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Mrs. Jet Bussemaker
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OPEN LETTER

INHABER

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zugelassen bei der RAK Berlin, Deutschland
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Unser Zeichen:

Winterthur, 9.7.2015

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),

Case number: RC 3.131, 25 April 2013

Court verdicts of December 10, 2014 and January 14 2015

Your reference: 540559

Your Excellency,

My clients protest against the procedure and decision(s) of the Restitution Committee that was subject to our correspondence in August 2013. In the mean time we took the outcome of the binding advice to court.

Concerning the painting 'The Madonna with the Wild Roses' attributed formerly to Jan van Scorel the Court of Utrecht nullified the decision of the Restitution Committee with its decision of January 14, 2015. The courts nullification is based on the principles of equality and equality of arms **not** maintained by the Restitution Committee in the procedure. Thus the court found the Restitution Committee in its procedures favouring the interest of the public art collection over the validity of the claim of the claimants

Apparently this decision seems to bring my clients back to square one, but for the fact that the prejudice of the Restitution Committee is now openly established. Before the court's ruling you arbitrarily suggested the freedom of my claimants to seek other forms of dispute resolution outside the judicial way, other than the Restitution Committee. However the Restitution Committee is installed for this purpose by the State of the Netherlands, on whose behalf you are addressing me. Clearly this suggestion is strange coming from the Minister in charge. Like the binding advice procedure at the Restitution Committee, the two parties need to consent to an alternative dispute resolution (ADR) like arbitration, and to its outcome.

Taking your suggestion to seek other forms of dispute resolution, I contacted the Centraal Museums director Mr. Edwin Jacobs. Mr. Jacobs however rejected any alternative dispute resolution and suggested to apply at the *same* Restitution committee for a new binding advice. The legal advisor to the museum affirmed that they do not have any reason to question the procedures of Restitution Committee.

My second attempt to find a way to an disinterested ruling was through the Parliament. The party D'66 sent you a letter to ask you to establish an adhoc Restitution Committee selecting a new group of members, other than the current members who handled this very case.

Instead of considering the request, you handed the request to the director of the Restitution Committee Mr. Willibrord Davids and asked for his opinion. Quite predictable his answer was that this was by no means necessary; the committee as such is quite capable of handling the same claim by a binding advice procedure again. Accordingly you informed the Parliament.

Seeking the advice of the director of the Restitution Committee in such a sensitive matter ignores the fact that the decision in a binding advice procedure was overruled by court, which is unprecedented. Further the required independence between the administration and the Restitution Committee which was one of the main reasons to install the Restitution Committee was violated.

I am seeking redress for my clients and so far you are leaving them dangling in mid-air. None of the procedures are following the Washington principles. The court explicitly declared that the Restitution Committee is not even bound to the Washington Principles but only to the given regulations of the degree establishing it - what shows its importance and the necessity to revise and improve these regulations.

Even though the Committee concluded Mr. Semmel's sale at the time was designated as involuntarily, the procedures and rules of the binding advice procedure allows the Restitution Committee to let my clients off without any compensation. Basis of this "weighting" was the importance of a painting for the collection of the museum (a given fact in most cases) that could not be outweighed by a family's interest, which has not seen this painting for more than 70 years - what is also in the tragic nature of the subject. It seems very clear, that a museum is oblige to keep his collection, and will not give away artworks very easily without exchange and payment. The significance for an artwork should be defined by criteria which should be produced after consulting experts and discuss the implications in a transparent discourse. Despite the court's ruling you still ignore the fact that the Restitution Committee decision was structural partial; it favoured *in its procedure and criteria* the present owner, though in a second attempt you can assure that the Restitution Committee, after having been overruled in court, will handle the case different?

I implore you to take the necessary steps to provide an ad-hoc committee separate from the current Restitution Committee to re-advice in this case and to ensure a speedy and fair solution for my clients.

Yours sincerely,

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.