

*ADVISORY COMMITTEE ON THE ASSESSMENT OF RESTITUTION APPLICATIONS  
FOR ITEMS OF CULTURAL VALUE AND THE SECOND WORLD WAR*



**Report 2008**



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## Report 2008

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Cover:

*View of the Thames at London Bridge* by Jan Toorop



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**Frequently used abbreviations:**

BHG	Origins Unknown Agency
ICN	Netherlands Institute for Cultural Heritage
NK-collection	Netherlands Art Property Collection
OCW	Education, Culture and Science
SNK	Netherlands Art Property Foundation

## Foreword

In 1998, the *Washington Principles on Nazi Confiscated Art* were adopted at an international conference. The following year, the Parliamentary Assembly of the Council of Europe issued a resolution concerning *Looted Jewish Cultural Property*. Both these declarations advocated a lenient restitution policy for property looted during the war, and recommended opting for an alternative form of dispute resolution outside regular judicial procedure. Now, ten years later, the focus on 'looted art' continues unabated. The basic principles are also still very much alive – which, in the Netherlands, is abundantly clear from the seven annual reports issued by the Restitutions Committee since 2002. I know this from personal experience, having been appointed the new chairman as of 1 January 2009 and needing to familiarise myself with the Committee's tasks, policy regulations and working method as soon as possible. The annual reports were an invaluable source in achieving this goal.

Although the basic principles are the same, this does not mean that emphasis has always remained on the same subjects. Initially, emphasis was placed primarily on issuing recommendations concerning claims to works of art from the Dutch National Art Collection that were previously owned by private individuals. More recent annual reports, including the present one for 2008, have seen a shift in two respects.

The first is the increasing number of cases relating to art dealers. These cases are more complex due to the more subtle division of the burden of proof with regard to both the original ownership and the voluntary nature of the loss of possession. In addition, the Nazi practice of appointing a *Verwalter* for Jewish art dealers raises certain questions. Policy on the restitution of objects belonging to art dealers that has been developed in recent years by the Committee in its recommendations appears to be a sound basis for the solution to the problems this entails.

The second shift in focus that can be detected concerns the increasing interest in the Committee's task as described in Article 2, paragraph 2 of the Decree establishing the Advisory Committee on the Assessment of Restitution Applications: the issuing of recommendations with regard to disputes concerning the restitution of items of cultural value between the original owner or their heirs and the current owner, not being the State of the Netherlands. This is in keeping with 'alternative dispute resolution mechanisms' outside regular judicial procedure as described in the *Washington Principles*. In the year under review, three such recommendations were made for the first time. In particular, the initiative taken by the Netherlands Museum Association in the autumn of 2008 to take a closer look at the collections of its members will lead to more of these types of cases in the longer term. The Regulations on Binding Recommendation Procedure formulated by the Committee in 2007 provides a good framework for a fair and balanced procedure, which – pursuant to the provisions of Article 4 – has to be conducted 'in accordance with the requirements of reasonableness and fairness'. These Regulations have since been accepted as a basic principle by the Minister for Education, Culture and Science.

My predecessor, R. Herrmann, can take credit for heading the further development of the policy framework applied by the Committee. The Committee considers itself fortunate that he has agreed to continue as an advisor. A special word of gratitude is also due to the vice-chair, Ms I.C. van der Vlies, for the competent manner in which she fulfilled the role of chair for a period of time in 2008. Without the enthusiasm and the comprehensive expertise of the head and staff of the secretariat, it would be impossible for the Committee to perform its duties.

W.J.M. Davids  
Chairman



1. An American soldier in a church in Ellingen, one of the hundreds of places where the Nazis stored looted property and works of art.

# 1. Introduction

You have before you the seventh annual report of the Advisory Committee on the Assessment of Restitution Applications for Items of Cultural Value and the Second World War (hereafter: the Restitutions Committee). The Restitutions Committee is an independent advisory committee, which was established by order of the State Secretary for Education, Culture and Science (hereafter: OCW).<sup>1</sup> Since January 2002, at the request of the Minister for OCW, the Committee has been investigating and assessing claims to items of cultural value of which the original owners lost possession involuntarily due to circumstances directly related to the Nazi regime.<sup>2</sup> Pursuant to current national policy, the Committee issues independent advice to the Minister regarding decisions to be taken on applications for restitution.

This publication gives an overview of the Committee's work during 2008. The report is to be seen as a continuation of previously published annual reports, which will be referred to frequently. Chapter 2 below contains a short introduction to the Committee and its secretariat, as well as a general review of 2008. Chapter 3 then discusses the Committee's advisory duties and provides an insight into the Committee's procedure and the work of the secretariat. Chapter 4 includes some comments on the relevant policy framework and the general considerations on which the Committee bases its advice. Chapters 5 and 6 contain the full text of the recommendations issued in 2008, in addition to a statistical overview and details about a number of cases.

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<sup>1</sup> For a detailed description of the origins of the Restitutions Committee, see the 2002 and 2005 annual reports. All annual reports (years 2002 to 2007 inclusive) can be found on the Committee's website: <http://www.restitutiecommissie.nl> (Dutch language version) or <http://www.restitutionscommittee.org> (English language version).

<sup>2</sup> 'Decree establishing the Advisory Committee on the Assessment of Restitution Applications for Items of Cultural Value and the Second World War', 16 November 2001 (hereafter referred to as: 'Decree establishing the Restitutions Committee'). Appendix 1.

## 2. The Restitutions Committee

### 2.1 Members of the Restitutions Committee and the secretariat

In 2008, the Restitutions Committee comprised the following members:

R. Herrmann (chairman; until 1 October 2008)

I.C. van der Vlies (vice-chair)

J.Th.M. Bank

J.C.M. Leijten

P.J.N. van Os

E.J. van Straaten

H.M. Verrijn Stuart

In 2008, the Restitutions Committee convened on 12 occasions and organised two hearings. The Committee was chaired for most of the year under review by Mr R. Herrmann. On 1 October 2008, Mr Herrmann stepped down as chair, after which his position was filled by vice-chair Ms I.C. van der Vlies until the end of the year. Mr Herrmann has served as an advisor to the Committee since then. Mr W.J.M. Davids was appointed chair as of 1 January 2009.<sup>3</sup> In order to prepare for this position, Mr Davids has attended Committee meetings since November 2008.



2. Chair of the Restitutions Committee,  
Mr W.J.M. Davids

As already explained in the *2007 Annual Report*, the Decree establishing the Restitutions Committee – which provided for just one reappointment of sitting members – was amended in December 2007. Under the terms of this amendment, members who were appointed when the Committee was established in 2001 could be reappointed for a second three-year term. On the basis of this amended Decree, Mr Bank, Mr Leijten, Mr Van Straaten and Ms Verrijn Stuart were reappointed in December 2007 for a second three-year term and Mr Van Os and Ms Van der Vlies (vice-chair) for a first three-year term until 23 December 2010.<sup>4</sup> Mr Davids was appointed as a committee member and chair until 23 December 2010, commencing on 1 January 2009.

<sup>3</sup> 'Appointment of chair of Advisory Committee on the Assessment of Restitution Applications for Items of Cultural Value and the Second World War', 30 September 2008. Appendix 4.

<sup>4</sup> 'Appointment of member/chair and reappointment of members of Advisory Committee on the Assessment of Restitution Applications for Items of Cultural Value and the Second World War', 12 December 2007. Appendix 3.



3. Members of the Restitutions Committee and members of the secretariat. Back row f.l.t.r.: J.Th.M. Bank, E.J. van Straaten, C.C. Brienen, M. Stek, F.M. Kunert, T. Brandse, N.F. Dufais. Middle row f.l.t.r.: O.M. van Vessem, I.C. van der Vlies, J.C.M. Leijten, A. Marck, A.J. Kool, C.P.L. van Woensel. Front row f.l.t.r.: R.E.D. van Egmond, W.J.M. Davids, I. el Achkar, H.M. Verrijn Stuart, P.J.N. van Os, A.M. Jolles-van Loo, E. Campfens.

In the performance of its duties, the Restitutions Committee enlists the support of its secretarial staff under the management of Ms E. Campfens (secretary/rapporteur). In 2008, the secretariat also employed the following persons: Ms A. Marck (deputy secretary/researcher), Ms T. Brandse (office manager), Ms A.M. Jolles-van Loo (archivist), Ms A.J. Kool (researcher), Mr F.M. Kunert (researcher), Ms E. Muller (researcher) and Mr O.M. van Vessem (legal assistant). During the year under review, the secretariat was reinforced by the following new and/or temporary employees: Ms I. el Achkar (secretary), Mr C.C. Brienen (researcher), Ms R.E.D. van Egmond (researcher), Ms M. Stek (legal assistant) and Mr C.P.L. van Woensel (legal assistant). The Committee secretariat is located at Lange Voorhout 9 in The Hague and also has an office in the National Archive in The Hague.

## 2.2 A review of the year 2008

In 2008, Mr B.J. Asscher, former chairman of the Committee, passed away. The members and staff of the Committee remember him for the manner in which he chaired the meetings: with extensive legal and historical knowledge, coupled with a demeanour that was both to the point and fair. He was also the type of man who could be earnest when required yet lighten a serious discussion with a well-timed witticism. First as vice-chairman and from late 2004 as chairman, he made a significant and sometimes decisive contribution to the development of committee policy.

In October 2008, the Restitutions Committee bid farewell to Mr R. Herrmann, who had succeeded Mr Asscher in late 2007. Mr Herrmann stepped down as chairman for personal reasons, but has since continued to act as advisor to the Committee. The Committee has benefited enormously from the thorough manner in which Mr Herrmann mastered the subject of restitution. He chaired the Committee through its first binding recommendations – known as Article-2-paragraph-2 cases (see Chapters 3 and 6) – and helped to formulate Committee policy on this matter.

In an interview in the *NRC Handelsblad* newspaper of 5 September 2008<sup>5</sup>, then-chairman Mr Herrmann emphasised that private individuals in particular should also be able to approach the Restitutions Committee in case of dispute about the restitution of works of art in their possession. He argued that in the 'Dutch legal culture' the question of whether a work of art should be returned to its original (Jewish) owner deserved a well-considered answer in a careful and objective procedure. It should not be subjected to the pressure of legal counsel or art-historical experts. Yet it is clear that the legal profession is becoming increasingly involved in cases regarding the restitution of looted art.

In the first few years of its existence, the Restitutions Committee only received applications for restitution of works of art that were originally in the possession of private individuals and that are now part of the National Art Collection. After the establishment of restitution policy for art dealers in 2003, the Committee was also called upon to handle cases involving art dealers. A publicity campaign by the Ministry of OCW in 2006 and 2007<sup>6</sup> made more people aware of works of art that were looted or sold under duress during the war. On the recommendation of the Ekkart Committee, the Minister had set a closing date of 4 April 2007 for submission of claims under the 'liberalised' restitution policy.<sup>7</sup> This closing date led to a new wave of applications, most of which were supported and supervised by Dutch and foreign lawyers. From October 2008, the Minister for OCW also asked the Restitutions Committee for advice concerning cases submitted after 4 April 2007.<sup>8</sup> Partly due to this increase in cases, the Committee is still faced with a waiting list of claims that have yet to be actively dealt with. Currently, a maximum of 15 cases is actively being handled.

In 2008, the Restitutions Committee issued its first binding recommendations concerning disputes that can be submitted by two parties, neither of which being the State of the Netherlands.<sup>9</sup> The Committee's tasks in this respect are described in Article 2, paragraph 2 of the Decree establishing the Restitutions Committee.<sup>10</sup> Two of these cases involved a dispute between private individuals and a museum. The third was related to the

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<sup>5</sup> Lien Heyting, 'Particulier kan ook bij ons terecht. Dick Herrmann over de toekomst van de Restitutiecommissie' [Individuals are welcome too. Dick Herrmann on the future of the Restitutions Committee], in: *NRC Handelsblad*, Cultural Supplement, 5 September 2008. Appendix 6.

<sup>6</sup> See *Report 2007*, pp. 9-10.

<sup>7</sup> See *Report 2007*, pp. 17-18.

<sup>8</sup> See paragraph 4.3 of this report.

<sup>9</sup> See Chapters 3 and 6 of this report.

<sup>10</sup> Decree establishing the Restitutions Committee, Article 2, second, third and fifth paragraphs. Appendix 1.

Minister's decision in 2006 to return a large proportion of the Goudstikker collection.<sup>11</sup> This binding recommendation involved a dispute between Goudstikker's heirs and The Hague Municipal Council. The Committee's binding recommendations will be discussed in more detail in Chapters 3 and 6.

Restitution and restitution policy are subjects that are receiving a lot of attention internationally. This means that the Committee is increasingly in contact with committees and research institutes abroad. In 2008, the Committee was represented at a number of international symposia and seminars. On 30 January 2008, for example, vice-chair Van der Vlies gave a lecture at the *Sotheby's Restitution Symposium* in Amsterdam, while secretary/rapporteur Campfens has twice delivered lectures on the Committee's work, once on 15 September 2008 at *The Plundering of Artworks: Acknowledging and Compensating* conference in Paris and once at a seminar organised by *The Institute of Art & Law* in London on 5 November 2008. Finally, vice-chair Van der Vlies attended the international conference *Taking Responsibility. Nazi-looted Art – A Challenge for Libraries, Archives and Museums* on 11 and 12 December 2008 in Berlin, where she also delivered a lecture.



4. Vice-chair Van der Vlies at the international conference *Taking Responsibility. Nazi-looted Art – A Challenge for Libraries, Archives and Museums* in Berlin.

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<sup>11</sup> See paragraph 6.3 of this annual report for the full text of the binding recommendations issued in 2008.

### 3. Activities of the Restitutions Committee

#### 3.1 Introduction

Based on the Decree establishing the Restitutions Committee of 16 November 2001, the Committee's task is to advise the Minister for OCW, at the latter's request, on:

- a) decisions to be taken concerning applications for the restitution of items of cultural value of which the original owners involuntarily lost possession due to circumstances directly related to the Nazi regime and *which are currently in the possession of the State of the Netherlands* (Article 2, paragraph 1 of the Decree);
- b) disputes concerning the restitution of items of cultural value between the original owner who, due to circumstances directly related to the Nazi regime, involuntarily lost possession of such an item, or the owner's heirs, and the current owner, which *is not the State of the Netherlands* (Article 2, paragraph 2 of the Decree).<sup>12</sup>

If an item of cultural value for which an application for restitution has been made is in the possession of the State of the Netherlands and therefore part of the 'National Art Collection' (see a), the Committee will issue a recommendation pursuant to national policy. This restitution policy was established on the basis of recommendations made to the government by what is known as the Origins Unknown Committee – better known as the Ekkart Committee – a committee chaired by R.E.O. Ekkart.<sup>13</sup>

In cases in which the claimed objects are *not* in possession of the State of the Netherlands, but are owned, for instance, by a private individual, a foundation, a provincial or municipal government institution (see b), then the standards of 'reasonableness and fairness' define the Committee's assessment framework.<sup>14</sup>

#### 3.2 Cases concerning objects from the National Art Collection

Of the 18 recommendations issued by the Committee in 2008, 15 concern applications for restitution referred to the Committee under Article 2, paragraph 1 of the Decree establishing the Restitution Committee.<sup>15</sup> These cases involve applications for the restitution of works of art in possession of the State of the Netherlands, which are, for the most part, in the Netherlands Art Property Collection (NK Collection), a subdivision of the National Art Collection.<sup>16</sup> The NK collection currently contains approx. 3,700 works

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<sup>12</sup> Decree establishing the Restitutions Committee, Article 2, first and second paragraphs. Appendix 1.

<sup>13</sup> See paragraph 4.1 of this annual report for an overview of the documents on which restitution policy is based. Please refer to *Report 2002* and *Report 2005*, which can also be found on the Restitutions Committee's website, for a detailed description of national policy.

<sup>14</sup> Decree establishing the Restitutions Committee, Article 2, fourth and fifth paragraphs. Appendix 1.

<sup>15</sup> See paragraph 5.5 of this report for the full text of these recommendations.

<sup>16</sup> The Netherlands Art Property Collection contains some 3,700 paintings, drawings, prints, ceramics, silver, furniture, carpets and other special items and is administered by the Netherlands Institute for Cultural Heritage (ICN). Some objects are in museums and government institutions in the Netherlands and abroad, others are in the ICN depot.

of art with a 'war history', including objects that were confiscated or sold during the Nazi regime, most of which were taken to Germany whereupon they were recovered by the Allied Powers in 1945 and returned to the Netherlands, under whose administration they then fell.

During the year under review, the Restitutions Committee received 12<sup>17</sup> new requests for advice concerning items of cultural value in possession of the State of the Netherlands. At the end of 2008, the Committee had 36 cases relating to the National Art Collection pending.<sup>18</sup>

### **3.3 Method of working on cases relating to the National Art Collection**

To shed light on the Committee's procedure involving cases relating to the National Art Collection, this paragraph will look into the way the Committee and the secretariat handle the submitted requests for advice. The average time the Committee needed to deal with cases was approximately 61 weeks, counting from the moment the request for advice was received to the moment the recommendation was adopted and signed. Due to the large number of cases submitted to the Committee, a waiting list has been in place since 2007 for claims that are not being actively dealt with. The Committee has decided that a maximum of 15 cases can be actively handled at any one time and that the remaining cases will be put on hold. This does not mean, however, that the preparatory investigation of facts is on hold for the cases on the waiting list. Research on all cases is started as promptly as possible.

In general terms, a distinction can be made in the Committee's procedure between a reception phase, an investigative phase and a recommendation phase.



5. Secretariat staff: A. Marck and F.M. Kunert.

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<sup>17</sup> In 2008, the Restitutions Committee received a total of 13 requests for advice, 12 of which were based on Article 2, paragraph 1 and one on Article 2, paragraph 2 of the Decree establishing the Restitutions Committee.

<sup>18</sup> In total, the Committee had 36 cases pending at the end of 2008, including 1 binding recommendation case.

### **Reception phase**

After receiving a request for advice – sometimes supplemented by additional information from the Minister for OCW – the secretariat carries out the administrative processing procedure for the request. Applicants are informed in writing that the request for advice has been received and the application for restitution placed on the waiting list. The secretariat then conducts an investigation into the applicants' admissibility, addressing questions such as: On whose behalf is the applicant acting? What is their relationship to the original owner of the claimed objects? And is it plausible that the applicant is a legitimate claimant/heir? It should be noted that the Restitutions Committee does not determine who the claimants/heirs of the original owner are, but merely conducts a test of reasonableness. As a next step in this phase, any questions that result from this investigation are submitted to the applicants, who are sent a letter outlining the Committee's procedure. This letter is accompanied by a questionnaire to be filled in by the applicants. This questionnaire contains the basic questions of importance for the claims investigation. Given the fact that the Committee often deals with foreign applicants, a response period of several weeks has to be taken into account in most cases. The language employed by the Committee is Dutch, although correspondence with foreign applicants is also conducted in English.

### **Investigatory phase**

During the investigatory phase, the Committee's research team first inventories all available documentation, i.e. information sent by the Ministry of OCW, the results of the (archival) research carried out by the Origins Unknown Agency<sup>19</sup> and the information submitted by the applicants themselves. Based on this information, the secretariat conducts an initial test of reasonableness regarding the questions of importance under the terms of the Decree establishing the Restitutions Committee, namely: 1) Is the claimed object part of the National Art Collection? 2) Is it plausible that the object was once owned by the original owner named? and 3) Was possession of the item lost involuntary during the relevant period?

If there is any doubt as to whether the claim will pass this test of reasonableness – for instance, if there is no evidence to suggest that the claimed work of art ever belonged to the original owners named by the applicants – the Committee may decide to draw up a draft investigatory report (see below), in which a summary is made of the details available at that moment and any unanswered questions that may have arisen. Applicants are thus given the opportunity to provide more information regarding their claim and to clarify any gaps.

In practice, all claims that do pass the test of reasonableness prove to require further archival and art-historical research to be able to address the questions relevant to the recommendation. Important aspects include details concerning original ownership, the nature and circumstances of loss of possession and the settlement of any applications for

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<sup>19</sup> The Origins Unknown Agency (BHG) is the project agency that has carried out research into the provenance of every object in the NK collection under responsibility of the Ekkart Committee. For more information, see <http://www.herkomstgezocht.nl>.



6. Secretariat staff: secretary/rapporteur E. Campfens, in the background f.l.t.r. A. Marck, A.M. Jolles, A.J. Kool and C.P.L. van Woensel.

restitution submitted after the war. The current legal and factual status of the work of art is also investigated. Committee staff primarily conduct their research in archives stored in the National Archive in The Hague and the Netherlands Institute for War Documentation in Amsterdam, but in almost all cases files in other national and international (archival) institutions are also consulted. In addition, it is sometimes necessary to enlist external specialists, such as handwriting experts or restorers of paintings. Applicants are also often asked additional questions. Due in part to the extensive nature of the research, the use of external institutes and specialists, and the response time that needs to be considered in regard to the applicants, the Committee's procedure during the investigatory phase can take a considerable amount of time. The time needed also depends on the scope of the claim.

During the investigatory phase, the case is removed from the waiting list to be actively dealt with. Applicants are informed of this in writing. Generally, a case is taken from the waiting list when it is discussed in a committee meeting for the first time.

Information gathered during the investigatory phase is recorded in a draft investigatory report. Applicants are given the opportunity to respond to this draft report within four weeks for Dutch applications and six weeks for cases involving foreign applicants. The draft report is also sent to the Minister for OCW, affording the opportunity of bringing any additional facts to the attention of the Committee.

Responses sometimes give rise to questions that necessitate further investigation. In some cases, the Committee will deem it necessary to invite the applicants to a hearing, after which the draft report can be amended as required. The definitive investigatory report is adopted when the recommendation is determined (see next phase).

### **Recommendation phase**

When all the relevant facts of a case have been gathered, the Committee members deliberate the contents of the recommendation during a meeting. Legal experts and researchers at the secretariat formulate the first drafts. After the final recommendation

and investigatory report have been adopted, the recommendation is signed by the chair and the secretary/rapporteur. The recommendation and the investigatory report are then sent to the Minister for OCW, who will make a decision regarding the application for restitution. The Committee informs the applicants that the recommendation has been sent to the Minister, and that the contents of the recommendation and the investigatory report will be made known to the applicant by the Minister. The Minister informs applicants of his decision and the contents of the recommendation within six weeks of receiving it. After the Minister's decision has been announced, each recommendation is published on the Committee's website and in the annual report.

The recommendations issued in 2008 concerning objects belonging to the National Art Collection are included in full in Chapter 5, following a statistical overview and a brief explanation.

### **3.4 Binding recommendation cases**

2008 was the first year in which the Committee issued recommendations – 3 of the 18 in that year – under Article 2, paragraph 2 of the Decree establishing the Restitutions Committee.<sup>20</sup> These are claims where a dispute exists between the heirs or the legal successors of the original owners, on the one hand, and the current owners of the works, on the other. The distinguishing feature of these claims with regard to those cited in paragraph 3.2 is that the current owner is *not* the State of the Netherlands but a private individual, a foundation or a provincial or municipal government institution. The explanatory notes to the Decree establishing the Restitutions Committee describe such cases as follows:

*'The government also wishes to make available a facility for the settlement of disputes between private individuals concerning an object of which the original owner lost possession involuntarily due to circumstances directly related to the Nazi regime. In its assessment of such applications from private individuals the Advisory Committee will be guided by the principles of reasonableness and fairness.*

*The intervention by the Minister – since it is the Minister who refers disputes between private individuals to the Advisory Committee – is the result of pragmatic considerations. As it is the Minister who is responsible for ensuring that the Advisory Committee receives the support it needs, the Minister must be aware of the number of opinions the Advisory Committee is expected to issue.<sup>21</sup>*

With a view to the handling of cases submitted to the Committee under Article 2, paragraph 2 of the Decree, the Committee established regulations in 2007 outlining the procedure for such claims. The regulations stipulate that the Committee performs its advisory task in these cases by means of a *'binding recommendation within the meaning*

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<sup>20</sup> Under Article 2, paragraph 2 of its Decree establishing the Restitutions Committee, two requests for advice were referred to the Committee in 2006, one in 2007, and one in 2008.

<sup>21</sup> See the explanatory notes to the Decree establishing the Restitutions Committee. Appendix 1.

of Section 7:900 of the Netherlands Civil Code or by promoting a settlement between the parties.<sup>22</sup> The parties involved have to request the Minister to submit their dispute to the Committee. After the dispute has been presented, and once the parties have signed an agreement stating that they will accept the Committee's advice as binding, the Committee will then hear the dispute.<sup>23</sup> The Regulations, which are enclosed as Appendix 5 to this report, include rules regarding the authority of the Committee, the admissibility of the applicants and the handling of disputes by the Committee. Article 4 of the Regulations summarises the aspects the Committee may take into consideration in such cases:

#### Article 4

The Committee makes a recommendation in accordance with the requirements of reasonableness and fairness, and may, in any event, take the following into consideration:

- a. the government's line of policy concerning the restitution of stolen works of art in so far as they apply by analogy;
- b. the circumstances in which possession of the work was lost;
- c. the extent to which the applicant has endeavoured to trace the work;
- d. the circumstances in which the owner acquired the work and the inquiries the owner made when acquiring it;
- e. the significance of the work for the applicant;
- f. the significance of the work for the owner;
- g. the significance for the public art collection.

Chapter 6 contains an introduction to the binding recommendations issued in 2008 as well as their full texts.

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<sup>22</sup> 'Regulations of binding recommendation 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' (hereafter referred to as: 'Regulations'). See appendix 5 of this report for the full text of the Regulations. See Article 2, paragraph 2 of the Regulations, for the cited text.

<sup>23</sup> Regulations, Article 6, paragraph 2. Appendix 5.

## 4. Policy framework and general considerations

### 4.1 Policy framework

The Decree establishing the Restitutions Committee stipulates that to the extent that the applications for restitution concern objects in the National Art Collection, the Committee shall conduct its advisory task with due regard for relevant national policy. This policy framework was discussed at length in the 2002 and 2005 annual reports and remarks made there will not be repeated here.<sup>24</sup> An overview of the documents from which the policy framework in question arises is included, however. Some of this documentation can be found in the appendices to previous annual reports of the Committee.

<u>Date</u>	<u>Description</u>
April 1998	Recommendations of the Origins Unknown Supervisory Committee
20 May 1998	State Secretary's response to the recommendations of the Origins Unknown Supervisory Committee
21 March 2000	Letter to the Dutch Lower House concerning the government's overall position on WWII Assets
14 July 2000	Letter to the Dutch Lower House concerning the government's position on restitution and recuperation of items of cultural value
26 April 2001	Recommendations by the Ekkart Committee regarding the restitution of works of art
29 June 2001	Government response to the Ekkart Committee's recommendations
16 November 2001	Additional government response to the Ekkart Committee's recommendations
28 January 2003	Ekkart Committee's recommendations regarding the restitution of works of art belonging to art dealers
5 December 2003	Government response to the Ekkart Committee's recommendations regarding the art trade
14 December 2004	Ekkart Committee's final recommendations
8 March 2005	Government response to the Ekkart Committee's final recommendations

### 4.2 General considerations of the Restitutions Committee

Until the end of 2008, the Restitutions Committee set out the general considerations in all its recommendations concerning objects from the National Art Collection. Since then, however, the Committee has decided to no longer include the general considerations

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<sup>24</sup> See the Restitutions Committee website for *Report 2002* and *Report 2005*.

in full in the recommendations to be issued as of 2009. There are various reasons for this. One of them is that – aside from the fact that by now, most of those concerned will by and large be familiar with them – they used to be quoted at the beginning of the recommendation but did not always play a significant role in its preparation. Where any of these considerations do play a part, this will, in future, become clear in the special considerations relating to each individual case. Another reason is that these general considerations should be regarded as *guidelines* that have evolved over time, as a result of which, as static and unchangeable truths, they no longer always fully meet or will meet the requirements of a judicious recommendation.

The general considerations recorded in the recommendations until the end of 2008 were as follows:<sup>25</sup>

- a) The Committee has drawn up its opinion with due regard for the relevant lines of policy issued by the Ekkart Committee and the government.
- b) The Committee asked itself whether it is acceptable that an opinion to be issued is influenced by its potential consequences for decisions in subsequent cases. The Committee resolved that such influence cannot be accepted, save in cases where special circumstances apply, since allowing such influence would be impossible to justify to the applicant concerned.
- c) The Committee then asked itself how to deal with the circumstance that certain facts can no longer be ascertained, that certain information has been lost or has not been recovered, or that evidence can no longer be otherwise compiled. On this issue, the Committee believes that if the problems that have arisen can be attributed at least in part to the lapse of time, the associated risk should be borne by the government if the art was privately owned, save in cases where exceptional circumstances apply.
- d) The Committee believes that insights and circumstances which, according to generally accepted views, have evidently changed since the Second World War should be granted the status of new facts.
- e) It is highly probable that loss of possession was involuntary if the object was sold without the art dealer's consent and by 'Verwalters' [Nazi-appointed caretakers who took over management of firms owned by Jews] or other custodians not appointed by the owner of items from the old trading stock under their custodianship, insofar as the original owner or his heirs did not receive all the profits of the transaction, or insofar as the owner did not expressly waive his rights after the war.

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<sup>25</sup> As described and explained in *Report 2007* (pp. 16-17), general considerations c and e were phrased differently until 12 November 2007:

c) The Committee then asked itself how to deal with the circumstance that certain facts can no longer be ascertained, that certain information has been lost or has not been recovered, or that evidence can no longer be otherwise compiled. On this issue the Committee believes that if the problems that have arisen can be attributed at least in part to the lapse of time, the associated risk should be borne by the government, save in cases where exceptional circumstances apply.

e) Involuntary loss of possession is also understood to mean sale without the art dealer's consent by 'Verwalters' [Nazi-appointed caretakers who took over management of firms owned by Jews] or other custodians not appointed by the owner of items from the old trading stock under their custodianship, in so far as the original owner or his heirs did not receive all the profits of the transaction, or in so far as the owner did not expressly waive his rights after the war.

### 4.3 Claims submitted after 4 April 2007

As stated in the 2007 annual report, the Ekkart Committee advised the government in its 'Final Recommendations' of 14 December 2004 to *'provide the opportunity to submit claims to works of art from the NK collection until two years following publication in the Government Gazette of the government policy formulated on the basis of these final recommendations'*.<sup>26</sup> The government adopted the 'Final Recommendations' and published them with a government response in the *Government Gazette* on 4 April 2005<sup>27</sup>. This publication made it clear that applications for restitution under the liberalised government policy, as it took effect after 2001 on the recommendation of the Ekkart Committee, could be filed with the Minister for OCW until 4 April 2007.<sup>28</sup>

In the meantime, the Ministry of OCW has notified the Restitutions Committee that it can also issue recommendations on applications for restitution submitted to the Minister after 4 April 2007 on the basis of policy created by the Committee. As of October 2008, the Committee has therefore received a new stream of requests for advice that relate to claims filed after 4 April 2007. The Committee seeks to guarantee the continuity of its recommendations.



7. Members of the Restitutions Committee and the secretary/rapporteur.  
F.l.t.r. J.Th.M Bank, E. Campfens, I.C. van der Vlies, W.J.M. Davids,  
J.C.M. Leijten, H.M. Verrijn Stuart, E.J. van Straaten, P.J.N. van Os.

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<sup>26</sup> Final Recommendations of the Ekkart Committee, 14 December 2004. Published in: *Government Gazette*, 4 April 2005, no. 64, p. 13 and included as Appendix 4 in the *Report 2004* of the Restitutions Committee.

<sup>27</sup> *Ibid.*

<sup>28</sup> See also *Report 2004*, paragraph 4.4 and *Report 2005*, paragraph 3.3.

## 5. Cases concerning objects from the National Art Collection

### 5.1 State of affairs 2002 - 2008

In the period since the Restitutions Committee took up its duties in January 2002 until the end of 2008, the Minister for OCW has requested its advice in 107 cases, 103 of which related to items of cultural value from the National Art Collection, while the remaining 4 involved binding recommendations.<sup>29</sup> The overviews and figures shown in this Chapter only relate to the former claims, i.e. claims submitted to the Committee on the basis of Article 2, paragraph 1 of the Decree establishing the Restitutions Committee.<sup>30</sup>

Of the 103 cases relating to the National Art Collection that the Committee received until the end of 2008, 2 were withdrawn and one was combined with an application that was filed later, leaving a total of 100 requests for advice. In that same period, the Restitutions Committee issued 64 recommendations on the basis of Article 2, paragraph 1 of the Decree.<sup>31</sup> These recommendations involved several hundred items of cultural value from the National Art Collection, varying from paintings by 17th-century Dutch masters to silver or porcelain objects. The scope varies from claims to a single work of art to claims for the return of several hundreds of works. Of the total of 64 recommendations issued, 37 cases were fully in the applicants' favour. In 16 instances, it was recommended that the claim be rejected in full.<sup>32</sup> In 9 recommendations, the claim was partly granted and partly rejected,<sup>33</sup> and in 2 instances, the Committee considered itself unauthorised to prepare a substantive recommendation.<sup>34</sup>

Number of cases put before the RC each year		Number of recommendations issued by the RC each year	
2002	12	2002	5
2003	4	2003	7
2004	9	2004	2
2005	16	2005	7
2006	15	2006	12
2007	35 <sup>35</sup>	2007	16
2008	12	2008	15
<b>Total</b>	<b>103<sup>36</sup></b>	<b>Total</b>	<b>64<sup>37</sup></b>

<sup>29</sup> See paragraphs 3.1 and 3.2 of this report. At the end of 2008, one binding recommendation was still pending.

<sup>30</sup> See Chapter 6 of this report for binding recommendation cases.

<sup>31</sup> The Committee issued 64 recommendations including one in which two separate applications for restitution were combined. Hence, a total of 65 requests for advice were dealt with. All recommendations issued by the Committee can be found on the Committee's website.

<sup>32</sup> RC 1.6 (Koenigs collection), RC 1.9, RC 1.11, RC 1.27 (Lemaire), RC 1.43 (Goldsteen), RC 1.55 (Ter Laare), RC 1.59 (Letowski) RC 1.51 (Mossel), RC 1.53 (Van Brabant), RC 1.57 (Van Messel), RC 1.62 (Staal), RC 1.64 (Rubens), RC 1.68 (Weijers), RC 1.72 (Dotsch), RC 1.73 (Von Podwinetz) and RC 1.76 (May).

<sup>33</sup> RC 1.10, RC 1.15 (Goudstikker), RC 1.18, RC 1.19, RC 1.26, RC 1.37 (Mogrobi), RC 1.39 (Von Marx-May), RC 1.50 (De Vries) and RC 1.49 (Stodel II).

<sup>34</sup> RC 1.13; RC 1.38 (Anne Frank estate).

Until the end of 2008, the Committee issued recommendations in cases claiming some 634 items of cultural value. These recommendations were granted in favour of the applicants in the case of 385 objects (approx. 61%) and advised rejection for the remaining 249 objects (approx. 39%). Below is an overview of the number of objects regarding which the Committee has issued recommendations over the period from 2002 to 2008.<sup>38</sup>

Year	Recommended grants	Recommended rejections
2002	100	0
2003	5	73
2004	4	1
2005	220	72
2006	15	1
2007	31	22
2008	12	80
<b>Total</b>	<b>387</b>	<b>249</b>

## 5.2 State of affairs in 2008

In 2008, the Restitutions Committee had a total of 54 cases regarding the National Art Collection under consideration, 12 of which were filed in 2008, while 1 arose from a deferred recommendation concerning an object from a claim that in terms of the other objects was settled in 2007, and 41 other cases dated from previous years.

During the year under review, the Committee issued 15 recommendations concerning objects from the National Art Collection, 5 of which were granted in full,<sup>39</sup> 9 of which were rejected,<sup>40</sup> and 1 was granted in part and rejected in part.<sup>41</sup> All in all, this means that at the end of 2008, there were still 35 cases relating to the National Art Collection that are to be settled in 2009 or later.

<sup>35</sup> In 2007, the actual number of requests for recommendation referred to the Committee by the Minister was 34. The total of 35 requests in the table includes one case concerning a recommendation about NK 414, arising from the Mogrobi case (RC 1.37), which was deferred in 2007. See the Mogrobi recommendation in paragraph 5.3 of *Report 2007* for more information.

<sup>36</sup> A total of 103 requests for advice were submitted to the Committee, two of which were withdrawn and one was combined with an application that was submitted later.

<sup>37</sup> See note 31.

<sup>38</sup> This table takes no account of objects for which neither a grant or a rejection was recommended, for example the application for the restitution of various objects from the estate of Anne Frank (RC 1.38), with regard to which the Committee considered itself unauthorised to advise the Minister on account of the fact that loss of possession was not linked to circumstances directly related to the Nazi regime.

<sup>39</sup> RC 1.63 (Van Leeuwen), RC 1.66 (Lachmann), RC 1.67 (Oppenheimer), RC 1.71 (Behrens) and RC 1.86 (Wassermann).

<sup>40</sup> RC 1.51 (Mossel), RC 1.53 (Van Brabant), RC 1.57 (Van Messel), RC 1.62 (Staal), RC 1.64 (Rubens), RC 1.68 (Weijers), RC 1.72 (Dotsch), RC 1.73 (Von Podwinetz) and RC 1.76 (May).

<sup>41</sup> RC 1.49 (Stodel II).

### 5.3 Explanation of recommendations regarding art dealers issued in 2008

Of the 15 recommendations issued by the Committee in 2008 concerning objects from the National Art Collection, 8 cases involved items of cultural value that were originally in private ownership and 7 involved art dealers. In these cases, the claimed objects were part of the art dealer's trading stock at the time when possession was lost. The Committee assesses art trade cases relating according to the criteria of the specific restitution policy for art dealers, which was established in 2003 on the basis of the recommendations relating to art dealers issued by the Ekkart Committee.<sup>42</sup>

In 2007, in line with the Ekkart Committee's recommendations relating to art dealers and the subsequent government response, the Committee concluded that applications for restitution concerning objects that once belonged to the trading stock of art dealers must be dealt with differently than applications submitted by private individuals. The Committee also took into account the consideration made by the Ekkart Committee in the introduction to its recommendations *'that the art trade's objective is to sell its trading stock so that the majority of the transactions, even at the Jewish art dealers, in principle, constituted ordinary sales'*. Therefore, according to the Committee, it must be assumed that, for the art dealer more than for the private individual, there is a certain level of administration and, consequently, a higher likelihood of evidence.

It was also of importance to the Restitutions Committee that, in the introduction, the Ekkart Committee provided the following explanation: *'Particularly the recommendation to view sales by private individuals from the start of the war as forced sales unless emphatically proven otherwise cannot be adopted unaltered for application to the art trade.'* Should time be (partly) responsible for the failure to provide the necessary evidence, then the associated risk is not the government's but the applicant's, which is different to cases of private ownership. The unique reversal of the burden of proof as it applies to the private ownership of artworks is, therefore, not applicable to cases involving art dealers.<sup>43</sup>

This led to an amended assessment framework for this category of applications, in which the following aspects are of importance:

- a high probability of ownership of the object by the art dealer;
- the object having belonged to what is known as 'old trading stock';
- a high probability of involuntary loss of possession.

The term 'old trading stock' refers to the trading stock that was acquired by the art dealers themselves, before they had to discontinue their business – usually due to measures imposed by the occupying forces – and their art dealership was placed under the administration of a Nazi-appointed administrator (*Verwalter*). Trading stock sold under the administration of the *Verwalter* is referred to as 'new trading stock'.

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<sup>42</sup> See Appendix 1b to *Report 2005*.

<sup>43</sup> Restitution policy for cases involving art dealers is described in more detail in *Report 2005*, which can be found on the Committee's website.

In the year under review, the Committee issued 7 recommendations concerning a total of 78 objects originating from art dealerships.<sup>44</sup> The application with regard to 2 objects was withdrawn, 9 objects were eligible for restitution, but 2 of them were missing and therefore no longer available for restitution. For both these objects, the Committee recommended indemnification, and for the other 7, it was advised that they be returned. The applications for the restitution of the remaining 67 works of art did not satisfy the assessment criteria pertaining to cases involving art dealerships. Of 13 objects, ownership could not be established to the extent required, a further 45 objects did not belong to the 'old trading stock' and as to the remaining 9 objects, the likelihood that these were lost involuntarily could not be established to the extent required.

What is striking with regard to these art trade cases is the relatively large number of applications for restitution that were rejected on the grounds that the object did not belong to the old trading stock. In cases where applicants themselves appeared unable to provide the necessary evidence, the Committee conducted investigations itself. When it proved impossible to establish on the basis of the information at hand when the art dealership had acquired the work of art, the Committee was forced to conclude that there was insufficient evidence to confirm that the object belonged to the 'old trading stock' and had to recommend that the application be rejected.

An example of a negative recommendation involving an art dealership in 2008 is the Van Messel case (RC 1.57), which involved two art dealerships that were merged during the war.

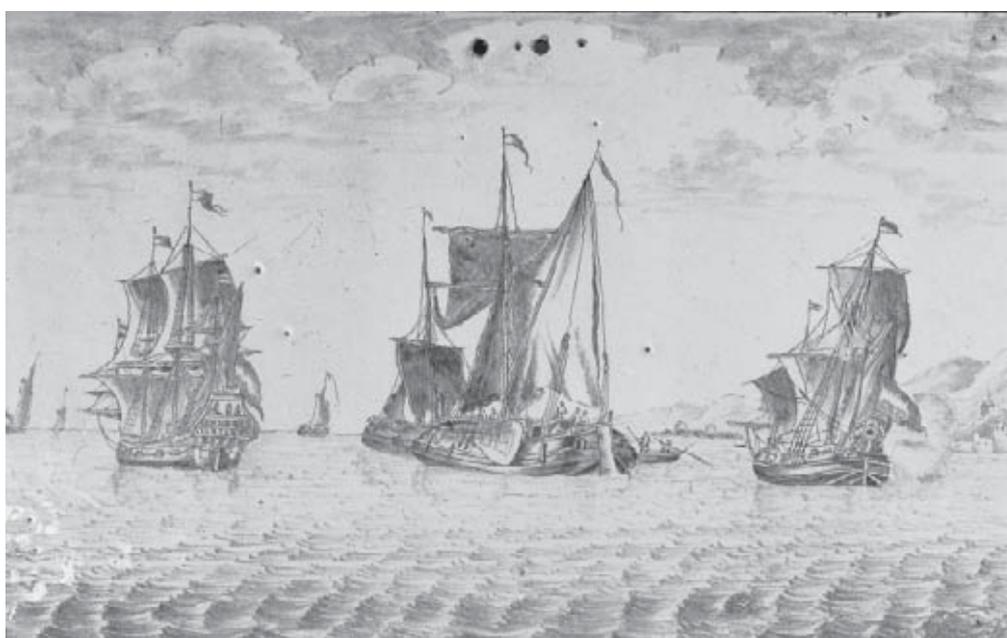
Investigation showed that Samuel van Messel, who was Jewish, established an art dealership at Nieuwe Spiegelstraat 39 in Amsterdam in 1921 under the name S. van Messel. This branch was managed by his two sons, A. van Messel and J. van Messel. In 1924, J. van Messel established his own art dealership in Amsterdam under the name J. van Messel, while his brother continued his father's business from 1925 under the name Firma S. van Messel. In 1935, J. moved his dealership to Nieuwe Spiegelstraat 49 in Amsterdam, so that when the German forces invaded the Netherlands, the two art dealerships, Firma S. van Messel and J. van Messel, were located within a stone's throw of one another.

During the Second World War, the German occupying forces took a number of measures to subsequently register, manage and then wind up Jewish companies. As a consequence of these measures, these companies were placed under administration and often wound up by a *Verwalter*. Firma S. van Messel and J. van Messel art dealership were both placed under the administration of the same *Verwalter*, who then merged them.

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<sup>44</sup> RC 1.49 (Stodel II), RC 1.51 (Mossel), RC 1.57 (Van Messel), RC 1.62 (Staal), RC 1.63 (Van Leeuwen), RC 1.64 (Rubens) and RC 1.67 (Oppenheimer). See paragraph 5.5 of this report for the full texts of the recommendations.

The claim regarding Van Messel was submitted by two applicants, who claimed to be the heirs and family, respectively, of A. van Messel and J. van Messel. The application for restitution concerned two works of art from the NK collection, namely a plate and a plaque. The documentation consulted by the Committee revealed that both objects were sold under the administration of the *Verwalter* to the *Kunstsammlungen der Stadt Düsseldorf* art collection in 1942. However, the investigation failed to uncover whether the sale took place before or after the two dealerships were merged. In addition, the investigation failed to answer the question whether the objects belonged to the old trading stock (purchased by the art dealer) or the new trading stock (purchased by the *Verwalter*). In its recommendation – reproduced in paragraph 5.5 – the Committee stated that neither applicant had made a statement or supplied further factual information to indicate that the objects had once belonged to either art dealership's old trading stock.



8. Delft Plaquette with a decoration of ships (NK 355).

On the basis of the above, the Committee did not consider it very likely that both objects belonged to the old trading stock of either one of the art dealerships, and therefore rendered the advice that the application for the restitution of both objects be rejected.

#### **5.4 A number of cases highlighted**

Before the recommendations issued in 2008 on the basis of Article 2, paragraph 1 of the Decree are set out in full in paragraph 5.5, this paragraph gives details of a few of the cases. The 15 applications for restitution of objects from the National Art Collection on which the Committee advised the Minister in 2008 all differ in complexity and scope. More than half were the result of the former Origins Unknown Agency's actively tracking down and approaching potential claimants, under responsibility of the Minister. The recommendation in the Lachmann case (RC 1.66) issued on 3 March 2008 is an illustration of this. This case concerned an application for the restitution of the painting

*Portrait of a woman with a fan* by J.A. Rootius. Investigations by the Origins Unknown Agency showed that the painting was returned to the Netherlands after the war, but that the restoration of rights authorities, due to a mistake in the translation of a letter, did not return it to its original owner.

In 1952, one of the original owners, Alice Lachmann, sent a letter in German to the Dutch restoration of rights authorities, describing belongings she was missing, including the painting by Rootius. The Committee determined that the restoration of rights authorities had made a mistake in the translation of the letter. The word '*Spitzenkragen*' – or Dutch 'kantkraag' ['lace collar'] – used by Alice Lachmann in her description of the missing painting had been erroneously translated as 'puntkraag' or 'pointed collar'. As a result, Lachmann's description did not correspond with the image of the recuperated painting and probably led to the reluctance of the restitution authorities to return the painting. Through the active approach by the Origins Unknown Agency of the Lachmann family, they were once more given the opportunity to submit a claim. On the basis of additional facts concerning the case – reproduced in recommendation RC 1.66 in paragraph 5.5 – the Committee deemed that in this case the conditions for restitution were met.

This claim was the direct result of investigation by the Origins Unknown Agency and the active tracing of parties concerned. In 2008, there was also a claim that came about as a result of the exhibition *Geroofd, maar van wie?* (Looted, but from whom?). This exhibition of works of art was specially organised in the Hollandsche Schouwburg theatre in Amsterdam in 2006-2007 in order to find owners who had not yet been traced. The exhibition also allowed visitors to consult the database of the Origins Unknown Agency, which contains the results of the provenance research into every object in the NK collection.<sup>45</sup> The exhibition was visited by a family who were looking for a painting that was lost during the war by the parents of their now deceased father, Bernard David Dotsch. The Dotsch family consulted the database during the exhibition and thought to have found a painting that corresponded with the missing painting. The work they were alluding to was *Fishermen on a beach* by J.H.B. Koekoek, with inventory number NK 2064. After contact between the family and the Origins Unknown Agency, an application for restitution was submitted to the Committee for a recommendation (RC 1.72).

The investigation showed that Bernard David Dotsch, who was Jewish, was arrested by the German occupying forces along with his parents and sister in 1942. He was the only member of the family to survive the war. Documentation that the applicants provided with their claim demonstrated that Dotsch himself had also searched for the painting that was missing from his parental home. On 30 June 1986, he made a claim to a painting under the administration of the Austrian state. The painting in question was included on the 'Mauerbach' list, which contains several hundred abandoned works of art that were found by the allied forces in Austria in 1945 and for which the Austrian government was trying to trace the owners in the 1980s. The description of the painting on the Mauerbach list reads: '*Koekoek Gestrandetes Schiff in der Brandung Öl/Lwd. 58,5x38 sign.*' (Koekoek Stranded ship in the surf, oil on canvas 58.5x38 sign.).

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<sup>45</sup> See <http://www.herkomstgezocht.nl> for this database.

Lfd. Nr.	Name des Malers	Kurzbeschreibung	Art	Ausmaß	Anmerkung	Lfd. Nr.	Name des Malers
200	Keller A. zugeschrieben	Tanz in finstern Waldgrund. Im Hintergrund Burg	Öl/ Holz	56x78		255	Lindenschmidt W.
201	Klimsch E.	Sitzendes Mädchen in bäuerlicher Tracht	Öl/ Lwd.	22x41,5	sign.	256	Lindenschmidt H.
202	Knaus L.	Vielfigurige Ghettozene. Spielende Kinder im Vordergrund.	Öl/ Lwd.	108x148,5	sign. u. dat.	257	Lindenschmidt H.
203	Knip A.	Flußlandschaft. Am Ufer Enten	Öl/ Lwd.	37x31	sign. u. dat.	258	Link... P.
204	Knip J. A.	Landschaft mit drei Kühen. Im Hintergrund Baumgruppe	Öl/ Lwd.	78x107,5	sign. u. dat.	259	Lint H. v.
205	Kobell J.	Hirte, eine Kuhherde auf die Weide treibend	Öl/ Lwd.	49x65	sign.	260	Lintzbauer C.
206	Kobey K.?	Historisches Porträt eines Feldherrn vom Ende des 17. Jahrhunderts, in Rüstung und Hermelinmantel	Öl/ Lwd.	150,5x111	sign. u. dat.	261	Loder M.
207	Koch A.	Wiese am Waldrand	Öl/ Lwd.	50,5x69	sign.	262	Loos F.
208	Koch J. A. in der Art	Ideale gebirgige Küstenlandschaft mit Stadt an Gebirgslehne und lagernden Figuren im Vordergrund	Öl	135x123		263	Ludwig C.
209	Koekoek	Gestrandetes Schiff in der Brandung	Öl/ Lwd.	58,5x38	sign.	264	Lueger M. zugeschrieben
210	Körner E.	Die Akropolis	Öl/ Lwd.	151x101	sign.	265	Lugo E.
211	Kolbe F.	Antikes Brautpaar. Venus und Amor	Öl/ Lwd.	162x130	sign.	266	Machy P. A. de
212	Kolitz L.	Blick auf einen mittellitalienischen See mit kleinen Städten auf den ihn umgebenden Hügeln. Im Vordergrund eine Straße mit Eselskarren	Öl/ Lwd.	92,5x113,9	sign. u. dat.	267	Magnasco A. zugeschrieben
213	Kramer K., Mitte des 19. Jh.	Fischmarkt am Kanal in einer Stadt	Öl/ Lwd.	51x65	sign.	268	Magnasco zugeschrieben
214	Kroener J. Ch.	Balzender Auerhahn im Geäst mit Hennen	Öl/ Lwd.	80x60	sign. u. dat.	269	Mahlknecht E.
215	Kronberger C.	Winterlandschaft. Knaben beim Schlittenfahren	Öl	32,5x25	sign.	270	Makart H. möglicherweise
216	Kronberger C.	Winterlandschaft mit schlittenfahrenden Knaben	Öl/ Lwd.	33x28	sign.	271	Makart H.
217	Kügelgen G. v. zugeschrieben	Allegorie auf die Befreiungskriege 1812/1813. Junge Frau in antikisierendem Gewand mit Diadem und Lorbeerkranz	Öl/ Lwd.	59,5x74,5		272	Makart H. in der Art des
218	Kügelgen G. v. zugeschrieben	Allegorie auf die Jahre 1812/1813/1814. Frau mit Krone, eine Urne haltend	Öl/ Lwd.	75x60			
219	Kühling W.	Kühe auf der Weide					

9. The description of the painting by Koekoek on the 'Mauerbach List' under number 209.

In a letter that Dotsch sent to the Austrian authorities on 11 August 1986, he described the missing work as follows: '(...) ein Ölgemälde des Malers Koekoek (JH. Oder H.) Abmessung 58,5 x 50cm, darstellend "ein gestrandetes Schiff in der Brandung".' (an oil painting by painter Koekoek (JH. or H.) dimensions 58.5 x 50 cm, depicting "a stranded ship in the surf"). In support of his request, he included three testimonies from people who claimed that they could remember seeing the painting in Dotsch's parental home. In these statements, the painting is described as follows: 'Es stellte ein Seestück vor, mit einem Schiff auf den Wellen'; 'Eine Seeansicht mit einem sich im not befindlichen Schiff darstellend' ('It depicted a seapiece, with a ship on the waves'; 'A seascape depicting a ship in distress'). In the end, Dotsch's claim was rejected by the Austrian authorities because of conflicting claims to the same painting.

The question that the Committee needed to answer first in its recommendation was whether it was highly likely that the painting NK 2064 – which the Dotsch family had found in the Origins Unknown Agency database and then claimed – was the same

painting that was lost by Dotsch. In its recommendation, the Committee stated the following with regard to this:

*'The Committee has determined that the descriptions provided by Bernard David Dotsch and the three eyewitnesses of the painting lost by S.D. [Bernard David Dotsch's father, RC] during the war do not match the currently claimed work. NK 2064 depicts a sandy path between low dunes with a beach in the background, featuring a fishing boat on the right which has been grounded, a shed on the left and in the centre horses feeding from a trough and several people. There is no suggestion of a ship in the surf or of a ship in distress. Moreover, in NK 2064, the sea or the surf as described in all the abovementioned descriptions is only partially visible on the horizon in the background. The Committee has also concluded that several distinctive elements featured in NK 2064 are missing in the statements that Bernard David Dotsch sent to the Austrian authorities, viz. the horses, the people and the small shed, all of which feature prominently in the painting.'*

The Committee established that the provenance research carried out by the Origins Unknown Agency into NK 2064 also failed to uncover any evidence to suggest that NK 2064 was ever owned by Bernard David Dotsch's parents. Finally, the applicants were also unable to provide the Committee with any further information. In its recommendation, the Committee stated that on the basis of current restitution policy, art objects can only be returned if a plausible case is made for ownership rights and there are no indications to the contrary. The Committee deemed that these conditions had not been met in this case and advised the Minister to reject the application for restitution.

Another point that the Committee has to assess on the basis of restitution policy is whether a case has been settled in the past. In the recommendations issued in 2008 concerning Wassermann (RC 1.86) and May (RC 1.76), post-war events led to the Committee looking into this point more closely.

The application for restitution regarding Wassermann concerned a painting that, after the war, was recognised by a representative of Wassermann at an exhibition of recuperated objects – what is known as a claims exhibition – organised by the Netherlands Art Property Foundation (SNK). Wassermann then submitted an application for restitution of the painting, but the Dutch recuperation authorities demanded that the sum Wassermann received during the war for the sale of the painting be repaid. The Committee concluded from extant correspondence that Wassermann, who fled to the United States during the war because he was Jewish, was unable to pay the (full) amount after the war, and was therefore forced to renounce his application for restitution. However, Wassermann's representative indicated that he would be willing to discuss another arrangement – a request that was similarly rejected by the post-war restoration of rights authorities. In 1959, Wassermann tried to reclaim the painting again, seeing as he was now capable of repaying the sum received during the war for its sale, but again this request was rejected by the authorities, who referred to the correspondence from 1951. In its recommendation, the Committee deemed that this course of events did not constitute a case that had been settled in the past, as defined in the restitution policy:

*'The Committee finds that the negotiations held after the war between Wassermann and the Dutch restitution authorities and Ministries did not lead to a judgment by the Council for*

*the Restoration of Rights or another competent court, nor to a settlement with a body which in hierarchy ranks above the SNK. Furthermore, the Committee finds that Wassermann's decision in 1951 to temporarily renounce his restitution claim because of the amount of the consideration cannot be regarded as an explicit renouncement of the restitution claim. The Committee therefore concludes that this case cannot be considered to have been settled in the past and deems the applicants' request admissible.'*

The recommendation regarding Wassermann (RC 1.86) as reproduced in paragraph 5.5 provides more detailed information regarding the Committee's arguments for advising the Minister to return the claimed painting.

The other recommendation issued in 2008 in which the Committee had to ascertain whether a case had been permanently settled in the past, as defined in the restitution policy, was the May case (RC 1.76). This request for advice was submitted to the Committee in 2007 and involved the painting *Portrait of a man* by H.W. Wieringa (formerly attributed to Thomas de Keyser), with inventory number NK 2558. During the war, the painting was sold by Robert May, who, in the context of the recuperation of works of art to the Netherlands, wrote a letter to the authorities after the war alerting them to the existence of the painting:

*'De opbrengst van de verkoop, zijnde F.18.000.-, hetgeen zonder twijfel te laag was, is mij ter hand gesteld, zodat uit dien hoofde ik geen schade te vorderen heb. Echter lijkt het mij, dat dit schilderij een kunsthistorische waarde heeft om de voorgestelde persoon zelf, en voor Nederland behouden zou moeten blijven, weswege ik U bij dezen hierop attent maak.'*

[The income from the sale, to wit NLG 18,000, which was doubtless too low, was consigned to me, so that on that account, I cannot claim damages. However, I do believe that this painting is of art-historical value because of the person it features, and should therefore be preserved for the Netherlands, which is the reason I am drawing your attention to it.]

The painting was recovered and after its return to the Netherlands, the authorities offered May the chance to buy the painting back for the sum that he received for its sale during the war. In his answer to the authorities, however, May wrote:

*'In antwoord op Uw brief (...), deel ik U mede, dat het niet mijn intentie is, om teruggave van de "Thomas de Keyser" te verzoeken.'*

[In answer to your letter (...), I am informing you that I have no intention of applying for the restitution of the "Thomas de Keyser".]

This course of events led the Committee to arrive at the following conclusion:

*'In the light of the above, and with due regard for relevant national policy concerning the restitution of items of cultural value, the Committee must first of all investigate whether the applicant can bring a claim. The principle of Dutch restitution policy is that the post-war restoration of rights should not be repeated unless new insights are gained. This means*

*that in principle, cases that have been conclusively settled are not reopened. Although the scope of the term "settled case" has been limited as a result of the interpretation given it in the first recommendation on private art property by the Ekkart Committee (April 2001), the government decided that a case should in any event be considered conclusively settled if "the claimant has explicitly withdrawn the claim for restitution".'*

In light of the facts, the Committee deemed that May was explicit in his rejection of the restitution of the painting. Furthermore, the following was also considered:

*'The Committee is of the opinion that no new facts have come to light that would necessitate a reopening of the case. It considers the following of significance in this respect. May received the purchase price at the time and indicated that he would not claim damages. Although May received less than the sum at which the work was valued during the war, there is no question of substantial loss of capital. Nor did May backtrack on his decision in later years. Moreover, there is no reason to assume that the post-war procedure was negligently performed.'*

The Committee deemed that the conditions as defined in the restitution policy were not met in this case and therefore advised the Minister to reject the application for restitution.

The above recommendations are reproduced in full in the following paragraph, together with the other recommendations relating to objects from the National Art Collection issued in 2008.

## **5.5 Recommendations issued in 2008 regarding objects from the National Art Collection**

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### **1. Recommendation regarding Stodel II**

(case number RC 1.49)

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In a letter dated 18 October 2006, the Minister for Education, Culture and Science (OCW) asked the Restitutions Committee to issue a recommendation regarding the application for restitution submitted on 10 July 2006 by S.L.-S. en J.S., through their representative R.W. Polak, master of laws. After the death of J.S. on 18 March 2007, his daughter L.E.B.-S. takes his place as applicant (together with S.L.-S. hereafter referred to as 'the applicants').

Initially, the application for restitution concerned the following objects:

NK 205:	bowl
NK 244:	box
NK 251:	commode
NK 296:	dish
NK 505:	plate
NK 508 A-B:	two beaker vases
NK 510:	vase
NK 511:	bowl
NK 512:	small jug
NK 530 A-B:	tobacco pot
NK 532 A-B:	two jars and covers
NK 633:	miniature cannon
NK 652:	armchair
NK 685:	tapestry
NK 810 A-B:	two armchairs
NK 891:	miniature cannon
NK 1074:	bordure of a tapestry

NK 1075: portière  
 NK 1079: tapestry  
 NK 2131: G. de Witte, *Italian landscape with herdsmen*  
 NK 2310: S.J. van Ruysdael, *Dune landscape with travellers near Egmond aan Zee*  
 NK 2443: B.C. Koekkoek, *View on the Rhine near Xanten*  
 NK 3202: mirror

According to the applicants, these objects were originally part of the trading stock of art dealers J. Stodel v.o.f., established in Amsterdam (hereafter referred to as 'art dealership Stodel'). Since their return to the Netherlands after the Second World War, the claimed objects have been part of the Netherlands Art Property Collection (hereafter referred to as the 'NK collection') under the inventory numbers listed above. According to information from the Netherlands Institute for Cultural Heritage in Rijswijk (hereafter referred to as 'ICN'), most of these objects can now be found in various government institutions and museums in the Netherlands and abroad, as well as in the ICN depot. Furthermore, the ICN reported that NK 510 and NK 633 are missing and that NK 3202 is effectively no longer part of the NK collection.



10. Artdealer Stodel at the Rokin nr. 70 in Amsterdam, October 1955.

### The procedure

In this case, the Committee refers first of all to its recommendation dated 18 April 2005 concerning the application of S.L.-S., on behalf of Salomon Stodel Antiquités, for the restitution of 15 NK works from the trading stock of art dealership J. Stodel v.o.f. (RC 1.10), which claim was reduced to 11 works in 2004. In the said recommendation, the Committee advised the restitution of the objects NK 2736, NK 1594, NK 1596, NK 2, NK 2240, NK 1790, NK 1863 and NK 1347 and the rejection of restitution of objects NK 179, NK 2822 and NK 554. Then State Secretary M.C. van der Laan followed this advice on 22 April 2005. The current application for restitution is a follow-up to the above application.

In response to the request for a recommendation, the Restitutions Committee instituted a fact-finding investigation, the results of which were summarised in a draft report dated 14 May 2007. This draft report was submitted to the applicants and to the Minister for OCW to give them the opportunity to add information. The applicants replied to the contents of the draft report in a letter dated 22 June 2007, indicating that they abandoned their claim to NK 2310 and NK 2443. At the request of the Minister in a letter dated 11 February 2008 to supplement the draft report, the ICN provided additional information concerning the missing objects NK 510, NK 633 and NK 3202. In a letter dated 12 November 2007, the Committee informed the applicants of the new wording of general considerations c and e, giving them the opportunity to alter their response to

the draft investigatory report. The applicants responded to the contents in a letter dated 21 January 2008, expressing their objections. The investigatory report was subsequently adopted on 3 March 2008. For the facts of the case, the Committee refers to this report, which is considered an integral part of this recommendation.

### General considerations

- a. The Committee has drawn up its opinion with due regard for the relevant (lines of) policy issued by the Ekkart Committee and the government.
- b. The Committee asked itself whether it is acceptable that an opinion to be issued is influenced by its potential consequences for decisions in subsequent cases. The Committee resolved that such influence cannot be accepted, save in cases where special circumstances apply, since allowing such influence would be impossible to justify to the applicant concerned.
- c. The Committee then asked itself how to deal with the circumstance that certain facts can no longer be ascertained, that certain information has been lost or has not been recovered, or that evidence can no longer be otherwise compiled. On this issue, the Committee believes that if the problems that have arisen can be attributed at least in part to the lapse of time, the associated risk should be borne by the government if the art was privately owned, save in cases where exceptional circumstances apply.
- d. The Committee believes that insights and circumstances which, according to generally accepted views, have evidently changed since the Second World War should be granted the status of new facts.
- e. It is highly probable that loss of possession was involuntary if the object was sold without the art dealer's consent by 'Verwalters' [Nazi-appointed caretakers who took over management of firms owned by Jews] or other custodians not appointed by the owner of items from the old trading stock under their custodianship, in so far as the original owner or his heirs did not receive all the profits of the transaction, or in so far as the owner did not expressly waive his rights after the war.

### Explanation of general considerations c and e<sup>46</sup>

In line with the recommendations with regard to art dealing and the explanation thereof, the Committee has come to the conclusion that consideration c should only apply to the ownership of art by private parties. Consideration e has been modified accordingly and, furthermore, this consideration should be taken to mean that only those objects that were effectively part of the old trading stock are eligible for restitution.

### Special considerations

1. After the withdrawal of the application for restitution of NK 2310 and NK 2443, this recommendation concerns the following twenty-one objects: NK 205, NK 244, NK 251, NK 296, NK 505, NK 508 A-B, NK 510, NK 511, NK 512, NK 530 A-B, NK 532 A-B, NK 633, NK 652, NK 685, NK 810 A-B, NK 891, NK 1074, NK 1075, NK 1079, NK 2131 and NK 3202.
2. The applicants stated that they are the heirs of Salomon Stodel, who, with his brother Bernhard Stodel, was partner in the art dealership J. Stodel v.o.f. during the Second World War. Furthermore, the applicants stated they are the sole shareholders of Stodel Holding B.V., in which Salomon Stodel Antiquités is incorporated. According to the applicants, the latter company is the successor of art dealership J. Stodel v.o.f. Further relevant information is contained in the investigatory report of 3 March 2008. The following summary suffices here. Art dealership Stodel was founded in 1898 by Jacob Stodel (senior), a Jewish art dealer, with its premises initially at Nieuwe Hoogstraat 15 in Amsterdam. After Jacob Stodel's death, his sons Salomon and Bernhard Stodel carried on the business. From 1936, art dealership Stodel was established at Rokin 70 in Amsterdam.
3. During the Second World War, the German occupying forces in the Netherlands put in place a number of measures designed to successively register, manage and then wind up Jewish companies. On 12 March 1941, *Verordnung 48/1941* was issued, the 'decree ordering the removal of Jews from all business'. Pursuant to this decree, companies owned by Jewish entrepreneurs were taken over and then wound up by a *Liquidations-Treuhänder* or bought by / placed under the permanent administration of a *Verwaltungs-Treuhänder* (in short: *Verwalter*). However, until October 1941, the German forces left art dealership Stodel alone. The partners were able to go about their business unimpeded and were at liberty to travel. This came to an end in October 1941, when the occupying forces closed and sealed the art dealership. Some weeks later, at the recommendation of an art dealer colleague, Bernhard Stodel approached Johan Peter Joseph Kalb requesting him to act as *Verwalter* of art dealership Stodel. On 27 November or 1 December 1941, Kalb took over the management of the company. The partners lost all control.
4. Kalb purchased art dealership Stodel on 5 August 1942 for NLG 46.765. The art dealership's employees who had to assess the value of the stock were instructed by Kalb to put the value of the objects at one third of the purchase price. A comparison of the stock book with the inventory in the deed of share transfer shows that, moreover, the sales price was much lower than the sum of the amounts contained in the stock book.

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<sup>46</sup> Until 12 November 2007, general considerations c and e read:

- c) The Committee then asked itself how to deal with the circumstance that certain facts can no longer be ascertained, that certain information has been lost or has not been recovered, or that evidence can no longer be otherwise compiled. On this issue, the Committee believes that if the problems that have arisen can be attributed at least in part to the lapse of time, the associated risk should be borne by the government, save in cases where exceptional circumstances apply.
- e) Involuntary loss of possession is also understood to mean sale without the art dealer's consent by 'Verwalters' [Nazi-appointed caretakers who took over management of firms owned by Jews] or other custodians not appointed by the owner of items from the old trading stock under their custodianship, insofar as the original owner or his heirs did not receive all the profits of the transaction, or insofar as the owner did not expressly waive his rights after the war.

Kalb paid the purchase price with a loan later repaid with income from the art dealership. Kalb paid the purchase price to Handelsmaatschappij H. Albert de Bary & Co N.V. in Amsterdam, crediting it to Salomon and Bernhard Stodel. However, the Stodel brothers never had access to this money. It can be concluded from a combination of these facts and the various statements made by witnesses referred to in the investigatory report that the sale to Kalb was not made voluntarily.

5. Bernhard and Salomon Stodel survived the war. After the liberation, the premises of art dealership Stodel at Rokin were found to be nearly empty. On 5 August 1946, a petition was submitted on behalf of art dealership Stodel to the Jurisdiction Department of the Council for the Restoration of Rights in Amsterdam, in which the amount to be claimed from Kalb was calculated at NLG 187,846.11. On 10 June 1947, pursuant to the Restitution of Legal Rights Decree, KB E 100, the Council declared the sale of the art dealership null and void. It did not discuss the requested compensation. Kalb was convicted on 18 June 1947 by the Amsterdam Tribunal because by becoming *Verwalter* of art dealership Stodel, he had attempted to take advantage of the measures implemented by the enemy. According to the Tribunal, the fact that the Stodel brothers had asked Kalb to become *Verwalter* did not detract from this.
6. An official record of objections dated 19 March 1951 was found in the archive of the Netherlands Property Administration Institute (hereafter referred to as 'NBI'), in which the disputes between art dealership Stodel and Kalb were discussed in detail. Although it says that the parties agreed to the record of objections being submitted to the Council for the Restoration of Rights, there is no evidence in the Council's archive to show that the record was actually submitted. Seeing as no information was found in available sources about a definitive settlement, the Committee argues that this case should not be regarded as settled, and therefore deems the applicants' claim admissible.
7. The applicants currently request the restitution of the objects registered under 21 NK numbers. They hold the view that their application should be assessed with due observance of the general considerations c and e, as they read up to 12 November 2007, given that they filed their application on 10 July 2006 and responded to the draft report in a letter dated 22 June 2007. Moreover, this is said to have constituted a 'change in policy in a current case, with regard to elements of which the Committee has already decided otherwise.' The Committee rejects this position on the grounds that it has given the applicants the opportunity to alter their assertions to the new wording of the general considerations c and e, and because it considers this an independent application submitted on 10 July 2006, hence after the recommendation of 18 April 2005 (RC 1.10) cited earlier. Below are the considerations per category.

#### 8. NK 685, NK 1079, NK 810 A-B and NK 205



11. Delft bowl with blue and white decor in Chinese style (NK 205).

The investigation has revealed the following facts with regard to the ownership of the objects registered under the four NK numbers shown above. Based on the BHG's reconstruction of the provenance and the archive documents found, the Committee concludes that art dealership Stodel sold these objects during the war. The Committee then investigated whether these works were part of the old trading stock (purchased under the owners' management) or the new trading stock (purchased under the management of the *Verwalter*). This investigation has shown that NK 685 and NK 1079 were sold to the Münchener Kunsthandelsgesellschaft (Munich Art Dealers) in November 1940, that NK 810 A-B was sold to art dealers Kunsthandel v/h J. Goudstikker N.V. at an unknown date in 1940, and that NK 205 was sold to the Historisches Museum in Frankfurt am Main on 5 April 1941. The Committee concludes from this that these four objects were sold prior to Kalb taking office as *Verwalter* and that they are therefore to be considered part of the old trading stock.

The Committee also investigated whether there were any indications to suggest that it was highly likely that this is a case of involuntary loss of possession as stipulated in Recommendations for the Art Trade 4, 5 and 6 issued by the Ekkart Committee. In the absence of claim forms indicating involuntary loss of possession, the required high degree of probability can also be assumed if the applicants can prove it was a case of theft, confiscation or coercion. The applicants argued that there is a realistic chance that the sales at issue were of an involuntary nature because the buyers were German and the first two had close connections to the Nazis. The applicants are of the opinion that although this can no longer be established with certainty, the associated risk should lie with the government. However, the Committee does not go along with this reasoning, seeing as it is not in keeping with the Ekkart Committee's Recommendations for the Art Trade. On this matter, the introduction to these Recommendations states that the recommendation to regard sales by private parties at the beginning of the war as forced sales, unless clearly shown to be otherwise, does not apply *mutatis mutandis* to the art trade. This resulted in the modified wording of general consideration c, from which it follows that a reversal of the burden of proof does not apply to cases involving the art trade. The Committee is of the opinion that the applicants have not demonstrated that in this case loss of possession was involuntary and a result of circumstances directly related to the Nazi regime.

#### 9. NK 1074

The investigation revealed the following facts with regard to the ownership of the above object. Based on the BHG's reconstruction of the provenance and the archive documents found, the Committee concludes that art dealership Stodel sold this object during the war. The Committee then investigated whether this work was part of the old trading stock (purchased under the owners' management) or the new trading stock (purchased under the management of the *Verwalter*). After studying the inventory of the trading stock of art dealership Stodel, drawn up on *Verwalter* Kalb's instructions, the Committee regards it as highly probable that this object was part of Stodel's old trading stock.

The Committee also investigated whether there were any indications to suggest that it was highly likely that this is a case of involuntary loss of possession as stipulated in Recommendations for the Art Trade 4, 5 and 6 issued by the Ekkart Committee. The Committee found claim forms for NK 1074 in the SNK archive, stating on behalf of art dealership Stodel that this work was sold voluntarily. In view of the qualification 'voluntarily' used here for the sale by art dealership Stodel, the Committee refers to the Ekkart Committee's art dealers recommendation no. 5 in which the latter recommends '*viewing the qualification binding in all cases in which the art dealer himself, his heirs or an immediate representative appointed by him or his heirs has filled in "voluntary sale", unless very clear clues are submitted which make it probable that a mistake was made when the form was filled in or that the filling in of the form took place under disproportionately burdening circumstances*'. The Committee has found no indications making it probable that a mistake was made filling in the claim form or that the filling in of the form took place under disproportionately burdening circumstances, so that it regards the qualification 'voluntarily' as binding.

#### 10. NK 244, NK 510, NK 512, NK 530 A-B, NK 532 A-B and NK 3202

The investigation revealed the following facts with regard to the ownership of the objects registered under the six NK numbers shown above. Based on the BHG's reconstruction of the provenance and the archive documents found, the Committee concludes that art dealership Stodel sold these objects during the war. The Committee then investigated whether these works were part of the old trading stock (purchased under the owners' management) or the new trading stock (purchased under the management of the *Verwalter*). After studying the inventory of the trading stock of art dealership Stodel, drawn up on *Verwalter* Kalb's instructions, the Committee regards it as highly probable that these six objects were part of the dealership's old trading stock.

The Committee also investigated whether there were any indications to suggest that it was highly likely that this is a case of involuntary loss of possession as stipulated in Recommendations for the Art Trade 4, 5 and 6 issued by the Ekkart Committee. In the absence of claim forms indicating involuntary loss of possession, the required high degree of probability can also be assumed if the applicants can prove that the sale was made by a *Verwalter*, insofar as the original owners or their heirs did not receive all the profits of the transaction or expressly waive their rights after the war. The applicants argue that these works were sold under *Verwalter* Kalb's management. Based on the information in the cited inventory, the Committee is of the opinion that it is sufficiently plausible that the *Verwalter* sold these six objects and that this is therefore a case of involuntary loss of possession due to circumstances directly related to the Nazi regime.

#### 11. NK 251, NK 296, NK 505, NK 508 A-B, NK 511, NK 633, NK 652, NK 891 and NK 1075

The investigation has revealed the following facts with regard to the ownership of the objects registered under the nine NK numbers shown above. Based on the BHG's reconstruction of the provenance and the archive documents found, the Committee concludes that art dealership Stodel sold these objects during the war. The Committee then investigated whether these works were part of the old trading stock (purchased under the owners' management) or the new trading stock (purchased under the management of the *Verwalter*). However, on the basis of the currently available facts, the Committee did not succeed in establishing when these objects became part of art dealership Stodel's trading stock. The applicants have not put forward any facts to indicate that these objects belonged to the old trading stock. For this reason, the Committee does not consider it very probable that these objects were part of art dealership Stodel's old trading stock.

The applicants also argue that if the claimed objects, in particular NK 633 and NK 891, are not considered as part of the old trading stock, they must then have been bought and sold by the *Verwalter* using Stodel's goodwill, infrastructure and capital, by virtue of which these objects should be returned to them. With reference to its explanation of general considerations c and e, which, among other things, state that only objects that were effectively part of the old trading stock are eligible for restitution, and, in the light of the considerations in paragraph 7, the Committee rejects this argument.

#### 12. NK 2131

The investigation has revealed the following facts with regard to the ownership of this object. Based on the BHG's reconstruction of the provenance and the archive documents found, the Committee concludes that the name Stodel does not occur in the provenance history, but that Kalb bought the work at auction house Mak van Waay on 29 June 1943.

The applicants argue that when he bought the work, Kalb was already *Verwalter* of the art dealers and that it is therefore plausible that when he purchased it, he made use of the company's goodwill, infrastructure and capital by virtue of which these objects should be returned to them. With reference to its explanation of general considerations c and e, which state that only objects that were effectively part of the old trading stock are eligible for restitution, and, in the light of the considerations in paragraph 7, the Committee rejects this argument.



12. *Italian landscape with herdsmen* by G. de Witte (NK 2131).

### 13. Further consideration about NK 510 and NK 3202

There is a specific problem with regard to NK 510 and NK 3202. The ICN has given to understand that NK 510 is missing and NK 3202 no longer exists. Although the application for the restitution of these two works is admissible, the consequence is that the Committee cannot advise restitution, but merely recommend that the applicants' claim be resolved in a request for compensation for NK 510, insofar as that work remains untraceable.

### Conclusion

The Restitutions Committee advises the Minister for Education, Culture and Science to return objects NK 244, NK 512, NK 530 A-B and NK 532 A-B to the heirs of Salomon Stodel and the heirs of Bernhard Stodel, partners in the art dealership J. Stodel v.o.f. at the time these possessions were lost, and to compensate the said heirs for NK 510 and NK 3202.

The Restitutions Committee advises the Minister for Education, Culture and Science to reject the application for the restitution of NK 205, NK 251, NK 296, NK 505, NK 508 A-B, NK 511, NK 633, NK 652, NK 685, NK 810 A-B, NK 891, NK 1075, NK 1079, NK 2131 and NK 1074.

Adopted at the meeting of 7 April 2008 by R. Herrmann (chair), J.Th.M. Bank, J.C.M. Leijten, P.J.N. van Os, E.J. van Straaten, H.M. Verrijn Stuart, I.C. van der Vlies (vice-chair), and signed by the chair and the secretary.

(R. Herrmann, chair)

(E. Campfens, secretary)

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## 2. Recommendation regarding Kunsthandel Mossel

(case number RC 1.51)

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In a letter dated 23 October 2006, the Minister for Education, Culture and Science (OCW) (hereafter referred to as 'the minister') asked the Restitutions Committee to issue a recommendation regarding the application by Mrs V. de J.-S. in S.-L.-W., Belgium (hereafter referred to as 'the applicant') for the restitution of the following objects:

- NK 126: statue of Mary Magdalene made of sandstone;
- NK 127: statue of Madonna with child made of sandstone;
- NK 183-A-B: round bowl with lid;
- NK 253: China cabinet;
- NK 266: small oak cupboard with pilasters;
- NK 319: China plate;
- NK 346A-B: two glazed pottery vases and covers;
- NK 396: African hunting horn;
- NK 425A-E: Delft vases;
- NK 481 A-B: glass decanter and stopper;
- NK 482: thumbglass;
- NK 483A-B: tankard with glass, partially cut lid;
- NK 484: Vexier glass;
- NK 486: brass bowl;
- NK 552: renaissance oak-canopy cupboard;
- NK 561: A. planer, bronze clock;
- NK 691A-E: five walnut chairs;
- NK 908: De Paauw, glazed pottery dish;
- NK 912A-G: seven glazed pottery dishes;
- NK 931A-B: two Chinese porcelain vases;
- NK 932A-B: Chinese jar and cover;
- NK 956A-F: six Limoges plaques with Biblical scenes;
- NK 960: Louis XVI table;
- NK 2014: E.A. Haanen, *Children with dog in garden*;
- NK 2015: E.A. Haanen, *Interior with two children and dogs*.



13. Statue of Madonna with child made of sandstone (NK 127).

According to the applicant, these objects were part of the former trading stock of the art dealer S.E. Mossel (hereafter also referred to as 'Kunsthandel Mossel') in Amsterdam. Since their recovery after the Second World War, the claimed objects have been part of the Netherlands Art Property Collection (hereafter referred to as 'NK collection') and can be found in various museums and government institutions both in the Netherlands and abroad under the abovementioned inventory numbers.

### The procedure

The reason for the application for restitution was a letter from the Origins Unknown Agency (hereafter referred to as 'BHG') of 13 July 2006 to the applicant concerning the abovementioned works of art, which were possibly part of the trading stock of Kunsthandel Mossel during the Second World War. This was the basis for the applicant's application for restitution of the works in a letter to the minister dated 31 August 2006. In response to the request for a recommendation that was subsequently submitted to the Restitutions Committee, it instituted a fact-finding investigation, the results of which were summarised in a draft investigatory report dated 3 September 2007. This draft report was sent to the applicant, after which she reacted by letter on 2 October 2007, providing the Committee with additional information. This information was included in the investigatory report that was adopted at a meeting on 7 January 2008 along with details stemming from more detailed investigation. For the facts of the case, the Committee refers to its investigatory report, which is considered an integral part of this recommendation. In conclusion, it should be noted that there was also a contradictory claim submitted by R.L. for the *statue of Mary Magdalene made of sandstone* (NK 126), which prompted the Committee to issue the Minister with a recommendation to reject the application for restitution on 6 August 2007. Furthermore, a contradictory claim has also been submitted for the *African hunting horn* (NK 396). This object is also part of the application with file number RC 1.87, which is currently being investigated by the Committee.

### General considerations

- a. The Committee has drawn up its opinion with due regard for the relevant (lines of) policy issued by the Ekkart Committee and the government.
- b. The Committee asked itself whether it is acceptable that an opinion to be issued is influenced by its potential consequences for decisions in subsequent cases. The Committee resolved that such influence cannot be accepted, save in cases where special circumstances apply, since allowing such influence would be impossible to justify to the applicant concerned.
- c. The Committee then asked itself how to deal with the circumstance that certain facts can no longer be ascertained, that certain information has been lost or has not been recovered, or that evidence can no longer be otherwise compiled. On

this issue, the Committee believes that if the problems that have arisen can be attributed at least in part to the lapse of time, the associated risk should be borne by the government if the art was privately owned, save in cases where exceptional circumstances apply.

- d. The Committee believes that insights and circumstances which, according to generally accepted views, have evidently changed since the Second World War should be granted the status of new facts.
- e. It is highly probable that loss of possession was involuntary if the object was sold without the art dealer's consent by 'Verwalters' [Nazi-appointed caretakers who took over management of firms owned by Jews] or other custodians not appointed by the owner of items from the old trading stock under their custodianship, in so far as the original owner or his heirs did not receive all the profits of the transaction, or in so far as the owner did not expressly waive his rights after the war.

#### Explanation of general considerations c and e<sup>47</sup>

In line with the recommendations with regard to art dealing and the explanation thereof, the Committee has come to the conclusion that consideration c should only apply to the ownership of art by private parties. Consideration e has been modified accordingly and, furthermore, this consideration should be taken to mean that only those objects that were effectively part of the old trading stock are eligible for restitution.

#### Special considerations:

1. The applicant requests restitution of the following objects: NK 126, NK 127, NK 183A-B, NK 253, NK 266, NK 319, NK 346A-B, NK 396, NK 425A-E, NK 481A-B, NK 482, NK 483A-B, NK 484, NK 486, NK 552, NK 561, NK 691A-E, NK 908, NK 912A-G, NK 931A-B, NK 932A-B, NK 956A-F, NK 960, NK 2014 and NK 2015. The applicant is a great niece cousin and foster daughter of the now deceased Meier Mossel, who was a partner in Kunsthandel Mossel. The applicant has stated in her application for restitution that she is acting on behalf of the heirs of Meier Mossel and his brothers Elias and Simon, who were also partners in the company.
2. The relevant facts are described in the draft report of 7 January 2008. The following summary will suffice for this recommendation. Kunsthandel Mossel was established by Mr Salomon Elias Mossel. On 6 February 1912, his sons, Elias and Meier, joined the business. According to the company file, which was found in the archive of the trade register in the Amsterdam Chamber of Commerce (hereafter referred to as 'the trade register'), the business was located at Rokin 120 in Amsterdam. A third son, Simon Mossel, became a partner in the business on 1 August 1920. After the death of Salomon Elias Mossel in the mid-1930s, the three brothers continued the company.
3. During the Second World War, the German occupying forces in the Netherlands employed various measures to proceed with the systematic registration, management and liquidation of Jewish businesses. On 12 March 1941, the *Verordnung* (Decree) 48/1941 was issued – the 'decree to remove all Jews from the business sector'. Based on this decree, Jewish businesses were put into administration and subsequently wound up by a *Liquidationstreuhandler* (liquidation trustee) or bought and permanently administered by a *Verwaltungstreuhandler* (administration trustee), known as *Verwalter*. Pursuant to the above decree, Jacques Jansen was appointed *Verwalter* of Kunsthandel Mossel on 27 November 1941 and the *Niederländische Aktiengesellschaft für Abwicklung von Unternehmungen* (NAGU) in The Hague was appointed administrator, with the authority to sell off the business.
4. Details were found during the Committee's archival research regarding the ins and outs of Kunsthandel Mossel during the Second World War. Meier Mossel was the only partner to survive the war. The trade register indicates that on 12 January 1946, the Netherlands Property Administration Institute (hereafter referred to as 'NBI') appointed him administrator of Simon and Elias Mossel's estate, including, therefore, Kunsthandel Mossel. A statement was found in the Central Archive Special Criminal Jurisdiction from an office clerk who had worked for Verwalter Jansen. This person stated that virtually nothing was left of the property in the business after liberation. Meier Mossel himself continued to do business after the war under the name 'M. Mossel'. According to details in the trade register, this art dealership was discontinued on 14 September 1951 after the death of Meier Mossel on the same date.
5. After the war, a declaration was made on behalf of Kunsthandel Mossel concerning the sale of various objects that were lost from the art dealers during the war. The declaration forms are signed 'S.E. Mossel', most probably Meier Mossel himself. Those same forms also reported both voluntary and involuntary sales. As far as is known, Mossel classified all sales to the *Dienststelle Mühlmann* on his declaration forms as being involuntary. The forms involving sales to persons other than Mühlmann state that the sales were voluntary.

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<sup>47</sup> Until 12 November 2007, general considerations c and e read:

c) The Committee then asked itself how to deal with the circumstance that certain facts can no longer be ascertained, that certain information has been lost or has not been recovered, or that evidence can no longer be otherwise compiled. On this issue, the Committee believes that if the problems that have arisen can be attributed at least in part to the lapse of time, the associated risk should be borne by the government, save in cases where exceptional circumstances apply.

e) Involuntary loss of possession is also understood to mean sale without the art dealer's consent by 'Verwalters' [Nazi-appointed caretakers who took over management of firms owned by Jews] or other custodians not appointed by the owner of items from the old trading stock under their custodianship, insofar as the original owner or his heirs did not receive all the profits of the transaction, or insofar as the owner did not expressly waive his rights after the war.

6. The application for restitution in question concerns various art objects, registered under 25 NK numbers. With regard to their ownership, the claimed objects have been divided into three categories for the following consideration.

**NK 396, NK 912A-G, NK 319, NK 2014, NK 2015, NK 481A-B**

With regard to the ownership of the six abovementioned objects, the investigation has shown the following. It can be concluded from the reconstruction of provenance carried out by the Origins Unknown Agency (hereafter referred to as 'BHG') and the other archive material found that uncertainty exists surrounding the provenance name S.E. Mossel. It is possible that the name S.E. Mossel has been confused with another art dealer in Amsterdam with regard to several of these works. NK 396, for instance, has also been claimed in case number RC 1.87, which is currently being investigated by the Committee. The applicant has not been able to support ownership of the objects in question with further evidence. The Committee is therefore obliged to conclude that ownership of the six abovementioned works has not been made sufficiently plausible and therefore advises that the claim for these six works be refused.

**NK 126, NK 127, NK 183, NK 253, NK 266, NK 346A-B, NK 425A-E, NK 482, NK 483A-B, NK 484, NK 486, NK 552, NK 561, NK 691A-E, NK 908, NK 960**

With regard to the ownership of the sixteen abovementioned objects, the investigation has shown the following. It can be concluded from the reconstruction of provenance carried out by the BHG that the abovementioned objects were sold during the war by Kunsthandel Mossel. The Committee then endeavoured to determine whether the claimed objects were part of the old trading stock (bought by the owner) or the new trading stock (bought by the Verwalter). The Committee was unsuccessful in their attempt because, based on available information, it was no longer possible to determine when and from whom Kunsthandel Mossel bought the objects. In her application for restitution, the applicant stated that the majority of the claimed works was already owned by Kunsthandel Mossel before 1940. However, no facts or clues have come to light that support this statement and, moreover, it remains unclear to which of the works in question the applicant's statement refers. Therefore, the Committee considers it highly unlikely that the works in question were part of the old trading stock and therefore advises that the claim for these sixteen works be refused.



14. *Interior with two children and dogs* by E.A. Haanen (NK 2015).

## NK 931A-B, NK 932A-B, NK 956A-F

With regard to the ownership of the three abovementioned objects, the investigation has shown the following. It can be concluded from the reconstruction of provenance carried out by the BHG that these objects were sold during the war by Kunsthandel Mossel. The Committee endeavoured to determine whether the claimed objects were part of the old trading stock (bought by the owner) or the new trading stock (bought by the Verwalter). It is clear from archive material that these three works were bought by Kunsthandel Mossel at an auction at the auction house of Frederik Muller on 25 February 1941. This was before the art dealership was put under the administration of the Verwalter on 27 November 1941 and therefore means that these three objects were part of the old trading stock.

The Committee then asked the question as to whether there were any indications to suggest with any degree of certainty that the sale of these objects during the war constituted involuntary loss of possession due to circumstances directly related to the Nazi regime. In order to assess this, the statement made by the art dealer after the war has to be accepted as such, pursuant to the Ekkart Committee's fourth and sixth recommendations of January 2003 regarding the trading of art, unless circumstances are known that contradict this statement. Therefore, the Committee first investigated whether a statement was made after the war either by or on behalf of the partners with regard to these three works. The declaration forms that were drawn up on 22 October 1945 show that Meier Mossel declared that these works were sold voluntarily. Given these statements and the fact that there is no evidence to the contrary, the Committee considers it highly unlikely that these three NK works were lost involuntarily and therefore advises that the claim for the works NK 931A-B, NK 932A-B and NK 956A-F be refused.

### Conclusion

The Restitutions Committee advises the Minister for Education, Culture and Science to reject the application for restitution of the 25 NK works in question.

Adopted at the meeting of 7 January 2008,

R. Herrmann (chair)  
J.Th.M. Bank  
J.C.M. Leijten  
P.J.N. van Os  
E.J. van Straaten  
H.M. Verrijn Stuart  
I.C. van der Vlies (vice-chair)

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## 3. Recommendation regarding Van Brabant

(case number RC 1.53)

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In a letter dated 31 October 2006, the Minister for Education, Culture and Science (OCW) asked the Restitutions Committee to issue a recommendation regarding a decision to be taken on the application submitted on 2 October 2002 by B.E., as the authorised representative of J.A. van Brabant's grandchildren (hereafter referred to as 'the applicants'), concerning the restitution of the painting *Hunting still life* by D. de Coninck. Since its return to the Netherlands after the Second World War, the claimed object, previously attributed to J. Fyt, has been part of the Netherlands Art Property Collection (hereafter referred to as 'NK collection') under inventory number NK 2149. According to information provided by the Netherlands Institute for Cultural Heritage (hereafter referred to as 'ICN'), the claimed work of art is currently on long-term loan in the Ridderzaal at the Binnenhof (Dutch Parliament building) in The Hague.

### The procedure

On 2 October 2002, B.E., the deputy advisor of the Department for the Restitution of Stolen Goods at the Belgian Ministry of Economic Affairs (hereafter referred to as 'Restitution Department') in his capacity as the authorised representative of J.A. van Brabant's six grandchildren, sent an application for the restitution of NK 2149 directly to the Restitutions Committee. After having received it, the Committee forwarded the application to the Ministry of OCW, due to the fact that it can only issue a recommendation at the request of the Minister. On 31 October 2006, the Minister requested the committee to issue a recommendation on this application for restitution. In response to this request, the Committee instituted a fact-finding investigation, the results of which have been recorded in a draft report of 11 June 2007. This draft report was submitted to the applicants, who responded to the contents of the report in a letter of 14 August 2007. The report was subsequently adopted on 4 February 2008. For the facts of the case, the Committee refers to the investigatory report, which is considered an integral part of this recommendation.



15. *Hunting still life* by  
D. de Coninck (NK 2149).

### General considerations

- a. The Committee has drawn up its opinion with due regard for the relevant (lines of) policy issued by the Ekkart Committee and the government.
- b. The Committee asked itself whether it is acceptable that an opinion to be issued is influenced by its potential consequences for decisions in subsequent cases. The Committee resolved that such influence cannot be accepted, save in cases where special circumstances apply, since allowing such influence would be impossible to justify to the applicant concerned.
- c. The Committee then asked itself how to deal with the circumstance that certain facts can no longer be ascertained, that certain information has been lost or has not been recovered, or that evidence can no longer be otherwise compiled. On this issue, the Committee believes that if the problems that have arisen can be attributed at least in part to the lapse of time, the associated risk should be borne by the government if the art was privately owned, save in cases where exceptional circumstances apply.
- d. The Committee believes that insights and circumstances which, according to generally accepted views, have evidently changed since the Second World War should be granted the status of new facts.
- e. It is highly probable that loss of possession was involuntary if the object was sold without the art dealer's consent by 'Verwalters' [Nazi-appointed caretakers who took over management of firms owned by Jews] or other custodians not appointed by the owner of items from the old trading stock under their custodianship, in so far as the original owner or his heirs did not receive all the profits of the transaction, or in so far as the owner did not expressly waive his rights after the war.

### Explanation of general considerations c and e<sup>48</sup>

In line with the recommendations with regard to art dealing and the explanation thereof, the Committee has come to the conclusion that consideration c should only apply to the ownership of art by private parties. Consideration e has been modified accordingly and, furthermore, this consideration should be taken to mean that only those objects that were effectively part of the old trading stock are eligible for restitution.

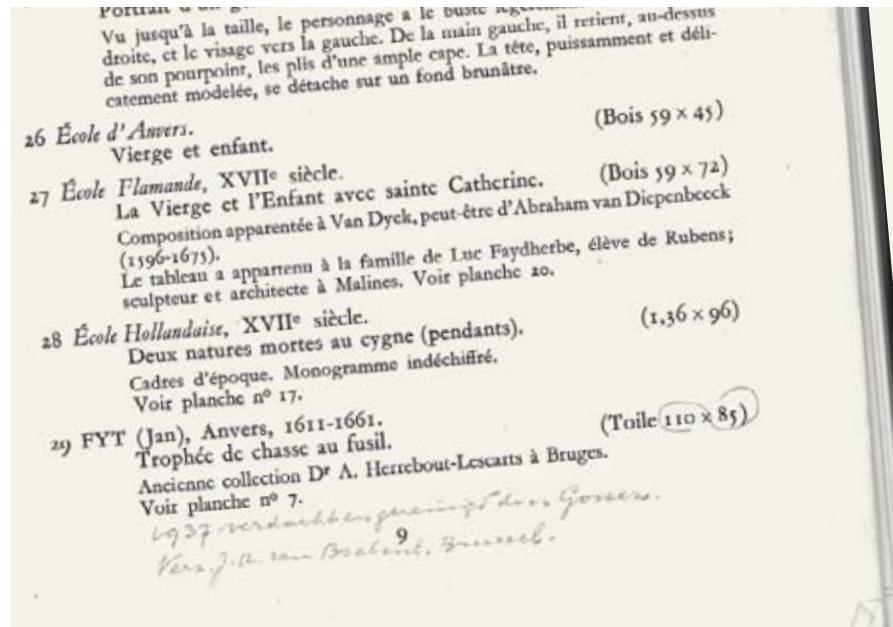
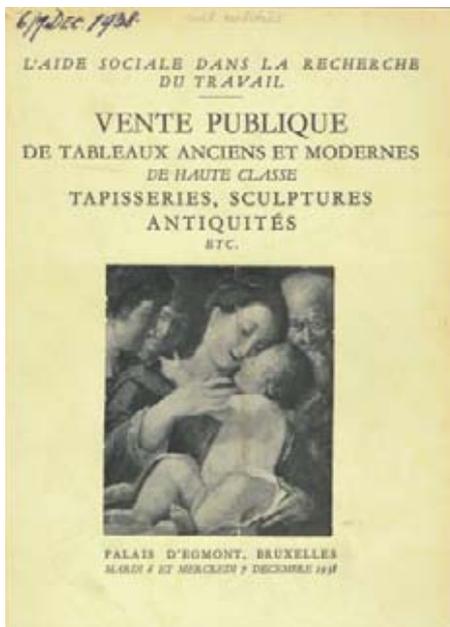
### Special considerations:

1. The applicants request the restitution of the painting *Hunting still life* by D. de Coninck, formerly attributed to J. Fyt (NK 2149). The applicants are the six children of E.J.-M. v. B., who died on 10 June 1991, son of J.A. van Brabant, who died on 25 December 1965. According to the applicants, their grandfather sold the painting involuntarily during the Second World War. The aforesaid Mr E. is acting on behalf of the six Van Brabant grandchildren and is therefore considered by the Committee to be a private person and not a representative of the Belgian government. The committee has also taken cognisance of a number of documents regarding the position of the applicants with regard to the law of inheritance.

<sup>48</sup> Until 12 November 2007, general considerations c and e read:

- c) The Committee then asked itself how to deal with the circumstance that certain facts can no longer be ascertained, that certain information has been lost or has not been recovered, or that evidence can no longer be otherwise compiled. On this issue, the Committee believes that if the problems that have arisen can be attributed at least in part to the lapse of time, the associated risk should be borne by the government, save in cases where exceptional circumstances apply.
- e) Involuntary loss of possession is also understood to mean sale without the art dealer's consent by 'Verwalters' [Nazi-appointed caretakers who took over management of firms owned by Jews] or other custodians not appointed by the owner of items from the old trading stock under their custodianship, insofar as the original owner or his heirs did not receive all the profits of the transaction, or insofar as the owner did not expressly waive his rights after the war.

- The relevant facts are stated in the investigatory report dated 4 February 2008. The following summary of events will suffice for the present purposes. In 1940, the Belgian engineer James Alexandre van Brabant lived in Brussels and was married to Marguerite Gullet. According to the applicants' statement, the Van Brabant family did not belong to a persecuted group. Research in the Netherlands Institute for Art History (hereafter referred to as 'RKD') brought to light an auction catalogue for an auction that took place on 6 and 7 December 1938 in Egmont Palace in Brussels. This catalogue contains a painting by J. Fyt entitled '*Trophée de chasse au fusil*'. The pictures and descriptions in this catalogue clearly refer to NK 2149 and indicate that this work came from the J.A. van Brabant collection in Brussels.
- On 30 November 1940, James van Brabant wrote a letter to the Dutch art dealer W.M.H. Paech offering to sell him four of paintings from his collection, including the painting in question, NK 2149. Based on this, the Committee concludes that the painting was not sold at the 1938 auction and that it was still in Van Brabant's possession in 1940. Van Brabant subjected the sale of the Fyt painting to an unspecified condition, which he intended to explain in person. Evidence from the Netherlands Art Property Foundation archives (hereafter referred to as the 'SNK archive') and the Centraal Archief Bijzondere Rechtspleging (Central Archives for Special Criminal Jurisdiction, hereafter referred to as 'CABR') shows that Paech often did business with Germans who purchased art for prominent Nazis. The investigation also shows that Paech mediated art acquisitions for Hermann Göring and that had he accompanied the Reichsmarschall on a visit to Brussels at the time. After the war, the Amsterdam Tribunal convicted Paech for his activities during the occupation.



16 and 17. Catalogue for the auction held on 6 and 7 December 1938 in the Egmont Palace, Brussels. Lot number 29 was the painting by De Conninck, which was attributed to Jan Fyt at the time.

- According to documents found in the archives of the Dienst voor Economische Recuperatie (Office for Economic Recovery, hereafter referred to as 'DER') in Brussels, a claim form was filled out for the Jan Fyt painting '*Trophée de chasse au fusil*' after the war. The form names Van Brabant as the owner of the painting and Paech as the buyer. Furthermore, it states that the work ended up in the Hermann Göring collection. It cannot be determined from the form whether the sale was voluntary or involuntary because both choices were checked. However, the form does state that the work was sold for 2,000 RM under the condition that Van Brabant's son, who was a Belgian prisoner of war in Germany, would be released early. The name of the person who filled in the claim form is not given.
- In the Netherlands, a claim form concerning the Fyt painting was found in the SNK archive, which was filled in on behalf of art dealer W. Paech in Amsterdam on 14 February 1946. This form states that Paech voluntarily sold Fyt's '*Hunting still life*' to H. Bangert in Düsseldorf during the war. This is confirmed by other documents found in the SNK archive. After the war, W.A. Hofer, who had been responsible for the Göring collection, declared that NK 2149 had not been part of Göring's art collection.
- In 1971, Marguerite Gullet, the then 83-year-old widow of James van Brabant, wrote a letter to the Belgian Minister of Foreign Affairs concerning the painting in question after having heard a radio programme on stolen art. It can be deduced from this letter that the son of the Van Brabants was taken prisoner of war by the German occupation forces in 1940. According to the widow, the married couple found

out after some time that their son had been operated on for sinusitis by a German doctor. Worried about their son and depressed over the recent death of their daughter, they decided to sell the Fyt painting on the condition that the buyer would arrange for their son's early release from captivity via Göring. The widow also stated that this condition was never met after the sale and that her son did not return home until 1943.

7. On the basis of current restitution policy, the conditions for restitution have been met if the claimed object was sold involuntarily due to circumstances that are directly related to the Nazi regime. In this regard, the Committee noted that the applicants indicated that their grandfather James van Brabant did not belong to a persecuted group. Therefore, the reversal of the burden of proof for persecuted populations as contained in the third recommendation of the Ekkart Committee of April 2002 does not apply. The question, then, is whether the applicants have sufficiently demonstrated that the sale of the painting was involuntary due to circumstances that are directly related to the Nazi regime. In this context, the applicants refer to the intended buyer, Hermann Göring, who would have the son of the Van Brabants released from captivity if Van Brabant sold him the painting.
8. The Committee answers this question in the negative. The Committee is of the opinion that there is not sufficient evidence of a connection between this sale and the Nazi regime now that it is clear that it cannot be proven that the claimed work was part of the Göring collection and that Van Brabant's son was not released from captivity early. Moreover, the committee deems that the involuntariness of the sale has not been proven because Van Brabant had already put the painting up for sale at a public auction before the war in 1938. Therefore, the committee is of the opinion that it is not sufficiently likely that it is a case of involuntary loss of possession due to circumstances directly related to the Nazi regime.

### Conclusion

The Restitution Committee advises the Minister for Education, Culture and Science to reject the application for restitution of the painting *Hunting still life* by D. de Coninck (NK 2149).

Adopted at the meeting of 4 February 2008 by R. Herrmann (chair), J.Th.M. Bank, J.C.M. Leijten, P.J.N. van Os, E.J. van Straaten, H.M. Verrijn Stuart, I.C. van der Vlies (vice-chair), and signed by the chair and the secretary.

(R. Herrmann, chair)

(E. Campfens, secretary)

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## 4. Recommendation regarding Van Messel

(case number RC 1.57)

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In a letter dated 1 December 2006, the Minister for Education, Culture and Science (hereafter referred to as 'the Minister') asked the Restitutions Committee to issue a recommendation regarding a decision to be taken on the application submitted on 12 November 2006 by E. W.-P. of B. (hereafter referred to as 'applicant 1').

In a letter dated 23 March 2007, the Minister asked the Restitutions Committee to issue a recommendation regarding a decision to be taken on the application submitted on 13 February 2007 by Mr D.J.D., Master of Laws, as the authorised representative of his mother, H. D.-M. of A. (hereafter referred to as 'applicant 2').

Both applications concern restitution of the following objects:

NK 352: plate  
NK 355: plaque.

According to applicant 1, these objects belonged to the former trading stock of art dealership Firma S. van Messel of Amsterdam, and according to applicant 2, they belonged to the former trading stock of art dealership J. van Messel of Amsterdam. Since their return to the Netherlands after the Second World War, the claimed objects have been part of the Netherlands Art Property Collection (hereafter referred to as the 'NK collection') under the inventory numbers listed above, and are currently located in the Zuiderzee Museum in Enkhuizen and in the Museum Lambert van Meerten in Delft, respectively.

### The procedure

The reason for both applications for restitution was the correspondence with the Origins Unknown Agency (hereafter referred to as 'BHG') concerning the aforementioned objects that may have formed part of the trading stock of Firma S. van Messel or art dealership J. van Messel during the Second World War. In response to the two requests for restitution referred to above, the Restitutions Committee instituted a fact-finding investigation,

the results of which were recorded in a draft report dated 1 October 2007, which was then submitted to the applicants. Applicant 2 responded to the contents of this report in a letter dated 15 November 2007. The report was subsequently adopted on 4 February 2008. For the facts of the case, the Committee refers to the investigatory report, which is considered an integral part of this recommendation.

### General considerations

- a. The Committee has drawn up its opinion with due regard for the relevant (lines of) policy issued by the Ekkart Committee and the government.
- b. The Committee asked itself whether it is acceptable that an opinion to be issued is influenced by its potential consequences for decisions in subsequent cases. The Committee resolved that such influence cannot be accepted, save in cases where special circumstances apply, since allowing such influence would be impossible to justify to the applicant concerned.
- c. The Committee then asked itself how to deal with the circumstance that certain facts can no longer be ascertained, that certain information has been lost or has not been recovered, or that evidence can no longer be otherwise compiled. On this issue, the Committee believes that if the problems that have arisen can be attributed at least in part to the lapse of time, the associated risk should be borne by the government if the art was privately owned, save in cases where exceptional circumstances apply.
- d. The Committee believes that insights and circumstances which, according to generally accepted views, have evidently changed since the Second World War should be granted the status of new facts.
- e. It is highly probable that loss of possession was involuntary if the object was sold without the art dealer's consent by 'Verwalters' [Nazi-appointed caretakers who took over management of firms owned by Jews] or other custodians not appointed by the owner of items from the old trading stock under their custodianship, in so far as the original owner or his heirs did not receive all the profits of the transaction, or in so far as the owner did not expressly waive his rights after the war.

### Explanation of general considerations c and e<sup>49</sup>

In line with the recommendations with regard to art dealing and the explanation thereof, the Committee has come to the conclusion that consideration c should only apply to the ownership of art by private parties. Consideration e has been modified accordingly and, furthermore, this consideration should be taken to mean that only those objects that were effectively part of the old trading stock are eligible for restitution.

### Special considerations:

1. Applicants 1 and 2 both request the restitution for themselves of objects NK 352 and NK 355. Applicant 1 has stated that she is an heir to A. van Messel's estate. She is also acting on behalf of his other heirs. During his life, A. van Messel was a partner in Firma S. van Messel. Applicant 2 is a daughter of J.M., the brother of R.M., spouse of J. van Messel. She is acting on her own behalf. During his life, J. van Messel owned art dealership J. van Messel. Both art dealerships were merged during the war.
2. The relevant details are described in the investigatory report dated 4 February 2008. The following summary of events will suffice for the present purposes. In 1910, Samuel van Messel established an antiques dealership in Leeuwarden. In 1921, he opened a branch at Nieuwe Spiegelstraat 39 in Amsterdam under the name S. van Messel. This branch was run by his two sons, A. van Messel (1884-1955) and J. van Messel (1889-1944). In 1924, the latter opened his own art dealership under the name J. van Messel on Van Woustraat in Amsterdam, while in 1925, A. took over his father's art dealership under the name Firma S. Van Messel. Their younger brother K. (1896-1966) was appointed manager with power of attorney of A.'s firm. In 1930, J.'s art dealership moved to Spiegelgracht and five years later, to Nieuwe Spiegelstraat 49 in Amsterdam. Consequently, the art dealerships of A. en J. van Messel were located within a stone's throw of each other when the Germans invaded the Netherlands.
3. During the Second World War, the German occupying forces took a number of measures designed to register, manage and then wind up Jewish companies. On 12 March 1941, *Verordnung 48/1941* was issued, the 'decree ordering the removal of Jews from all business'. Pursuant to this decree, companies owned by Jewish entrepreneurs were taken over and then wound up by a *Liquidations-Treuhänder* or bought by / placed under the permanent administration of a *Verwaltungs-Treuhänder* (in short: *Verwalter*). As a result of this decree, Firma S. van Messel and art dealership J. van Messel were both placed under the administration of *Verwalter* Dr Friedrich Hübner. Research in the trade register of the Amsterdam Chamber of Commerce revealed that on 29 November 1941 Hübner was appointed *Verwalter* of Firma S. van Messel. It is unclear exactly when Hübner took over administration of art dealership J. van Messel.

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<sup>49</sup> Until 12 November 2007, general considerations c and e read:

- c) The Committee then asked itself how to deal with the circumstance that certain facts can no longer be ascertained, that certain information has been lost or has not been recovered, or that evidence can no longer be otherwise compiled. On this issue, the Committee believes that if the problems that have arisen can be attributed at least in part to the lapse of time, the associated risk should be borne by the government, save in cases where exceptional circumstances apply.
- e) Involuntary loss of possession is also understood to mean sale without the art dealer's consent by 'Verwalters' [Nazi-appointed caretakers who took over management of firms owned by Jews] or other custodians not appointed by the owner of items from the old trading stock under their custodianship, insofar as the original owner or his heirs did not receive all the profits of the transaction, or insofar as the owner did not expressly waive his rights after the war.

4. A. and K. van Messel both survived the war. On 4 September 1946, K., in his capacity as administrator of the assets of his brother J. and his spouse R.M., who both perished at Auschwitz in 1944, wrote a letter to the NBI, the Netherlands Property Administration Institute. This letter reveals that the art dealership J. van Messel was closed down by the Germans in November 1941. When the German establishment Omnia Treuhandgesellschaft mbH (hereafter referred to as 'Omnia') wanted to wind up its operations in 1942, Hübner was able to prevent it by having art dealership J. van Messel merge with Firma S. van Messel under his administration. This came into effect on 18 August 1942.
5. Research has shown that after the war, there was contact between the Netherlands Art Property Foundation (hereafter referred to as 'SNK') and A. van Messel regarding artworks that were seized during the occupation. The SNK archives contain claim forms for objects that were taken from the collection of the art dealership during the war, but the Committee has discovered no claim forms for the two claimed objects.
6. This request for a recommendation concerns two works of art. The considerations for each object are given below.

#### **NK 352**

With regard to the ownership of this plate, the investigation has revealed the following. On the basis of the origin reconstruction of BHG and the documents found in the archives, the Committee concludes that in 1942, this object was sold by art dealership Firma S. van Messel to the Kunstsammlungen der Stadt Düsseldorf in Düsseldorf. This took place after Hübner had been appointed *Verwalter*. However, it is unknown whether the sale occurred before or after the merger with art dealership J. van Messel. The Committee then tried to determine whether this claimed object belonged to the old trading stock (purchased by the owner) or to the new trading stock (purchased by the *Verwalter*). The Committee was unable to do so, however, because on the basis of the existing information, it is no longer possible to ascertain when this plate was added to the trading stock of Firma S. van Messel. Neither of the applicants has made a statement or supplied factual information that indicates that the plate belonged to the old trading stock. Therefore, the Committee does not consider it very likely that the plate in question belonged to the old trading stock of Firma S. van Messel, nor does the Committee consider it very likely that the plate belonged to the old trading stock of art dealership J. van Messel. It is for this reason that the Committee adjudges the claims for restitution of the plate (NK 352) to be inadmissible.

#### **NK 355**

With regard to the ownership of this plaque, the investigation has revealed the following. On the basis of the origin reconstruction of BHG and the documents found in the archives, the Committee concludes that in 1942, both this object and the plate referred to above were sold by art dealership Firma S. van Messel to the Kunstsammlungen der Stadt Düsseldorf in Düsseldorf. This also took place after Hübner had been appointed *Verwalter*. It is again unknown whether the sale occurred before or after the merger with art dealership J. van Messel. The Committee then tried to determine whether this claimed object belonged to the old trading stock (purchased by the owner) or to the new trading stock (purchased by the *Verwalter*). In its efforts to do so, the Committee encountered the same problems as in the case of NK 352. On the basis of the existing information, it is no longer possible to ascertain when and from whom Firma S. Van Messel purchased this object. Neither of the applicants has made a statement or supplied factual information that indicates that the plaque belonged to the old trading stock. Therefore, the Committee does not consider it very likely that the plaque in question belonged to the old trading stock of Firma S. van Messel, nor does the Committee consider it very likely that the plaque belonged to the old trading stock of art dealership J. van Messel. It is for this reason that the Committee adjudges the claims for restitution of the plaque (NK 355) to be inadmissible.

#### **Conclusion**

The Restitutions Committee advises the Minister for Education, Culture and Science to reject the applications for restitution of the plate (NK 352) and the plaque (NK 355).

Adopted at the meeting of 4 February 2008 by R. Herrmann (chair), J.Th.M. Bank, J.C.M. Leijten, P.J.N. van Os, E.J. van Straaten, H.M. Verrijn Stuart, I.C. van der Vlies (vice-chair), and signed by the chair and secretary.

(R. Herrmann, chair)

(E. Campfens, secretary)

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## 5. Recommendation regarding Staal

(case number RC 1.62)

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In a letter dated 12 March 2007, the Minister for Education, Culture and Science (OCW) asked the Restitutions Committee to issue a recommendation regarding the application submitted on 15 February 2007 by L.E.S., of P.W., United States of America (hereafter referred to as 'applicant') for the restitution of the following objects:

NK 178 A-E: garniture  
NK 179 A-E: garniture  
NK 225 A-D four plates  
NK 447 A-B: two plates  
NK 470: goblet  
NK 490: amulet  
NK 560: tapestry  
NK 563: bowl  
NK 611: dish  
NK 686: tapestry  
NK 2313: P.P. Lastman, *Mordechai's Triumph*  
NK 2506: A. van Beijeren, *Still life* (forgery)  
NK 3225: vase  
NK 3400: C.F. Mali, *Shepherdess with cattle near a mountain lake*

According to the applicant, these objects were part of the original trading stock of Amsterdam art dealership A. Staal (hereafter referred to as 'art dealership Staal'). Since their return to the Netherlands after the Second World War, the claimed objects have been part of the Netherlands Art Property Collection (hereafter referred to as the 'NK collection') under the inventory numbers listed above. Some works are in the depot of the Netherlands Institute for Cultural Heritage in Rijswijk (hereafter referred to as 'ICN') and some in various institutions in the Netherlands and abroad.



18. Artdealer Staal at the Rokin 154-156 in Amsterdam.

## The procedure

The reason for the application for restitution was a letter from the Origins Unknown Agency (hereafter referred to as 'BHG') concerning the above-mentioned objects that had possibly been part of the trading stock of art dealership Staal during the Second World War. In response to the request for recommendation, the Restitutions Committee instituted a fact-finding investigation, the results of which were summarised in a draft report dated 3 September 2007. This draft report was sent to the Minister on 5 October 2007 to give the Minister the opportunity to add information. On the same day, the draft report was also sent to the applicant, who responded to the contents in a letter dated 12 December 2007. The report was adopted on 7 April 2008. For the facts of the case, the Committee refers to this report, which is considered an integral part of this recommendation.

### General considerations

- a. The Committee has drawn up its opinion with due regard for the relevant (lines of) policy issued by the Ekkart Committee and the government.
- b. The Committee asked itself whether it is acceptable that an opinion to be issued is influenced by its potential consequences for decisions in subsequent cases. The Committee resolved that such influence cannot be accepted, save in cases where special circumstances apply, since allowing such influence would be impossible to justify to the applicant concerned.
- c. The Committee then asked itself how to deal with the circumstance that certain facts can no longer be ascertained, that certain information has been lost or has not been recovered, or that evidence can no longer be otherwise compiled. On this issue, the Committee believes that if the problems that have arisen can be attributed at least in part to the lapse of time, the associated risk should be borne by the government if the art was privately owned, save in cases where exceptional circumstances apply.
- d. The Committee believes that insights and circumstances which, according to generally accepted views, have evidently changed since the Second World War should be granted the status of new facts.
- e. It is highly probable that loss of possession was involuntary if the object was sold without the art dealer's consent by 'Verwalters' [Nazi-appointed caretakers who took over management of firms owned by Jews] or other custodians not appointed by the owner of items from the old trading stock under their custodianship, in so far as the original owner or his heirs did not receive all the profits of the transaction, or in so far as the owner did not expressly waive his rights after the war.

### Explanation of general considerations c and e<sup>50</sup>

In line with the recommendations with regard to art dealing and the explanation thereof, the Committee has come to the conclusion that consideration c should only apply to the ownership of art by private parties. Consideration e has been modified accordingly and, furthermore, this consideration should be taken to mean that only those objects that were effectively part of the old trading stock are eligible for restitution.

### Special considerations:

1. The applicant requests the restitution of the following objects in the Dutch National Art Collection: NK 178 A-E, NK 179 A-E, NK 225 A-D, NK 447 A-B, NK 470, NK 490, NK 560, NK 563, NK 611, NK 686, NK 2313, NK 2506, NK 3225 and NK 3400. The applicant has stated that she is the great-granddaughter of the founders of art dealership A. Staal, Abraham Salomon Staal and his wife Betje Staal-Morpurgo, and that she is a great-niece of Salomon Staal, the last owner of the company. The applicant has stated that she is acting '*on behalf of all the heirs of A. Staal Antiquairs*'.
2. The relevant information is contained in the investigatory report of 7 April 2008. The following summary suffices here. Art dealership Staal was founded by Abraham Salomon Staal (hereafter referred to as 'Abraham Sr.') and his wife Betje Staal-Morpurgo. The company had its premises on Rokin 154-156 in Amsterdam. Abraham Sr. died on 18 July 1929. His widow and their sons Salomon and Joseph continued the business as a partnership firm. According to information from the Trade Register of the Chamber of Commerce and Industry for Amsterdam (hereafter referred to as 'trade register'), as of 14 March 1939, Salomon continued the business on his own under the old company name of A. Staal.
3. During the Second World War, the German occupying forces in the Netherlands put in place a number of measures designed to successively register, manage and then wind up Jewish companies. On 12 March 1941, *Verordnung 48/1941* was issued, the 'decree ordering the removal of Jews from all business'. Pursuant to this decree, companies owned by Jewish entrepreneurs were taken over and then wound up by a *Liquidations-Treuhänder* or bought by / placed under the permanent administration of a *Verwaltungs-Treuhänder* (in short: *Verwalter*). As a consequence of the above decree, Friedrich Hübner was appointed *Verwalter* of art dealership Staal on 29 November 1941. In June 1942, during Hübner's management, art dealership Staal was sold to C.W.M.M. Zwijns-Swanenburg.

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<sup>50</sup> Until 12 November 2007, general considerations c and e read:

- c) The Committee then asked itself how to deal with the circumstance that certain facts can no longer be ascertained, that certain information has been lost or has not been recovered, or that evidence can no longer be otherwise compiled. On this issue, the Committee believes that if the problems that have arisen can be attributed at least in part to the lapse of time, the associated risk should be borne by the government, save in cases where exceptional circumstances apply.
- e) Involuntary loss of possession is also understood to mean sale without the art dealer's consent by 'Verwalters' [Nazi-appointed caretakers who took over management of firms owned by Jews] or other custodians not appointed by the owner of items from the old trading stock under their custodianship, insofar as the original owner or his heirs did not receive all the profits of the transaction, or insofar as the owner did not expressly waive his rights after the war.

4. Salomon Staal went into hiding for a while during the war, probably in Woudenberg. His mother Betje Staal-Morpurgo and his sister Elisabeth Staal-Staal and her family were arrested in 1943 and deported by way of Westerbork to Sobibor, where they all perished. Salomons nephew Abraham (Andy) Staal, the applicant's father, managed to escape arrest and survived the war.
5. After the liberation, in June 1945, the art dealership was transferred back to Salomon Staal, who had survived the war. Information in the Netherlands Art Property Foundation (hereafter referred to as 'SNK') archive showed that Staal probably submitted a declaration of loss of possession of items of cultural value to the SNK. However, during its investigation of the said archive, the Committee did not find any declaration forms concerning individual objects. In correspondence dating from after the war, Salomon Staal indicated that much of the work he had in his company had disappeared during the war. Salomon Staal died on 22 February 1981.
6. The applicant requests the restitution of 14 objects, currently registered under the above-mentioned NK numbers. Below are explanations per category.
7. **NK 2506**

The investigation has revealed the following facts with regard to the ownership of NK 2506. Based on the BHG's reconstruction of the provenance and the archive documents found, the Committee concludes that art dealership Staal sold this object during the war. The Committee then attempted to establish whether this work was part of the old trading stock (purchased prior to the appointment of the *Verwalter*) or the new trading stock (i.e. purchased after the appointment of the *Verwalter*). The archive material has shown that this work was sold in June/July 1940 by art dealership Staal to Dutch art dealership P. de Boer of Amsterdam. That was before the art dealers were placed under the management of the *Verwalter*. The object should therefore be considered part of the old trading stock.



19. *Still life with gilt cup, ewer, dish and other objects*,  
(forgery) A. Van Beijeren (NK 2506).

The Committee then investigated whether there were any indications to suggest that it was highly likely that the sale of this painting during the war was a case of involuntary loss of possession due to circumstances directly related to the Nazi regime. The Committee concludes that in this case, this was a sale to a Dutch art dealership made by the owner himself and prior to the appointment of the *Verwalter*. Under these circumstances, the Committee believes that involuntary loss of possession due to circumstances directly related to the Nazi regime has not been made sufficiently plausible. In connection with this opinion,

the Committee refers to the explanations to the Recommendation of the Ekkart Committee concerning the art trade (2003) which states that *'the art trade's objective is to sell the trading stock so that the majority of the transactions, even at the Jewish art dealers, were principally carried out in the normal way'*.

8. NK 179 A-E, NK 225 A-D, NK 447 A-B, NK 470, NK 563, NK 686, NK 3400

The investigation has revealed the following facts with regard to the ownership of the objects registered under the above seven NK numbers. Based on the BHG's reconstruction of the provenance and the archive documents found, the Committee concludes that art dealership Staal sold these objects during the war. The Committee investigated whether these works were part of the old trading stock (i.e. purchased prior to the appointment of the *Verwalter*) or the new trading stock (purchased after the appointment of the *Verwalter*). However, on the basis of the currently available facts, the Committee did not succeed in establishing when these objects became part of art dealership Staal's trading stock. The applicants have not put forward any facts to indicate that these objects belonged to the old trading stock. For this reason, the Committee does not consider it very probable that these objects were part of art dealership Staal's old trading stock.

9. NK 178 A-E, NK 490, NK 560, NK 611, NK 2313, NK 3225

The investigation has revealed the following facts with regard to the ownership of the objects registered under the above six NK numbers. Based on the BHG's reconstruction of the provenance and the archive documents found, the Committee concludes that insufficient proof has been found that these objects were part of art dealership Staal's trading stock at any time during the occupation of the Netherlands. The Committee therefore believes that there is insufficient evidence that art dealership Staal owned this object during the occupation.



20. *Mordecai's triumph* by P.P. Lastman (NK 2313).

## Conclusion

Based on the above, the Committee concludes that the current information is insufficient and that there are insufficient grounds for granting the application.

The Restitution Committee advises the Minister for Education, Culture and Science to reject the application for the restitution of NK 178 A-E, NK 179 A-E, NK 225 A-D, NK 447 A-B, NK 470, NK 490, NK 560, NK 563, NK 611, NK 686, NK 2313, NK 2506, NK 3225 and NK 3400.

Adopted at the meeting of 7 April 2008 by R. Herrmann (chair), J.Th.M. Bank, J.C.M. Leijten, P.J.N. van Os, E.J. van Straaten, H.M. Verrijn Stuart, I.C. van der Vlies (vice-chair), and signed by the chair and the secretary.

(R. Herrmann, chair)

(E. Campfens, secretary)

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## 6. Recommendation regarding the application for restitution of a China 'Famille Rose' plate with flower vase decor (NK 504)

(case number RC 1.63)

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In a letter dated 8 March 2007, the Minister for Education, Culture and Science (hereafter referred to as 'the Minister') asked the Advisory Committee on the Assessment of Restitution Applications for Items of Cultural Value and the Second World War (hereafter referred to as 'the Restitutions Committee') to issue a recommendation regarding the application submitted by M.M.v.L. in R. (hereafter referred to as 'the applicant') on behalf of herself and her sister L.v.O. for the restitution of a *China 'Famille Rose' plate with flower vase decor* that was formerly part of the trading stock of the art dealership Kunsthandel A. van Leeuwen & Zoon (hereafter also referred to as 'art dealership Van Leeuwen'). Since its return to the Netherlands after the Second World War, the claimed object has been part of the Netherlands Art Property Collection (hereafter referred to as 'NK collection') under inventory number NK 504. According to information from the Netherlands Institute for Cultural Heritage (hereafter referred to as 'the ICN') it is now part of the collection at Kasteel Groeneveld in Baarn.



21. Repository of Van Leeuwen art dealers, then located at Lutherse Burgwal 13 in The Hague.

### The procedure

The reason for the application for restitution was a letter sent to the applicant on 12 January 2007 by the Origins Unknown Agency (hereafter referred to as 'BHG') informing her that the above-mentioned object had possibly been part of the trading stock of the art dealership Van Leeuwen during the Second World War. Based on this, the applicant sent the Minister a letter dated 4 February 2007 requesting the restitution of the work of art in question. In response to the request for recommendation that was subsequently submitted, the Restitutions Committee instituted a fact-finding investigation, the results of which were summarised in a draft report dated 6 August 2007. This draft report was submitted to the applicant, to which she added her own

memories and some additional facts in an email dated 2 October 2007. This information together with further investigatory findings was included in the investigatory report adopted in the committee meeting on 7 January 2008. For the facts of the case, the Committee refers to this report, which is considered an integral part of this recommendation.

### General considerations

- a. The Committee has drawn up its opinion with due regard for the relevant (lines of) policy issued by the Ekkart Committee and the government.
- b. The Committee asked itself whether it is acceptable that an opinion to be issued is influenced by its potential consequences for decisions in subsequent cases. The Committee resolved that such influence cannot be accepted, save in cases where special circumstances apply, since allowing such influence would be impossible to justify to the applicant concerned.
- c. The Committee then asked itself how to deal with the circumstance that certain facts can no longer be ascertained, that certain information has been lost or has not been recovered, or that evidence can no longer be otherwise compiled. On this issue, the Committee believes that if the problems that have arisen can be attributed at least in part to the lapse of time, the associated risk should be borne by the government if the art was privately owned, save in cases where exceptional circumstances apply.
- d. The Committee believes that insights and circumstances which, according to generally accepted views, have evidently changed since the Second World War should be granted the status of new facts.
- e. It is highly probable that loss of possession was involuntary if the object was sold without the art dealer's consent by 'Verwalters' [Nazi-appointed caretakers who took over management of firms owned by Jews] or other custodians not appointed by the owner of items from the old trading stock under their custodianship, in so far as the original owner or his heirs did not receive all the profits of the transaction, or in so far as the owner did not expressly waive his rights after the war.

### Explanation of general considerations c and e<sup>51</sup>

In line with the recommendations with regard to art dealing and the explanation thereof, the Committee has come to the conclusion that consideration c should only apply to the ownership of art by private parties. Consideration e has been modified accordingly and, furthermore, this consideration should be taken to mean that only those objects that were effectively part of the old trading stock are eligible for restitution.

### Special considerations:

1. The applicant requests the restitution of the object a *China 'Famille Rose' plate with flower vase decor* (NK 504). The applicant is the daughter of the late Alexander Isaïc van Leeuwen, who was a partner at the V.O.F. A. Van Leeuwen & Zoon in The Hague. In her application for restitution, the applicant stated that she was acting in the name of herself and her father's remaining heirs. As to this fact, the Restitutions Committee has taken cognisance of information from the Central Bureau for Genealogy (CBG) which showed the following. Abraham van Leeuwen was born in The Hague on 9 January 1877 and died in Loenersloot on 13 August 1963. He was married to Esther de Vries and had three children, namely Judith, Alida and Alexander Isaïc. According to information from the CBG, Alexander Isaïc van Leeuwen was born



22. China *'Famille Rose'* plate with flower vase decor (NK 504).

<sup>51</sup> Until 12 November 2007, general considerations c and e read:

- c) The Committee then asked itself how to deal with the circumstance that certain facts can no longer be ascertained, that certain information has been lost or has not been recovered, or that evidence can no longer be otherwise compiled. On this issue, the Committee believes that if the problems that have arisen can be attributed at least in part to the lapse of time, the associated risk should be borne by the government, save in cases where exceptional circumstances apply.
- e) Involuntary loss of possession is also understood to mean sale without the art dealer's consent by 'Verwalters' [Nazi-appointed caretakers who took over management of firms owned by Jews] or other custodians not appointed by the owner of items from the old trading stock under their custodianship, insofar as the original owner or his heirs did not receive all the profits of the transaction, or insofar as the owner did not expressly waive his rights after the war.

in The Hague on 4 July 1910 and died in Zoetermeer on 19 August 1998. He was married to J.G. van O. and had three daughters, namely M. (applicant), P. (died on 7 February 2000) and L. (co-applicant). The Van Leeuwen family is of Jewish extraction.

2. The relevant facts are listed in the investigatory report dated 7 January 2008, a summary of which is given below. The V.O.F. A. van Leeuwen & Zoon was registered at the Trade Register of the Netherlands Chamber of Commerce and Factories in The Hague (hereafter referred to as 'the Trade Register') on 8 March 1939. According to the company file found in the Trade Register archive, the company was located at Oranjestraat 1 in The Hague and had been in operation since 1 January 1939. It was a company trading in new and second-hand furniture in the broadest sense.  
The following persons were registered as partners of the firm:
  - a. Abraham van Leeuwen, born in The Hague on 9 January 1877, residing in The Hague (hereafter referred to as 'Van Leeuwen Sr'); and
  - b. Alexander Isaïc van Leeuwen, born in The Hague on 4 July 1910, residing in The Hague (hereafter referred to as 'Van Leeuwen Jr').
3. During the Second World War, the German occupying forces took a number of measures designed to register, manage and then wind up Jewish companies. On 12 March 1941, *Verordnung 48/1941* was issued, the 'decree ordering the removal of Jews from all business'. Pursuant to this decree, companies owned by Jewish entrepreneurs were taken over and then wound up by a *Liquidations-Treuhänder* or bought by *I* placed under the permanent administration of a *Verwaltungs-Treuhänder* (in short: *Verwalter*). As a result of this decree, the German Dr F. Hübner was appointed *Verwalter* of the art dealership Van Leeuwen on 27 November 1941.
4. The Restitutions Committee's search in the Nationaal Archief and The Netherlands Institute for War Documentation yielded little information on art dealership Van Leeuwen & Zoon during the Second World War. The only archive sources containing information on the events at the company during the war are post-war correspondence between Verwalter Hübner and his lawyer and a post-war overview of Hübner's administration of art dealership Van Leeuwen, compiled at the behest of the Netherlands Property Administration Institute (hereafter referred to as NBI).
5. In addition to the archive materials mentioned in 5, the Restitutions Committee has two written accounts of telephone conversations with the applicant that were drawn up by a BHG employee. Below are two quotes from these accounts concerning the situation during the war:  
  
*'Mrs V.L. said that her father was still working in the business at the beginning of the war. Whenever a potentially dangerous situation arose, for example when Germans came by, Alexander van Leeuwen's employees alerted him and he took cover in a small space between two floors until all was clear. He survived the war by going into hiding. (...) His wife, Van Leeuwen's mother, was not Jewish. (...) Mr Van Leeuwen spent the war in hiding in and outside The Hague, at various underground addresses.'*  
  
*'According to Mrs V.L., the Verwalter sold everything in the old trading stock during the war, without permission. (...) "My mother said to me: everything was taken by that Verwalter. My sister knows that, my cousin too..."'*
6. Both partners of art dealership Van Leeuwen survived the war. After the occupation ended, they continued the company. The Trade Register archives show that the V.O.F. A. Van Leeuwen & Zoon was disbanded on 19 July 1957 due to the resignation of one of the partners, Abraham van Leeuwen. On 19 July 1957 A.I. van Leeuwen continued the company on his own under the same company name. On 1 January 1965, the one-man business became a general partnership under the name Firma A. van Leeuwen en Zoon, the partners being Alexander Isaïc van Leeuwen and his wife J.G. van Leeuwen. According to the applicant's statement, Firma A. van Leeuwen en Zoon was finally closed down when Alexander Isaïc van Leeuwen retired.
7. The investigation has revealed the following facts with regard to the ownership of the claimed object (NK 504). BHG's reconstruction of the provenance of NK 504 shows that A. van Leeuwen & Zoon partnership sold the plate to the *Münchener Kunsthandels-gesellschaft* (Munich Art Dealership) in Munich, Germany during the war. Exactly when during the war the sale took place is unknown, nor was BHG able to ascertain when and from whom art dealership Van Leeuwen acquired the plate. Consequently, the Restitutions Committee has not been able to determine whether the claimed object belonged to the old trading stock (bought by the owner) or the new trading stock (bought by the Verwalter). The applicant, however, stated that one of the partners had bought the claimed object before May 1940 and that it was therefore part of the old trading stock. The investigation in question subsequently turned up information that backs up the applicant's statement, in particular regarding the Verwalter himself and the fact that the art dealership had a warehouse that supplied the Verwalter with articles to sell. Further information on this is contained in the investigatory report. The Restitutions Committee therefore deems it highly probable that the claimed object d'art was part of the old trading stock of the art dealership Van Leeuwen.
8. The Committee also investigated whether there were any indications to suggest that it was highly likely that this is a case of involuntary loss of possession as stipulated in the Recommendations for the Art Trade 4 and 6 issued by the Ekkart Committee. In accordance with these recommendations, the Restitutions

Committee's first concern was to ascertain whether one of the partners had ever submitted a claim on the sale of the plate after the war. However, a search of the SNK archive turned up nothing to that effect. According to the above recommendations, in the absence of claim forms, the required high degree of probability can also be assumed if the object was sold by a Verwalter. As stated before, the claimed object was bought by the *Münchener Kunsthandelsgesellschaft* during the war, which, according to information from the *Facts and Files* research agency in Berlin, was established in 1939 by the *Kameradschaft der Künstler München* (Munich Artists' Fellowship) to 'Aryanise' the famous Jewish art dealership L. Bernheimer. Chair of the *Kameradschaft* was Adolf Wagner, the *Gauleiter* of the NSDAP in Munich. In the Committee's opinion, the applicant has made a sufficiently plausible case that her father did not deal with these institutions as a matter of principle, and therefore, the Committee concludes that the work can only have been sold by the Verwalter without the owner's permission and that it is highly likely that he did not fully profit from the transaction. Given these circumstances, the Committee believes that the loss of possession should be considered involuntary and due to the Nazi regime.

## Conclusion

The Restitutions Committee advises the Minister to return the *China 'Famille Rose' plate with flower vase decor* (NK 504) to the heirs of Abraham van Leeuwen and Alexander Isaïc van Leeuwen.

Adopted at the meeting of 7 January 2008,

R. Herrmann (chair)  
J.Th.M. Bank  
J.C.M. Leijten  
P.J.N. van Os  
E.J. van Straaten  
H.M. Verrijn Stuart  
I.C. van der Vlies (vice-chair)

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## 7. Recommendation regarding Rubens

(case number RC 1.64)

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In letters dated 21 March 2007 and 25 June 2007, the Minister for Education, Culture and Science (hereafter referred to as 'the Minister') asked the Restitutions Committee to issue a recommendation regarding a decision to be taken on the applications for restitution submitted by A.H.M. of A., L.J.J.-R. of H. and A.v.d.S. of L., F. respectively. These three applications concern the following objects:<sup>52</sup>

NK 182: earthenware dish;  
NK 194 A-F: six plates;  
NK 208 A-B: two coffee pots;  
NK 230 A-E: set of decorative vases;  
NK 339 A-F: six plates;  
NK 417: 'Prince's plate';  
NK 418: plate;  
NK 421 A-B: cup and saucer;  
NK 422 A-D: four plates;  
NK 449: plate;  
NK 453: slide.

The applicants claim that these objects belonged to the former trading stock of art dealership L. Rubens in The Hague (hereafter referred to as 'art dealership Rubens'). Since their return to the Netherlands after the Second World War, the claimed objects have been part of the Netherlands Art Property Collection (hereafter referred to as 'NK collection') under the abovementioned inventory numbers and are currently housed in various museums in the Netherlands or in the depot of the Netherlands Institute for Cultural Heritage in Rijswijk (hereafter referred to as 'ICN').

### The procedure

The application for restitution was prompted by the correspondence with the Origins Unknown Agency (hereafter referred to as 'BHG') concerning the aforementioned objects. A.H.M. (hereafter referred to as

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<sup>52</sup> NK-422 A-D are only named in the claim letter sent by A.H.M.. However, the Committee informed the other two applicants in writing on 19 July 2007 that they assumed that their claims also concern these objects.



23. On 3 March 1945, English bombers intended to destroy several German V2-related targets in The Hague. Due to a mistake, however, the residential area Bezuidenhout was bombed instead. Also Rubens Art Dealers on the nearby Lange Voorhout was heavily damaged.

'applicant 1') and L.J.J.-R. (hereafter referred to as 'applicant 2') submitted their respective applications for restitution to the Minister on 9 February 2007 and 8 May 2007. The undated application submitted by A.v.d.S. (hereafter referred to as 'applicant 3') was received by the Minister on 22 May 2007. Given the mutual nature of the three applications, the Committee combined them on receipt of the Minister's requests for a recommendation and instituted a fact-finding investigation, the results of which were summarised in a draft report dated 4 February 2008. On 21 February 2008, the draft report was sent to both the Minister and the applicants with a request for additional information. Neither the Minister nor the applicants provided any relevant additional facts. The report was subsequently adopted during the meeting of 6 May 2008. For the facts of the case, the Committee refers to the investigatory report, which is considered an integral part of this recommendation.

### General considerations

- a. The Committee has drawn up its opinion with due regard for the relevant (lines of) policy issued by the Ekkart Committee and the government.
- b. The Committee asked itself whether it is acceptable that an opinion to be issued is influenced by its potential consequences for decisions in subsequent cases. The Committee resolved that such influence cannot be accepted, save in cases where special circumstances apply, since allowing such influence would be impossible to justify to the applicant concerned.
- c. The Committee then asked itself how to deal with the circumstance that certain facts can no longer be ascertained, that certain information has been lost or has not been recovered, or that evidence can no longer be otherwise compiled. On this issue, the Committee believes that if the problems that have arisen can be attributed at least in part to the lapse of time, the associated risk should be borne by the government if the art was privately owned, save in cases where exceptional circumstances apply.
- d. The Committee believes that insights and circumstances which, according to generally accepted views, have evidently changed since the Second World War should be granted the status of new facts.
- e. It is highly probable that loss of possession was involuntary if the object was sold without the art dealer's consent by 'Verwalters' [Nazi-appointed caretakers who took over management of firms owned by Jews] or other custodians not appointed by the owner of items from the old trading stock under their custodianship, in so far as the original owner or his heirs did not receive all the profits of the transaction, or in so far as the owner did not expressly waive his rights after the war.

### Explanation of general considerations c and e<sup>53</sup>

In line with the recommendations with regard to art dealing and the explanation thereof, the Committee has come to the conclusion that consideration c should only apply to the ownership of art by private parties. Consideration e has been modified accordingly and, furthermore, this consideration should be taken to mean that only those objects that were effectively part of the old trading stock are eligible for restitution.

<sup>53</sup> Until 12 November 2007, general considerations c and e read:

- c) The Committee then asked itself how to deal with the circumstance that certain facts can no longer be ascertained, that certain information has been lost or has not been recovered, or that evidence can no longer be otherwise compiled. On this issue, the Committee believes that if the problems that have arisen can be attributed at least in part to the lapse of time, the associated risk should be borne by the government, save in cases where exceptional circumstances apply.
- e) Involuntary loss of possession is also understood to mean sale without the art dealer's consent by 'Verwalters' [Nazi-appointed caretakers who took over management of firms owned by Jews] or other custodians not appointed by the owner of items from the old trading stock under their custodianship, insofar as the original owner or his heirs did not receive all the profits of the transaction, or insofar as the owner did not expressly waive his rights after the war.

### Special considerations:

1. The applicants request restitution of thirty objects from the Dutch national collection, registered under the eleven abovementioned NK numbers. The applicants claim to be the heirs or relatives of Levie Rubens, who was the owner of art dealership Rubens. It is unclear whether the applicants are acting alone or whether they are representing other heirs. The relationships under the law of inheritance between the applicants and Levie Rubens is also unclear (particularly with regard to applicant 3). Given the following, the Committee sees no reason to instigate a more detailed investigation.
2. The relevant details are described in the investigatory report dated 6 May 2008. For these purposes, the following summary will suffice. Art dealership Rubens was established by Levie Rubens (1872-1942) in Enschede around 1900. The company relocated to The Hague in mid-April 1940. At the time of the German invasion, the art dealership (probably a one-man business) was located at Lange Voorhout 88a.
3. During the Second World War, the German occupying forces took a number of measures designed to register, manage and then wind up Jewish companies. On 12 March 1941, *Verordnung 48/1941* was issued, the 'decree ordering the removal of Jews from all business'. Pursuant to this decree, companies owned by Jewish entrepreneurs were taken over and then wound up by a *Liquidations-Treuhänder* or bought by / placed under the permanent administration of a *Verwaltungs-Treuhänder* (in short: *Verwalter*). As a result of this decree, Frederick Hübner was appointed *Verwalter* of art dealership Rubens, a fact he registered in the trade register at the Chamber of Commerce and Industry for The Hague (hereafter referred to as 'the trade register') on 14 May 1942. After his appointment, Hübner probably combined art dealership Rubens with another art dealership based in The Hague, that of Samuel Alberge.
4. Levie Rubens was deported to Auschwitz on or around 1 October 1942, together with his wife Jansje de Vries and his daughter Sophia Rubens, where they died on or around 8 October 1942. Hartog Rubens, Levie and Jansje's son, was the only member of the family to survive the war. Little is known about Hübner's administration of art dealership. During the allied bombing on 3 March 1945, in which the Bezuidenhout neighbourhood in The Hague was hit, several bombs landed in the vicinity of Lange Voorhout, causing extensive damage to the building in which art dealership Rubens was situated and resulting in a large proportion of the trading stock being lost.
5. Hartog Rubens returned to The Hague after the liberation, where he discovered what was left of his father's art dealership. On 5 July 1945, the Military Authorities appointed Hartog Rubens as temporary administrator of his father's estate, whose art dealership he continued to run. On 26 April 1949, a record was entered into the trade register saying that the administration had ended due to the death of Levie Rubens, whose death could not be registered in the population register until the late 1940s. A record was also made of the fact that, as sole heir, Hartog had taken on the business. On 4 March 1970, art dealership Rubens' entry in the trade register was deleted. According to details from BHG, Hartog Rubens died on 10 July 1979.
6. The applicants request restitution of thirty objects, currently registered under the eleven abovementioned NK numbers. Below are the considerations per category.



24. Small glazed china plate with flower decor in *famille rose* (NK 194).



25. Porcelain plate, with polychrome decorations with two coats of arms, *chine de commande* (NK 339).



26. Glazed pottery plate with blue and white decor of three soldiers playing cards (NK 422).

7. NK 182, NK 194 A-F, NK 208 A-B, NK 230 A-E, NK 417, NK 418, NK 421 A-B, NK 422 A-D, NK 449 and NK 453.

With regard to the ownership of the objects registered under the ten abovementioned NK numbers, the investigation has revealed the following. On the basis of the reconstruction of provenance carried out by BHG and other documents found in the archives, the Committee concludes that these objects were probably sold by art dealership Rubens during the war. The Committee investigated whether these works belonged to the old trading stock (that is to say purchased before the appointment of the *Verwalter*) or the new trading stock (purchased after the appointment of the *Verwalter*). However, based on the information available, the Committee has been unable to determine when these objects became part of art dealership Rubens' trading stock. The applicants have also failed to provide any factual information that would indicate that these objects belonged to the old trading stock. Therefore, the Committee has concluded that there is insufficient evidence to indicate whether the objects in question belonged to the old trading stock of art dealership Rubens. In reference to general consideration e, the Committee judges that the application does not meet the conditions for restitution.

8. NK 339 A-F

With regard to the ownership of the object registered under the abovementioned NK number, the investigation has revealed the following. It can be concluded from the reconstruction of provenance carried out by BHG and other documents found in the archives that uncertainty exists surrounding the provenance name L. Rubens. Two internal registration forms were found in the archives of the Netherlands Art Property Foundation. With regard to provenance, one of the forms states art dealership Rubens, while the other states art dealership Delaunoy in Amsterdam. The Committee has been unable to determine which statement is correct and has therefore concluded that there is insufficient evidence to indicate that this object was part of art dealership Rubens' trading stock. The Committee is of the opinion that art dealership Rubens' ownership of this object is not very likely and that the application does not, therefore, meet the conditions for restitution.

## Conclusion

The Restitutions Committee advises the Minister for Education, Culture and Science to reject the applications for restitution of NK 182, NK 194 A-F, NK 208 A-B, NK 230 A-E, NK 339 A-F, NK 417, NK 418, NK 421 A-B, NK 422 A-D, NK 449 and NK 453.

Adopted at the meeting of 6 May 2008 by R. Herrmann (chair), J.Th.M. Bank, J.C.M. Leijten, P.J.N. van Os, E.J. van Straaten, H.M. Verrijn Stuart, I.C. van der Vlies (vice-chair), and signed by the chair and secretary.

(R. Herrmann, chair)

(E. Campfens, secretary)

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## 8. Recommendation regarding Lachmann

(case number RC 1.66)

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In a letter dated 2 April 2007, the Minister for Education, Culture and Science (OCW) asked the Restitutions Committee to issue a recommendation regarding the application submitted on 20 March 2007 by V.B.L. ('the applicant') for the restitution of *Portrait of a woman with a fan* by J.A. Rootius. The claimed work, previously attributed to B. van der Helst, with inventory number NK 3389, has been in the Netherlands Art Property Collection ('NK collection') since its return to the Netherlands after the Second World War. According to information from the Netherlands Institute for Cultural Heritage in Rijswijk ('ICN'), the claimed artwork is currently stored in the ICN depot.

### The procedure

The application for restitution was prompted by the correspondence with the Origins Unknown Agency ('BHG') concerning the aforementioned painting that had probably belonged to Hugo and Alice Lachmann, a Jewish-German couple, during the war. In response to the request for a recommendation, the Restitutions Committee instituted a fact-finding investigation, the results of which were summarised in a draft report dated 3 December 2007. This draft report was submitted to the applicant, to which she replied in a letter received on 7 February 2008. The investigatory report was subsequently adopted on 3 March 2008. For the facts of the case, the Committee refers to this report, which is considered an integral part of this recommendation.

## General considerations

- a. The Committee has drawn up its opinion with due regard for the relevant (lines of) policy issued by the Ekkart Committee and the government.
- b. The Committee asked itself whether it is acceptable that an opinion to be issued is influenced by its potential consequences for decisions in subsequent cases. The Committee resolved that such influence cannot be accepted, save in cases where special circumstances apply, since allowing such influence would be impossible to justify to the applicant concerned.
- c. The Committee then asked itself how to deal with the circumstance that certain facts can no longer be ascertained, that certain information has been lost or has not been recovered, or that evidence can no longer be otherwise compiled. On this issue, the Committee believes that if the problems that have arisen can be attributed at least in part to the lapse of time, the associated risk should be borne by the government if the art was privately owned, save in cases where exceptional circumstances apply.
- d. The Committee believes that insights and circumstances which, according to generally accepted views, have evidently changed since the Second World War should be granted the status of new facts.
- e. It is highly probable that loss of possession was involuntary if the object was sold without the art dealer's consent by 'Verwalters' [Nazi-appointed caretakers who took over management of firms owned by Jews] or other custodians not appointed by the owner of items from the old trading stock under their custodianship, in so far as the original owner or his heirs did not receive all the profits of the transaction, or in so far as the owner did not expressly waive his rights after the war.

### Explanation of general considerations c and e<sup>54</sup>

In line with the recommendations with regard to art dealing and the explanation thereof, the Committee has come to the conclusion that consideration c should only apply to the ownership of art by private parties. Consideration e has been modified accordingly and, furthermore, this consideration should be taken to mean that only those objects that were effectively part of the old trading stock are eligible for restitution.

### Special considerations:

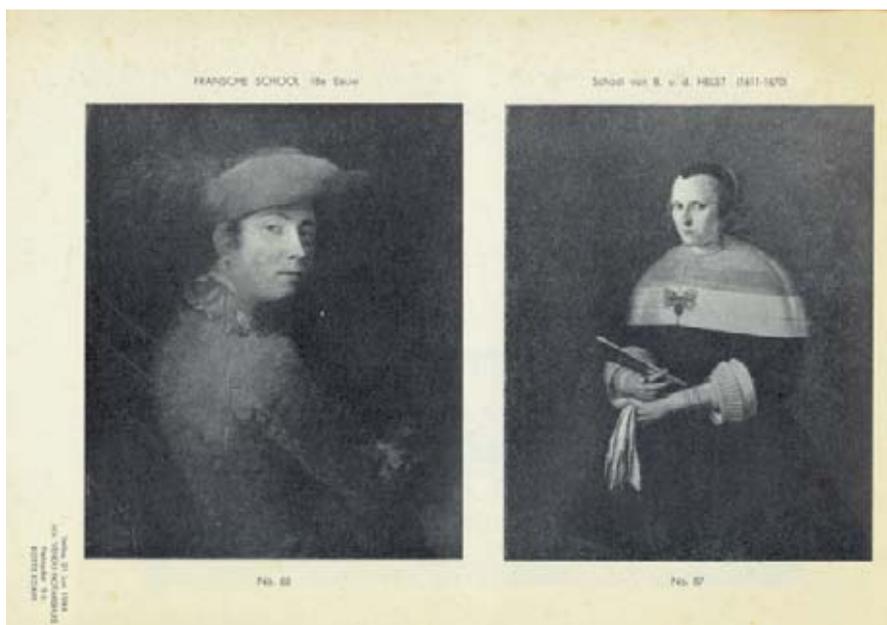
1. The applicant requests the restitution of the painting *Portrait of a woman with a fan* by J.A. Rootius, previously attributed to B. van der Helst (NK 3389). The applicant says that she is sole heir of L. Lachmann, the son of Hugo and Alice Lachmann. For this purpose, the Committee has taken cognisance of several law of inheritance documents. According to the applicant, the Lachmanns lost possession of the painting in question when it was confiscated during the war.



27. *Portrait of a woman with a fan*  
by J.A. Rootius (NK 3389).

<sup>54</sup> Until 12 November 2007, general considerations c and e read:

- c) The Committee then asked itself how to deal with the circumstance that certain facts can no longer be ascertained, that certain information has been lost or has not been recovered, or that evidence can no longer be otherwise compiled. On this issue, the Committee believes that if the problems that have arisen can be attributed at least in part to the lapse of time, the associated risk should be borne by the government, save in cases where exceptional circumstances apply.
- e) Involuntary loss of possession is also understood to mean sale without the art dealer's consent by 'Verwalters' [Nazi-appointed caretakers who took over management of firms owned by Jews] or other custodians not appointed by the owner of items from the old trading stock under their custodianship, insofar as the original owner or his heirs did not receive all the profits of the transaction, or insofar as the owner did not expressly waive his rights after the war.



28. In June 1944, the *Sammelverwalter feindlicher Hausgeräte* ordered the Vendue Notarishuis in Rotterdam to auction the painting by Rootius, *Portrait of a woman with a fan*.

29. Under lot number 29 the painting by Rootius, at the time still attributed to B. van der Helst, was put up for auction. The picture in the auction catalogue gives evidence that it is the same painting.

2. The relevant facts are described in the investigatory report of 3 March 2008 and summarised here. It can be concluded from various post-war documents that the Jewish couple Hugo and Alice Lachmann left Germany in 1939 or thereabouts to escape the Nazis, and settled in Switzerland. They had their household effects transported in two crates from Berlin to Rotterdam. On arrival, the crates were stored at Transatlantica N.V., a transport and shipping company.
3. When studying the archive of the Netherlands Property Administration Institute ('NBI'), the Committee found a copy of a letter dated 1 December 1943 from the German looting organisation *Sammelverwaltung feindlicher Hausgeräte* ('*Sammelverwaltung*') to Transatlantica N.V., concerning the crates containing the Lachmanns' household effects. The contents of the letter confirm that the *Sammelverwaltung* had seized the crates in December 1943.
4. Post-war correspondence shows that in June 1944, the *Sammelverwaltung* commissioned the Vendu Notarishuis N.V. in Rotterdam to auction the claimed painting. It was purchased on the instructions of art dealers P. de Boer of Amsterdam, who sold it during the war to one Kaminski of Bergen, who in turn sold it to the *Kunsthalle* in Hamburg.
5. After the war, De Boer completed a declaration form at the Netherlands Art Property Foundation ('SNK') concerning the sale of this painting. Between 1950 and 1952, J. Jolles, director of the bureau for restoration payments and the restoration of property ('Bureau Hergo'), the successor of the SNK, corresponded with De Boer, Vendu Notarishuis N.V., the NBI and M. Thoolen, Alice Lachmann's lawyer, concerning the provenance of the painting. With reference to this, Alice wrote a letter, in German, to Bureau Hergo on 18 December 1952, describing the possessions she lost, including the work in question. It was found that a mistake had been made in the translation of this letter. The German word '*Spitzenkragen*' was wrongly translated as a 'pointed collar' instead of 'lace collar'. As a result, the description did not match that of the painting in question. This misunderstanding probably made the restitution authorities cautious about returning the work.
6. The Committee's research has shown that the correspondence Alice Lachmann conducted after the war with the Dutch restitution authorities did not result in a decision about the restitution of the claimed work. The Committee therefore concludes that this case cannot be considered to have been settled in the past and deems the application admissible.
7. The current restitution policy allows a claimed object to be returned if the original owner lost possession of it involuntarily due to circumstances directly related to the Nazi regime. It is clear that the claimed object was seized by the occupying forces in 1943 under anti-Jewish measures put in place by the Nazis. The

Committee is therefore of the opinion that in this case, loss of possession was involuntary and a result of circumstances directly related to the Nazi regime.

## Conclusion

The Restitution Committee advises the Minister for Education, Culture and Science to return the painting *Portrait of a woman with a fan* by J.A. Rootius (NK 3389) to the heirs of Hugo and Alice Lachmann.

Adopted at the meeting of 3 March 2008 by R. Herrmann (chair), J.Th.M. Bank, J.C.M. Leijten, P.J.N. van Os, E.J. van Straaten, H.M. Verrijn Stuart, I.C. van der Vlies (vice-chair), and signed by the chair and the secretary.

(R. Herrmann, chair)

(E. Campfens, secretary)

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## 9. Recommendation regarding Oppenheimer

(case number RC 1.67)

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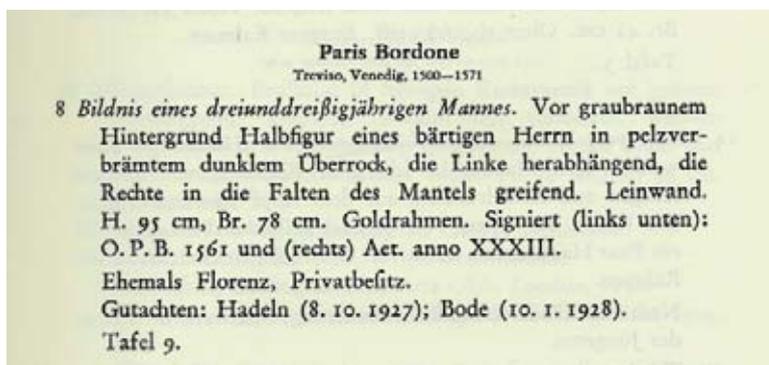
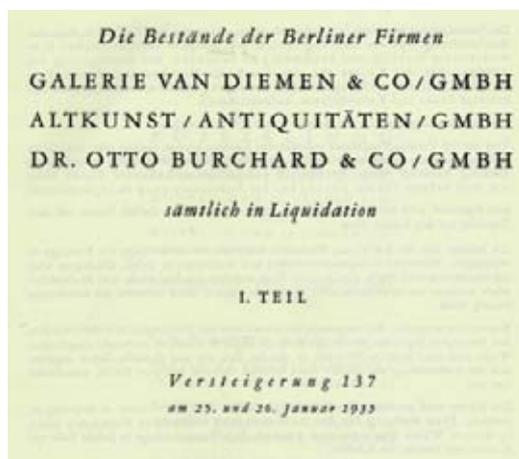
In a letter dated 2 April 2007, the Minister for Education, Culture and Science asked the Restitutions Committee to issue a recommendation regarding a decision to be taken on the application submitted on 14 March 2007 by E.S. in Paris, acting as the authorised representative of the heirs of Rosa and Jakob Oppenheimer (hereafter referred to as 'the applicants') for the restitution of the following works of art:

NK 1771: P. Bordone, *Portrait of a man*;  
NK 2244: H.G. Pot, *Merry company at a table*.

According to the applicants, both paintings originally came from one of the enterprises of the Margraf group in Berlin, the sole stockholders of which were said to have been the Jewish art dealers Rosa and Jakob Oppenheimer. Since their return to the Netherlands after the Second World War, the claimed works of art have been part of the Netherlands Art Property Collection (hereafter referred to as 'NK collection'), and are currently located in the repository of the Netherlands Institute for Cultural Heritage in Rijswijk (hereafter referred to as 'ICN').

### The procedure

In response to the application for restitution that was subsequently submitted, the Restitutions Committee instituted a fact-finding investigation, the results of which were summarised in a draft report dated 6 August 2007. This draft report together with a number of additional inquiries was submitted to the applicants, who responded to the contents in a letter dated 24 September 2007. Certain items in the report were then changed and it was adopted on 4 February 2008. For the facts of the case, the Committee refers to the investigatory report, which is considered an integral part of this recommendation.



30 and 31. According to the auction catalogue, the two currently claimed paintings were auctioned at the Paul Graupe auction house in Berlin on 25 and 26 January 1935.

## General considerations

- a. The Committee has drawn up its opinion with due regard for the relevant (lines of) policy issued by the Ekkart Committee and the government.
- b. The Committee asked itself whether it is acceptable that an opinion to be issued is influenced by its potential consequences for decisions in subsequent cases. The Committee resolved that such influence cannot be accepted, save in cases where special circumstances apply, since allowing such influence would be impossible to justify to the applicant concerned.
- c. The Committee then asked itself how to deal with the circumstance that certain facts can no longer be ascertained, that certain information has been lost or has not been recovered, or that evidence can no longer be otherwise compiled. On this issue, the Committee believes that if the problems that have arisen can be attributed at least in part to the lapse of time, the associated risk should be borne by the government if the art was privately owned, save in cases where exceptional circumstances apply.
- d. The Committee believes that insights and circumstances which, according to generally accepted views, have evidently changed since the Second World War should be granted the status of new facts.
- e. It is highly probable that loss of possession was involuntary if the object was sold without the art dealer's consent by 'Verwalters' [Nazi-appointed caretakers who took over management of firms owned by Jews] or other custodians not appointed by the owner of items from the old trading stock under their custodianship, in so far as the original owner or his heirs did not receive all the profits of the transaction, or in so far as the owner did not expressly waive his rights after the war.

### Explanation of general considerations c and e<sup>55</sup>

In line with the recommendations with regard to art dealing and the explanation thereof, the Committee has come to the conclusion that consideration c should only apply to the ownership of art by private parties. Consideration e has been modified accordingly and, furthermore, this consideration should be taken to mean that only those objects that were effectively part of the old trading stock are eligible for restitution.

## Special considerations:

1. The applicants are requesting the restitution of the paintings NK 1771 and NK 2244. The applicants have stated that they are the heirs of Rosa and Jakob Oppenheimer who, during their lives, are said to have been the sole stockholders of the German Margraf group. To this purpose, the Committee has taken cognisance of the law of inheritance documents submitted by the applicants.
2. The relevant facts are contained in the investigatory report dated 4 February 2008. The following summary of events will suffice for the present purposes. In 1912, Albert Loeske founded the Margraf & Co. GmbH company in Berlin, an enterprise that traded in jewels and gold. In the years following, he expanded the Margraf group with the establishment of various subsidiary companies, including the art dealerships Van Diemen & Co. GmbH, Dr. Benedict & Co. GmbH, Dr. Burchard & Co. GmbH, and the antiques business Altkunst & Co. GmbH. Loeske put the management of his businesses in the hands of the Jewish art dealer Jakob Oppenheimer and his wife Rosa Oppenheimer-Silberstein. At the time of Loeske's death in 1929, the abovementioned art dealerships had grown into prominent companies. Loeske left the Oppenheimers the shares of his companies. However, the execution of Loeske's estate was delayed due to years of legal battle, which was only settled shortly before the Nazis took power in 1933. Jakob Oppenheimer died in France in 1941. Rosa was later deported by the Nazis and died in Auschwitz in 1943. Their three children survived the war.
3. Shortly after the Nazis seized power in 1933, they aimed their sights on the Margraf group, which they viewed as an exponent of the 'international Jewish jewel and art trade'. On 1 April 1933, the Nazi authorities attempted to intern Jakob and Rosa Oppenheimer, but the couple were able to escape to France. Because of these developments, the shares of the Margraf group were never registered in the Oppenheimers' name. After Loeske's death, the shares had been given to the Tiergarten tax office to serve as collateral for the payment of the inheritance taxes on the release of Loeske's estate. When the tax debts were paid in 1937, the Nazi authorities would only release the shares on the condition that they would be transferred to the Jewish Rosa Beer who, under pressure from the authorities, agreed. She was the heir to Loeske's remaining estate and was still living in Germany. In so doing, the Nazis were able to maintain their hold on the estate.
4. A decision of the Landesgericht (Court of Justice) in Berlin dated 2 December 1933 determined that the Oppenheimers were forbidden to perform any legal transactions for the various enterprises in the Margraf group. Bolko Freiherr von Richthofen, a close acquaintance of Hermann Göring was appointed administrator of the group. From 1938 on, Von Richthofen acted as liquidator of the companies. In order to liquidate the Margraf group, the stock of the subsidiary companies was sold during at least eight auctions under execution. According to an auction catalogue, the two paintings currently being claimed were auctioned at

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<sup>55</sup> Until 12 November 2007, general considerations c and e read:

c) The Committee then asked itself how to deal with the circumstance that certain facts can no longer be ascertained, that certain information has been lost or has not been recovered, or that evidence can no longer be otherwise compiled. On this issue, the Committee believes that if the problems that have arisen can be attributed at least in part to the lapse of time, the associated risk should be borne by the government, save in cases where exceptional circumstances apply.

e) Involuntary loss of possession is also understood to mean sale without the art dealer's consent by 'Verwalters' [Nazi-appointed caretakers who took over management of firms owned by Jews] or other custodians not appointed by the owner of items from the old trading stock under their custodianship, insofar as the original owner or his heirs did not receive all the profits of the transaction, or insofar as the owner did not expressly waive his rights after the war.

auction house Paul Graupe in Berlin on 25 and 26 January 1935. According to the applicants, these were forced auctions, then known as *Judenauktionen*, intended to steal possessions from Jewish owners.

5. After the war, in a letter dated 25 July 1957, Willi Schulz, tax consultant in Berlin, submitted a request to the German authorities demanding compensation on behalf of Jakob and Rosa Oppenheimer's children among others. In addition, documents from the German *Entschädigungsamt* (Compensation Office) show that an application for RM 500,000 in damages was submitted on behalf of Firma Galerie Van Diemen & Co. GmbH's (in liquidation) on 25 July 1956 for losses as a result of the sale of paintings at cut-rate prices. According to these documents, on 13 June 1957 a settlement was reached and damages to the amount of DM 75,000 (the maximum sum) were awarded to art dealership Van Diemen & Co, for losses.
6. The committee's investigation into the claimed paintings revealed no post-war correspondence between the Netherlands Art Property Foundation and the Oppenheimer heirs and/or the art dealers Van Diemen & Co. (in liquidation). No evidence was found to indicate that the parties involved were aware of the fact that the claimed paintings had been in the custody of the Dutch Government since the war.
7. The present application for restitution regards two paintings, which are currently registered as NK 1771 and NK 2244. The criteria for restitution for each work of art are described below.

#### **NK 1771**

As regards the ownership of the painting, the investigation has shown that this work of art was part of the trading stock of one of the corporations Galerie Van Diemen & Co GmbH/Altkunst Antiquitäten GmbH/ Dr. Otto Burchard & Co GmbH, all in liquidation, all of whose trading stocks were sold under the hammer at auction house Paul Graupe on 25 and 26 January 1935. Subsequently, the Committee attempted to determine whether this work of art was part of the old trading stock (acquired by the owner) or the new trading stock (acquired by Von Richthofen). Archive material revealed that the painting was almost certainly already present on the premises of the art dealer Van Diemen & Co in 1928 and therefore can be considered part of the old trading stock.

The Committee also investigated whether there were any indications to suggest that it was highly likely that this is a case of involuntary loss of possession as stipulated in the Recommendations for the Art Trade 4 and 6 issued by the Ekkart Committee. The required degree of probability can be assumed if the applicants can prove it was a case of theft, confiscation or forced sale. In the Committee's opinion, the applicants have sufficiently shown that the work of art was auctioned at a forced auction set up by the Nazi authorities to implement anti-Jewish measures and the Committee therefore adjudges that it can be considered involuntary loss of possession as a result of circumstances directly related to the Nazi regime.

#### **NK 2244**

As regards the ownership of the painting, the investigation has shown that this work of art was part of the trading stock of one of the three abovementioned corporations, all of whose trading stocks were auctioned at auction house Paul Graupe on 25 and 26 January 1935. Subsequently, the Committee attempted to determine whether the work of art was part of the old trading stock (acquired by the owner) or the new trading stock (acquired by Von Richthofen). The Committee was not able to trace a date of acquisition for this painting. The Committee deems it highly probable that no further art was acquired by the art traders involved between the time when the Oppenheimers fled and the auction and that therefore this work of art should be considered part of the old trading stock.

The Committee also investigated whether there were any indications to suggest that it was highly likely that this is a case of involuntary loss of possession as stipulated in the Recommendations for the Art Trade 4 and 6 issued by the Ekkart Committee. The required degree of probability can be assumed if the applicants can prove it was a case of theft, confiscation or forced sale. In the Committee's opinion, the applicants have sufficiently shown that the work of art was auctioned at a forced auction set up by the Nazi authorities to implement anti-Jewish measures and the Committee therefore adjudges that it can be considered involuntary loss of possession as a result of circumstances directly related to the Nazi regime.

8. The Committee asked itself whether the proceeds of the auctions under execution went to the Oppenheimers. However, no proof of this was found during the investigation. Given the nature and objective of these auctions and all of the surrounding circumstances, the Committee deems it highly unlikely that the married couple in exile ever saw any of the auction proceeds. The Committee is therefore of the opinion that the proceeds of the auctions under execution can be left out of the discussion.
9. Subsequently, the Committee asked itself whether in case of restitution of the paintings concerned a sum of money should be paid (by the heirs of Rosa en Jakob Oppenheimer) in connection with the damages issued by the German authorities in 1957. The Committee took into consideration that the damages issued do not compare to the actual losses suffered by the Margraf group as a result of the Nazi measures. Therefore, the Committee is of the opinion that these damages can also be left out of the discussion.



32. *Portrait of a man* by P. Bordone (NK 1771).



33. *Merry company at a table* by H.G. Pot (NK 2244).

## Conclusion

The Restitution Committee advises the Minister for Education, Culture and Science to return the painting *Portrait of a man* by P. Bordone (NK 1771) and the painting *Merry company at a table* by H.G. Pot (NK 2244) to the heirs of Rosa and Jakob Oppenheimer.

Adopted at the meeting of 4 February 2008 by R. Herrmann (chair), J.Th.M. Bank, J.C.M. Leijten, P.J.N. van Os, E.J. van Straaten, H.M. Verrijn Stuart, I.C. van der Vlies (vice-chair), and signed by the chair and the secretary.

(R. Herrmann, chair)

(E. Campfens, secretary)

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## 10. Recommendation regarding Weijers

(case number RC 1.68)

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On 8 March 2007, J.A.C.M.V., on behalf of the '*erven van wijlen H. Weijers uit Tilburg*' ['the heirs of the late H. Weijers from Tilburg'] ('the applicants') sent a letter to the Ministry of Education, Culture and Science ('OCW'), requesting restitution of nine works of art from the Netherlands Art Property Collection ('NK collection'), which is administered by the Dutch government. It concerns paintings with the inventory numbers NK 1667, NK 1870, NK 2069, NK 2183, NK 2264, NK 2476, NK 2477, NK 2509 and NK 2774. In a letter dated 3 April 2007, the Minister for OCW asked the Restitutions Committee to issue a recommendation. The claimed paintings are currently on long-term loan to various Dutch museums, except for NK 2183, which is currently stored in the depot of the Netherlands Institute for Cultural Heritage ('ICN') in Rijswijk, the Netherlands.

### The procedure

The current application for restitution was preceded by an application for restitution to the Ministry of OCW's Inspectorate of Cultural Heritage. On 20 March 1998, one of the current applicants, J.A.C.M.V., filed an application for restitution with that Inspectorate on behalf of his mother, M.A.V.-W., and his aunts, H.F.E.-W. and E.M.d.J.-W. That application for restitution concerned seven paintings from the NK collection, which are similar to seven of the nine works of art currently claimed (NK 2183 and NK 2509, which are part of the current claim, were not mentioned in the previous one). According to V., the works of art claimed in 1998 were lost involuntarily by his grandfather H.F.J. Weijers during the Second World War. On 3 August 1998, the Ministry of OCW rejected V.'s application for restitution (see under 2).

On 8 March 2007, the applicants submitted the current application for restitution to the Ministry of OCW.



34. *Still life with fish* by P.P. van Noort (NK 2476).



35. *Still life with shotgun and two dead grouse* by P.P. van Noort (NK 2477).

On 3 April 2007, the Minister for OCW requested the Committee to issue a recommendation regarding this application for restitution. In a letter dated 5 March 2008, lawyer M.H. Stötzel informed the Committee that he had been authorised by the 'heirs of the late H.F.J. Weijers' to represent them in their application for restitution. In response to the application for restitution submitted to it, the Committee wrote a draft investigatory report (6 May 2008), which was sent to the applicants for comment on 13 May 2008. The applicants' comments dated 24 June 2008 were added as an appendix to the definitive investigatory report, which was adopted on 6 October 2008. For the facts on which the application for restitution is based, the Committee refers to its investigatory report. R. Herrmann, former chairmen of the Committee, acted as consultant to the Committee in this case.

#### General considerations

- a. The Committee has drawn up its opinion with due regard for the relevant (lines of) policy issued by the Ekkart Committee and the government.
- b. The Committee asked itself whether it is acceptable that an opinion to be issued is influenced by its potential consequences for decisions in subsequent cases. The Committee resolved that such influence cannot be accepted, save in cases where special circumstances apply, since allowing such influence would be impossible to justify to the applicant concerned.
- c. The Committee then asked itself how to deal with the circumstance that certain facts can no longer be ascertained, that certain information has been lost or has not been recovered, or that evidence can no longer be otherwise compiled. On this issue, the Committee believes that if the problems that have arisen can be attributed at least in part to the lapse of time, the associated risk should be borne by the government, save in cases where exceptional circumstances apply.
- d. The Committee believes that insights and circumstances which, according to generally accepted views, have evidently changed since the Second World War should be granted the status of new facts.
- e. Involuntary loss of possession is also understood to mean sale without the art dealer's consent by 'Verwalters' [Nazi-appointed caretakers who took over management of firms owned by Jews] or other custodians not appointed by the owner of items from the old trading stock under their custodianship, in so far as the original owner or his heirs did not receive all the profits of the transaction, or in so far as the owner did not expressly waive his rights after the war.

#### Special considerations:

1. The applicants, a daughter and ten grandchildren of H.F.J. Weijers ('Weijers'), request the restitution of nine works from the NK collection. The applicants have stated that they are entitled to Weijers' estate. In this context, the Committee has taken cognisance of documents submitted. The application for restitution concerns nine paintings with inventory numbers NK 1667, NK 1870, NK 2069, NK 2183, NK 2264, NK 2476, NK 2477, NK 2509 and NK 2774, which, according to the applicants, were once owned by Weijers. The applicants stated that their application for restitution applies to more works of art, but have not specified which (NK) works these are. The Committee cannot issue a recommendation on more works than those included in the Minister for OCW's request for a recommendation.
2. In so far as the rejection by the Ministry of OCW of the previous application for restitution from 1998 regarding NK 1667, NK 1870, NK 2069, NK 2264, NK 2476, NK 2477 and NK 2774 (see under The Procedure) is concerned, the Committee does not consider the case settled in the sense of prevailing policy. Under the terms of the recommendations of the Ekkart Committee from 2001 and the Government's 2001 response to these recommendations, a case is only settled if 'the Council for the Restoration of Property Rights or another competent court has pronounced judgment' or if 'the claim for restitution resulted in a conscious and deliberate settlement or the claimant expressly renounced his claim for restitution'. Since this criterion does not cover the Ministry of OCW's decision on the first application for restitution regarding Weijers, the Committee deems the applicants' current application for restitution admissible. There is no information on any previous application for restitution of the works NK 2183 and NK 2509.

3. No significant problems were encountered identifying the claimed NK works based on the documentation consulted by the Committee, with the exception of NK 2509. The Committee deduced from research data from the Origins Unknown Agency ('BHG') that it is not certain that the painting in question, a work by G. van den Eeckhout, was once owned by Weijers and sold by Weijers to art dealer D. Sijperda in The Hague. In addition, the Committee found that, of all the works currently claimed, this is the only work not featured in the reproductions of the photo albums that the Weijers family made of its art collection during the war and that were sent to the Committee. However, identification of NK 2509 as a possible former possession of Weijers is irrelevant here, given the Committee's recommendation as referred to under 13-14 below.
4. The applicants declare that in the period between 1940 and 1944, Weijers sold his entire art collection and that, given Weijers' circumstances at the time, this sale *'can not be considered voluntarily'* (letter of 1 April 2008). They state that although Weijers did not come from a Jewish family, he *'must be considered to have been persecuted because he had been suspected and labeled to be an enemy of the Germans and of their Dutch sympathisers'* (letter of 1 April 2008). According to his memoirs from 1945, Weijers had fiercely opposed the Nazi regime in the 1930s, his initial sympathy for the Germans turning into covert hostility after the occupation of the Netherlands in 1940. In November 1940, his house in Tilburg was requisitioned by the occupying forces. In April 1943 and February 1944, Weijers was said to have been under threat of imprisonment due to his openly hostile attitude towards the Nazi regime; his advanced age and poor health prevented this threat from becoming a reality.
5. In order to answer the question of whether restitution can be recommended, it is important to know whether the sale of the claimed paintings can be considered involuntary due to circumstances directly related to the Nazi regime. In this context, the Committee points out that Weijers did not belong to a population group that was persecuted by the Nazis. Consequently, the reversal of the burden of proof as expressed in the Ekkart Committee's third recommendation from April 2001 does not apply here. The involuntary nature of the loss of possession as referred to above must, therefore, be demonstrated by the applicants.
6. When war broke out, Weijers owned a private art collection which he had accumulated in the period 1929-1940. The Committee infers this from the dates mentioned on the reproductions of photo albums the Weijers family made of the art collection during the war and that were sent to the Committee. The applicants therefore challenge, to no avail, that the purchase period extended until 1940 and mention 1929-1930/32 as the period during which Weijers bought most of the works of art (appendix 2 to letter of 1 April 2008). In his letter to the SNK of 4 October 1945, Weijers declared that he had purchased almost all of the works of art in his collection from *'duitsche joden'* ['German Jews'] through art dealer H.S. de Haan. But according to the applicants, there is no indication of such provenance (appendix to the investigatory report, p. 3).



36. *Madonna and child*  
by follower of L. Cranach (NK 1667).

7. During the war, Weijers sold his art collection. The nine works currently claimed were probably sold to different Dutch buyers and/or intermediaries, to wit sales to or through the Dutch art dealers H.S. de Haan (NK 1667, NK 2264), F. Parry (NK 1870, NK 2069, NK 2183, NK 2774), H.A. Wetzlar (NK 2476 and NK 2477) and possibly D. Sijperda (NK 2509). Part of Weijers' collection was sold before his house was requisitioned in November 1940, part of it was sold subsequently. The exact sales data and prices are, however, not known.
8. Weijers completed an SNK declaration form for two of the paintings currently claimed (NK 1667 and NK 2264), filling in that this had been a '*vrijwillige verkoop*' ['voluntary sale'] to De Haan shortly after the beginning of the war. Weijers also declared that he later learned that De Haan had bought these works on behalf of Alois Miedl. Apart from two works (not claimed in this case), Weijers did not '*aan Duitschers rechtstreeks geen schilderijen verkocht*' [sell paintings directly to the Germans] during the war, as he stated in his letter to the SNK of 4 October 1945. A large portion of Weijers' collection was transported to Germany during the war, as the investigation has shown. The works Weijers sold to intermediaries and dealers were, in all likelihood, delivered to Germans.
9. In his letter to the SNK of 4 October 1945, Weijers said that the '*joodse herkomst*' [Jewish provenance] of most of the works in his collection and his '*bekende anti-duitscheid*' [well-known anti-German attitude] formed a risk of them being seized by the Nazis. In his letter he continued:

*Dat gevaar werd nog groter toen ik in Nov. 1940, door de Duitschers, "wegens felle anti-duitscheid" uit mijn huis werd gezet. Ik meende safe te zijn door mijn schilderijen op te slaan bij de Gruyter den Haag. Maar toen ik daar mijn eerste inspectie-bezoek bracht, en constateerde, dat daar ook Seisz-Inquart en andere hoge nazi's, door hen verzamelde ??? kunst hadden geborgen, zag ik my genoopt de verkoop myner in gevaar verkeerende schilderijen met den grootst mogelyken spoed door te voeren.*

[That danger only increased when I was thrown out of my home by the Germans in Nov. 1940 because of my fierce opposition of the Germans. I thought I was safe by storing my paintings at De Gruyter in The Hague. But when, during my first inspection visit, I found out that Seisz-Inquart and other high-ranking Nazis also kept the art they had collected ??? there, I was forced to sell my paintings, which were now in danger, as soon as possible.]

10. Referring to a notebook (not known to the Committee) in which Weijers was said to have recorded his sales, his wife Weijers-Arnold wrote in a letter to the SNK of 13 June 1947:

*Zoals uit het cahier blykt (en ik herinner me nog alles zeer goed), werdt myn man in Juli of Aug. 1940 opgebeld door F. Parry uit den Haag en vroeg prys van diverse schilderijen met het verzoek deze drie dagen in optie te mogen houden. Op de vraag voor wie deze schilderijen bedoelt waren, juist omdat hy niet aan Duitschers wilde verkoopen, kreeg myn man ten antwoord, dat het geen usance was namen van clientèle te noemen. Een en ander werdt door myn man op verzoek van de heer Pary schriftelyk bevestigd. Binnen drie dagen was de Heer Parry per auto met zyn client, een zekere Dr. Kieslinger uit Weenen by ons tot groote ergernis van myn man. De in optie genomen schil[d]deryen werden gekeurd, gekocht, betaald en direct in de auto geladen en meegenomen.*

[As is clear from the notebook (and I remember it all very well) my husband received a call from F. Parry from The Hague in July or August 1940, who wanted to know the price of various paintings and asked if he could exercise an option on them for three days. When he asked for whom these paintings were intended, given that he did not want to sell to Germans, my husband was told that it was not customary to mention the names of clients. This was confirmed in writing by Mr Parry, at my husband's request. Within three days, Mr Parry and his client, one Dr. Kieslinger from Vienna, arrived at our place by car, to the great annoyance of my husband. The paintings on which he had an option were examined, bought, paid for and immediately loaded into the car and taken away.]

According to the applicants, Weijers-Arnold also wrote on the back of two photographs of works that Weijers had sold to De Haan: '*verkocht door de Haan aan voor Hitler te stichten museum. onder pressie*' [sold to De Haan for museum to be set up for Hitler. under pressure]. Weijers and Weijers-Arnold did not apply for restitution after the war. Weijers died in 1947, his wife in 1972.

11. The applicants claim that the loss of possession of all nine paintings was involuntary, pointing to Weijers' personal circumstances during the war, i.e. the fact that he was anti-German and had been threatened and given a hard time as a result of it. Moreover, they state that the German buyers used local art dealers to acquire parts of Weijers' collection. Weijers is said to have sold '*under the impact of the more or less blunt threats by De Haan, by Parry and Sijperda and others*' and because he was given the idea that his collection would be confiscated. The Committee's investigatory report contains relevant quotes from the applicants. On 2 April 2008, Weijers' daughter E.-W. said the following about the sales to De Haan:

*Uit allerlei gezegdes tussen hem en moeder kon ik ook afleiden dat De Haan vader onder druk zette. Dat gebeurde al vóór de oorlog. Het had te maken dat veel van vaders schilderijen oorspronkelijk uit Duits bezit kwamen. De Haan had tegen vader gezegd dat de Nazi's in Duitsland achter joodse kunst aan zaten en je wist maar nooit wat de toekomst zou brengen. Veel van de schilderijen die vader ooit via De Haan had*



*gekocht, kwamen blijkbaar oorspronkelijk uit joods bezit. Volgens De Haan zou dit vaders collectie in groot gevaar brengen. Hij had in Duitsland gezien hoe de Nazi's tekeer gingen.*

[All kinds of things he and my mother said to each other led me to believe that De Haan was putting pressure on my father. This occurred even before the war. It had to do with the fact that a lot of father's paintings were originally owned by Germans. De Haan had told my father that the Nazis were looking for Jewish art in Germany and you never knew what the future would bring. A lot of the paintings father had bought through De Haan apparently came from Jewish ownership. According to De Haan, this would gravely endanger father's collection. He had seen for himself how the Nazis carried on in Germany.]

On 2 April 2008, E.-W. said about Sijperda:

*Toen hij [Sijperda] drie prachtige schilderijen had gekocht, bleek dat dit sujet helemaal niet uit zichzelf had gehandeld maar de schilderijen had gekocht voor een museum van Hitler in Duitsland. Hij vroeg namelijk of vader maar de schilderijen naar Duitsland wilde versturen. Vader weigerde en zei dat hij niets met Duitsland te maken wilde hebben. [...] Vader werd verzocht bij Seisz-Inquart te komen en die zou alles verder met hem in orde maken. Vader weigerde, hij had niets te maken met Seisz-Inquart, alleen met Syperda zelf.*

[When he [Sijperda] had bought three beautiful paintings, it appeared that this character had not acted on his own behalf but had bought the paintings for a Hitler museum in Germany. He asked my father if he could ship the paintings to Germany. Father refused and told him he didn't want anything to do with Germany. [...] Father was summoned to come to Seisz-Inquart, who would arrange everything. Father refused. He had no dealings with Seisz-Inquart, only with Syperda himself.]

On 2 April 2008, E.-W. said the following about the sales through Parry:

*Vader en moeder vertelden mij dat de kunsthandelaar naar Bremhorst was gekomen samen met een Oostenrijker, Kieslinger. Deze man bleek de klant te zijn en wist alles van vaders collectie. Ter plekke kocht hij meerdere schilderijen en betaalde hij meteen in contanten. Vader durfde de koop niet te weigeren. Kieslinger was een Oostenrijker, maar hij kwam wel aanzetten in een Duitse auto met daarop de letters 'R.K.'. Hij was gewoon een stroman van de Nazi's. Wat zou er gebeuren als hij niet vrijwillig aan Kieslinger zou verkopen?*

[Father and mother told me that the art dealer had come to Bremhorst together with an Austrian, Kieslinger. This man turned out to be his client and he knew everything about father's collection. He bought several paintings on the spot and paid in cash. Father did not dare refuse the purchase. Although Kieslinger was an Austrian, he arrived in a German car with the letters 'R.K.'. He was just a puppet of the Nazis. Who knows what would have happened if my father had not sold to Kieslinger voluntarily?]

12. The Committee rules that the two sales to the Dutch art dealer De Haan, corresponding to the works currently being claimed NK 1667 and NK 2264, must be considered voluntary. The sales were made shortly after war broke out and Weijers himself declared, on the SNK declarations related to these works, that the loss of possession was a result of *'vrijwillige verkoop'* [voluntary sale].
13. As regards the seven other works currently claimed, NK 1870, NK 2069, NK 2183, NK 2476, NK 2477, NK 2509 and NK 2774, the Committee sees insufficient reason to assume that the loss of possession was involuntary due to circumstances directly related to the Nazi regime.
14. By way of further explanation of point 13, the Committee considers the following. First of all, the Committee states that in the case of sale by private parties not belonging to persecuted population groups, involuntary loss of possession due to circumstances directly related to the Nazi regime only exists if there is a direct correlation between specific threats or coercion on the part of the Nazis and the sale in question. Weijers sold the works of art to intermediaries and dealers who then supplied them to Germans. The Committee assumes that Weijers, given the circumstances of the war and, more specifically, the confiscation of his house in November 1940, intended to sell the paintings in question to various intermediaries and dealers, but that he would not have wanted Germans to buy his paintings. The Committee finds corroboration of this standpoint in the statement by Weijers' wife Weijers-Arnold as referred to under 10 and the statements by his daughter E.-W. as referred to under 11. The Committee has found no evidence of specific threats or coercion by the Nazis for the different sales. The Committee deems it plausible that Weijers would have feared confiscation of his collection, given the requisitioning of his home, but the Committee also finds that there are no concrete indications that his art collection was about to be confiscated. There is, therefore, no direct relationship between a specific threat or coercion by the Nazis and the sales in question.

## Conclusion

The Restitutions Committee advises the Minister for Education, Culture and Science to reject the application for restitution by J.A.C.M. V. on behalf of the *'heirs of the late H. Weijers from Tilburg'* regarding the works of art with inventory numbers NK 1667, NK 1870, NK 2069, NK 2183, NK 2264, NK 2476, NK 2477, NK 2509 and NK 2774.

Adopted at the meeting of 1 December 2008 by I.C. van der Vlies (acting chair), J.Th.M. Bank, J.C.M. Leijten, P.J.N. van Os, E.J. van Straaten, H.M. Verrijn Stuart, and signed by the acting chair and the secretary.

(I.C. van der Vlies, acting chair)

(E. Campfens, secretary)

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## 11. Recommendation regarding Behrens

(case number RC 1.71)

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In a letter dated 10 April 2007, the Minister for Education, Culture and Science asked the Restitutions Committee to issue a recommendation regarding a decision to be taken on the application submitted on 9 March 2007 by I.L., E.E.S.G., E.K.B. and J.O.B (hereafter referred to as 'the applicants') for the restitution of the painting *Female figure at a well* by J.B.C. Corot. The claimed object has been part of the national collection since 1942 and according to details from the Netherlands Institute for Cultural Heritage (hereafter referred to as 'the ICN') is currently housed in the Kröller-Müller Museum in Otterlo.

### The procedure

The reason for the application for restitution was an email sent to the Kröller-Müller Museum by the applicants in which they sought information concerning several paintings by Corot, including the painting in question, which are said to have been owned by the Jewish banker G.E. Behrens during the Nazi regime. The museum informed the applicants that the painting was part of the museum's collection and advised them of the possibility of submitting an application for restitution to the Ministry of Education, Culture and Science (OCW). In response to the request for a recommendation, the Restitutions Committee instituted a fact-finding investigation, the results of which were summarised in a draft report dated 7 April 2008. This draft report was submitted to the Minister for OCW in a letter dated 28 April 2008 by way of supplementary information, and the Committee pointed to the possibility of providing a copy of the draft investigatory report to the Kröller-Müller Museum. The Minister found that there was no reason to do so. On 28 April 2008, the Committee also sent the draft investigatory report to the applicants, who responded to the contents in a letter dated 6 June 2008. The draft investigatory report was subsequently adopted on 3 July 2008. For the facts of the case, the Committee refers to this report, which is considered an integral part of this recommendation. Given that the painting was bought by the former Rijksmuseum Kröller-Müller during the war, the painting became part of the national collection. Although the painting is not part of the Netherlands Art Property Collection (hereafter referred to as the 'NK collection'), which is predominantly made up of artworks recovered after the liberation of the Netherlands, but is part of the national collection, the Committee advises the Minister in the context of Section 2, subsection 1 of the Decree establishing the Advisory Committee on the Assessment of Restitution Applications.

Mr E.J. van Straaten, director of the Kröller-Müller Museum, has asked to be excused from providing a recommendation in the case.

During the procedure, the applicants were represented by A. Honert, a lawyer based in Bologna, Italy.

### General considerations

- a. The Committee has drawn up its opinion with due regard for the relevant (lines of) policy issued by the Ekkart Committee and the government.
- b. The Committee asked itself whether it is acceptable that an opinion to be issued is influenced by its potential consequences for decisions in subsequent cases. The Committee resolved that such influence cannot be accepted, save in cases where special circumstances apply, since allowing such influence would be impossible to justify to the applicant concerned.
- c. The Committee then asked itself how to deal with the circumstance that certain facts can no longer be ascertained, that certain information has been lost or has not been recovered, or that evidence can no longer be otherwise compiled. On this issue, the Committee believes that if the problems that have arisen can be attributed at least in part to the lapse of time, the associated risk should be borne by the government if the art was privately owned, save in cases where exceptional circumstances apply.
- d. The Committee believes that insights and circumstances which, according to generally accepted views, have evidently changed since the Second World War should be granted the status of new facts.
- e. It is highly probable that loss of possession was involuntary if the object was sold without the art dealer's consent by 'Verwalters' [Nazi-appointed caretakers who took over management of firms owned by Jews] or other custodians not appointed by the owner of items from the old trading stock under their custodianship, in so far as the original owner or his heirs did not receive all the profits of the transaction, or in so far as the owner did not expressly waive his rights after the war.

### Explanation of general considerations c and e<sup>56</sup>

In line with the recommendations with regard to art dealing and the explanation thereof, the Committee has come to the conclusion that consideration c should only apply to the ownership of art by private parties. Consideration e has been modified accordingly and, furthermore, this consideration should be taken to mean that only those objects that were effectively part of the old trading stock are eligible for restitution.

### Special considerations:

1. The applicants are requesting restitution of the painting *Female figure at a well* by J.B.C. Corot. The applicants claim to be the heirs of George Eduard Behrens (hereafter referred to as 'Behrens'). Accordingly, the Committee has taken cognisance of several inheritance documents, which have not led the Committee to question the status of the applicants. According to the applicants, Behrens lost possession of the painting in question as a result of the Nazi regime in Germany.
2. The relevant facts are described in the investigatory report of 3 July 2008, and are summarised as follows. Behrens was born in Hamburg in 1881, the son of a Jewish banker Eduard Ludwig Behrens and his wife Franziska Gorrissen. Behrens was (co-)owner of the banking firm *L. Behrens & Söhne*, located in Hamburg, and owned an important art collection, which had been started by his grandfather.
3. Behrens inherited the collection by way of a specific legacy in the joint last will and testament (under German law) of his parents. On his father's death in 1925, Behrens loaned the collection to the city of Hamburg for a period of ten years. In 1935, the Nazi authorities informed Behrens that a number of paintings from his collection had been included in the *'Verzeichnis der national wertvollen Kunstwerke'* (list of works of art considered to be of national value), which meant that these paintings could leave the country with the government's consent. In all probability, these artworks also included the currently claimed painting.
4. In May 1938, Behrens' banking firm was 'aryanised' and in November of that year, he was arrested and detained until December in the concentration camp in Sachsenhausen. On his release, Behrens tried to emigrate. In order to obtain an exit visa, he was forced to pawn all his possessions to the State. In April 1939, Behrens fled to Belgium, before reaching Cuba in 1940. The painting by Corot remained in Hamburg. The Committee has not been able to ascertain how Behrens lost possession of the painting. The applicants claim that it was sold in the period between October 1939 and April 1942. They consider the painting to



38. *Female figure at a well*  
by J.B.C. Corot.

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<sup>56</sup> Until 12 November 2007, general considerations c and e read:

c) The Committee then asked itself how to deal with the circumstance that certain facts can no longer be ascertained, that certain information has been lost or has not been recovered, or that evidence can no longer be otherwise compiled. On this issue, the Committee believes that if the problems that have arisen can be attributed at least in part to the lapse of time, the associated risk should be borne by the government, save in cases where exceptional circumstances apply.

e) Involuntary loss of possession is also understood to mean sale without the art dealer's consent by 'Verwalters' [Nazi-appointed caretakers who took over management of firms owned by Jews] or other custodians not appointed by the owner of items from the old trading stock under their custodianship, insofar as the original owner or his heirs did not receive all the profits of the transaction, or insofar as the owner did not expressly waive his rights after the war.

be one of the '*verfolgungsbedingt entzogener Kunstgegenstände*' (works of art confiscated in relation to the persecution) of Behrens. They also associate the loss of these works with persecution by the national socialists and his intended flight from Germany. The investigation uncovered no information concerning the sale of the painting. However, it did uncover that, in September 1941, the painting was in the possession of the German art dealer, H.W. Lange.

5. Correspondence found in the archives of the Kröller-Müller Museum shows that the museum bought the currently claimed painting from H.W. Lange in June 1942. Lange had offered the painting to the museum at the behest of Kajetan Mühlmann, head of the German looting body *Dienststelle Mühlmann*. In October 1940, Mühlmann had confiscated three paintings on behalf of the German authorities from the former Rijksmuseum Kröller-Müller. To make the confiscation appear legitimate, the Nazi authorities made NLG 600,000 available to the museum for the purchase of new artworks. The purchase price of the painting in question was paid for from this so-called '600,000 fund'.
6. After the war, Behrens returned to Hamburg, where he submitted a request for reparation with the *Wiedergutmachungsamt* in Hamburg. According to the applicants, this did not concern compensation for the loss of the painting in question. Behrens died in Hamburg in 1956. The Committee has been unable to ascertain if Behrens ever received any compensation for the loss of the painting. Nor did the investigation uncover any details that point to the fact that Behrens had contact with the Dutch restoration of rights authorities concerning the currently claimed painting. There is, therefore, no question that the case was concluded and the Committee deems the applicant's request to be admissible.
7. The current restitution policy allows a claimed object to be returned if the original owner lost possession of it involuntarily due to circumstances directly related to the Nazi regime. It is clear that Behrens lost possession of the currently claimed object during the Nazi regime in Germany. The Committee is therefore of the opinion that, based on considerations in 4 above, there is sufficient evidence to suggest that loss of possession by Behrens was involuntary and a result of circumstances directly related to the Nazi regime and his subsequent flight from Germany. Therefore, the Committee is of the opinion that the conditions for restitution have been met. Given that there is nothing to suggest that Behrens ever received anything in the way of compensation for the loss of the painting, the painting can be restituted without any payment being required.

## Conclusion

The Restitutions Committee advises the Minister for Education, Culture and Science to return the painting *Female figure at a well* by J.B.C. Corot to the heirs of George Eduard Behrens.

Adopted at the meeting of 3 July 2008 by R. Herrmann (chair), J.Th.M. Bank, J.C.M. Leijten, P.J.N. van Os, H.M. Verrijn Stuart, I.C. van der Vlies (vice-chair), and signed by the chair and the secretary.

(R. Herrmann, chair)

(E. Campfens, secretary)

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## 12. Recommendation regarding the painting *Fishermen on a beach* by J.H.B. Koekkoek (NK 2064)

(case number RC 1.72)

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In a letter dated 10 April 2007, the Minister for Education, Culture and Science (OCW) asked the Restitutions Committee to issue a recommendation regarding a decision to be taken on the application submitted on 24 March 2007 by N.S.-D. and R.S.D. (hereafter referred to as 'the applicants') for the restitution of the painting *Fishermen on the beach* by J.H.B. Koekkoek (previously attributed to B.C. Koekkoek). The claimed object is part of the Netherlands Art Property Collection (hereafter referred to as the 'NK collection') under inventory number NK 2064 and according to information from the Netherlands Institute for Cultural Heritage, is currently on loan to the *Institut Néerlandais* in Paris.

### The procedure

The reason for the application for restitution was the *Geroofd, maar van wie?* [Looted, but from whom?] exhibition in the Hollandsche Schouwburg theatre in Amsterdam. The applicants claim that they recognised the painting in question in a digital database as a work that possibly belonged to their grandfather Simon Dotsch during the Second World War. In response to the request for a recommendation, the Restitutions Committee instituted a fact-finding investigation, the results of which were summarised in a draft report dated 6 May 2007. This draft report was sent to the applicants for comment in a letter dated 15 May 2008, with the request to take the problems concerning identification of the claimed work into consideration. The applicants failed to respond to this request. The draft investigatory report was sent to the Minister for OCW on the same date to

give the Minister the opportunity to add information. The draft investigatory report was subsequently adopted on 3 July 2008. For the facts of the case, the Committee refers to this report, which is considered an integral part of this recommendation.

### General considerations

- a. The Committee has drawn up its opinion with due regard for the relevant (lines of) policy issued by the Ekkart Committee and the government.
- b. The Committee asked itself whether it is acceptable that an opinion to be issued is influenced by its potential consequences for decisions in subsequent cases. The Committee resolved that such influence cannot be accepted, save in cases where special circumstances apply, since allowing such influence would be impossible to justify to the applicant concerned.
- c. The Committee then asked itself how to deal with the circumstance that certain facts can no longer be ascertained, that certain information has been lost or has not been recovered, or that evidence can no longer be otherwise compiled. On this issue, the Committee believes that if the problems that have arisen can be attributed at least in part to the lapse of time, the associated risk should be borne by the government if the art was privately owned, save in cases where exceptional circumstances apply.
- d. The Committee believes that insights and circumstances which, according to generally accepted views, have evidently changed since the Second World War should be granted the status of new facts.
- e. It is highly probable that loss of possession was involuntary if the object was sold without the art dealer's consent by 'Verwalters' [Nazi-appointed caretakers who took over management of firms owned by Jews] or other custodians not appointed by the owner of items from the old trading stock under their custodianship, in so far as the original owner or his heirs did not receive all the profits of the transaction, or in so far as the owner did not expressly waive his rights after the war.

### Explanation of general considerations c and e<sup>57</sup>

In line with the recommendations with regard to art dealing and the explanation thereof, the Committee has come to the conclusion that consideration c should only apply to the ownership of art by private parties. Consideration e has been modified accordingly and, furthermore, this consideration should be taken to mean that only those objects that were effectively part of the old trading stock are eligible for restitution.

### Special considerations:

1. The applicants are requesting restitution of the painting *Fishermen on the beach* (NK 2064) by J.H.B. Koekkoek (previously attributed to B.C. Koekkoek). The applicants claim to be the children and heirs of Bernard David Dotsch (1917-2006), son of Simon Dotsch (1890-1943). Accordingly, the Committee has taken cognisance of several legal inheritance documents. According to the applicants, their grandfather Simon Dotsch lost possession of the painting in question involuntarily during the war.



39. *Fishermen on the beach* by J.H.B. Koekkoek (NK 2064).

<sup>57</sup> Until 12 November 2007, general considerations c and e read:

- c) The Committee then asked itself how to deal with the circumstance that certain facts can no longer be ascertained, that certain information has been lost or has not been recovered, or that evidence can no longer be otherwise compiled. On this issue, the Committee believes that if the problems that have arisen can be attributed at least in part to the lapse of time, the associated risk should be borne by the government, save in cases where exceptional circumstances apply.
- e) Involuntary loss of possession is also understood to mean sale without the art dealer's consent by 'Verwalters' [Nazi-appointed caretakers who took over management of firms owned by Jews] or other custodians not appointed by the owner of items from the old trading stock under their custodianship, insofar as the original owner or his heirs did not receive all the profits of the transaction, or insofar as the owner did not expressly waive his rights after the war.

- The relevant facts are described in the investigatory report of 3 July 2008, and are summarised here as follows. At the outbreak of the Second World War, Simon Dotsch, who, according to the applicants, was the previous owner of the currently claimed work, was married to Bertha van Minden, his third wife. The couple lived with the children from Dotsch's first marriage, Bernard David Dotsch and Carla Dotsch, on the Zuider Amstellaan 197-hs in Amsterdam. A document submitted by the applicants and written by their father, Bernard David Dotsch, states that the Dotsch family was arrested by the Germans in August 1942. Because the occupying authorities deemed Simon Dotsch to be indispensable at that time, he was temporarily permitted to return home with his wife and son, Bernard David, who possessed what was known as an *Ausweis*. However, the couple's daughter, Carla, was transported to Auschwitz where she died in September 1942. The couple went into hiding but were betrayed, arrested and transported to Auschwitz, where they died on 27 August 1943. Moving from safehouse to safehouse, their son, Bernard David Dotsch, was the only family member to survive the war. After liberation, he returned to Amsterdam.

725 H.K. DOCUMENTATIONFILE LOOTED WORKS OF ART AMSTERDAM HOLLAND-OFFICE - KEIZERSGRACHT 105	DESCRIPTION	PHOTO Nr.	OBJECT: <i>Painting</i> ✓	REG. Nr.: 18259
	<i>Winter-day. Some horses are getting food on the beach right a fisherboat. Fishermen is talking with woman and child. Left the village.</i>		ARTIST: <i>J.H.B. Koekkoek</i> ✓	
			TITLE OR KIND OF OBJ.: <i>Beach-scene</i> ✓	
		SIGN:	DATE:	
		MATERIAL: <i>canvas</i> ✓ <i>met</i>	SIZE: <i>43 x 66</i> ✓	
		ORIGIN:		
		LIT.:		
		PHOTO DOC. CENTRE HOLLAND:		
		OWNER: <i>Muller, Amsterdam</i>		
		PRESENT FACTS: <i>Sold to G. Paffrath, Düsseldorf</i>		
APPRaised VALUE: <i>f 200,-</i>		<i>M. f 500,-</i>		
DESCRIPTION OF PICTUREFRAME, LABELS OR STAMPS ON THE BACK <i>Al 8415/3062 R Paffrath, Duss</i> <i>1142, 3 11</i>		PRESENT LOCATION: <i>Transport Düsseldorf VIII. 7.11.1947.</i>		

- SNK inventory card ('White Card') for the painting *Fishermen on the beach* by J.H.B. Koekkoek. These 'White Cards' contained the characteristics and particulars of traced paintings, so that they could be easily linked to lost works of art.

- Documentation submitted by the applicants shows that, on 30 June 1986, Bernard David Dotsch made a claim to a painting under the administration of the Austrian state. This claim involved a work from the 'Mauerbach' list, which contains several hundred abandoned works of art that were found by the allied forces in Austria in 1945 and for which the Austrian government was trying to trace the owners. The description of the painting on the Mauerbach list reads: '*Koekoek Gestrandetes Schiff in der Brandung Öl/Lwd. 58,5x38 sign.*'. In a letter that Bernard David Dotsch sent to the Austrian authorities on 11 August 1986, he describes the work he was claiming as follows: '*(...) ein Ölgemälde des Mahlers Koekoek (J.H. Oder H.) Abmessung 58,5 x 50cm, darstellend "ein gestrandetes Schiff in der Brandung"*'. In support of his request, he included three testimonies from people who claimed that they could remember seeing the painting in Dotsch's parental home. In these statements, the painting is described by the three witnesses. Cato Ringeling-Parfumeur described the painting as follows: '*Es stellte ein Seestück vor, mit einem Schiff auf den Wellen*', Salomon Louis Rubens described the work as: '*eine Seeansicht mit einem sich im not befindlichen Schiff darstellend*' and M.J. Tafelkruyer described it as a '*Seascape*'. The claim was rejected by the Austrian authorities because of conflicting claims to the same painting.
- The Committee has determined that the descriptions provided by Bernard David Dotsch and the three eyewitnesses of the painting lost by Simon Dotsch during the war do not match the currently claimed work.

NK 2064 depicts a sandy path between low dunes with a beach in the background, featuring a fishing boat on the right which has been grounded, a shed on the left and in the centre horses feeding from a trough and several people. There is no suggestion of a ship in the surf or of a ship in distress. Moreover, in NK 2064, the sea or the surf as described in all the abovementioned descriptions is only partially visible on the horizon in the background. The Committee has also concluded that several distinctive elements featured in NK 2064 are missing in the statements that Bernard David Dotsch sent to the Austrian authorities, including the horses, the people and the small shed, all of which feature prominently in the painting.

5. Little is known about the provenance of the currently claimed work. Investigations instigated by the Origins Unknown Agency (hereafter referred to as the 'BHG') and the Restitutions Committee have failed to uncover any archival material that sheds light on who owned NK 2064 at the outbreak of the Second World War. Similarly, no information has been found about the whereabouts of the painting prior to 10 May 1940. Conclusions concerning the provenance drawn by the BHG and the archival material consulted only suggest that, at an undefined moment during the Second World War, NK 2064 was sold by the German art dealer G. Paffrath of Düsseldorf at Fredrik Muller & Co auction house in Amsterdam. There is no evidence to suggest that the currently claimed painting by Koekkoek (NK 2064) was the property of Simon Dotsch. The applicants have also been unable to furnish the Committee with further information.
6. In accordance with the Ekkart Committee's eighth recommendation of April 2001, current restitution policy dictates that art objects can only be returned if a plausible case has been made for ownership rights and there are no indications to the contrary.
7. Based on the above summary, the Committee deems it unlikely that NK 2064 was owned by Simon Dotsch.

### Conclusion

The Restitutions Committee advises the Minister for Education, Culture and Science to reject the application for restitution of the painting *Fishermen on the beach* by J.H.B. Koekkoek (NK 2064).

Adopted at the meeting of 3 July 2008 by R. Herrmann (chair), J.Th.M. Bank, J.C.M. Leijten, P.J.N. van Os, E.J. van Straaten, H.M. Verrijn Stuart, I.C. van der Vlies (vice-chair), and signed by the chair and the secretary.

R. Herrmann (chair)

E. Campfens (secretary)

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## 13. Recommendation regarding Von Podwinetz

(case number RC 1.73)

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In a letter dated 10 April 2008, the Minister for Education, Culture and Science (OCW) asked the Restitutions Committee to issue a recommendation regarding the application for restitution submitted on 9 March 2007 by U.W.-S. (hereafter referred to as the 'applicant') of the painting *Stable interior with peasant family* by A. van Ostade. The claimed object is part of the Netherlands Art Property Collection (hereafter referred to as the 'NK collection') under inventory number NK 1808. According to details provided by the Netherlands Institute for Cultural Heritage (hereafter referred to as the 'ICN'), the claimed work is currently stored in the ICN depot in Rijswijk.

### The procedure

The application for restitution was prompted by the posting of the currently claimed painting on the website of the Origins Unknown Agency (hereafter referred to as the 'BHG'), which included the provenance name '*Podwinetz, Paris*'. According to the applicant, the painting belonged to her great-uncle F.H. von Podwinetz. In response to the request for a recommendation, the Restitutions Committee instituted a fact-finding investigation, the results of which were summarised in a draft report dated 7 April 2008. This draft report was sent to the Minister on 25 April 2008 to give the Minister the opportunity to add information. On the same day, the draft report was also sent to the applicant with a request for more information, who responded in writing on 28 April 2008. The report was adopted on 2 June 2008. For the facts of the case, the Committee refers to this report, which is considered an integral part of this recommendation.

### General considerations

- a. The Committee has drawn up its opinion with due regard for the relevant (lines of) policy issued by the Ekkart Committee and the government.
- b. The Committee asked itself whether it is acceptable that an opinion to be issued is influenced by its potential consequences for decisions in subsequent cases. The Committee resolved that such influence cannot be accepted, save in cases where special circumstances apply, since allowing such influence would be impossible to justify to the applicant concerned.

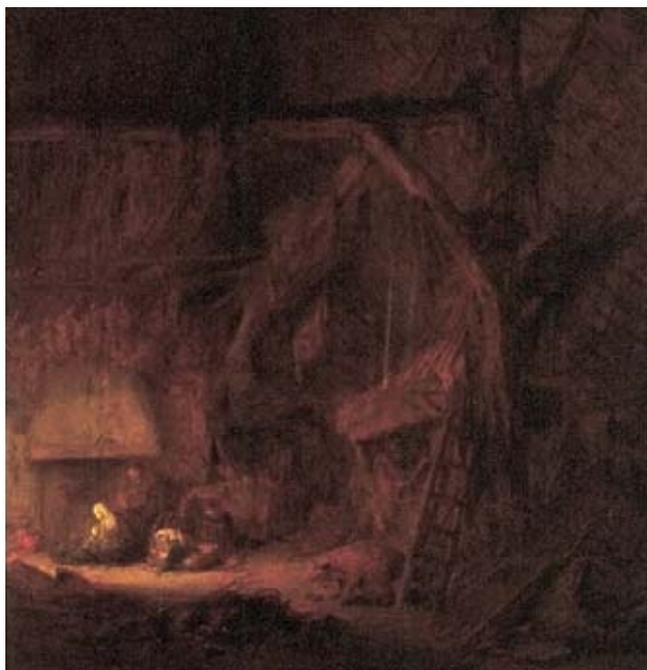
- c. The Committee then asked itself how to deal with the circumstance that certain facts can no longer be ascertained, that certain information has been lost or has not been recovered, or that evidence can no longer be otherwise compiled. On this issue, the Committee believes that if the problems that have arisen can be attributed at least in part to the lapse of time, the associated risk should be borne by the government if the art was privately owned, save in cases where exceptional circumstances apply.
- d. The Committee believes that insights and circumstances which, according to generally accepted views, have evidently changed since the Second World War should be granted the status of new facts.
- e. It is highly probable that loss of possession was involuntary if the object was sold without the art dealer's consent by 'Verwalters' [Nazi-appointed caretakers who took over management of firms owned by Jews] or other custodians not appointed by the owner of items from the old trading stock under their custodianship, in so far as the original owner or his heirs did not receive all the profits of the transaction, or in so far as the owner did not expressly waive his rights after the war.

#### Explanation of general considerations c and e<sup>58</sup>

In line with the recommendations with regard to art dealing and the explanation thereof, the Committee has come to the conclusion that consideration c should only apply to the ownership of art by private parties. Consideration e has been modified accordingly and, furthermore, this consideration should be taken to mean that only those objects that were effectively part of the old trading stock are eligible for restitution.

#### Special considerations:

1. The applicant is requesting restitution of the painting *Stable interior with peasant family* by A. van Ostade (NK 1808). The applicant claims to be the second cousin and heir of F.H. von Podwinetz. According to the applicant, Von Podwinetz was born on 16 June 1891 in Vienna as the son of L. von Podwinetz. The applicant also claims that her grandmother, M. Podwinetz, was L. von Podwinetz's daughter. In terms of inheritance, the applicant claims that '*ich und meine beiden Kinder die einzigen direkt abstammenden verbliebenen Erben meines Grossonkels F.H. von Podwinetz sind*'. The Committee has not been able to establish or discount the applicant's claim to being her great-uncle's (sole) heir. In this context, the Committee points to the fact that while the applicant undoubtedly has family connections to Von Podwinetz, the information she provided implies that Von Podwinetz was survived by his wife, thereby casting doubt on the applicant's position as his heir. Given what follows, the Committee deemed it unnecessary to carry out a more detailed investigation into the position of the applicant as the rightful claimant.



41. *Stable interior with peasant family* by A. van Ostade (NK 1808).

<sup>58</sup> Until 12 November 2007, general considerations c and e read:

- c) The Committee then asked itself how to deal with the circumstance that certain facts can no longer be ascertained, that certain information has been lost or has not been recovered, or that evidence can no longer be otherwise compiled. On this issue, the Committee believes that if the problems that have arisen can be attributed at least in part to the lapse of time, the associated risk should be borne by the government, save in cases where exceptional circumstances apply.
- e) Involuntary loss of possession is also understood to mean sale without the art dealer's consent by 'Verwalters' [Nazi-appointed caretakers who took over management of firms owned by Jews] or other custodians not appointed by the owner of items from the old trading stock under their custodianship, insofar as the original owner or his heirs did not receive all the profits of the transaction, or insofar as the owner did not expressly waive his rights after the war.

2. According to the applicant, F.H. von Podwinetz became the owner of the Vienna-based firm L. Podwinetz & Co. on the death of his father in 1917. He was married to J.A. Podwinetz – also referred to by the applicant as H. D. – with whom he lived at VIII Feldgasse 10 in Vienna between 1926 and 1939. According to information supplied by the applicant, F.H. von Podwinetz was of Jewish descent. However, in the documentation sent by the applicant, she states that: '*His religion was stated on his police residential permit as Evangelikus or Lutheran*'. In 1938, Von Podwinetz supposedly left Vienna for England, but no record exists of him ever being there. According to the applicant, Von Podwinetz stayed in Berlin from 1934 and Paris from 1938. Nothing is known of Von Podwinetz after 1938. The applicant presumes that he was killed as a result of Jewish persecution. The applicant claims that Von Podwinetz's wife fled to England in 1939 and has submitted a statement to the Committee made by an acquaintance of the Von Podwinetz-D. in 1964, in which it is stated that, due to measures introduced by the Nazis, the couple were forced to flee Berlin, where the wealthy Von Podwinetz had a luxury mansion and a '*Privatbankhaus*', leaving behind all their possessions.
3. According to the applicant, her great-uncle F.H. von Podwinetz is the as yet unidentified owner of the painting in question. A post-war overview concerning '*Irrtümliche Restitution nach Holland*' from the Federal Archive in Koblenz states the following in relation to the provenance of the currently claimed painting: '*28.3.1941 von Podwinetz, Paris an Gal. Haberstock, Berlin; 16.4.1941 von dort an S[ammlun]g L[inz]*'. The 1945 Art Looting Investigation Unit's 'Consolidated Interrogation Report No. 4' indicates '*PODWINETZ 1941*' with regard to the provenance of Van Ostade's painting. Presumably, '*PODWINETZ*' is one and the same as the person indicated as '*PEDWINETZ, F.I. / Paris*' in the Art Looting Investigation Unit's 'Final Report', and about which the report remarks '*Sold to HABERSTOCK*'. The applicant is of the opinion that the person named in these documents is her great-uncle. She claims that Von Podwinetz lived in Paris after 1938 and that since 'Podwinetz' and in particular 'Von Podwinetz' are highly uncommon names, it can be assumed that the provenance specified as '*Podwinetz, Paris*' refers to her great-uncle. The position taken by the applicant, particularly her assumption that her great-uncle lived in Paris at the time the painting in question may have been sold in 1941, cannot be substantiated.
4. In accordance with the Ekkart Committee's eighth recommendation of April 2001, current restitution policy dictates that art objects can only be returned if a plausible case has been made for ownership rights and there are no indications to the contrary.
5. On the basis of the above summary, the Committee deems it possible but not highly likely that NK 1808 was owned by F.H. von Podwinetz. The applicant has been unable to provide details of ownership of the painting and the circumstances of its involuntary loss, other than in her statements. Ownership is only implied because the surname mentioned in the Federal Archive in Koblenz corresponds with that of her great-uncle. This provides insufficient grounds for the Committee to determine with any certainty that this painting was the property of the applicant's great-uncle and that it was involuntarily lost as a result of circumstances directly related to the Nazi regime.

## Conclusion

The Restitutions Committee advises the Minister for Education, Culture and Science to reject the application for the restitution of the painting *Stable interior with peasant family* by A. van Ostade (NK 1808).

Adopted at the meeting of 2 June 2008 by R. Herrmann (chair), J.Th.M. Bank, J.C.M. Leijten, P.J.N. van Os, E.J. van Straaten, H.M. Verrijn Stuart, I.C. van der Vlies (vice-chair), and signed by the chair and the secretary.

R. Herrmann (chair)

E. Campfens (secretary)

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## 14. Recommendation regarding May

(case number RC 1.76)

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In a letter dated 24 April 2007, the Minister for Education, Culture and Science (OCW) asked the Restitutions Committee (hereafter referred to as: 'the Committee') to issue a recommendation regarding the application of G.J. S.-V. (hereafter referred to as: 'the applicant') submitted on 14 March 2007 for the restitution of the painting *Portrait of a man* by H.W. Wieringa from the former property of Robert May. The claimed object has been part of the Netherlands Art Property Collection since it was recovered after World War II, and is registered under the inventory number NK 2558. The painting is currently housed in the depot of the Netherlands Institute for Cultural Heritage in Rijswijk.

## The procedure

The reason for the application for restitution was a letter from the Origins Unknown Agency (BHG) of 23 October 2006 to the applicant's son with a request for further information about Robert May's reasons for not claiming the painting after the war. The application for restitution concerns not only the painting registered as NK 2558, but also various other objects from Robert May's former property. In a letter dated 24 April 2007, the Minister informed the applicant that with regard to these other objects, the application for restitution was not specific enough for submission to the Committee.

Until 11 February 2008, the applicant was represented by R.O.N. van Holthe tot Echten, a lawyer based in Vreeland.

In response to the request for a recommendation concerning NK 2558, the Committee instituted a fact-finding investigation, the results of which were summarised in a draft investigatory report dated 2 June 2008. On 7 July 2008, the draft report was sent to the applicant with a request for additional information, to which she responded by letter on

10 August 2008. On 8 July 2008, the draft investigatory report was sent to the Minister 2008 to provide an opportunity to add information. The report was subsequently adopted on

10 November 2008. On 13 July 2008, the applicant informed the Committee that she was also acting on behalf of her cousins P.A.H. S. and A.J. S. For the facts of the case, the Committee refers to this report.

R. Herrmann, former chair of the Committee, acted as advisor in this matter.

## General considerations

- a. The Committee has drawn up its opinion with due regard for the relevant (lines of) policy issued by the Ekkart Committee and the government.
- b. The Committee asked itself whether it is acceptable that an opinion to be issued is influenced by its potential consequences for decisions in subsequent cases. The Committee resolved that such influence cannot be accepted, save in cases where special circumstances apply, since allowing such influence would be impossible to justify to the applicant concerned.
- c. The Committee then asked itself how to deal with the circumstance that certain facts can no longer be ascertained, that certain information has been lost or has not been recovered, or that evidence can no longer be otherwise compiled. On this issue, the Committee believes that if the problems that have arisen can be attributed at least in part to the lapse of time, the associated risk should be borne by the government if the art was privately owned, save in cases where exceptional circumstances apply.
- d. The Committee believes that insights and circumstances which, according to generally accepted views, have evidently changed since the Second World War should be granted the status of new facts.
- e. It is highly probable that loss of possession was involuntary if the object was sold without the art dealer's consent, by 'Verwalters' [Nazi-appointed caretakers who took over management of firms owned by Jews] or other custodians not appointed by the owner of items from the old trading stock under their custodianship, in so far as the original owner or his heirs did not receive all the profits of the transaction, or in so far as the owner did not expressly waive his rights after the war.



42. *Portrait of a man* by H.W. Wieringa (NK 2558).

## Special considerations:

1. The applicant requests restitution of the painting *Portrait of a man* by H.W. Wieringa (NK 2558) from the former property of Robert May. The painting was previously attributed to the 17th-century painter Thomas de Keyser. The applicant says she is sole heir of C.W. S. (who died in 1991), who himself was heir of J.P. (who died in 1986). The latter was sole heir of Robert May (hereafter referred to as 'May'). The applicant's cousins, P.A.H. S. jr. and A.J. S., on whose behalf the applicant is also acting, are heirs of P.A.H. S. sr., who himself was also heir of J.P. Accordingly, the Committee has taken cognisance of several legal inheritance documents.
2. The relevant facts are stated in the investigatory report dated 10 November 2008. The following summary of events will suffice for the present purpose. May was of Jewish extraction and a partner in the banking firm of Lippmann, Rosenthal & Co located at Nieuwe Spiegelstraat in Amsterdam. In this recommendation, the bank is referred to as Liro-Spiegelstraat, in order to distinguish it from the German clearing house for stolen artworks, Lippmann, Rosenthal and Co. at Sarphatistraat in Amsterdam (Liro-Sarphatistraat). In early July 1940, Liro-Spiegelstraat was placed under the administration of a *Verwalter*, the German banker A. Flesche. It can be concluded from statements made by May and co-proprietor Fuld after the war that in his capacity as *Verwalter*, Flesche behaved appropriately. Lou de Jong wrote the following about Flesche in his work 'Het Koninkrijk der Nederlanden in de Tweede Wereldoorlog' (The Netherlands in the Second World War, part 5, p. 608, The Hague 1974):

*'Fuld en May beschermde hij: toen alle Joden gedeporteerd waren, wist hij hen en Fulds moeder van deportatie te vrijwaren. Bovendien zorgde hij er voor dat de twee bankiers een redelijk inkomen behielden, dat hun vermogens intact bleven (die behoorden, zei hij, tot het vermogen van de bank die hij beheerde) en dat de aangemelde Joodse bedrijven waarvan Lippmann-Rosenthal-Nieuwe Spiegelstraat de administratie gevoerd had, geen van alle geliquideerd werden.'*

*[He protected Fuld and May: after all Jews had been deported, he managed to protect them and Fuld's mother against deportation. Moreover, he made sure that the two bankers kept a reasonable income, that their assets remained intact (they were, he said, part of the bank's capital, which he managed) and that none of the registered Jewish firms whose accounts were kept by Lippmann-Rosenthal-Nieuwe Spiegelstraat were wound up.]*

3. The surviving Liro-Spiegelstraat accounts show that in 1940, May had ran up a substantial debt with the bank, the greater part of which was unsecured. In connection with that, in November 1940, Liro-Spiegelstraat stipulated that a right of pledge be enforced on all May's movable property, which included his porcelain and silver collection, as well as the painting that is currently being claimed.
4. From May 1942, Regulation 58/1942 prescribed that all Jews were to hand in valuable possessions at Liro-Sarphatistraat. May, on the other hand, was ordered at the end of June 1942 by the then Department of Education, Science and Cultural Protection (a predecessor of today's Ministry of Culture, Education and Science) to lodge his (pledged) collection of silver and porcelain, as well as the currently claimed painting, with the Rijksmuseum in Amsterdam (RMA) for safekeeping. According to a surviving valuation report, the painting was valued at NLG 20,000.
5. The RMA was informed in late 1942 that Jewish works on loan, including May's art objects, were to be sold by Liro-Sarphatistraat. The RMA was given the opportunity to purchase any works in which the Germans were not interested at the price at which they had been valued. The RMA let it be known that it wished to purchase the entire May collection. In late January 1943, whilst the negotiations were still in progress, the Dienststelle Mühlmann demanded delivery of the painting NK 2558. It can be concluded from post-war documents that the painting ended up in Hermann Göring's collection. The investigation did not reveal the exact amount the Dienststelle Mühlmann paid for the painting. A sum of NLG 15,000 is mentioned in various records and May himself refers to a sum of NLG 18,000. It appears from a statement made after the war, cited below, that May received the purchase price.
6. After the war, in a letter dated 7 November 1945, May informed the Netherlands Art Property Foundation (SNK) that Dienststelle Mühlmann had claimed the painting NK 2558 during the war, saying:



43. Rijksmuseum in Amsterdam in the early forties.

*'De opbrengst van de verkoop, zijnde F.18.000.-, hetgeen zonder twijfel te laag was, is mij ter hand gesteld, zodat uit dien hoofde ik geen schade te vorderen heb. Echter lijkt het mij, dat dit schilderij een kunsthistorische waarde heeft om de voorgestelde persoon zelf, en voor Nederland behouden zou moeten blijven, weswege ik U bij dezen hierop attent maak.'*

[The income from the sale, to wit F. 18,000, which was doubtless too low, was consigned to me, so that on that account, I cannot claim damages. However, I do believe that this painting is of art-historical value because of the person it features, and should therefore be preserved for the Netherlands, which is the reason I am drawing your attention to it.]

7. The painting was recovered in 1946. Since it was damaged, the SNK valued it at between NLG 5,000 and 6,000. In 1949, the SNK offered to sell back the painting to May for the sum of NLG 15,000 (the assumed selling price in 1943) plus administration costs. In response, May wrote in a letter on 10 October 1949: *'In antwoord op Uw brief van 5 October j.l. (...), deel ik U mede, dat het niet in mijn intentie is, om teruggave van de "Thomas de Keyser" te verzoeken.'*  
[In answer to your letter of 5 October (...), I am informing you that I have no intention of applying for the restitution of the "Thomas de Keyser"].  
Based on this, the SNK made a note in its records next to the painting that the former owner was not claiming the work. No evidence has been revealed that May later reneged on his former statement.
8. In the light of the above, and with due regard for relevant national policy concerning the restitution of items of cultural value, the Committee must first of all investigate whether the applicant can bring a claim. The principle of Dutch restitution policy is that the post-war restoration of rights should not be comprehensively repeated unless new insights are gained. This means that in principle, cases that have been conclusively settled are not reopened. Although the scope of the term 'settled case' has been limited as a result of the interpretation given it in the first recommendation on private art property by the Ekkart Committee (April 2001), the government decided that a case should in any event be considered conclusively settled if *'the claimant has explicitly withdrawn the claim for restitution'* (Government response of 29 June 2001, TK 2000-2001, 25 839, no. 26)
9. In his letter of 7 November 1945 to the SNK, May wrote that he had at the time received the purchase price, that he claimed no damages on that account and, in his letter of 10 October 1949, that it was not his intention to apply for the restitution of the 'Thomas de Keyser'. It must be concluded, therefore, that May explicitly refrained from applying for restitution of the painting.
10. The Committee is of the opinion that no new facts have come to light that would necessitate a reopening of the case. It considers the following of significance in this respect. May received the purchase price at the time and indicated that he would not claim damages. Although May received less than the sum at which the work was valued during the war, there is no question of substantial loss of capital. Nor did May backtrack on his decision in later years. Moreover, there is no reason to assume that the post-war procedure was negligently performed.

## Conclusion

The Restitutions Committee advises the Minister for Education, Culture and Science to reject G.J. S.-V.'s application for restitution of the painting *Portrait of a man* by H.W. Wieringa (NK 2558).

Adopted at the meeting of 10 November 2008 by I.C. van der Vlies (acting chair), J.Th.M. Bank, J.C.M. Leijten, P.J.N. van Os, E.J. van Straaten, H.M. Verrijn Stuart, and signed by the acting chair and the secretary.

(I.C. van der Vlies, acting chair)

(E. Campfens, secretary)

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## 15. Recommendation regarding Wassermann

(case number RC 1.86)

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On 4 April 2007, the *'members of the community of heirs after Siegmund Wassermann'* (the applicants) sent a letter to the Ministry of Education, Culture and Science ('OCW') via their representative, the lawyer J. Von Trott zu Solz in Berlin, requesting restitution of the painting *Woman Playing a Lute*, by A.R. von Lisiewska. The work of art in question has been part of the Netherlands Art Property Collection ('NK collection') under inventory number NK 1931 since it was returned to the Netherlands after the Second World War. The claimed painting is currently on loan to the Museum Het Markiezenhof in Bergen op Zoom, the Netherlands.

### The procedure

The application for restitution was prompted by the correspondence between the Origins Unknown Agency ('BHG') and the applicants regarding the above-mentioned painting that probably belonged to the Jewish-

German banker Dr Sigmund Wassermann during the Second World War. In a letter dated 7 June 2007, the Minister for OCW requested the Restitutions Committee to issue a recommendation regarding this application for restitution. In response to this request, the Committee instituted a fact-finding investigation, the results of which were recorded in a draft investigatory report of 18 August 2008. This draft report was sent to the applicants for comment in a letter of 4 September 2008; the applicants responded to the contents of the report in a letter of 22 September 2008. The report was subsequently adopted on 1 December 2008. For the facts of the case, the Committee refers to the draft report.

### General considerations

- a. The Committee has drawn up its opinion with due regard for the relevant (lines of) policy issued by the Ekkart Committee and the government.
- b. The Committee asked itself whether it is acceptable that an opinion to be issued is influenced by its potential consequences for decisions in subsequent cases. The Committee resolved that such influence cannot be accepted, save in cases where special circumstances apply, since allowing such influence would be impossible to justify to the applicant concerned.
- c. The Committee then asked itself how to deal with the circumstance that certain facts can no longer be ascertained, that certain information has been lost or has not been recovered, or that evidence can no longer be otherwise compiled. On this issue, the Committee believes that if the problems that have arisen can be attributed at least in part to the lapse of time, the associated risk should be borne by the government if the art was privately owned, save in cases where exceptional circumstances apply.
- d. The Committee believes that insights and circumstances which, according to generally accepted views, have evidently changed since the Second World War should be granted the status of new facts.
- e. It is highly probable that loss of possession was involuntary if the object was sold without the art dealer's consent, by 'Verwalters' [Nazi-appointed caretakers who took over management of firms owned by Jews] or other custodians not appointed by the owner of items from the old trading stock under their custodianship, in so far as the original owner or his heirs did not receive all the profits of the transaction, or in so far as the owner did not expressly waive his rights after the war.

### Special considerations:

1. The applicants request the restitution of the painting *Woman Playing a Lute* by A.R. von Lisiewska (NK 1931). The applicants claim to be the heirs of Dr Sigmund Wassermann ('Wassermann'). In this context, the Committee has taken cognisance of several inheritance documents, which have not led the Committee to question the status of the applicants as heirs. According to the applicants, Wassermann lost possession of the painting in question as a direct result of the Nazi regime in Germany.
2. The relevant facts are described in the investigatory report of 1 December 2008. The following summary of events will suffice for the present purposes. Wassermann was born in Germany in 1889 and was of Jewish origin. In 1939, he fled from the Nazi regime and settled in Amsterdam, where he worked as a banker. After the occupation of the Netherlands, Wassermann managed to escape to the United States in March 1941.
3. According to the applicants, Wassermann sold the painting in April 1941 to P. de Boer art dealers of Amsterdam through his lawyer C.F. van Veen ('Van Veen'), in connection with his escape. Documents have been found in the art dealers' archive that confirm this. For example, the Committee has taken cognisance of an inventory card that accompanies the painting, which states: '*Commission Van Veen (...) fl: 1,000,-*'. The back of the card states: '*Bought from Van Veen (coll. Wassermann) in April 41 for fl. 1,000,-*'. The inventory



44. *Woman playing a lute* by A.R. von Lisiewska (NK 1931).

card also states that the painting was sold on to the Staetisches Museum in Nuremberg in May 1941. After the war, P. de Boer art dealers reported the sale of the painting to the Netherlands Art Property Foundation ('SNK'), indicating that the painting was originally owned by 'Wassermann, Amsterdam'.

4. During his visit to the exhibition of recovered art held in the Rijksmuseum in Amsterdam between 20 April and 9 June 1950, Van Veen recognised the work as the former property of Wassermann. Van Veen submitted a declaration, after which he corresponded on behalf of Wassermann with Mr J. Jolles, head of the Bureau for Restoration Payments and the Restoration of Property of the Ministry of Finance (successor of the SNK), about the restitution of the work in question. It can be concluded from this correspondence that Wassermann could not afford to pay the required consideration for the restitution in full, which consisted of the purchase price of fl. 1,000,- received at the time, and was therefore forced to renounce his application for restitution. Van Veen did indicate, however, that he would be happy to discuss any other arrangement. However, on 9 May 1951, Jolles informed Van Veen that he could not deviate from the existing provisions and that he would therefore set the claim aside.
5. In early 1959, Van Veen and Mr H.C. Visser made another attempt to reclaim possession of the painting for Wassermann, first through the Ministry of Finance and, subsequently, the Ministry of Education, Arts and Science. It can be concluded from the extant correspondence that Wassermann was able to pay back the full purchase price at that time. On 22 January 1959, this second application for restitution was rejected by the Minister of Finance, because Wassermann had renounced his application for restitution for financial reasons in 1951. The application for restitution submitted to the Ministry of Education, Arts and Science was not successful either. Wassermann died on 28 February 1959.
6. The Committee finds that the negotiations held after the war between Wassermann and the Dutch restitution authorities and Ministries did not lead to a judgment by the Council for the Restoration of Rights or another competent court, nor to a settlement with a body which in hierarchy ranks above the SNK. Furthermore, the Committee finds that Wassermann's decision in 1951 to temporarily renounce his restitution claim because of the amount of the consideration cannot be regarded as an explicit renouncement of the restitution claim. The Committee therefore concludes that this case cannot be considered to have been settled in the past and deems the applicants' request admissible.
7. Pursuant to current national policy in respect of the restitution of items of cultural value, the Committee can only recommend restitution if it is deemed sufficiently probable that the work was originally the property of Wassermann and if possession thereof was relinquished involuntarily as a consequence of circumstances directly related to the Nazi regime.
8. Regarding the ownership of the currently claimed painting, the Committee considers the following. Based on the results of the investigation, as described earlier in considerations 3 and 4, the Committee deems it highly likely that the painting in question was the property of Wassermann in 1941.
9. Regarding the loss of possession, the Committee notes the following. The applicants have argued that Wassermann sold the painting in connection with his emigration. The Committee deems this statement plausible, given the facts that emerged from the investigation. For example, it has been shown that Wassermann emigrated to the United States in March 1941 and that around the same time he commissioned – through his lawyer Van Veen – the painting to P. de Boer art dealers, who subsequently bought the work in April 1941. On 2 June 1950, – on a form he filled in at the exhibition for recovered art in the Rijksmuseum in Amsterdam – Van Veen already mentioned that the painting was sold in connection with emigration. In this context, the Committee refers to the third recommendation of the Ekkart Committee of 26 April 2001, adopted by the government, which stipulates that all sales by Jewish private owners in the Netherlands from 10 May 1940 until the end of the war are deemed involuntary, unless expressly proven otherwise. The Committee is therefore of the opinion that Wassermann lost possession of the painting involuntarily as a consequence of circumstances directly related to the Nazi regime.
10. Based on the above, the Committee deems the application for restitution of the claimed painting admissible. The Committee is of the opinion that no condition for repayment of the purchase price received at the time can be attached thereto. In this context, the Committee refers to the fourth recommendation of the Ekkart Committee of 26 April 2001, which stipulates that an obligation for repayment solely applies if the then seller obtained the free disposal of the proceeds. It can be concluded from the above-mentioned account of the facts that this was not the case.

## Conclusion

The Restitutions Committee advises the Minister for Education, Culture and Science to return the painting *Woman Playing a Lute* by A.R. von Lisiewska (NK 1931) to the heirs of Dr Sigmund Wassermann.

Adopted at the meeting of 1 December 2008 by I.C. van der Vlies (acting chair), J.Th.M. Bank, J.C.M. Leijten, P.J.N. van Os, E.J. van Straaten, H.M. Verrijn Stuart, and signed by the acting chair and the secretary.

(I.C. van der Vlies, acting chair)

(E. Campfens, secretary)

## 6. Binding recommendations

### 6.1 State of affairs

The previous chapter provided an overview of the recommendations issued by the Committee in 2008 regarding claims to objects in the National Art Collection. As explained in paragraphs 3.1 and 3.4, when it was established, the Restitutions Committee was allocated a second task. Article 2, paragraph 2 of the Decree establishing the Restitutions Committee created the possibility of also submitting disputes to the Committee concerning cases of looted art involving parties other than the State of the Netherlands.

By the end of 2008, the Committee was handling four requests for advice in the context of this task. Two of these 'binding recommendation cases' were submitted to the Committee in 2006 and the other two in 2007 and 2008, respectively.

Number of binding recommendation cases put before the RC each year		Number of binding recommendations issued by the RC each jaar	
2002	-	2002	-
2003	-	2003	-
2004	-	2004	-
2005	-	2005	-
2006	2	2006	-
2007	1	2007	-
2008	1	2008	3
Total	4	Total	3

In 2008, the Committee published its first three binding recommendations. These recommendations related to the Flersheim I (RC 3.45), Flersheim II (RC 3.48) and Jan Steen (RC 3.93) cases, which will be dealt with below. At the end of 2008, the Committee still had one binding recommendation case to deal with, which will be settled in 2009 or later and therefore will be included in a future annual report.

### 6.2 Summary of binding recommendations issued in 2008

In 2008, the Restitutions Committee issued three binding recommendations for disputes concerning looted art in which the government was not involved. Both the first and second recommendations involved a dispute concerning a work of art by Jan Toorop that was originally owned by Ernst Flersheim (1862-1944). Both cases – referred to as Flersheim I and Flersheim II, respectively – will be briefly explained below, followed by a discussion of the third binding recommendation. The full texts of all three recommendations are included in paragraph 6.3.

The first binding recommendation that was published concerned the Flersheim II case (RC 3.48), which involved a dispute between Ernst Flersheim's grandchildren and Rotterdam Municipal Council about ownership of the painting *The Thames at London* by Jan Toorop. Flersheim's grandchildren were claiming restitution of *The Thames at London* arguing that the painting was lost involuntarily due to circumstances directly related to the Nazi regime. Rotterdam Municipal Council, which owned the painting at that time, challenged this and dismissed their claim. Eventually, both parties jointly requested that the Minister for OCW settle the dispute through the Restitutions Committee. The Minister submitted the case to the Committee in 2006 with the request to provide a recommendation to both parties. Flersheim's grandchildren and Rotterdam Municipal Council declared in writing that they would accept the recommendation issued by the Committee as binding.

The Committee concluded from documentation provided by the parties during the procedure that the painting *The Thames at London* was owned by the Jewish businessman and art collector Ernst Flersheim of Frankfurt am Main in the 1930s. From 1933, Flersheim's family were increasingly affected by the anti-Jewish measures implemented in Nazi Germany, as a consequence of which the family fled abroad. During his flight in March 1937, Flersheim sold *The Thames at London* to a Dutch art dealer for NLG 3,500, after which it ended up in the collection of the municipal Museum Boymans in Rotterdam. Six years later, Flersheim and his wife were deported from the Netherlands, and died in Bergen-Belsen concentration camp in 1944.

After taking cognisance of the documents provided by both parties, the discussion of the dispute during a hearing in 2007 and the extra information sent by the parties at the request of the Committee, the Committee issued its binding recommendation on 3 March 2008. The Committee deemed the loss of possession by Flersheim in the said situation to be involuntary as a result of circumstances directly related to the Nazi regime. The Committee also found that it was likely that Flersheim intended to use the proceeds from the sale of the Toorop in 1937 to help finance his family's flight. However, the Committee was also of the opinion that neither Museum Boymans nor Rotterdam Municipal Council had been negligible with respect to the purchase of the painting in 1937.

In its binding recommendation, the Committee concluded that given Flersheim's involuntary loss of possession, the significance of restitution to his grandchildren and their offer to pay Rotterdam Municipal Council the indexed purchase price, the Toorop should be returned to them upon payment of EUR 30,397.50, which is the amount Flersheim received for the painting in 1937 (NLG 3,500), indexed according to the general price index figure.

The Flersheim I case (RC 3.45) involved a dispute between Flersheim's grandchildren and the Zeeuwse Museumstichting in Middelburg (hereafter referred to as: 'Zeeuws Museum'). This dispute also involved a painting by Jan Toorop, namely *A Prayer before Supper*, which was acquired by the Zeeuws Museum in 1981.

Flersheim's grandchildren claimed that the painting had been confiscated by the Gestapo under the Nazi regime, and made a claim for restitution. The Zeeuws Museum rejected

this claim, adducing that the museum had acquired the painting in good faith in 1981. The dispute was submitted to the Committee by the Minister in 2006. In this case, too, the parties declared in writing that they would accept the recommendation of the Committee as binding. After a procedure comparable to that of the Flersheim II case (see the full text in paragraph 6.3), the Committee issued its binding recommendation on 7 April 2008.

It appeared from the facts at hand that *A Prayer before Supper* was owned by Ernst Flersheim, who – as mentioned above – fled Nazi Germany in the 1930s. In or around 1938, several works of art from Flersheim's collection, which he had left behind in Germany, were confiscated by the Gestapo, among them *A Prayer before Supper*.

The loss of possession in this case was also deemed to be involuntary as a consequence of circumstances directly related to the Nazi regime. Given the involuntary nature of the loss of possession, the significance of restitution to Flersheim's grandchildren and their offer to pay the purchase price to the museum, the Committee concluded that the Toorop should be returned to them upon payment of EUR 121,500 to the museum. This is the amount that the museum paid for the painting in 1981 (NLG 150,000), indexed according to the general price index figure. The Committee was also of the opinion that the Zeeuws Museum had not acted negligibly with respect to the purchase of the painting in 1981. Taking this, and the importance that the museum attributed to keeping the painting, into account, the Committee was of the opinion that in the event that the painting was to be resold by Flersheim's heirs or their legal successors within ten years of the date of this recommendation, the Museum should be offered the right of first refusal.

In December 2008, various Dutch newspapers reported that the painting *Prayer before Supper* - that had since been returned to Flersheim's heirs – was in fact resold to the Zeeuws Museum by Flersheim's grandchildren for an amount lower than the actual value.<sup>59</sup> The museum said it was pleased with the outcome.

The third binding recommendation that the Committee issued in 2008 (RC 3.93) involved Jan Steen's painting *The Marriage of Tobias and Sarah*, which had a unique history. At one time, the painting, which was housed in Museum Bredius in The Hague, was split in two, before being physically reunited during a restoration in 1996. Until the restoration, one part belonged to The Hague Municipal Council (*Archangel Raphael*), while the other part belonged to the Dutch State (*The Prayer of Tobias and Sarah*). The State and the Municipal Council decided to unite the two parts in 1996 and agreed an ownership ratio of 76% for the State and 24% for the Municipal Council. These percentages were based on the estimated value of the respective parts.

In 2006, ten years after the restoration and prompted by the application for restitution in the Goudstikker case,<sup>60</sup> the State transferred its share of the painting to Mrs Von Saher-Langenbein, the daughter-in-law of art dealer Jacques Goudstikker. While neither Von

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<sup>59</sup> See, for example, the article 'Ende gut, gut alles' [All's well that ends well] in: *De Volkskrant*, 4 December 2008.

<sup>60</sup> Recommendation regarding Goudstikker (RC 1.15). See *Report 2006*.

Saher nor the Council wished to share ownership of the painting any longer, they did not want to reverse the unification either. Because they were unable to solve the dispute, they requested the Minister to present their dispute to the Restitutions Committee to issue a binding recommendation. Accordingly, a request for advice was submitted to the Committee in 2007.

The purchase of Von Saher's share by the Municipal Council, as initially suggested by the Committee, proved impossible because the Council could not raise the required funds. In the course of the procedure, the parties reached an agreement about the sale of the Municipal Council's part of the work to Von Saher. In accordance with the parties' wishes, the Restitutions Committee documented this sale in its binding recommendation. The Committee advised that the Municipal Council of The Hague was obliged to sell its share to Von Saher, who, in turn, was obliged to pay the Council the purchase price as well as a proportionate part of the restoration costs.

The Committee's binding recommendation (RC 3.93) also laid down the agreement that the Municipal Council request the District Court to release it from a testamentary obligation that still rested on this painting.<sup>61</sup> Only then can the Council sell the painting. Once the testamentary obligation has been lifted, the Council is obliged to transfer its share to Mrs von Saher, who, upon payment of EUR 622,478.54, will acquire full ownership of the painting.



45. Restoration staff working on *The Marriage of Tobias and Sarah* by Jan Steen.

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<sup>61</sup> See binding recommendation RC 3.93 in paragraph 6.3 of this annual report.

## 6.3 Binding recommendations issued in 2008

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### 1. Binding advice concerning the dispute over the restitution of the painting *A Prayer before Supper* by Jan Toorop from the estate of E. Flersheim, currently in the possession of the Zeeuwse Museum Foundation

Case number: RC 3.45

Date of binding advice: 7 April 2008

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#### Binding advice

in the dispute between:

**W.A.E. and A.J.C.-E.**

represented by *mr.* P.W.L. Russell  
in Amsterdam  
hereafter referred to as 'E. and C.',

and:

**De Zeeuwse Museumstichting**

represented by *mr.* R.W. Polak  
in The Hague  
hereafter referred to as 'the Museum',

given by the Advisory Committee on the Assessment of Restitution Applications for Items of Cultural Value and the Second World War in The Hague (the Restitutions Committee), hereafter referred to as 'the Committee'.

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#### The dispute

Ernst Flersheim (1862-1944), hereafter referred to as 'Flersheim', was the owner of the painting *A Prayer before Supper* (1907) by Jan Toorop (hereafter referred to as: 'the painting' or 'the work of art') before losing possession of it around 1938. In 1981, the painting was bought by the Zeeuwse Museumstichting (hereafter referred to as 'the Museum') and is currently part of the collection in the Zeeuws Museum in Middelburg. E. and C. are Flersheim's heirs and have submitted an application for the restitution of *A Prayer before Supper*, based on their assertion that the painting was relinquished involuntarily as a result of circumstances directly related to the Nazi regime. The Museum has rejected E. and C.'s claim.

#### The procedure

The parties have submitted a joint request to the Minister for Education, Culture and Science (OCW) to have the dispute settled by the Committee. The Minister submitted a written request to the Committee on 2 May 2006, asking the Committee to advise the parties on the dispute in accordance with the procedure laid down in Section 2, subsections 2 and 3 of the Decree establishing the Advisory Committee on the Assessment of Restitution Applications of 16 November 2001. In letters dated 31 March 2006 and 5 April 2006 respectively, the Museum and E. and C. declared that they will consider the Committee's recommendation to be binding.

The Committee has taken cognisance of all documents submitted by the parties. The dispute was heard at the hearing in Utrecht on 16 April 2007 in the presence of both parties, who explained their respective positions on the basis of the written pleadings.

During the hearing, E. and C. offered to compensate the Museum for the sum that it paid for the painting in 1981 (NLG 150,000). No agreement could be reached between the parties during the hearing, after which the Museum was granted some time to respond to E. and C.'s proposal.

In a letter dated 18 June 2007, the Museum rejected the proposal, citing their reasons for doing so, after which the Committee resumed the procedure.

In a letter dated 18 September 2007, the Committee requested that both parties provide more detailed information, whereupon they both responded in writing. Finally, a Jan Toorop expert was consulted by the Committee, and the results of the investigation were communicated to both parties in a letter dated 19 November 2007, to which both have responded in writing.

## The facts

The following indisputable facts can be assumed in this procedure.

1. E. and C. submitted an application for the restitution of the painting *A Prayer before Supper* (1907) by Jan Toorop to the Museum in 1999. Their grandfather, Ernst Flersheim (1862-1944), lost possession of the painting around 1938. *A Prayer before Supper* was bought by the Museum in 1981 from the art dealer Ivo Bouwman in The Hague (hereafter referred to as 'Bouwman') who acquired the painting in 1973, probably from the estate of the art dealer Herman d'Audretsch in The Hague (hereafter referred to as 'D'Audretsch'). *A Prayer before Supper* has been part of the Museum's collection since 1981 and is on permanent display. The application for restitution submitted by E. and C. to the Museum did not result in the painting's restitution.
2. In the 1930s, Flersheim lived with his wife Gertrud Flersheim-Freiin von Mayer (1872-1944) in Frankfurt am Main, Germany, where he ran an international family business. The Flersheims were of Jewish extraction and had three children: Hans (1893-1933), Edith (1895-1992) and Margarete (1904-1940). Over the years, Flersheim had built up a private art collection that included, at least from 1909 onwards, *A Prayer before Supper*. The painting can be seen in a photograph taken at E. and C.'s parents' wedding.

Under Nazi rule, the Flersheim family lost the security of its livelihood as well as a substantial part of its estate. In 1936 and 1937, the two Flersheim daughters fled to London and Brussels respectively, after Flersheim had negotiated with the German authorities about moving his business abroad in the years previously (1935-36). In March 1937, Flersheim fled to the Netherlands. On 2 March, he was issued with a visa; on 12 March, he was given a residence permit due to his Jewish extraction and the political situation in Germany; and on 16 March, he was included in the population register in Amsterdam. His wife initially remained in Frankfurt am Main but joined her husband in Amsterdam one year later, in March 1938. The German authorities declared that the Flersheims were no longer German citizens and took possession of their estate.

In May 1937, the Flersheims auctioned part of their art collection in Frankfurt am Main. The owner of the auction house declared in 1953 that the Flersheims had put their collection up for auction following coercion by the Nazi authorities. *A Prayer before Supper*, however, was not on his list of works of art that were offered for auction in May 1937.

According to a post-war statement made by Edith Eberstadt-Flersheim to the *Wiedergutmachungskammer des Landgerichts Frankfurt am Main* (Chamber of Reparation of the District Court of Frankfurt am Main), a number of other artworks from the Flersheim collection were confiscated by the Gestapo around 1938, including artworks that the Flersheim's had put into storage in Germany. According to this post-war statement, *A Prayer before Supper* (German title: *Tischgebet*) was one of the works confiscated. No further evidence concerning any such confiscation was found in this procedure, partly due to the possibility that



46. *A Prayer before Supper* by Jan Toorop (1907).

relevant information concerning Gestapo activities was lost during the war.

Neither party disputes that the painting was part of Flersheim's estate and that it was in his possession until around 1938, neither do they dispute that it was relinquished involuntarily as a result of circumstances directly related to the Nazi regime.

The Flersheim couple were deported in 1943 and died in Bergen-Belsen concentration camp in 1944. Only their daughter, Edith Eberstadt-Flersheim, survived the war along with her family.

3. The Committee has been unable to determine in this procedure what happened to the painting in the period after the confiscation in or around 1938 suggested by E. and C. and where and in whose possession it was. The painting was probably returned to the Netherlands several years after it was confiscated and was, in all probability, in the hands of the art dealer H.E. d'Audretsch in November 1942. The archive of photographer L. Dingjan in The Hague, who carried out assignments for D'Audretsch, contains a glass plate negative of *A Prayer before Supper* from that period and another from 1944. Furthermore, a card on the back of the painting gives an indication about the possible inclusion of the painting in a number of Dutch collections including those of 'G. Oudshoorn (Rotterdam Bank) The Hague' and 'Collection of Mr. W.A.M., Nijmegen'. This card is undated but the names correspond with those of persons in the 1940s and 50s. The next clue is the acquisition of the painting by Bouwman in 1973. As he remembers it, he received the work from D'Audretsch's estate. The Museum then bought the painting from Bouwman in 1981 for the sum of NLG 150,000, half of which (NLG 75,000) was donated by the Rembrandt Association. It is unknown whether or not the Museum knew at the time it bought the work that the painting was previously owned by Flersheim before 1940 and that it had been confiscated by the Nazis due to its owner being Jewish. The Museum states that it has been impossible to determine what research was conducted at the time to uncover the provenance of the painting, but any such research was probably superficial.
4. In 1999, the Museum asked the Committee for the Code of Ethics for Museums for advice concerning E. and C.'s application for restitution, particularly with respect to the conscientiousness of the Museum at the time of the acquisition. In May 2000, this committee issued the following advice:

'The Committee for the Code of Ethics for Museums is of the opinion that the Zeeuws Museum did not act carelessly with regard to the acquisition of the painting concerned in 1981 by not instigating a further investigation into the provenance of the painting. (...) The committee concludes that the Zeeuws Museum could not have known in 1981 that there may have been a problem concerning the provenance of Toorop's work.'

Moreover, the Committee for the Code of Ethics for Museums came to the conclusion after considering self-formulated factors that, in its opinion, the Museum did not act improperly in rejecting the application for restitution of *A Prayer before Supper*. They added the following:

'The provenance of the painting, however, contains 'elements that point to dubious trading' (as described by article 5 of the *Guidelines concerning Museum Acquisitions 1940-1948*) in the period between 1938 and 1945, which is why the committee deems that in the spirit of those guidelines a possible alternative should be sought for a reasonable and fair solution that will do justice to the emotional importance to the applicant on the one hand and the importance of the piece for the Museum's collection on the other.'

The Committee for the Code of Ethics for Museums then decided that it was not in their mandate to broker such solutions. Their advice also contained the following consideration:

'The painting was acquired at the time for NLG 150,000, of which NLG 75,000 came from financial support provided by the Rembrandt Association. In that light, the committee considers it reasonable that compensation be paid that covers the purchase price and the costs of maintaining the painting. However, the committee has been unable to determine whether the heirs are prepared to do this.'

5. On 27 September 2006, the Museum introduced a dated written statement by Prof. R.E.O. Ekkart from the Netherlands Institute for Art History in The Hague into the procedure, in which Ekkart gives his opinion about the acquisition practices used by museums and art dealerships in 1981 with regard to the possible war history of acquisitions. The purport of this statement is that such practices did not exist in those days and that more recent awareness of such cannot be projected back to 1981. Incidentally, E. and C. dispute the accuracy, in part, of this statement.
6. On 30 January 1956, the *Wiedergutmachungskammer des Landgerichts Frankfurt am Main* paid compensation to the sole surviving member of the Flersheim family, Edith Eberstadt-Flersheim, for the works of art that were taken by the Nazi authorities from the Flersheims' collection. In the *Wiedergutmachungskammer's* statement, an artwork by Jan Toorop called *Tischgebet* was included (*A Prayer before Supper*). Compensation for this painting amounted to DM 3,000.
7. The Committee asked Jan Toorop expert G. van Wezel about the quantity, quality and availability of paintings by Toorop. Van Wezel said he could only name two other paintings of the same quality as *A Prayer before Supper*. Van Wezel commended the quality of the painting and declared that a work of comparable quality never or very rarely appears on the market. However, he also pointed out that there are possibilities that a painting by Jan Toorop of this quality could be put out on loan for exhibition purposes. There are a

relatively large number of good quality paintings with themes relating to Zeeland available in various Dutch museums that in Van Wezel's opinion probably offer ample opportunities to be placed on loan.

### E. and C.'s position

E. and C. argue that their grandfather, Ernst Flersheim, lost possession of the painting *A Prayer before Supper* by Jan Toorop involuntarily, having had it confiscated by the Gestapo in Frankfurt am Main in 1938. In connection with this involuntary loss, they submitted an application for restitution of the painting to the Museum. According to E. and C., their application, received in 1999, is their first application with regard to *A Prayer before Supper* and has been considered as such by the Committee. The fact that compensation was paid to their mother, Edith Eberstadt-Flersheim, by the *Wiedergutmachungskammer des Landgerichts Frankfurt am Main* in 1956, does not, in E. and C.'s opinion, imply that their application for restitution should be seen as a case that has already been dealt with (explanation 30.8.2006, p.7). The Museum's refusal to grant their application has prompted them to request the Committee to recommend the restitution of the painting. Due to the lack of official documentation concerning the confiscation, the sole survivor of the Flersheim family, Edith Eberstadt-Flersheim, drew up two lists with her lawyer, Kappus, on 19 January 1954 of artworks that were said to have been confiscated by the Gestapo. According to E. and C., the painting *A Prayer before Supper* appears on one of the two lists concerning works by non-German artists that were put into storage by Flersheim and then confiscated. The date of confiscation was not given in the statement and was, according to E. and C., probably unknown.

E. and C. also point to a decision taken by the *Landgericht Frankfurt am Main* in 1956, in which they say that given the German State's inability to provide evidence to the contrary, it must be assumed that the lists drawn up by Edith Eberstadt-Flersheim are correct and that a sum of DM 3,000 must be awarded as compensation for the confiscation of *A Prayer before Supper*. E. and C. argue that this award of compensation should not influence the consideration of their application for restitution.

According to E. and C., the criteria regarding the restitution of items of cultural value in the possession of the state that were relinquished involuntarily should also be applied to the restitution of items of cultural value in the possession of the Museum. Hence, recommendations issued to date by the Committee with regard to the former situation should also have significance in this case.

Only after the painting was acquired by the Museum did E. and C. become aware of where it was housed. They were not in a position to trace the painting before that time and were never approached by third parties with regard to the location of the work.

E. and C. contend that the Museum neglected to conduct any research into the painting's provenance and that this prevents an appeal by the Museum based on the fact that they acted in good faith when they acquired the painting. They are of the opinion that even bound by the criteria of 1981, the Museum could have been expected to have conducted more thorough research into the provenance of the painting than they actually did at the time, and that, at the very least, the names on the back of the painting warranted closer investigation.

E. and C. dispute the accuracy of elements of the statement made by Prof. R.E.O. Ekkart from the Netherlands Institute for Art History in The Hague on 27 September 2006, which was introduced into the procedure by the Museum. They point to international rules of ethics that have applied to museums since 1970 requiring that museums carry out thorough research into the provenance of acquisitions. They also point to the fact that awareness within society regarding the fate of victims of persecution began to increase in the early 1970s. In addition, they are also of the opinion that even if such neglect with regard to researching the provenance of a painting was not uncommon in 1981, neglect regarding *A Prayer before Supper* cannot be justified on that basis alone.

Furthermore, E. and C. consider their interest in *A Prayer before Supper* as significant, given that their grandfather was a friend of Jan Toorop and bought the painting directly from the artist. Their interest can be further underlined by the presence of the painting in their parents' wedding photo.

In addition to the above, they also argue that the Museum's interest in the work should play a minor role in the judgement of the dispute, which would be in line with the Committee's advice regarding the restitution of works in the possession of the state. E. and C. would also like to modify the statement made by Toorop expert Van Wezel, since Van Wezel can only speak for works by Toorop he has knowledge of and that, in general terms, as yet unknown paintings by Toorop still surface every year. According to them, it cannot, therefore, be discounted that a superior or comparable painting will crop up.

E. and C. have offered to pay the Museum NLG 150,000 as recompense, this being the price the Museum paid to Bouwman in 1981.

### The Museum's position

The Museum argues that the application for restitution submitted by E. and C. should be rejected, or, at the very least, that it should not be granted without E. and C. compensating the Museum in a manner to be determined by the Committee and that the Museum be indemnified against third-party claims to the painting (explanation 28.9.2006, no.33 and rejoinder 16.12.2006).

The Museum refers to the Committee's judgement concerning the involuntary loss of possession. Moreover, the Museum is not arguing that the application be dismissed as a result of the compensation paid by the *Wiedergutmachungskammer des Landgerichts Frankfurt am Main* in 1956, but refers in this respect to the judgement of the Committee (explanation 28.9.2006, nos.7 and 26-27). The Museum does not rely on the prescription of E. and C.'s claims because they consider this to be inconsistent with (its consent to) presenting



47. Wedding portrait of Edith Flersheim and Georg Eberstadt. The painting *A Prayer before Supper* is partly visible in the right background.

the dispute to the Committee (explanation 28.9.2006, no. 28).

According to the Museum, there is uncertainty as to whether the painting was lost as a result of confiscation, as E. and C. contend, although they admit that it is a possibility. The Museum acknowledges that the painting was owned by Ernst and Gertrud Flersheim until approximately 1938, and, according to the Museum, the facts and circumstances put forward by E. and C. do not rule out the possibility that the work was confiscated by the Gestapo at that time.

The Museum argues that it is now difficult to determine what research was carried out at the time into the provenance of *A Prayer before Supper*. It is plausible, according to the Museum, that when the painting was acquired in 1981, any such research was superficial (explanation 28.9.2006, no. 9), but that, when purchasing modern art, it was unusual for research into the war history of a piece to be conducted either in the Netherlands or abroad. In 1981, the Museum did not know or could not in all reasonableness have known that a work of art had belonged to a Jewish family prior to the war. The substantial amount of documentation that appeared after 1981 and insights that originated later should not be projected back to that year. This should also apply to the names on the back of the painting, which, according to E. and C., constituted grounds for further investigation by the Museum. The Museum is of the opinion that, in 1981, the knowledge that an artwork was once in the possession of someone with a dubious war history did not constitute the need for further investigation.

Furthermore, the Museum bought the painting from a dealer with a significant reputation, Bouwman, subject to a normal market transaction for which a considerable price was paid (NLG 150,000). Moreover, the purchase of the painting was supported financially by the well-respected Rembrandt Association (NLG 75,000). This offer of support can also be interpreted to mean that others in the museum world saw no reason to question the acquisition.

In response to a question from the Museum, Prof. R.E.O. Ekkart from the Netherlands Institute for Art History in The Hague declared in writing on 27 September 2006 that, in 1981, museums and art dealers were not in the habit of researching whether or not works of art acquired or documented had a war history. Ekkart also argued that the manner in which museums and art dealers traded in 1981 cannot be judged on the basis of an awareness that originated much later.

According to the Museum, the abovementioned details can lead to no other conclusion than that when the painting was purchased in 1981, the Museum acted in good faith. The Museum is also of the opinion that this should play a role in the Committee's final judgement in the dispute with E. and C., albeit as a secondary point now that Bouwman's power of disposition is no longer open to discussion.

The Museum also deems that the above factors are reason enough for them to have a different, stronger position in this dispute than the State would in disputes regarding the national art collection.

After E. and C. submitted their claim to the Museum in 1999 and the parties were unable to reach agreement, the Museum requested advice from the Committee for the Code of Ethics for the Association of Dutch Museums

(25 May 2000), which determined that the criteria of decent trading by museums governing the acquisition of *A Prayer before Supper* in 1981 did not require that additional research be carried out.

The Museum argues that their interest in keeping *A Prayer before Supper* in their collection is significant. The loss of the painting from the collection would represent a substantial loss for the Museum, which they have explained as follows. Jan Toorop lived and worked in Zeeland during different periods and *A Prayer before Supper* is important for the province because it links an international artistic movement with a local theme. The painting depicts a family portrait of Toorop's friends from Domburg, the Louwerse family, and represents the painter's glorification of piety of the citizens of Zeeland.

After consideration, the settlement offer proposed by E. and C. during the hearing was rejected. The Museum explained that keeping *A Prayer before Supper* in their collection and a decision by the Committee is more important to them than any financial remuneration.

### The task of the Committee

Under Section 2, subsection 2 of the Decree of 16 November 2001, the Committee has the task of providing advice to parties concerning their dispute over the restitution of items of cultural value between the original owner, who relinquished possessions involuntarily as a consequence of circumstances directly related to the Nazi regime, or their heirs and the current owner, other than the State of the Netherlands. In accordance with Section 2, subsection 5 of the Decree, the Committee will make a recommendation in accordance with the requirements of reasonableness and fairness. This advice is binding within the meaning of Section 7: 900 of the Dutch Civil Code.

### Assessment of the facts in the dispute

1. The Committee firstly states that its advice is based on deliberations concerning the circumstances in which the possession of the work was lost, the extent to which the party requesting restitution has exerted itself to retrieve the work, as well as the period and the circumstances in which the current owner acquired the work and the investigation carried out by the current owner before the work was acquired. In addition, the respective importance of the work for both parties and for the public art collection can be taken into consideration. With respect to artworks in the possession of the State that were recuperated from Germany after the Second World War (what is known as the *NK-collectie* [Netherlands Art Property Collection]), the government's policy guidelines regarding the restitution of stolen works of art apply. However, as this case does not revolve around such artworks, but rather around works that are in possession of someone other than the State, the abovementioned guidelines are not, contrary to E. and C.'s contention, directly applicable, but can be included in the consideration in so far as they, in the Committee's opinion, apply by analogy.
2. The Museum is not invoking the prescription of E. and C.'s claims, and deems that such an appeal is inconsistent with (its consent to) presenting the case to the Committee.
3. Documents pertaining to the law of inheritance suggest that E. and C. are their mother's sole heirs, Edith Eberstadt-Flersheim, and that she in turn was their father's sole surviving heir. The Committee, therefore, regards E. and C. as being entitled to apply for restitution of a work of art formerly in the possession of Ernst Flersheim.
4. The Committee has ascertained that the dispute between E. and C. and the Zeeuws Museum has not been settled previously. The Committee considers this application for restitution of *A Prayer before Supper* submitted by E. and C. in 1999 to be the first application. Furthermore, the Committee has found no evidence of a court ruling concerning restitution of *A Prayer before Supper* or of an explicit waiver of rights. The compensation of DM 3,000 paid by the *Wiedergutmachungskammer des Landgerichts Frankfurt am Main* mentioned under 6 above is not deemed to be an impediment in the current application for restitution. The Committee considers both parties' cases admissible.
5. Neither party disputes that Flersheim was forced to relinquish possession of *A Prayer before Supper* due to circumstances directly related to the Nazi regime. It can be assumed that the painting was confiscated by the Gestapo around 1938.
6. It can be deduced from the information provided by E. and C. to the Committee that the applicants have sufficiently exerted themselves to retrieve the painting.
7. E. and C. argue that when the Museum acquired the painting in 1981, it did not act in good faith. The Committee rejects this argument, endorsing Prof. R.E.O. Ekkart's expert opinion the Museum did not act negligently by not instigating a special investigation into the painting's provenance between 1933 and 1945 before acquiring it in 1981. As also included as a consideration in the recommendation given by the Committee for the Code of Ethics for Museums mentioned under 4 above, the ICOM Code of Professional Ethics was not published until 1986, which included the requirement that all acquisitions must be accompanied by reliable proof of provenance and that museums are obliged to conduct research into the provenance of a work of art.
8. In terms of the importance of the painting to both parties, the Committee finds the following. *A Prayer before*

*Supper* was part of E. and C.'s grandparents' art collection. The collection included many works by Jan Toorop, who lived and worked in Domburg during a period when the grandparents frequently holidayed in the area and with whom he struck up a friendship. The painting can be clearly seen on the wall in a photograph taken at E. and C.'s parents' wedding. E. en C. attach great emotional value to the painting (rejoinder 26.10.2006, par. VIII.a, p.20-21) and given their advanced years, would like to see the painting restituted quickly. The Museum describes the painting's importance as follows (explanation 28.9.2006, item 29 under iii, p.7): 'the loss of the work [would] constitute a huge loss for the museum. It is an important piece for the province of Zeeland because it links an international artistic movement (luminism; painting with light) with a local theme. It is a family portrait of Toorop's friends from Domburg, the Louwerse family. In addition, it is a portrait that represents the painter's glorification of piety of the citizens of Zeeland. In sweeping brushstrokes, the painting depicts the divine glow that surrounds the family during their evening prayer.'

9. The Committee deems that in all reasonableness and fairness the Museum should return *A Prayer before Supper* to E. and C. The Committee has taken the following into account: 1) that Flersheim lost possession of the painting involuntarily as a result of circumstances directly related to Nazi regime and that this involuntary loss came in the form of confiscation by the Gestapo, 2) the emotional importance to E. and C., as described under 8 above, which the Committee considers to be significant, 3) that E. and C. are prepared to pay compensation, and 4) that although the Museum cannot be reproached for acting unconscientiously during the acquisition of the painting, there are elements in the provenance of the work that point to dubious dealings (as described in art. 5 of the Guidelines concerning Museum Acquisitions 1940-1948). The painting has a sticker on the back with the name 'Mr W.M.A. Weitjens', who, as argued by E. and C. and not contradicted by the Museum, played a key role in dealing with the Nazis during the Second World War. The questionable role played by Weitjens was also referred to in the recommendation made by the Committee for the Code of Ethics for Museums on 17 May 2000.

The Museum's interest in keeping the painting – which the Committee considered to be considerable – and the fact that a work of art of comparable quality to *A Prayer before Supper* is no longer available for purchase (according to Jan Toorop expert G. van Wezel) carry, in the committee's opinion, insufficient weight to compel the Committee to reach an alternative judgement. The Committee is of the opinion, however, that in all reasonableness and fairness restitution of the painting can only take place upon repayment of the sale price (NLG 150,000) indexed according to the general price index. The Committee proposes that E. and C. pay an indexed sum of EUR 121,500 (NLG 270,000).<sup>62</sup>

The Committee considers it reasonable and fair that E. and C. cover the cost of insuring and transporting the painting from the moment of transfer from the Museum. Furthermore, as the Museum requested, E. and C. will indemnify the museum against third-party claims to the painting. Finally, the Committee is of the opinion that in the event that the painting is resold by E. and C. or their legal successors within ten years of the date of this recommendation, the Museum should be offered the right of first refusal.

10. On the basis of the above-mentioned information, the Committee recommends the following.

#### BINDING ADVICE

1. The Museum is obliged to return the painting *A Prayer before Supper* to E. and C. on payment by E. and C. to the Museum of EUR 121,500.
2. E. and C. are obliged to cover the costs of insuring and transporting the painting from the moment of transfer from the Museum.
3. E. and C. are obliged to indemnify the Museum against third-party claims to the painting.
4. Should the painting be resold within ten years of the date of this recommendation, E. and C. or their legal successors are obliged to offer the Museum the right of first refusal.

This binding advice was given on 7 April 2008 by R. Herrmann (chair), J.Th.M. Bank, J.C.M. Leijten, P.J.N. van Os, E.J. van Straaten, H.M. Verrijn Stuart, I.C. van der Vlies (vice-chair), and signed by the chair and the secretary.

(R. Herrmann, chair)

(E. Campfens, secretary)

<sup>62</sup> The following price index figures (yearly averages) were taken from Statistics Netherlands (CBS) on 5 March 2008: 1900=100; 1981=1.405; 2007=2.510. The multiplication factor of 1.8 (2.510/1.405) has been determined on the basis of these figures.

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## **2. Binding advice concerning the dispute over the restitution of the painting *Thames at London* by Jan Toorop from the estate of E. Flersheim, currently in the possession of Rotterdam Municipal Council**

Case number: RC 3.48

Date of binding advice: 3 March 2008

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### **Binding advice**

in the dispute between:

#### **W.A.E. and A.J.C.**

represented by P.W.L. Russell, Master of Laws  
in Amsterdam

hereafter referred to as 'E. and C.';

and:

#### **Rotterdam Municipal Council**

represented by the Councillor for Participation and Culture, O. Kaya  
in Rotterdam

hereafter referred to as 'Rotterdam Municipal Council',

given by the Advisory Committee on the Assessment of Restitution Applications for Items of Cultural Value and the Second World War in The Hague, hereafter referred to as the Committee.

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### **The dispute**

Ernst Flersheim (1862-1944), hereafter referred to as 'Flersheim', was the owner of the painting *View of the Thames at London Bridge* (1885) by Jan Toorop (hereafter referred to as: '*Thames at London*') before selling it in 1937, after which it ended up in the collection of the Museum Boymans in Rotterdam – currently known as the Museum Boijmans van Beuningen (hereafter referred to as 'the Museum'). E. and C. are Flersheim's heirs and have submitted an application for the restitution of *Thames at London*, based on their assertion that the painting was relinquished involuntarily as a result of circumstances directly related to the Nazi regime. Rotterdam Municipal Council, the current owner of the painting, disputes the involuntary nature of the loss and has rejected E. and C.'s claim.

### **The procedure**

The parties have submitted a joint request to the Minister for Education, Culture and Science (OCW) to have the dispute settled by the Committee. The Minister submitted a written request to the Committee on 12 September 2006, asking the Committee to advise the parties on the disputes in accordance with the procedure laid down in Section 2, subsections 2 and 3 of the Decree establishing the Advisory Committee on the Assessment of Restitution Applications of 16 November 2001. In letters dated 19 December 2005 and 30 August 2006 respectively, Rotterdam Municipal Council and E. and C. declared that they will consider the Committee's recommendation to be binding.

The Committee has taken cognisance of all documents submitted by the parties. The dispute was heard at the hearing in Utrecht on 1 October 2007 in the presence of both parties, who explained their respective positions. E. and C. did so on the basis of the written pleadings they submitted. During the hearing, the Committee requested that both parties provide more detailed information, whereupon they both responded in writing.

The Museum's response differed substantively from their position during the hearing and contained new information. The Committee responded in writing on 16 November 2007, informing both parties that, in connection with the different information provided by the Museum, they were giving E. and C. the opportunity to respond, and that the new information would be disregarded by the Committee. E. and C. subsequently took the opportunity to respond.

## The facts

The following indisputable facts can be assumed in this procedure.

1. E. and C. submitted an application for the restitution of the painting *Thames at London* (1885) by Jan Toorop to Rotterdam Municipal Council on 26 January 1999. According to E. and C., the painting was sold involuntarily by their grandfather Flersheim (1862-1944) in 1937 as a consequence of circumstances directly related to the Nazi regime. *Thames at London* was bought by the Museum from the art dealer Nieuwenhuizen Segaar in The Hague (hereafter referred to as 'Nieuwenhuizen Segaar'), who had purchased it from Flersheim several days earlier. The painting, which has since been in the Museum's collection and is currently being stored in the Museum's depot, is the property of Rotterdam Municipal Council. E. and C.'s application to Rotterdam Municipal Council has not resulted in restitution.



48. *View of the Thames at London Bridge* by Jan Toorop (1885)

2. In the 1930s, Flersheim lived with his wife Gertrud Flersheim-Freiin von Mayer (1872-1944) in Frankfurt am Main, Germany, where he ran an international family business. The Flersheims were of Jewish extraction and had three children: Hans (1893-1933), Edith (1895-1992) and Margarete (1904-1940). Over the years, Flersheim had built up a private art collection that definitely included, from 1909 onwards, *Thames at London*.  
Under Nazi rule, the Flersheim family lost the security of its livelihood as well as a substantial part of its estate. In 1936 and 1937, the Flersheim daughters fled to London and Brussels respectively, after Flersheim had negotiated with the German authorities about moving his business abroad in the years previously (1935-36). In March 1937, Flersheim fled to the Netherlands. On 2 March, he was issued with a visa; on 12 March, he was given a residence permit due to his Jewish extraction and the political situation in Germany; and on 16 March, he was included in the population register in Amsterdam. His wife initially remained in Frankfurt am Main but joined her husband in Amsterdam one year later, in March 1938. The German authorities declared that the Flersheims were no longer German citizens and took possession of their estate. In May 1937, the Flersheims auctioned part of their art collection in Frankfurt am Main. According to a post-war statement made by E.E.-F. to the *Wiedergutmachungskammer des Landgerichts Frankfurt am Main* (Chamber of Reparation of the District Court of Frankfurt am Main), she states that a number of other artworks from the Flersheim collection were confiscated by the Gestapo. The painting *Thames at London* was neither auctioned nor confiscated and was in London during the period in which Flersheim fled to the Netherlands.  
After fleeing Germany, the members of the Flersheim family were predominantly dependent on Ernst Flersheim for their livelihood. The Flersheim couple were deported in 1943 and died in Bergen-Belsen concentration camp in 1944. Only their daughter, E.E.-F., survived the war along with her family.
3. On or around 20 March 1937, there was contact between Flersheim and Nieuwenhuizen Segaar concerning the sale of *Thames at London*. Who made the initial contact is unknown, but Flersheim sent Nieuwenhuizen Segaar written confirmation on 20 March 1937 from Alassio (Italy), in which he refers to a previous exchange of telegrams between the two, and in which he states that he agreed with the final price of NLG

3,500 for the sale of *Thames at London*. According to Flersheim's wishes, Nieuwenhuizen Segaar transferred this amount to London, and receipt was confirmed by Flersheim on 3 April 1937.

At the time when Nieuwenhuizen Segaar bought *Thames at London*, the Museum's then director Dirk Hannema was aware of the painting's existence. The Museum was interested in acquiring this early Toorop for its collection and was given the possibility to do so by Nieuwenhuizen Segaar. Sales details from Nieuwenhuizen Segaar show that the painting was sold to the Museum on 24 March 1937 along with the painting *Female Portrait* by Bart van der Leek for NLG 6,000. It is not known how much was paid for *Thames at London*, but it can be derived from details of Nieuwenhuizen Segaar's inventory that the painting was insured during that time for NLG 5,000.

4. It was determined after the war that the auction of the Flersheims' works of art in Frankfurt am Main in 1937 was involuntary: in 1953, the owner of the auction house declared that the Flersheims had put their collection up for auction in the spring of 1937 because they were forced to do so by the Nazi authorities. On 30 January 1956, the *Wiedergutmachungskammer des Landgerichts Frankfurt am Main* paid compensation to the sole surviving member of the Flersheim family for the works of art that were taken by the Nazi authorities. It is possible that *Thames at London* was also included in the *Wiedergutmachungskammer's* decision, although if so, this was apparently done in error.

### E. and C.'s position

In short and in so far as is it of interest in this case, the position taken by E. and C. is as follows.

E. and C. claim that the sale of *Thames at London* by Flersheim should be regarded as involuntary. In their opinion, restitution of this work to them, is, therefore, appropriate as they are the sole heirs to their mother, who in turn was the sole surviving heir to her father, Flersheim.

The burden of proof regarding the involuntary loss of possession should not rest on them. E. and C. describe Flersheim as a wealthy German of Jewish origin, living in Frankfurt am Main, who decided to flee to the Netherlands as a consequence of persecution by the Nazis. He was forced to leave many of his possessions behind in Germany, including the lion's share of his art collection, or to sell them to pay for his escape. He only took two paintings, including *Thames at London*, with him.

E. and C. adduce that, in March 1937, Flersheim received a visa for the Netherlands and left Germany in haste because he feared reprisals. After his escape, which would eventually take him to the Netherlands, he took his gravely ill daughter to a spa in Alassio, Italy, from where he negotiated and sold *Thames at London* to the art dealer G.J. Nieuwenhuizen Segaar in The Hague on 20 March 1937.

E. and C. refer to this as being a sale while in the act of flight, and in this respect defend the analogous application of the government's policy with regard to the restitution of works of art from the national collection, in the sense that Flersheim's sale of the painting while on the run is the same as the Jews selling their possessions in Germany during the same period, namely after 1933. The fact that Flersheim was registered in the population register in Amsterdam on 16 March 1937 is, according to them, irrelevant.

E. and C. are of the opinion that it is implausible that Flersheim, who needed the extra finances to maintain himself and his family and to pay for his escape to the Netherlands, had access to the NLG 3,500 he received for the sale of the painting. In cases of doubt, the Committee should give Flersheim the benefit of the doubt, in accordance with the government's policy guidelines.

Nieuwenhuizen Segaar sold *Thames at London* to the Museum within a few days of concluding the transaction with Flersheim. E. and C. criticise Nieuwenhuizen Segaar, who made an unusually high profit from the sale (43%).

Information found in the Museum's archive with regard to *Thames at London* is limited to a summary of its provenance. E. and C. agree with critical post-war publications concerning the position of Museum director Dirk Hannema with regard to the purchase of artworks formerly in the possession of Jews. Furthermore, E. and C. point to correspondence from 1954 between the *Wiedergutmachungskammer des Landgerichts Frankfurt am Main* and the Museum, when the former was said to have enquired about artworks from Flersheim's former collection, including *Thames at London*, but were kept at arm's length by the Museum.

E. and C. consider their interest in the restitution of *Thames at London* to be significant. They point to the fact that there was a close personal bond between the Flersheims and Toorop and argue that Flersheim would not have sold the painting had it not been out of financial necessity.

In a letter dated 14 November 2007, E. and C. stated that they were also willing to pay Rotterdam Municipal Council the indexed purchase price for *Thames at London*.

### Rotterdam Municipal Council's position

In short and in so far as is it of interest in this case, the position taken by Rotterdam Municipal Council is as follows.

Rotterdam Municipal Council claims that the sale of *Thames at London* by Flersheim cannot be seen as involuntary, arguing that it was Flersheim who decided to sell the painting to art dealer G.J. Nieuwenhuizen Segaar. They further argue that Flersheim sold the painting while living in the Netherlands during a period before the date on which, according to the Ekkart Committee, sales by Jews living in the Netherlands were considered, in principle, to be acts forced upon them. According to Rotterdam Municipal Council, it cannot be taken for granted that the burden of proof and the risk of missing information rest with the council. It is plausible that Flersheim had access to the NLG 3,500 that was sent to him in Great Britain. The alleged

high profit percentage that Nieuwenhuizen Segaar made on the sale of *Thames at London* to the Museum could, according to Rotterdam Municipal Council, be related to the high cost of transporting the painting from London to the Netherlands.

According to Rotterdam Municipal Council, *Thames at London* is an important work by an important artist, Jan Toorop. Rotterdam Municipal Council is not predisposed in advance to oppose the restitution of *Thames at London*.

### The task of the Committee

Under Section 2, subsection 2 of the Decree of 16 November 2001, the Committee has the task of providing advice to parties concerning their dispute over the restitution of items of cultural value between the original owner, who relinquished possessions involuntarily as a consequence of circumstances directly related to the Nazi regime, or their heirs and the current owner, other than the State of the Netherlands. In accordance with Section 2, subsection 5 of the Decree, the Committee will make a recommendation in accordance with the requirements of reasonableness and fairness. This advice is binding within the meaning of Section 7: 900 of the Dutch Civil Code.

### Assessment of the facts in the dispute

1. The Committee firstly states that its advice is based amongst others on deliberations concerning the circumstances in which the possession of the work was lost, the extent to which the party requesting restitution has exerted itself to retrieve the work, as well as the period and circumstances in which the current owner acquired the work and the investigation carried out by the current owner before the work was acquired. In addition, the respective importance of the work for both parties and for the public art collection can be taken into consideration. The government's policy guidelines regarding the restitution of items of cultural value in the possession of the state can be considered in so far as they, in the Committee's opinion, apply accordingly to the case in question.
2. Documents according to the law of inheritance suggest that E. and C. are the sole heirs to their mother, E.E.-F., and that she in turn was the sole surviving heir to her father, Flersheim. The Committee, therefore, regards E. and C. as being entitled to apply for restitution in the name of Flersheim.
3. The Committee has ascertained that the dispute between E. and C. and Rotterdam Municipal Council has not been settled previously. During the hearing, there was mention of an application for restitution in the 1950s to Rotterdam Municipal Council but the Committee has no proof that any such application took place. The Committee considers this application for restitution of *Thames at London* submitted by E. and C. in 1999 to be the first application. Furthermore, the Committee has found no evidence of a court ruling concerning restitution of *Thames at London* or of an explicit waiver of rights. The Committee considers both parties' cases admissible.
4. The events in the Flersheim's family's lives that preceded the sale of *Thames at London* on or around 20 March 1937 are evidence of a downward spiral. The restrictive measures imposed by the Nazis had an ever increasing effect on the family, resulting in the loss of work and status, decreasing access to their assets, excessive taxes and eventual flight abroad. The sale of *Thames at London* to Nieuwenhuizen Segaar took place in the same month in which Flersheim was issued with a visa for and a residence permit in the Netherlands, and at the point when he was in Italy with his ailing daughter. The Committee considers this transaction to have taken place while Flersheim was escaping Germany for the Netherlands. It is plausible that Flersheim thought he would have to use the profits from the sale of *Thames at London* to meet his financial obligations towards the flight of his family. Flersheim and Nieuwenhuizen Segaar appear to have corresponded about the purchase price and Flersheim agreed to what for him must have been the final offer. The Committee considers it possible that Flersheim would have wanted a higher price for the painting but that he did not consider himself to be in a position to call off the sale. Under the circumstances, the Committee considers that this loss of possession was involuntary and attributable to circumstances directly relating to the Nazi regime. The fact that the sale in question did not take place under duress is irrelevant to this judgement.
5. E. and C. are of the opinion that, when the Museum purchased the painting in 1937, they did not exercise the requisite care given the painting's Jewish provenance – an assertion that Rotterdam Municipal Council disputes. On this matter, given the circumstances of the purchase including the moment of purchase and the active role Flersheim himself played in the sale, the Committee is of the opinion that neither the Museum nor Rotterdam Municipal Council was negligible with respect to this purchase.
6. During the hearing, Rotterdam Municipal Council explained its interest in retaining *Thames at London* for the collection and also stated that it did not wish to emphasise this interest during the procedure. The Committee understands this position to mean that Rotterdam Municipal Council considers the circumstances in which painting was relinquished to be the central issue in the dispute and that it wishes to keep its interest in the painting out of this dispute. In contrast, the interest that E. and C. claim to have in the work is substantial. Flersheim had a personal relationship with Jan Toorop, making *Thames at London* a special addition to Flersheim's collection. E. and C., therefore, have a great interest in recovering this family heirloom. Both positions are further underlined by that taken by Rotterdam Municipal Council, which is not predisposed to opposing restitution of the painting, and by E. and C.'s offer to pay it the indexed purchase price for the painting.

7. Taking into account the fact that the loss of *Thames at London* is to be regarded as involuntary caused by circumstances directly related to the Nazi regime, and the significance of restitution to E. and C., the Committee recommends that the painting be returned to them.

With regard to E. and C.'s offer to pay the indexed purchase price for the work, the Committee considers it reasonable and fair to obligate E. and C. to pay a sum of money to Rotterdam Municipal Council. The Committee is of the opinion that E. and C. should pay the amount that Flersheim received in 1937 (NLG 3,500), indexed according to the general price index figure. The Committee has determined that E. and C. pay the indexed price of EUR 30,397.50 (NLG 67,550).<sup>63</sup>

The Committee is conscious of the fact that the purchase price paid by the Museum in 1937 for *Thames at London* was probably higher – although the exact price was never recorded – than the price that Flersheim received for it, while the indexed price is still based on the supposedly lower price. The Committee is also aware that the current value of the painting is considerably higher than the above indexed amount that E. and C. will pay for it. However, the Committee consider it reasonable and fair that E. and C. do not have to pay more for it than the above-mentioned amount now that it has been reasonably ascertained that Flersheim had to use the profits from the sale of *Thames at London* to fulfil the financial obligations to his family with regard to their flight from Germany.

8. On the basis of the above-mentioned information, the Committee recommends the following.

#### **BINDING ADVICE**

Rotterdam Municipal Council is obliged to return the painting *Thames at London* to E. and C., upon payment of EUR 30,397.50 by the latter.

This binding advice was given on 3 March 2008 by R. Herrmann (chair), J.Th.M. Bank, J.C.M. Leijten, P.J.N. van Os, E.J. van Straaten, H.M. Verrijn Stuart, I.C. van der Vlies (vice-chair), and signed by the chair and the secretary.

(R. Herrmann, chair)

(E. Campfens, secretary)

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<sup>63</sup> The following price index figures (yearly averages) were taken from Centraal Bureau voor de Statistiek [Statistics Netherlands] on 20 February 2008: 1900=100; 1937=130; 2007=2,510. The multiplication factor of 19.3 (2510/130) has been determined on the basis of these figures.

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### 3. Binding advice concerning the dispute over *The Marriage of Tobias and Sarah* by Jan Steen

Case number: RC 3.93

Date of binding advice: 6 October 2008

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#### Binding advice

in the dispute between:

**The Hague Municipal Council**

represented by the councillor responsible for  
Culture and Finance, Mrs J. Klijnsma  
and *mr.* R. van Dam  
in The Hague  
hereafter referred to as 'the Municipal Council',

and:

**Mrs M. von Saher-Langenbein**

represented by *mr.* R.W. Polak,  
in The Hague  
hereafter referred to as 'Von Saher',

given by the Advisory Committee on the Assessment of Restitution Applications for Items of Cultural Value and the Second World War in The Hague (the Restitutions Committee), hereafter referred to as 'the Committee'.

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#### 1. Introduction

- 1.1 The parties are joint owners of the painting *The Marriage of Tobias and Sarah* by Jan Steen, also known as *The Wedding Night of Tobias and Sarah*. The painting is currently housed in Museum Bredius in The Hague.
- 1.2 Joint ownership arose as a result of a radical restoration in 1996 in which two parts of Jan Steen's painting, which at one time or another had been separated, were physically reunited. The two separate parts, *Archangel Raphael* and *The Prayer of Tobias and Sarah* belonged to the Municipal Council and the State of the Netherlands (hereafter referred to as 'the State') respectively. The State and the Municipal Council agreed to unify the paintings. Based on the estimated value of *The Prayer of Tobias and Sarah* and *Archangel Raphael*, the State and the Municipal Council maintained an ownership ratio of 76 : 24.
- 1.3 As a result of an application for restitution of *The Prayer of Tobias and Sarah* (NK 2726, RC 1.15 *Goudstikker*), the State transferred ownership of its share in the unified painting to Von Saher in 2006.
- 1.4 Von Saher and the Municipal Council no longer wished to share ownership of the painting and sought a solution that would preserve the unification of the painting. Initially, they failed to reach an agreement but during the procedure before the Committee, they agreed to transfer the Municipal Council's share in the painting to Von Saher.

#### 2. Procedure

- 2.1 The parties submitted a joint request to the Minister for Education, Culture and Science (OCW) to have the dispute settled by the Committee. The Minister submitted a written request to the Committee on 6 August 2007, asking the Committee to advise the parties on the dispute in accordance with the procedure laid down in Section 2, subsections 2 and 3 of the Decree establishing the Advisory Committee on the Assessment of Restitution Applications of 16 November 2001 (hereafter referred to as 'the Decree'). In accordance with Section 2, subsection 5 of the Decree, the Committee issued advice according to the principles of reasonableness and fairness in the aforementioned procedure. In letters dated 6 July 2007 and 1 November 2007, respectively, Von Saher, also on behalf of the Municipal Council, and the Municipal Council, independently, declared that they would consider the Committee's advice to be binding.

2.2 The Committee took cognisance of all documents submitted by the parties as well as their individual standpoints. The Committee submitted a written request to Von Saher on 14 April 2008 to provide copies of legal deeds concerning the transfer and delivery of *The Prayer of Tobias and Sarah*. On 22 May 2008, Von Saher provided transcriptions of the restitution deed, which was deemed sufficient to satisfy the Committee's request.

2.3 The dispute was heard at the hearing in The Hague on 2 June 2008 in the presence of both parties, who explained their respective positions.



49. *The Marriage of Tobias and Sarah* by Jan Steen.

2.4 At the hearing, the parties had a disagreement about the basic principles of the dispute submitted to the Committee before a discussion could take place concerning the contents of the dispute. In letters dated 16 April and 21 May 2008, Von Saher contended, in brief, that the Municipal Council's preference to maintain the status quo in terms of ownership, which only emerged in the course of the procedure, was inconsistent with the initial agreements that the parties reached previously (joint letter dated 6 July 2007). The Municipal Council denied the grievances of the opposing party in a letter dated 24 April 2008. At the request of both parties, the Committee handed down a decision with regard to this moot point at the hearing, deciding that in accordance with Section 3: 178, subsection 1 of the Dutch Civil Code, no-one should be forced to remain co-owner of an undivided property against their will and that this binding advice, therefore, would be based on the fact that the joint ownership of the painting will be terminated. The Committee informed the parties of its decision in writing on 3 June 2008.

2.5 As a result of information provided by the parties at the hearing, the Committee asked the parties to provide further information in a letter dated 3 June 2008. Von Saher was asked to provide copies of valuations made at her request to both the Committee and the Municipal Council. The Municipal Council was asked to substantiate the cost of restoration to both the Committee and Von Saher. At the same time, both parties were given the opportunity to respond to the information provided by the other. The information and responses requested were received in writing on 23 June, 30 June and 29 July 2008 (the Municipal Council) and on 26 June, 16 July and 1 September 2008 (Von Saher).

2.6 In a letter dated 11 September 2008, the Committee informed both parties that the case was closed and that it would issue a binding advice.

2.7 After the final exchange of letters, the Committee concluded that there was no longer a dispute between the parties concerning the desired resolution of the dispute. Despite this, the parties failed to reach a settlement. As the Committee understands it, the parties seek a binding recommendation that merely formalises in essence the agreement between the parties.

### 3. Basic principles of binding advice

On the basis of the letter from the parties dated 6 July 2007, the hearing and the letters from Von Saher dated 26 June 2008 and the Municipal Council dated 29 July 2008, the Committee employs the following basic principles with regard to this case:

In a legal deed dated 7 November 2006, the State transferred all rights to the unified work, in so far it had any, including its share in the unified work and all contractual rights in relation to the Municipal Council, to Von Saher.

The unified work is currently co-owned by Von Saher and the Municipal Council in a 76 : 24 ownership ratio. The parties' request for advice does not call into question the conclusions drawn from the recommendation of the Committee issued on 19 December 2005 (NK 2726, RC 1.15 *Goudstikker*) and the decision to grant restitution on 6 February 2006.

The parties no longer wish to retain joint ownership of the work and joint ownership will, therefore, be terminated (see 2.4).

The outcome of the recommendation should not result in the physical separation of the painting.

During the procedure, the parties reached agreement concerning the following solution: the Municipal Council will sell its share in the painting to Von Saher.

### 4. Preference of the parties: sale by the Municipal Council

4.1 The parties assume an ownership ratio of 76 percent (Von Saher) : 24 percent (the Municipal Council). Apparently, they assume that they can claim the respective percentages of the financial value of the painting.

4.2 At the beginning of the procedure, three solutions recognised as such by both parties were put forward. One party would have to sell its share to the other or both parties would have to sell the painting to a third party with a division of the proceeds. Both parties saw the sale to a third party, privately or publicly, as the least preferable option, and focused instead on selling one of the shares to the other.

4.3 During the hearing, the Committee expressed a preference for the sale of Von Saher's share to the Municipal Council, which would enable the museum to keep the painting in its collection. To this end, the Municipal Council would have to attempt to raise the necessary funds. The Municipal Council and Von Saher agreed to this proposal.

4.4 Some time later, however, the Municipal Council announced that it had been unsuccessful in its fundraising attempts. Therefore the preferred solution did not have the desired result. Given these circumstances, the Committee cannot, in all reasonableness and fairness, recommend that the Municipal Council purchase the painting.

4.5 In a letter dated 29 July 2008, the Municipal Council illuminated its position as follows:

'The Municipal Council has recently endeavoured to gather sufficient financial means through the relevant funds to acquire Mrs Von Saher's share. However, given that these funds are the subject of other financial requests, we were unsuccessful. The Municipal Council, therefore, has been forced to abandon the option to buy Mrs Von Saher's share for the estimated market value. Instead, it is prepared, under the conditions stated in the letter from Mr Polak to the Committee, to sell its share in the painting to Mrs Von Saher (...).'

4.6 Given that the Municipal Council was prepared to sell its share to Von Saher and that Von Saher stated in writing that she was prepared to go along with this option (letter dated 26 June 2008), the Committee came to a decision accordingly. The Committee has seen insufficient support from the parties for sale to a third party.

4.7 In the procedure, Von Saher stated that the estimated value of *The Prayer of Tobias and Sarah* was USD 2,892,000 corresponding to her 76 percent share. This valuation was based on an exchange rate of EUR 1 = USD 1.55.<sup>64</sup> In a letter dated 29 July 2008, the Municipal Council agreed to both the value and the exchange rate. Consequently, the parties agreed that the value of the 24 percent share was USD 913,263<sup>65</sup> and that of the entire painting USD 3,805,263.

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<sup>64</sup> Explanation of the calculation: given Von Saher's 76 percent share, Simon Dickinson estimated the value of the painting at  $76\% \times \text{EUR } 3,000,000 \times 1.55 = \text{USD } 3,534,000$ , while Christie's valued that part of the painting at USD 2,250,000. The average of the two valuations is USD 2,892,000.

<sup>65</sup> The sum of USD 913,263 is calculated as follows:  $24/76 \times \text{USD } 2,892,000$ .

4.8 The Municipal Council will sell its share in the painting to Von Saher for the total sum of EUR 589,201.94.<sup>66</sup>

## 5. Contribution to the cost of restoration

5.1 During the procedure, the Municipal Council announced that they wanted to include the costs of unifying the two paintings in the transaction. Von Saher stated that she was prepared to contribute a proportional amount to the costs, i.e. 76 percent, on the condition that the Municipal Council substantiate the costs.

5.2 To that end, the Municipal Council provided the following explanation (enclosed in a letter dated 29 July 2008).

'[T]he number of hours that the two restorers from the Gemeentemuseum Den Haag spent on unifying the two paintings, which was a very time-consuming business, amounts to approximately 1,500, which equates to 37.5 work weeks. This amounts to a total of €43,785 based on a gross hourly rate of €29.19. The additional costs of €1,215 relate to materials and space, but I should note that the cost of materials are minimal and that we have only added spatial cost as a symbolic gesture. The total cost, therefore, amounts to approximately €45,000.'

5.3 The Committee has decided that the Municipal Council has sufficiently substantiated the restoration costs in terms of labour costs. The Committee has also considered the fact that the restoration was carried out internally and that the Municipal Council could not produce any invoices as a result. The Committee has also taken into consideration the fact that the restoration was substantial and that the time the Municipal Council says was spent on the restoration is entirely plausible. Von Saher is therefore obligated to keep her promise to contribute proportionally to the cost of restoration.

5.4 Von Saher's objection to the amount of the additional costs, which were recently put forward in a letter dated 1 September 2008, was legitimate. The Committee sees no reason to pass on costs for the use of materials and space for a restoration that was carried out internally. Accordingly, the Committee has based Von Saher's contribution towards the cost of restoration on the labour costs alone.

5.5 The Committee, therefore, advises Von Saher to pay 76 percent of the total labour costs, i.e. EUR 33,276.60, in addition to the purchase price.<sup>67</sup>

## 6. Conditions stipulated by the parties regarding the sale

6.1 In a letter dated 26 June 2008, Von Saher stated four conditions that she would like to apply to her purchase of the Municipal Council's share in the painting. The Municipal Council accepted these conditions in a letter dated 29 July 2008 (see the quote in 4.5).

6.2 The conditions are the following: (i) when transferred, the painting is in the same condition as it was when it was valued on 13 October 2006 and 27 March 2007; (ii) the Municipal Council relieves itself of the testamentary obligation of Dr A. Bredius concerning her share in the painting; (iii) the relationship with the Stichting Bredius Genootschap in which the work is loaned out for exhibitions is terminated; (iv) The Ministry of OCW declares that there are no objections to the painting being exported from the Netherlands to a country outside the European Union.

6.3 Although the Committee in principle is open to accept the conditions set by Von Saher and the Municipal Council, given their agreement, its binding advice only includes condition (ii). The testamentary obligation that initially rested on the work *Archangel Raphael* and that currently rests on the Municipal Council will be released before the option chosen by the parties – i.e. sale by the Municipal Council – can be implemented. This means that the Municipal Council will be immediately required to submit a request for the release from the obligation to the District Court of The Hague.

6.4 Condition (i) relates to the standard statutory requirement of conformity. The Committee assumes in its binding advice that the painting upon transfer will not have been deteriorated since the valuations were made. Condition (iii) was fulfilled in 2006 as a consequence of the termination of the arrangement concerning the loan of works for exhibitions by the Netherlands Institute for Cultural Heritage with the Municipal Council and the Stichting Bredius Genootschap respectively. Condition (iv) is beyond the scope of this advice. If so required, the parties are responsible for making further arrangements and contacting the government to that effect.

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<sup>66</sup> USD 913,263/1.55 = EUR 589,201.94.

<sup>67</sup> EUR 43,785 x 76% = EUR 33,276.60.

## 7. BINDING ADVICE

- a. Von Saher and the Municipal Council are the joint owners of the painting *The Marriage of Tobias and Sarah* by Jan Steen with a 76 percent : 24 percent share respectively.
- b. The following values are assumed: USD 3,805,263 for the entire painting, USD 2,892,000 for Von Saher's share and USD 913,263 for the Municipal Council's share. The exchange rate is EUR 1 = USD 1.55.
- c. The Municipal Council should immediately submit a request for the release from the obligation mentioned in 6.2 under (ii) to the District Court of The Hague.
- d. After release from the obligation, the Municipal Council is required to the transfer its share in the painting to Von Saher upon payment by Von Saher of EUR 622,478.54, which comprises the following sums: EUR 589,201.94 for the 24 percent share and a proportional (76 percent) contribution of EUR 33,276.60 towards the cost of restoration.

This binding advice was given on 6 October 2008 by I.C. van der Vlies (acting chair), J.Th.M. Bank, J.C.M. Leijten, P.J.N. van Os, E.J. van Straaten, H.M. Verrijn Stuart, and signed by the acting chair and the secretary. During the procedure, R. Herrmann retired as chair of the Committee for reasons unconnected with this case and was involved in this binding advice in an advisory capacity.

(I.C. van der Vlies, acting chair)

(E. Campfens, secretary)

## **7. Conclusion**

During its first three years (late 2001 to late 2004), the Restitutions Committee received 25 requests for advice. From the end of 2004 to the end of 2007, this number increased to 67. In addition to this increase in the number of cases, the Committee has had to deal increasingly with extensive and complex (art dealer) cases since 2007, which have sometimes raised unique procedural questions, in the case of different applicants submitting 'competing' claims to the same work of art, for example. Finally, since the end of 2006, the Committee has had to contend with a different procedure in binding recommendation cases. In conclusion, the workload has increased, both quantitatively and qualitatively.

At present, there are no indications to suggest that the flood of new claims will end. It appears that details regarding the provenance of the NK collection collected by the Origins Unknown Agency between 1998 and 2004 take considerable time to reach possible claimants. The Committee aims to continue investigating and assessing the 36 cases that were still pending at the end of the year under review, as well as any future cases, to the best of its ability.

## Appendices

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6. Lien Heyting, 'Particulier kan ook bij ons terecht. Dick Herrmann over de toekomst van de Restitutiecommissie' [Individuals are welcome too. Dick Herrmann on the future of the Restitutions Committee], in: *NRC Handelsblad*, Cultural Supplement, 5 September 2008 116

**Decree issued by the State Secretary for Education, Culture and Science, F. van der Ploeg, establishing a committee to advise the government on the restitution of items of cultural value of which the original owners involuntarily lost possession due to circumstances directly related to the Nazi regime and which are currently in the possession of the State of the Netherlands (Decree establishing the Advisory Committee on the Assessment of Restitution Applications)**

Reference  
**WJZ/2001/45374(8123)**

Zoetermeer  
16 November 2001

The State Secretary for Education, Culture and Science, F. van der Ploeg,

Acting in accordance with the views of the Council of Ministers;

Having regard to Article 15, third paragraph, of the 1995 Public Records Act;

Herewith decrees as follows:

#### **Article 1**

For the purposes of this Decree, the terms below shall be defined as follows:

- a. the Minister: the Minister for Education, Culture and Science;
- b. the Ministry: the Ministry for Education, Culture and Science;
- c. the Committee: the Committee as referred to in Article 2 of this Decree.

#### **Article 2**

1. There shall be a Committee whose task is to advise the Minister, at his request, on decisions to be taken concerning applications for the restitution of items of cultural value of which the original owners involuntarily lost possession due to circumstances directly related to the Nazi regime and which are currently in the possession of the State of the Netherlands.
2. A further task of the Committee shall be to issue an opinion, on the Minister's request, on disputes concerning the restitution of items of cultural value between the original owner who, due to circumstances directly related to the Nazi regime, involuntarily lost possession of such an item, or the owner's heirs, and the current possessor which is not the State of the Netherlands.
3. The Minister shall only submit a request for an opinion as referred to in the second paragraph to the Committee if and when the original owner or his heirs and the current possessor of the item in question have jointly asked the Minister to do so.
4. The Committee shall carry out its advisory role as referred to in the first paragraph in accordance with the relevant government policy.
5. The Committee shall carry out its advisory role as referred to in the second paragraph in accordance with the requirements of reasonableness and fairness.

#### **Article 3**

1. The Committee shall comprise no more than 7 members, including the chairman and the deputy chairman.
2. Both the chairman and the deputy chairman shall be qualified lawyers (*meester in de rechten*).

3. The Committee shall include at least one member whose expertise on matters concerning World War II constitutes a substantial contribution to the work of the Committee.
4. The Committee shall include at least one member whose expertise on matters concerning art history and museology constitutes a substantial contribution to the work of the Committee.
5. The Minister shall appoint the chairman, the deputy chairman and the other members for a period not exceeding three years. They shall not form part of the Ministry or work in any other capacity under the responsibility of the Minister.
6. The chairman, the deputy chairman and the other members may be reappointed once at most.

#### **Article 4**

1. Each request for advice shall be considered by a group of at least three Committee members, to be selected by the chairman, with the proviso that at least the chairman or the deputy chairman shall be involved in the consideration of the request.
2. The Committee may issue further regulations pertaining to the method to be adopted.

#### **Article 5**

1. The Minister shall provide the Committee with a Committee Secretariat.
2. The Secretariat shall be headed by the Committee Secretary, who shall be a qualified lawyer (*meester in de rechten*).
3. The Secretary shall be accountable only to the Committee for the work performed for the Committee.

#### **Article 6**

1. If required for the execution of its task, the Committee may, at a meeting, hear the person that has submitted a restitution application as referred to in Article 2, first paragraph and a Ministry representative or, as the case may be, the parties whose dispute, as referred to in Article 2, second paragraph, has been submitted to the Committee for advice.
2. If required for the execution of its task, the Committee may directly approach any third parties in order to obtain information, and may invite such third parties to a meeting so as to learn their views.
3. The Minister shall ensure that all documents that the Committee needs in order to execute its task and that are in the Ministry's files are made available to the Committee in time and in full.
4. Each and every officer of the Ministry shall comply with a summons or a request issued by the Committee.
5. The restrictions relevant to the public accessibility of records as referred to in Section 1, subsection c, under 1 and 2 of the 1995 Public Records Act that the Committee needs for the execution of its task and are filed in State Archives shall not be applicable to the Committee.

#### **Article 7**

1. Every year the Committee shall report to the Ministry of Education, Culture and Science on the current situation regarding the tasks referred to in Article 2.
2. The first report shall be submitted in January 2003.

#### **Article 8**

The members of the Committee shall receive a fee plus reimbursement for travel and subsistence expenses in accordance with the relevant government schemes.

**Article 9**

The Committee's records shall be transferred to the archives of the Ministry's Cultural Heritage Department after dissolution of the Committee or at such earlier time as may be dictated by circumstances.

**Article 10**

From the date that this Decree takes effect, the following persons shall be appointed for a period of three years:

- a. J.M. Polak of Ede, chairman
- b. B.J Asscher of Baarn, deputy chairman
- c. Prof. J. Leyten of Nijmegen
- d. E. van Straaten of Beekbergen
- e. Prof. J.Th.M. Bank of Amsterdam
- f. H.M. Verrijn-Stuart of Amsterdam

**Article 11**

This Decree shall come into effect on the second day after the date of the Government Gazette in which it is published.

**Article 12**

This Decree shall be cited as the Decree establishing the Advisory Committee on the Assessment of Restitution Applications.

This Decree and the associated explanatory notes will be published in the Government Gazette.

The State Secretary for Education, Culture and Science

[signed]

F. van der Ploeg

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**General**

The Ekkart Committee is one of the committees established in the Netherlands since 1997 to carry out research in the extensive field of post-World War II restitutions. The Committee supervises research into the origins of the 'NK collection', i.e. the collection of art objects that were recovered from Germany after World War II and have been held by the State of the Netherlands since then. Given the size of the NK collection, which comprises some 4000 objects, and the nature of the research, which involves tracing transactions that took place more than fifty years ago and of which, in many cases, very few documents have survived, the Ekkart Committee will not be able to finalise its research until the end of 2002.

In addition to supervising the research into the origins of collection items, the Committee is charged with issuing recommendations to the Minister of Education, Culture and Science on the government's restitution policy. The Committee submitted its interim recommendations to me on 26 April 2001. As stated in the accompanying letter, the Committee decided to draw up interim recommendations because in its view the urgency of policy adaptations is such, considering, among other things, the advanced age of some of the interested parties, that they should be implemented before the overall research project has been completed. In formulating its recommendations, the Committee aims to create scope for a more generous restitution policy. In its view, the strictly legal approach as laid down in the government's policy paper of 14 July 2000 is no longer acceptable.

I sent the Cabinet's response to these recommendations to the Speaker of the Lower House of Parliament on 29 June 2001, and a supplementary reaction of the government by letter of 16 November 2001. In its reaction to the Ekkart Committee recommendations, the government has not opted for a purely legal approach to the restitution issue, but rather for a more policy-oriented approach, also in the light of international developments in these matters, in which priority is given to moral rather than strictly legal arguments. This view was expressed, for example, in the outcome of the conference held in Washington in 1998 for a global discussion of World War II assets (known as the 'Washington Principles'). One of these principles is the establishment of "alternative dispute resolution mechanisms for resolving ownership issues." Countries like France and the United Kingdom have implemented this principle and have established committees charged with judging individual applications for restitution.

The establishment of an Advisory Committee in the Netherlands to consider individual applications for restitution is consistent both with the Ekkart Committee recommendations and with the international developments outlined above. The main reason for setting up an Advisory Committee was the need for the Ministry of Education, Culture and Science to decide on applications for restitution in as objective a manner as possible. Since the Minister of Education, Culture and Science, being the possessor/administrator of the NK collection, is directly concerned in the matter, the existence of an advisory committee will enhance the independence of the decision process. By letter of 7 June 2001 the parliamentary Education, Culture and Science Committee expressed its preference for an independent committee.

Based on its own experience, the Ekkart Committee currently expects that the Advisory Committee will be asked to consider 30 to 50 cases relating to objects currently held by the State. There are no indications as yet about the number of applications that might be submitted to the

## **Explanatory notes on each article**

### **Article 2**

The main task of the Committee is to advise the Minister of Education, Culture and Science, at his request, on individual applications for restitution of items that form part of the NK collection. In addition, the Minister may also ask for advice on restitution applications that relate to items in the state collection that do not form part of the NK collection but nevertheless came into the possession of the State due to circumstances directly related to the Nazi regime.

Following the example of similar committees abroad and at the express request of the Lower House of Parliament, the Minister may also refer to the Committee disputes between private individuals, provided that the parties involved have made a request to that effect and provided that the dispute concerns an object of which the original owner lost possession involuntarily due to circumstances directly related to the Nazi regime.

The Minister will ask the Committee to give an opinion if and when he receives an application for restitution that complies with the relevant framework conditions. The Minister himself will only directly deal with applications that evidently fall outside the Committee's remit, for example because they do not relate to the restitution of items of cultural value that were transferred within the context of World War II. It has been decided to present the applications to the Committee via the Minister so as to avoid overburdening the Committee with requests that fall outside its mandate.

The Committee's advisory framework corresponds with the relevant outlines of government policy; first and foremost, the general government policy on World War II assets as laid down in the letter issued by the government on 21 March 2000. In addition, the government has issued rules that more specifically concern the restitution of items of cultural value. These rules form part of the policy the government announced to the Lower House of Parliament in its policy paper of 14 July 2000. However, the Ekkart Committee recommendations and the government's response to them have led to major amendments to that policy. The government's letters continue to be effective and, together with the Ekkart Committee recommendations and the government's response to these recommendations, constitute the policy framework within which the Advisory Committee is to operate. It goes without saying that any further recommendations from the Ekkart Committee in the future may cause the government to make adaptations to this policy framework.

The Advisory Committee will judge any application for restitution in the light of this policy framework. It may then conclude that:

- the application, while being covered by the regular legal rules, falls beyond the Advisory Committee's mandate. If so, the Advisory Committee will incorporate this in its opinion to the Minister.
- the application falls within the Advisory Committee's mandate and therefore qualifies for an opinion.

The government also wishes to make available a facility for the settlement of disputes *between* private individuals concerning an object of which the original owner lost possession involuntarily due to circumstances directly related to the Nazi regime. In its assessment of such applications from private individuals the Advisory Committee will be guided by the principles of reasonableness and fairness.

The intervention by the Minister – since it is the Minister who refers disputes between private individuals to the Advisory Committee – is the result of pragmatic considerations. As it is the Minister who is responsible for ensuring that the Advisory Committee receives the support it needs, the Minister must be aware of the number of opinions the Advisory Committee is expected to issue.

### **Articles 3 and 4**

The decisions about the Advisory Committee's size, composition and working method were taken with due regard to the need to balance the requirement of expertise against the requirement of efficiency in the formulation of Committee opinions.

The Advisory Committee is composed in such a way that at least the legal, historical and art history expertise required for the assessment of a restitution application is represented. The requirement that the chairman and deputy chairman be legal experts stems from the fact that in spite of the choice for a moral policy-oriented approach, legal expertise obviously remains indispensable in the assessment of the laws and regulations involved in applications for

restitution. The availability of legal expertise is ensured in all cases, given that no opinion is formulated without the involvement of either the chairman or the deputy chairman.

The intention is for the Advisory Committee to comprise seven members from the time of its inception. It is up to the chairman to decide which particular members, in a specific case, should contribute to the formulation of an opinion. The involvement of a member in a particular application for restitution may influence this decision. The number of members to be involved in the opinion on a particular application will depend on the complexity of the case. As a minimum requirement, each application must be considered by the chairman or the deputy chairman and at least two other committee members.

### **Article 5**

The Minister will provide a Committee Secretariat that is able to give the advisory committee the required level of support. The Committee Secretary must be a qualified lawyer (*meester in de rechten*). In addition, the Secretariat should be able to offer research capacity as well as the required level of administrative and organisational support. The size of the Secretariat will be variable and geared to the Advisory Committee's workload.

### **Article 6**

It is of the utmost importance that the Advisory Committee has access to all the relevant information in drawing up its recommendations: both information from claimants and information provided by the Ministry or third parties.

I have lifted the restrictions on the public accessibility of records filed in State Archives by virtue of Article 15, fifth paragraph of the 1995 Public Archives Act so as to enable the Advisory Committee to gather all the information it needs in the shortest possible time. This obviously only concerns those records that are relevant to the execution of the Advisory Committee's task. The fact that the Committee is allowed to inspect restricted documents does not automatically open up those documents to others as well, given that the members of the Advisory Committee themselves are bound to observe secrecy under Article 2:5 of the General Administrative Law Act regarding information that comes to their knowledge and the confidential nature of which is evident.

### **Article 10**

By the time this Decree establishing the Advisory Committee was signed, the six persons referred to in this Article had already expressed their willingness to become members of the committee. This is why I have provided for their appointment in this Decree. One more member will be appointed (separately) as soon as possible.

The State Secretary for Education, Culture and Science,

[signed]

(F. van der Ploeg)

## Amendment to the decree establishing the Advisory Committee on the Assessment of Restitution Applications for Items of Cultural Value and the Second World War

*Decision of the Minister for Education, Culture and Science of 8 November 2007, no. WJZ/2007/41600 (8225) to amend the Decree establishing the Advisory Committee on the Assessment of Restitution Applications for Items of Cultural Value and the Second World War in connection with the reappointment of the members*

The Minister for Education, Culture and Science,

Decision:

### *Article I*

The Decree establishing the Advisory Committee on the Assessment of Restitution Applications for Items of Cultural Value and the Second World War is amended as follows:

A

In article 1, paragraphs a and b, the word ‘Sciences’ is replaced in both cases by: Science.

B

In article 3, paragraph 6, ‘once at most’ is deleted.

C

In article 7, paragraph 1, ‘Minister for Education, Culture and Sciences’ is replaced by ‘Minister’.

### *Article II*

The decision of 21 January 2002, providing for the reimbursement of the members of the Advisory Committee on the Assessment of Restitution Applications for Items of Cultural Value and the Second World War (Government Gazette 2002, 16) is repealed.

### *Article III*

This decision comes into force as from the second day after the date of the Government Gazette in which it is published.

This decision, plus explanation, will be published in the Government Gazette.

*The Minister for Education, Culture and Science,  
R.H.A. Plasterk.*

### **Explanation:**

#### *Article I*

The three-year appointment term of the members of the Restitutions Committee reappointed in 2004 ended on 23 December 2007.

In 2001, the expectation was that the Advisory Committee, that is the Restitutions Committee, would have some 30 to 50 cases to handle, for which they would need 3-5 years. Since this decision was drafted, the Minister has, over the years, already submitted 92 requests for advice, 44 of which are still pending. Moreover, it is possible that more requests for advice will follow. Over the next period, the Restitutions Committee will be giving priority to those applications for restitution submitted before 4 April 2007, which was the final date on which claims could be submitted under the extended restitution policy. Claims received after that date fall under the normal restitution policy.

In the light of optimum progress and continuity of recommendations, it is considered appropriate as from 23 December 2007 to hold on to the reappointed members of the Committee. Retaining knowledge is of great importance. This is why the provision that the members of the Restitutions Committee may only be

reappointed once ceases to apply pursuant to this decision.

#### *Article II*

This decision no longer serves a purpose because the Decision on fixed reimbursement of the Restitutions Committee was adopted on 25 August 2006. Since the decision in question was not repealed, this is effected in this amending decision.

*The Minister for Education, Culture and Science,  
R.H.A. Plasterk.*

Ministry of Education, Culture and Science (OCW)

## **Appointment of member/chair and reappointment of members of Advisory Committee on the Assessment of Restitution Applications for Items of Cultural Value and the Second World War**

The Minister of Education, Culture and Science, having regard to article 3, paragraphs five and six, of the Decree establishing the Advisory Committee on the Assessment of Restitution Applications for Items of Cultural Value and the Second World War:

Decree:

### *Article 1*

To be appointed as member and also chair of the Advisory Committee on the Assessment of Restitution Applications for Items of Cultural Value and the Second World War as of 23 December 2007, for a period of three years until 23 December 2010:

Mr R. Herrmann, *mr.*

### *Article 2*

To be reappointed as member of the Advisory Committee on the Assessment of Restitution Applications for Items of Cultural Value and the Second World War as of 23 December 2007, for a period of three years until 23 December 2010:

Ms I.C. van der Vlies, Prof., *mr.*, also deputy chair;  
Mr J.Th.M. Bank, Prof.dr.;  
Mr J.C.M. Leijten, Prof. *mr.*;  
Mr P.J.N. van Os, *mr.*;  
Mr E.J. van Straaten, Dr.;  
Ms H.M. Verrijn Stuart, *mr.*

This decree comes into force on the second day after the date of the Government Gazette in which it is published.

*The Minister for Education, Culture and Science,  
R.H.A. Plasterk.*

Please note this is an unauthorized translation of the original Dutch text '*Benoeming voorzitter Adviescommissie restitutieverzoeken cultuurgooderen en Tweede Wereldoorlog*'

**Appointment of chairman of the Advisory Committee on the Assessment of Restitution Applications for Items of Cultural Value and the Second World War**

*30 September 2008*  
*No. DCE/59319*

The Minister for Education, Culture and Science,

Having regard to Article 3, paragraphs 5 and 6, of the Decree Establishing the Advisory Committee on the Assessment of Restitution Applications;

decides:

**Article 1**

Accompanied by an expression of thanks for services rendered, Mr R. Hermann is, at his own request, discharged from his position as member and chairman of the Advisory Committee on the Assessment of Restitution Applications for Items of Cultural Value and the Second World War as of 1 October 2008.

**Article 2**

Mr W.J.M. Davids, of The Hague, has been appointed member and chairman of the Advisory Committee on the Assessment of Restitution Applications for Items of Cultural Value and the Second World War, from 1 January 2009 until 23 December 2010.

A copy of this decision, notification of which will appear in the Government Gazette, will be sent to all those concerned.

*The Minister for Education, Culture and Science,*  
*R.H.A. Plasterk.*

**Published in the Government Gazette 26 January 2009, no. 1147**

**ADVIESCOMMISSIE RESTITUTIEVERZOEKEN  
CULTUURGOEDEREN EN TWEEDE WERELDOORLOG**

Regulations on binding recommendation 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 (hereafter: the Decree);
- b. the Minister: the Minister for Education, Culture and Science;
- c. the Ministry: the Ministry of Education, Culture and Science;
- d. the applicant: the person applying for restitution of items of cultural value as referred to in Article 2, paragraph 2 of the Decree;
- e. the owner: the current owner, other than the State of the Netherlands;
- f. the work: the items of cultural value that are the subject matter of the dispute.

**Task**

Article 2

1. At the request of the Minister, the Committee has the task of providing advice about disputes concerning the return of items of cultural value as referred to in Article 1 under d between the party applying for restitution of items of cultural value and the current owner which is not the State of the Netherlands.
2. The Committee does this by making a binding recommendation within the meaning of Section 7:900 of the Netherlands Civil Code or by promoting a settlement between the parties.

**Authority**

Article 3

The Committee is authorised to deal with a dispute referred to it by the Minister if and in so far as the parties have agreed to submit to the Committee's binding recommendation and both parties sign the agreement as referred to in Article 6, paragraph 2, which was sent to them by the Committee.

Article 4

The Committee makes a recommendation in accordance with the requirements of reasonableness and fairness, and may, in any event, take the following into consideration:

- a. the government's line of policy concerning the restitution of stolen works of art in so far as they apply by analogy;
- b. the circumstances in which possession of the work was lost;
- c. the extent to which the applicant has endeavoured to trace the work;
- d. the circumstances in which the owner acquired the work and the inquiries the owner made when acquiring it;
- e. the significance of the work for the applicant;
- f. the significance of the work for the owner;
- g. the significance for the public art collection.

**ADVIESCOMMISSIE RESTITUTIEVERZOEKEN  
CULTUURGOEDEREN EN TWEDE WERELDOORLOG**

**Admissibility**

Article 5

The Committee can deny a party's application if:

- a. it concerns a dispute regarding which one of the parties has already instituted proceedings before a court,
- b. this is a dispute on the substance of which the court has already given a decision, or
- c. the applicant has previously explicitly relinquished his or her rights to the work at issue.

**The hearing of disputes**

Article 6

1. Both parties request the Minister to submit their dispute to the Committee for a binding recommendation in accordance with Article 2, paragraph 3 of the Decree.
2. After the Minister has presented the dispute to the Committee, it will not hear the dispute unless the parties have signed an agreement sent to them by the Committee, stating that they accept the recommendation at issue as binding.
3. If the parties, after a request thereto, have not met the stipulation referred to in paragraph 2 within four weeks, the dispute will not be heard.
4. The Committee may extend the said term of four weeks.

Article 7

1. The Committee notifies both parties in writing that it has received the request for advice from the Minister.
2. The applicant is the first to be given the opportunity to provide an explanation concerning his or her application within six weeks.
3. After receipt of the explanation referred to in paragraph 2, the owner is given the opportunity to set out his or her viewpoint within six weeks.
4. After receipt of the owner's viewpoint, first the applicant and then the owner are given the opportunity to lodge a reply and a rejoinder, subject to a reply deadline of six weeks.
5. Parties comply with the Committee's request for further documents and information, subject to a reply deadline to be determined by the Committee. The parties themselves are responsible for any investigations required for this purpose.
6. The Committee may extend the reply deadline.

Article 8

1. If the Committee deems it necessary or if both parties request it, the parties may be summoned to be heard in person. The Committee 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. Names and addresses of such persons are to be given to the Committee at the latest ten days before the hearing.
3. Parties may send documents to the Committee until ten days before the hearing.

Article 9

1. If it deems such necessary, the Committee may make enquiries itself, for instance by hearing witnesses or experts, conducting an investigation or having an investigation conducted by one or more experts it designates.
2. The Committee informs the parties of this. They may be present when witnesses or experts are heard.
3. The Committee provides the parties with a copy of the investigation, to which they may respond in writing within three weeks. The Committee may extend the term.

Article 10

Each party immediately sends the other party copies of all documents submitted to the Committee during this procedure.

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**Article 11**

If the parties reach a settlement during the verbal hearing, the Committee may lay down the contents thereof in the form of a binding recommendation.

**Recommendation**

**Article 12**

The Committee may recommend that:

- a. the work be returned to the applicant;
- b. the work be returned on payment by the applicant to the owner of a sum of money to be determined;
- c. the work be returned to the applicant subject to further provisions;
- d. the owner pay the applicant a sum of money to be determined, while the item remains in the owner's possession;
- e. the work be exhibited, stating its provenance and the part played by the (heirs of the) original owner;
- f. the application for restitution be denied, subject to further provisions, where applicable.

**Article 13**

1. The chairman or vice-chairman and the secretary of the Committee sign the recommendation and send it to the parties, with a copy to the Minister.
2. The chairman of the Committee may correct information or obvious calculation or writing errors in the recommendation, 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 recommendation was sent.
3. The parties are informed in writing of any changes or corrections.

**Article 14**

Any costs with regard to handling of the dispute and the preparation of the recommendation are for the account of the parties themselves, unless, in certain circumstances, the Committee decides otherwise.

**Confidentiality, objection and exemption**

**Article 15**

The members of the Committee are bound to confidentiality on all information relating to the parties of which they have become cognisant during the handling of the dispute.

**Article 16**

1. One or both parties may object to a member of the Committee on the basis of facts or circumstances that might make the forming of an impartial opinion difficult. Objections may be lodged within one week after receiving the confirmation of receipt of the application for recommendation.
2. The other members of the Committee decide if the grounds for objection are valid.
3. A member of the Committee may claim exemption in respect of a case on the basis of facts or circumstances as referred to in paragraph 1. The member is obliged to do so if the other members of the Committee are of the opinion that the said fact and circumstances do indeed exist in his case.
4. The parties are informed of the decision as referred to in the second paragraph.

**Liability**

**Article 17**

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

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**Final provisions**

Article 18

The Committee's recommendation may only be reversed if it has been submitted to the ordinary court for review within two months after the recommendation was sent to the parties. The recommendation becomes irreversible if the decision is not submitted to the ordinary court within the said term.

Article 19

The Committee decides all cases not provided for in these regulations in accordance with the requirements of reasonableness and fairness.

Article 20

These regulations are sent to the parties as soon as possible.

Article 21

These regulations were adopted at the meeting of the Committee held on 3 December 2007 and will be published on the Committee's website.

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# INDIVIDUALS ARE WELCOME TOO

## Dick Herrmann on the future of the Restitutions Committee

The Restitutions Committee is about to make a decision in some difficult ownership matters concerning Nazi-looted art. Dick Herrmann, the new chairman, anticipates a lot of work, especially if museums also start reporting looted art. ‘Exerting moral pressure on private individuals who obtained a painting in good faith is an objectionable practice.’



Dick Herrmann Photo: private collection

As though nothing is wrong, the painting *The marriage of Tobias and Sara* (1668) by Jan Steen still hangs in the Bredius Museum in The Hague, where it has been one of the showpieces since 1996. That was the year in which the painting, which had at one time been cut into two parts, was restored to its original state. The two parts of the painting had been apart for a long time and had been sold separately as independent paintings. The right-hand part had been bought by collector Abraham Bredius in 1907, while the left-hand part ended up in the collection of art dealer Jacques Goudstikker in 1931. During the war, this part was sold to leading Nazi Hermann Göring. Later on, the painting was returned to the Netherlands, where it ended up in the State collection. Since its reunion with the right-hand part of the painting, which is owned by the municipality of The Hague, the left-hand part was

on loan to the Bredius Museum – until 2006. At that time, the Netherlands returned 202 paintings to the Goudstikker heirs and this included the left-hand part of *The marriage of Tobias and Sara*. Since then, the reunited painting is owned in part by the Goudstikker heirs and by the municipality of The Hague.



The marriage of Tobias and Sara (1668) by Jan Steen

The fate of the painting is to be decided in the autumn of this year: the Restitutions Committee will determine whether and under what conditions the work can remain in the Bredius Museum.

This Jan Steen case is one of the many difficult matters on which the Restitutions Committee still needs to pronounce judgement. This Committee, which consists of seven legal experts and art historians, advises the government about returning works of art that were obtained by the State after the Second World War. Often, this concerns art that had been taken from Jews by Nazis by means of confiscation or forced sale. At the end of the 1990s, it became clear that the State of the Netherlands had in many cases neglected to return the works of art to their rightful owners or their heirs. This oversight is now being compensated for in a ‘generous’ returns policy for which the Ekkart committee drew up a list of *Recommendations* eight years ago. The Restitutions Committee uses these Recommendations as a basis for all its recommendations.

When the Restitutions Committee started work in January of 2002, it was anticipated that they would have to give advice on some 30 to 50 claims in all. The entire job would be finished in three years, or five years at the most, it was thought. Meanwhile,

the Committee has been in existence for almost seven years and has to date received 94 requests for advice (see box). In 2007, the Ministry of Education, Culture and Science decided to extend the Committee's mandate until the end of 2010, though it is questionable whether all the requests for restitution of Nazi-looted art will have been dealt with by then.

At the beginning of this year, legal expert Dick Herrmann (65) was appointed as the new chairman to the Restitutions Committee. His previous postings included that of vice-president to the Supreme Court of the Netherlands. When asked what would constitute the final date for ending restitution of Nazi-looted art, even he was unable to give a clear-cut answer.

Herrmann: 'Originally, the closing date for the submission of claims was 4 April 2007. But that date gave rise to protests so that later on, the date was retracted. All claims submitted after 4 April 2007 are now in the hands of the Ministry. Those claims have not yet been submitted to the Restitutions Committee, because the government must first decide whether they are eligible for consideration under the new, more generous, restitutions policy. It would seem that this is the way things are headed, but the Ministry still has to take a formal decision. That decision will probably be taken in September. I expect that those claims that were received after 4 April 2007 – there are about ten of them – will then be submitted to us. The Ministry also wishes to set a new deadline for the submission of claims, because that possibility must come to an end at some point.'

Herrmann thinks that by 2011 the Restitutions Committee will have processed all claims that have been submitted to date. But that does not mean that the Committee can then be disbanded. Not only does it advise the government about the restitution of state-owned looted art, the Committee can also rule on claims to works of art owned by local governments, museums, private persons and the like, but only if both parties are willing to consider the Committee's recommendation as binding. This is the case for Jan Steen's painting in the Bredius Museum. The Goudstikker heirs and the Municipality of The Hague have submitted the question of what should be done with this painting to the Committee and have

promised to accept their recommendation. This is to be the third time the Committee will issue a binding recommendation. Earlier this year, they ruled on the claim to two paintings by Jan Toorop: *The Thames at London Bridge* in the Boijmans van Beuningen Museum in Rotterdam and *A Prayer before Supper* in the Zeeuws Museum. But these three rulings will not be their last ones.

At the instigation of the Ministry of Education, Culture and Science, the Dutch museums will, in the autumn months, be starting an extensive study of the provenance of all acquisitions from 1933 until the present day (excluding those acquisitions between 1940 and 1948 that have already been investigated). For each object it must be determined whether it was Jewish-owned between 1933 and 1945. This investigation, which will be performed under the supervision of the Dutch Museum Association (NVM), will take at least four years to complete. It is highly likely that objects with a dubious 'war history' will be found, leading to new claims.

NVM director Siebe Weide hopes that the Restitutions Committee will remain in existence long enough to be able to deal with those claims as well: 'The Committee has developed a good method for solving delicate problems, so I hope that their mandate will be extended again after 2010.'

Dick Herrmann: 'I cannot make any promises. Perhaps the Committee will continue in a reduced form, or perhaps the Minister will say: I will do without a committee. I have no idea.'

During the first four years of its existence, the Restitutions Committee could count on general acclaim and there was little criticism of their recommendations. But that changed after they had given a positive restitution recommendation in the matter of the Goudstikker collection in 2006. The Committee is aware of this. Their 2007 annual report mentions 'a certain change in public opinion' as well as 'questions' that had arisen in the media about the 'legitimacy of restitution of looted items of cultural value.'

Dick Herrmann: 'When I began as chairman, public opinion was starting to change. The Goudstikker case has certainly influenced it. But even there, it was determined that this case concerned the involuntary loss of property in circumstances that were directly

related to the Nazi regime. I want to make that very clear, and the government does not deny it either. However, the government felt it was a matter that had already been settled as there had been an earlier legal ruling. We had a difference of opinion about that. Eventually, the government decided to return the collection to the family on moral grounds. I was not personally involved in the Goudstikker recommendation, but I did see that it provoked a lot of misunderstandings.'

This year, the two binding recommendations given by the Restitutions Committee regarding the Jan Toorop painting were criticised. In both cases, the paintings had to be relinquished to the Eberstadt family in New York, in return for restitution of the sales price. At the time, this newspaper wrote in an editorial especially with regard to *A Prayer before Supper* which the Zeeuws Museum had acquired in good faith in 1981 that with their ruling, the Committee had created 'radical legal precedents'. The recommendation would implicate that even a buyer in good faith could no longer be sure of his property. 'In this way', it said in the editorial, 'a civil law principle that is valid worldwide is abandoned in favour of restitution to the heirs of Jewish victims of Nazism.'

Dick Herrmann feels this criticism is unwarranted. He says, with some irritation: 'It was a difficult decision to make, and the emotional aspects of the family also played a role, as did the advice that the Dutch Museum Association had given earlier about this Toorop painting, which already pointed in a similar direction.' The Museum Association did indeed feel that the painting should not be returned, but a reason for this was that the Eberstadt family had, at the time, not yet offered to repay the purchase price with indexation. That offer was made later on, and it made a huge difference. In our recommendation, we gave an extensive motivation why good faith was not enough in this specific case to keep the painting here, for we are aware that considerable significance should be accorded to the fact that someone has purchased a work of art in good faith.'

To date, no private art owners have requested advice from the Restitutions Committee, although even they are confronted by claims to Nazi-looted art these days. Herrmann doubts whether they will feel deterred by the

recommendation given about the Toorop paintings: 'If those cases against Boijmans and the Zeeuws Museum give the impression that private owners who acted in good faith need to proceed with caution because they could suddenly be subjected to a claim, and that the Committee will then decide they need to give up their property, things have been grossly misunderstood.' If a private person owns a work of art that proves to have been stolen from Jews, it is possible they might start to feel their conscience pricking. They must decide for themselves whether to bring the matter to our attention, together with the claimant or alone – they are not required by law to do so. There is some commotion about the somewhat aggressive way in which private persons are being approached by claimants of looted art and their lawyers. I would like to state that I find the exertion of moral pressure upon private persons who have obtained a painting in good faith an objectionable and reprehensible practice. That does not befit our legal culture. The Restitutions Committee was set up because the Dutch State wished to make good what went wrong after the war concerning restitution of looted art. The State has a completely different position in this matter than Mr X or Y who unsuspectingly bought a painting in 1983. Yes, that also applies to the paintings from the Goudstikker collection that ended up in the hands of private persons. Some claimants are trying to draw a line from the advice we gave the government to private cases. That is not correct, there is no such line. But the fact that it does happen is not our responsibility.'

Herrmann thinks that private conflicts about Nazi-looted art have not yet been submitted to the Committee because 'regular private individuals are unaware of the possibility to do so. Also, it can be an honourable stance to decide not to submit such a case to us; there may be good reasons to do so, this is their own choice.'

The Restitutions Committee will not only be in the news in connection with their ruling concerning the Jan Steen painting from the Bredius Museum. There is another controversial case in which the Committee is due to give their judgement soon: the claim of the Katz heirs to 227 paintings in the State collection. This claim was submitted shortly before 4 April 2007 by the American lawyer of the four very senior children of Jewish art dealer Nathan Katz. A large part of the

paintings claimed were sold to the Germans during the war, including sales to Hitler (59 paintings), Göring (15) and art dealer Alois Miedl (91). With regard to the recommendation, a lot will probably hinge on the question of whether the Committee considers those sales by Katz to have been voluntary or forced.

In another claim, about which the Restitutions Committee gave a recommendation in 2005, paintings were also sold during the war to Alois Miedl by a Jewish art dealer. The Committee stated: ‘Buyer was the art dealership of Alois Miedl, a German citizen residing in the Netherlands with a shady reputation on account of his art purchases for Nazi leaders. Because of these and other circumstances, the Committee does not rule out that the sales were forcibly arranged and therefore our recommendation is that restitution be made.’

Does this recommendation constitute a precedent for the ruling in the Katz claim? Will the Netherlands again have to relinquish a large number of paintings? Herrmann: ‘I cannot say anything about the Katz case, as we are still researching it. Also, in each case it is dependent upon the circumstances whether sales to the Nazi’s were forced or not. The evidence for that is sometimes difficult to come by. Circumstances that seem similar can still differ on crucial points. It is not for nothing that the Committee often deliberates these matters at length.’

### **91 claims to Nazi-looted art**

Since January 202, the Restitutions Committee has received a total of 91 claims to Nazi-looted art currently owned by the State and issued recommendations regarding 61 of them, in which 386 objects were awarded to the claimants (202 of which to the Goudstikker heirs). Claims to 238 objects were rejected.

The Restitutions Committee not only processed claims to works of art in the Netherlands Art Property Collection owned by the State (the collection which – at present – consists of 3,700 works of art that were recovered from Germany after the war and which became State property). Two recommendations have been given about claims to art not owned by the State: claims to a painting by Jan Toorop in the Zeeuws Museum and one in the Museum Boijmans van Beuningen. More claims to works of art in museums are expected over the next 5 years.



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