde deskundige de nodige vrijheid en zelfstandigheid moet worden gelaten om het onderzoek op de hem best voorkomende wijze te verrichten. Daarmee heeft een deskundige beoordelingsvrijheid bij het opstellen van zijn rapport: de rechter mag alleen onderzoeken of de deskundige zich op basis van de uit zijn onderzoek verkregen informatie 'een verantwoord oordeel' heeft kunnen vormen, en niet of het onderzoek op een andere – misschien betere – wijze had kunnen worden gedaan.<sup>2</sup>
2. Deze norm kan worden doorgetrokken naar onderzoeksinstituten.<sup>3</sup> Dat betekent dat het in theorie mogelijk is dat het expertisecentrum aansprakelijk wordt gesteld, als zich voordoet dat het centrum níet zijn opdracht onpartijdig en naar beste weten heeft uitgevoerd, en zich niet op basis van de uit het onderzoek verkregen informatie 'een verantwoord oordeel' heeft kunnen vormen. In de praktijk zal niet snel aan deze maatstaf zijn voldaan.
3. Ook in de Leidraad deskundigen in civiele zaken is een passage opgenomen over aansprakelijkheid (zie onder 66-75). Vermeld is onder meer dat in het algemeen het risico zeer beperkt is dat een deskundige daadwerkelijk aansprakelijk zou blijken te zijn voor schade van een partij, omdat er voor partijen en de rechter in het vervolg van de zaak tal van correctiemechanismen zijn. Als een deskundige toch wil werken onder uitsluiting van aansprakelijkheid, is in de Leidraad vermeld dat hij dit kan voorstellen aan partijen (zie onder 68 e.v.). De deskundige kan dit echter niet afdwingen. Ook kan niet bereikt worden dat contractueel elke vorm van aansprakelijkheid wordt uitgesloten.

<sup>1</sup> HR 19 oktober 2018, ECLI:NL:HR:2018:1976, NJ 2019/46 m.nt. S.F.M. Wortmann. Zie voor deze maatstaf ook G. de Groot, 'Aansprakelijkheid van deskundigen: regulier beroepsrisico of chilling factor?', in: *Nederlands Tijdschrift voor Burgerlijk Recht* 2011/58, p. 416 en 419. Zie voorts R. Hoving, 'Deskundigen aanspreken op fouten', in: *Expertise & Recht* 2019/4.

<sup>2</sup> HR 19 oktober 2018, ECLI:NL:HR:2018:1976, NJ 2019/46 m.nt. S.F.M. Wortmann, rov. 3.4.5.

<sup>3</sup> K.J.O. Janssen, 'Aansprakelijkheid van onderzoeksinstituten', in: *Nederlands Tijdschrift voor Burgerlijk Recht* 2020/4.



4. De in de Leidraad omschreven mogelijkheid laat zich hier niet goed toepassen, omdat het expertisecentrum dan zelf partijen zou moeten benaderen. Dat lijkt niet wenselijk.
5. Relevant is wel de uit de Leidraad blijkende gedachte dat niet snel sprake is van aansprakelijkheid, omdat zelfs al zou een deskundige een steek hebben laten vallen, dat doorgaans niet zal leiden tot schade omdat partijen of de rechter dat in het vervolg van de procedure aan de orde kunnen stellen. De rechter kan dan corrigerend optreden, bijvoorbeeld door een aanvullend deskundigenonderzoek te gelasten. Daardoor zal dan niet zijn voldaan aan het voor een aansprakelijkheidsstelling geldende vereiste dat sprake is van *schade als gevolg van* het tekortschietende deskundigenbericht. Dit maakt het dus nog onwaarschijnlijker dat het expertisecentrum met succes aansprakelijk wordt gesteld.
6. Wel zou in het Reglement kunnen worden opgenomen dat (persoonlijke) aansprakelijkheid van (de leden van) het expertisecentrum wordt uitgesloten. Ook de commissie heeft in het Reglement (persoonlijke) aansprakelijkheid uitgesloten (zie art. 17).
7. Daarnaast zou kunnen worden afgesproken dat de Staat de KNAW vrijwaart in het geval een partij het expertisecentrum aansprakelijk stelt. In het onwaarschijnlijke geval dat het expertisecentrum (de KNAW) toch aansprakelijk wordt gesteld, kan de claim worden doorgeschoven naar de Staat.

## Provisional estimate of costs of resumption of provenance research

Opgesteld door NIOD, 14 oktober 2020.

### Inleiding

Eind september 2020 heeft de evaluatiecommissie het ECR gevraagd om een globale inschatting van de menskracht en kosten van vervolgonderzoek naar de NK-collectie en van onderzoek naar de familie/erfgenamen van de oorspronkelijke eigenaren. De commissie heeft daarbij een drieslag van taken benoemd en een aantal prioriteiten aangewezen. Hieronder volgt een eerste raming van de benodigde menskracht en kosten. De benoemde prioriteiten zijn daartoe verdeeld in vijf hoofdpunten, aangeduid met de letters A t/m E. De genoemde aantallen zijn beredeneerde schattingen en aannames die in korte tijd op papier zijn gezet op basis van voorhanden gegevens en opgedane ervaring, die bij het bekend worden van nauwkeurigere informatie mogelijk bijstelling behoeven.

De hieronder genoemde punten A t/m E hangen nauw met elkaar samen en versterken elkaar in de uitvoering. Aanvullend onderzoek naar de NK-collectie levert nieuwe gegevens op over mogelijke familie en rechthebbers, net als contact met nabestaanden. Onderzoek naar de Afdeling Binnenland brengt gegevens aan het licht over het lot van beroofde personen en over geroofde en teruggevonden objecten. De diverse processen dienen daarom in samenhang uitgevoerd te worden. Nieuwe informatie dient op een voor betrokkenen toegankelijke en transparante manier centraal beschikbaar gemaakt te worden. Daarom is in deze raming tevens een post opgenomen voor een projectcoördinator de verschillende processen aanstuurt, coördineert en de samenhang bewaakt.

### A. Actualisering en aanvulling onderzoek NK-collectie

Door de evaluatiecommissie geformuleerde aandachtspunten:

1. Van een groot deel van de collectie is alleen de herkomstgeschiedenis vanaf 1940 onderzocht, terwijl voor het voor een compleet overzicht van onvrijwillig verloren kunstvoorwerpen essentieel is om de herkomstgeschiedenis vanaf 1933-1940 te onderzoeken;
2. Met name de voorwerpen met individuele herkenningsswaarde (voornamelijk schilderijen) verdienen aanvullend onderzoek, waarbij deels ook achterkanten onderzoek moet worden verricht. Voor stukken zonder individuele herkenningsswaarde (zoals prenten, tegels, tapijten, serviezen en meubilair) is nader onderzoek niet nodig;
3. In de huidige database van de NK-collectie zijn (nog) niet de onderzoeksrapporten en adviezen van de RC verwerkt. Ook is de database nog niet aangepast aan internationale onderzoeken en databases, bronnen die nu toegankelijk zijn, en recente studies over grote collecties, zoals die van Hitler en Goering.

### Doel

De stand van onderzoek naar objecten uit de NK-collectie aan te vullen en te actualiseren.

### Vorm

Het eerste jaar wordt het onderzoeksplan geformuleerd, de bronnen/infrastructuur voorbereid en er wordt een voorselectie gemaakt van de objecten waarvoor aanvullend onderzoek opportuun is. Het project wordt gedurende de looptijd gemonitord en bijgestaan door een onafhankelijke begeleidingscommissie (vgl. BHG). De drie volgende jaren wordt het onderzoek uitgevoerd.

### Omvang onderzoek

Uitgaande van een voorlopige schatting is voor onderzoek gemiddeld 30 uur per object nodig (dit is inclusief de voorbereidingen in het eerste jaar). Te verwachten is dat de selectie van te onderzoeken objecten resulteert in circa 1000 objecten (voornamelijk schilderijen) die identificeerbaar zijn en waarvoor nader onderzoek nodig is. Benodigde fte is dan plm. 16 fte per 4 jaar, oftewel: circa 4 personen gedurende 4 jaar voor de onderzoeksgroep (1x schaal 9, 3x schaal 10). Daarnaast dienen o.a. vacatiegelden begeleidingscommissie, secretariële ondersteuning en reis- en verblijfkosten begroot te worden.

### Personele bezetting

4 fte per jaar. Zie begroting in bijlage.

## Onderbouwing

Op grond van een vergelijking met het onderzoek dat BHG verrichte naar de NK-collectie in de periode 1997-2007 is een beredeneerde inschatting gemaakt van de kosten van vervolgonderzoek. Omdat de interne administratie van BHG niet geraadpleegd kon worden is publiekelijk toegankelijke informatie gebruikt. In de projectperiode 1997-2007 varieerden de personele omvang en de werkzaamheden sterk. De kern van de onderzoeksgroep werd gevormd door zes onderzoekers (precies aantal fte onbekend), gedurende ongeveer drie jaar aangevuld met twee parttime onderzoekers. Daarnaast zijn 10 personen tijdelijk bij BHG werkzaam geweest als onderzoeker, documentalist of administratief medewerker. Gegevens over het aantal deeltijdbetrekkingen en fte ontbreken. De bandbreedte in de periode 1999-2004 valt wel in te schatten en begint vermoedelijk met circa 6 fte, in de drukste periodes oplopend tot circa 10 fte. Ook het aantal te onderzoeken objecten is van belang om de benodigde menskracht in te kunnen schatten. BHG meldt dat de NK-collectie destijds 4217 objecten omvatte. Van de circa 1645 schilderijen zijn er sindsdien circa 300 schilderijen gerestitueerd, maar aan de NK-collectie zijn tevens meer dan 100 werken (tekeningen en schilderijen) toegevoegd als gevolg van recuperaties uit onder meer Oekraïne en Duitsland. Tot slot is voor een vergelijking van belang wat de focus van het onderzoek destijds was. Die lag met name bij het verkrijgen van informatie over de vijfjarige periode 1940-1945 binnen Nederland. Het onderzoek werd verricht in met name Nederlandse bronnen, zoals het bij het Nationaal Archief berustende SNK-archief.

De omvang en de totale looptijd van het BHG-project tonen dat een vervolgonderzoek substantiële inspanningen zal vereisen. Onderzoek naar periode 1933-1940 zal naar verwachting de meeste menskracht vergen. Dergelijk onderzoek beslaat een langere tijdsperiode (zeven jaar) en een groter geografisch gebied (met name Duitsland, Oostenrijk, Polen en Tsjechië) dan het onderzoek dat door BHG werd verricht. Een groter deel van het onderzoek zal plaats dienen te vinden in buitenlandse bronnen/buiten Nederland. Bij dergelijk onderzoek is een op het object toegesneden aanpak het meest doelmatig. Als naar het aantal objecten gekeken wordt, valt op dat de NK-collectie anno 2020 wel kleiner is dan in 1999, maar dat de afname van het aantal schilderijen in verhouding beperkt is: van circa 1600 bij aanvang naar circa 1300 nu. Deze kunstwerken zijn vaak goed identificeerbaar. Een kleiner deel van de overige objecten is dat ook. Gezien de omvang en duur van het BHG-onderzoek zal een vervolgonderzoek naar de door de evaluatiecommissie benoemde speerpunten naar schatting circa 40 uur onderzoek per object vereisen. Dit is vergelijkbaar met het BHG project. Dit leidt bij 3000 objecten tot een totaal van 120.000 uur oftewel 65 fte, ongeveer vergelijkbaar met de totale omvang van het eerste BHG-onderzoek. Dit aantal zal echter substantieel naar beneden bijgesteld kunnen worden door het onderzoek stapsgewijs uit te voeren en zowel het aantal te onderzoeken objecten als de vereiste tijd per object terug te brengen. Om dit te bewerkstelligen wordt een onderzoeksplan opgesteld, dat de routekaart vormt voor het verdere verloop van het onderzoek. In het onderzoeksplan zullen in ieder geval worden betrokken: de periode 1933-1940, het waar nodig uitvoeren van achterkantonderzoek; het verwerken van nieuwe informatie, zoals de onderzoeksrapporten en adviezen van de RC; het actualiseren van de herkomstgegevens aan de hand van internationale onderzoeken, databases, sinds 2005 toegankelijk geworden bronnen en recente studies over grote collecties, waaronder die van Adolf Hitler en Hermann Goering. Waar mogelijk wordt aan het begin van het traject de toegang tot veelvuldig te raadplegen bronnen en databases geoptimaliseerd. Aan de hand van het onderzoeksplan zal voor een deel van de objecten uitsluitend nieuwe informatie worden toegevoegd. Naar een selectie van objecten zal tevens gericht aanvullend onderzoek worden uitgevoerd.

## B. Digitalisering restitutieactiviteiten 1945-1953

Door de evaluatiecommissie geformuleerde aandachtspunten:

1. De database met aangifteformulieren dient voltooid en geactualiseerd te worden, omdat het project dat in de periode 2015-2017 uitgevoerd, wegens tijdgebrek niet is afgerond;
2. Tot op heden is er nog geen ontsluiting in een database met gerestitueerde werken 1945-1952 en geveilde werken 1949-1953.

### Doel

Het digitaal toegankelijk maken van gegevens over de restitutie-activiteiten van de Nederlandse overheid tussen 1945 en 1953

### Omvang

- Aanvulling aangifteformulieren nooit gerecupereerde werken – voor zover nu bekend dienen ca. 3000 aangifteformulieren nog verwerkt te worden in de database ‘Vermiste Werken’;
- Opzetten database gerestitueerde werken 1945-1952;
- Opzetten database geveilde werken 1949-1953;

### Personele bezetting

0.8 fte schaal 9 gedurende 2 jaar, maar grote marge van onzekerheid.  
Zie begroting.

### Toelichting/onderbouwing:

Alle benodigde gegevens zijn hoogstwaarschijnlijk voorhanden in het SNK-archief: inv.nrs. 556-565 bevatten gegevens over geveilde kunstwerken. Gerestitueerde kunstwerken in de periode 1945-1952 zijn te achterhalen uit verklaringen van ontvangst (SNK inv.nr. 529) en de diverse aangifteformulieren (diverse inventarisnummers). De hoeveelheid handwerk nodig is voor het bijeenbrengen en ontsluiten van de informatie bepaalt de menskracht die nodig is. In dit stadium is dat onduidelijk, zodat aan de genoemde kosten een aanmerkelijke marge van onzekerheid verbonden is.

### NB:

Het ontsluiten van dit soort informatie zou beschouwd kunnen worden als een onderdeel van de bij de inrichting van het ECR opgedragen taak informatievoorziening (via ontsluiten gegevens), maar is daarbij nooit zo expliciet benoemd. De opgedragen taak informatievoorziening wordt aansluitend bij de in 2018 bij BHG bestaande praktijk op dit moment voornamelijk ingevuld door de beantwoording van individuele informatieverzoeken. De beantwoording van een enkel informatieverzoek neemt daarbij gemiddeld circa 25 uur in beslag.

Deze ontsluiting zou dus binnen het ECR kunnen plaatsvinden, maar niet dan na het herschikken van de prioriteiten dan wel na tijdelijke uitbreiding van de formatie. De vraag is evenwel of het wenselijk is de beantwoording van individuele aanvragen minder ruimte te geven.

## C. Onderzoek naar de Afdeling Binnenland

Door de evaluatiecommissie geformuleerde aandachtspunten:

De zogenaamde ‘Afdeling Binnenland’ van de Stichting Nederlands Kunstbezit is nog niet onderzocht. Het betreft hier een collectie van voorwerpen die in Nederland bij collaborateurs in beslag genomen zijn. [Vooralsnog lijkt het erop dat in deze collectie zich weinig cultuurgoederen bevinden die van vervolgte groepen afkomstig zijn.]

### Doel

Duidelijkheid verkrijgen over activiteiten van de ‘Afdeling Binnenland’ van de SNK

### Omvang

Onderzoek, publicatie artikel/hoofdstuk, publicatie eventuele objecten

### Totale kosten

Nihil; binnen bestaand budget



*Toelichting:*

Het ECR kan dit onderzoek uitvoeren als onderdeel van de bestaande taken (vrij onderzoek), binnen het huidige budget. Een dergelijk onderzoeksproject zou kunnen resulteren in twee ‘deliverables’:

1. Een publicatie (artikel of hoofdstuk) over de Afdeling Binnenland;
2. Gegevens over objecten die bij dit onderzoek naar voren komen kunnen worden opgenomen in de objectdatabase.

**D. De hulp/coördinatie bij afronding Museale verwervingen.***Geformuleerde aandachtspunten:*

De hulp/coördinatie bij afronding Museale verwervingen.

*Doel*

Ondersteuning specifiek gericht op het museale veld

*Omvang*

Diverse activiteiten ten behoeve van musea en daar werkzaam personeel

*Personele bezetting*

0,5 fte (schaal 10) per jaar, in eerste instantie voor 4 jaar. Zie begroting.

*Toelichting:*

De verantwoordelijkheid voor het verrichten van onderzoek naar objecten uit de eigen collectie berust bij de musea zelf. De rol die het ECR heeft bij onderzoek bij individuele restitutieverzoeken vereist dat het centrum op enige afstand tot het museale veld blijft. Als het ECR onderzoek zou uitvoeren in opdracht van een museum of door een museum uitgevoerd onderzoek zou coördineren, zou dat kunnen botsen met andere taken die het centrum uitvoert. Het bieden van algemene ondersteuning aan het museale veld is wel mogelijk. Op dit moment beantwoordt het ECR al de gestage stroom individuele informatieverzoeken van musea die gericht zijn op het achterhalen van concrete gegevens en het wegwijs maken in archieven.

Het museumveld zou daarnaast bediend kunnen worden door onder meer het organiseren van workshops, het opstellen van lespakketten, het stimuleren van (kennis)netwerkvorming en in voorkomende gevallen consultancy of advies over herkomstonderzoek. Deze activiteiten passen in principe binnen de bestaande taken van het ECR, maar bij de oprichting zijn daar onvoldoende personele gevolgen aan verbonden. Een impuls geven aan deze ondersteunende activiteiten zou mogelijk zijn met een uitbreiding van de formatie van 0,5 fte (schaal 10), in eerste instantie voor de duur van 4 jaar.

**E. Identificatie en opsporing familie/mogelijke erfgenamen***Door de evaluatiecommissie geformuleerde aandachtspunten:*

Identificatie rechthebbenden NK-stukken (en dan vervolgens deze personen opsporen ... via Helpdesk).

*Doel*

Door middel van genealogisch onderzoek opsporen van mogelijke nabestaanden/erfgenamen en het actief benaderen van deze personen.

*Omvang*

Circa 1000-1500 individuele pogingen tot achterhalen mogelijke nabestaande/erfgenaam door middel van genealogisch onderzoek

*Personele bezetting*

Circa 0,8 fte (schaal 10) per jaar gedurende een periode van 4 jaar. Zie begroting.

*Toelichting:*

Het is wenselijk om de actieve benadering van mogelijke nabestaanden/erfgenamen in ieder geval gedurende de looptijd van het aanvullende onderzoek naar werken uit de NK-collectie uit te voeren. Het ECR adviseert het onderzoek naar mogelijke erfgenamen/rechthebbenden binnen het ECR plaats te laten vinden, maar de actieve benadering van personen buiten het centrum te beleggen. Te verwachten valt dat er in circa 1000-1500 gevallen aanknopingspunten zijn om erfgenamenonderzoek te verrichten. Naar schatting zal het genealogische onderzoek en de actieve benadering van personen circa 5 uur per casus in beslag nemen.

## 3. Voorlopige begroting kosten (zie bijlage)

Nota bene: bij de berekeningen is er van uitgegaan dat de bij door het NIOD ontwikkelde database tegen de tijd van een eventuele uitvoering is gerealiseerd.

**Begroting kosten hernieuwd herkomstonderzoek**

## Projectcoördinatie

Personeelskosten	554.795
Materiële kosten	72.000
<b>Totale kosten</b>	<b>626.795</b>

## Activiteit A.

## Actualisering en aanvulling onderzoek naar NK-collectie

Personeelskosten	1.663.594
Materiële kosten	14.000
<b>Totale kosten</b>	<b>1.677.594</b>

## Activiteit B.

## Restitutieactiviteiten 1945-1953

Personeelskosten	143.227
Materiële kosten	0
<b>Totale kosten</b>	<b>143.227</b>

## Activiteit C.

## Onderzoek naar de zogenaamde 'Afdeling Binnenland'

Geen extra kosten

## Activiteit D.

## Hulp/coördinatie bij afronding Museale Verwervingen

Personeelskosten	192.388
Materiële kosten	2.000
<b>Totale kosten</b>	<b>194.388</b>

## Activiteit E.

## Identificatie rechthebbenden NK-stukken

Personeelskosten	324.635
Materiële kosten	2.000
<b>Totale kosten</b>	<b>326.635</b>

<b>Totale kosten</b>	<b>2.968.638</b>
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Objects from the Second World War*

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