

Ministry for Education, Culture
and Science

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cultural goods

During the Second World War, cultural goods of mostly Jewish owners were looted on a large scale in Europe. This looting was part of the Nazi regime's deprivation of the rights, humanity and often the lives of people from persecuted population groups. The restitution policy offers original owners and their heirs the opportunity to recover cultural goods that they involuntarily lost due to circumstances related to the Nazi regime. Since 2001, applications for restitution can be submitted to the Restitutions Committee. It is essential that these applications are handled carefully and fairly, because restitution is more than just the return of an item of cultural value. It is the recognition of the injustice done to the original owners and a contribution to the redress of this injustice.

On 17 December 2019, I requested the Council for Culture to establish a committee to evaluate the restitution policy and to advise me on possible improvements to the policy, in line with my predecessor in office's pledge to the House in 2016.^[1] I asked the Council to include various aspects in the evaluation, including the accessibility and awareness of the restitution policy, with an eye to the suffering of the victims and the dialogue with their heirs. In addition, I consider it important to link Dutch restitution policy to the international guideline in this area, the Washington Conference Principles on Nazi-Confiscated Art (hereafter referred to as the Washington Principles), and developments in European countries with similar policies.

On 7 December 2020, I received the advisory report *Striving for Justice* from the Council for Culture and the Second World War Restitution Policy Evaluation Committee, chaired by Mr Jacob Kohnstamm (Kohnstamm Committee).^[2] In this report, the Kohnstamm Committee argues, on the basis of an extensive analysis, for a reassessment and intensification of the restitution policy. To this end, the Committee's main recommendations were as follows:

- Additional research into the provenance of possible looted art
- Active communication about the restitution policy,
- A transparent working method that takes into account the interests and feelings of applicants,
- A clear and revised assessment framework.

I am very grateful to the Council and the Committee for their advice.

In this letter, I will address the Committee's advice to amend the assessment framework and the working method for applications for restitution. These components have priority for me, because clarity in this regard is important for applicants. In the meantime, I am considering how the recommendations regarding additional provenance research and active communication can be implemented with due speed. I consider this important, because research into the provenance of possible looted art forms the basis of restitution policy. I will respond to these recommendations in a separate letter before the summer.

Before I respond to the recommendations of the Kohnstamm Committee, I think it is important to consider the basic principles of the policy (I) and the current assessment framework (II). After that I will discuss the advice of the Kohnstamm Committee on the assessment framework (III) and the new assessment framework (IV). Next, I will discuss the establishment and application of the assessment framework (V). Finally, I will explain the working method of the Restitutions Committee (VI).

I. Principles of the restitution policy

The current restitution policy originated in the 1990s, when post-war restoration of rights received renewed national and international attention. The studies that the government commissioned from 1997 onwards by committees in various fields showed that the post-war restoration of rights had been formalistic, bureaucratic and cold. In its letter to the Lower House of Parliament of 21 March 2000, the government acknowledged this and stated that conclusions should be drawn from it. As a result, it was decided at the time that applications for the restitution of items of cultural value from entitled parties (or heirs of entitled parties) would still be processed.^[3]

To implement this decision, a committee chaired by Professor R.E.O. Ekkart supervised research from 1997 to 2004 into the origins of the so-called NK collection (objects recovered after World War II that the State had taken into custody with a view to restitution) and made recommendations on how to deal with applications for restitution. In 2001, this led to an expanded restitution policy, which is based on the following principles:

- The objective of the restitution policy is to contribute to the reparation of the unprecedented injustice suffered by the victims of the Nazi regime through the restitution of looted items of cultural value to (the heirs of) the original owners, in so far as this has not already taken place in the years immediately following the war. In the case of new applications for restitution, the government does not invoke the statute of limitations.

- The Minister seeks the advice of an independent committee on applications for restitution: the Advisory Committee on the Assessment of Restitution Applications for Items of Cultural Value and the Second World War (hereinafter 'the Restitutions Committee').
- The restitution policy is low-threshold. Everyone can submit an application without having to do any research beforehand. No costs are incurred by the applicant for the procedure or the provenance investigation.

II. The current assessment framework

The recommendations of the Ekkart Committee form the basis of the assessment framework for restitution applications. It sets out the criteria for determining involuntary loss of possession by population groups persecuted during the Nazi regime. A distinction is made between private individuals and art dealers.

The Restitutions Committee also handles applications for the restitution of items of cultural value that are in the possession of someone other than the State. The potential claimant and the current possessor submit a joint application for this purpose. These applications are judged according to the standards of reasonableness and fairness. The Restitutions Committee has the latitude to weigh up the interests of the various parties and may also recommend solutions other than restitution.

On the advice of the Dutch Council of Culture, it was announced in 2012 that the assessment framework for the NK collection and other works owned by the State would be amended. The recommendations of the Ekkart Committee and the above principles still form the basis of the restitution policy. However, the assessment framework for these cases was aligned with the framework for works owned by parties other than the State. Therefore, since 2012 (other State-owned collection) and 2015 (NK collection), all applications are assessed within the framework of the Washington Principles according to standards of reasonableness and fairness. This means that, at present, a balance of different interests and elements is possible when assessing all requests. These include

- The circumstances under which the possession of the work was lost;
- The extent to which the applicant has made an effort to retrieve the work;
- The circumstances of the acquisition by the possessor and the investigation carried out by him prior to acquisition of the work;
- The importance of the work to the applicant;
- The importance of the work for the possessor;
- The importance of the public art heritage.

I note that the Restitutions Committee has always given considerable weight to the provenance of the NK collection, as was also indicated in the policy letter from the State Secretary of Education, Culture and Science dated 22 June 2012.^[4] For that reason, in practice the Restitutions Committee has never weighed up the interests involved in applications for the restitution of items of cultural value from the NK collection, but has

advised restitution once involuntary loss of possession and original ownership had been established.

III. Advice of the Kohnstamm Committee on the Assessment Framework

The Kohnstamm Committee has assessed the restitution policy in accordance with my request for advice in relation to the Washington Principles. The committee concluded that the current assessment framework is in line with these principles and that the expanded restitution policy, based on the recommendations of the Ekkart committee, should still form the basis of current restitution policy. Nevertheless, the Kohnstamm Committee mentioned several points that it felt should be amended.

a. Balancing interests

Central to restitution policy is the pursuit of restoration of rights. The Kohnstamm Committee stated that weighing up the interests of the applicant for the work, those of the owner and those of the public art collection would prejudice the pursuit of restoration of rights. According to the Committee, the extent to which the applicant has made an effort to retrieve the work should no longer have any place in the assessment of whether restoration of rights should take place. I share the Committee's opinion that weighing the aforementioned elements should not play a role in answering the question of whether restoration of rights should take place.

b. Dealing with the manner of acquisition by the current owner

The Kohnstamm Committee recommends that current owners should be able to invoke acquisition in good faith. The Committee also recommended that the State and other public authorities should not be able to invoke acquisition in good faith if the provenance of a cultural object was not investigated in accordance with current standards.

Governments have a great responsibility to right wrongs, regardless of the manner and circumstances of acquisition. I share the opinion of the Kohnstamm Committee that if a work owned by the State appears to have been lost involuntarily, irrespective of whether the work is part of the NK collection, the State has a responsibility to remedy this injustice. I therefore go further than the recommendation of the Kohnstamm Committee. I do not consider an appeal to good faith by the State to be in line with the aim of restoring injustice. Therefore, the State will in no case appeal to good faith in the acquisition.

It is up to the local authorities to decide whether they will invoke acquisition in good faith. From conversations I have had with the IPO, the VNG and several municipalities with extensive collections, I gather that local governments also feel strongly about the moral duty to restore looted art.

c. A mediating solution

If original ownership, involuntary loss of possession and good faith on the part of the owner are established, the Kohnstamm Committee recommends that the Restitutions Committee decide in favour of restitution without conditions or seek a mediated solution. The

Kohnstamm Committee refers to principle 8 of the Washington Principles. In these cases it is about finding a "just and fair solution, recognising this may vary according to the facts and circumstances surrounding a specific case".

I am adopting this recommendation. The Restitutions Committee may, when seeking a mediated solution, take into account all facts and circumstances as referred to in principle 8 without any restrictions. Because the involuntary loss of possession has already been established, this may under no circumstances lead to a complete rejection of the application for restitution.

IV. The new assessment framework

The above recommendations and considerations lead to the following assessment framework. For items of cultural value that are in the possession of the State (the NK collection and other works), only two criteria will be considered:

1. Is it highly likely that the person applying for restitution is the original owner of the cultural object (or an heir)?
2. Is it sufficiently plausible that the original owner's possession of the cultural object involuntarily lost possession of the cultural object due to circumstances directly related to the Nazi regime?

With this in mind, the new assessment framework for assessing applications for works from the NK collection is in line with the method of assessment that the Restitutions Committee already applies in practice. For other works in the possession of the State, the new assessment framework is essentially a return to the assessment framework applied before the policy change in 2012.

For applications for the restitution of items of cultural value owned by parties other than the State, the Restitutions Committee, after having determined that the first and second criteria have been met, will form an opinion about the third criterion, namely

3. Did the current owner know or ought to have known when he acquired the object that it had been lost involuntarily due to circumstances directly related to the Nazi regime?

If the Restitutions Committee finds that this is the case, or if the current owner does not invoke good faith, the Restitutions Committee will decide to award restitution. If the acquisition was made in good faith, and the current possessor appeals to that belief, the Restitutions Committee will decide to award restitution without conditions or to find a mediating solution in line with Principle 8 of the Washington Principles.

V. Determination and application of the assessment framework

The Kohnstamm Committee believes it is important that an applicant can be certain that advice issued by the Restitutions Committee will also be followed. When the Restitutions Committee was established in 2001, a promise was made that the Minister would always follow the advice issued by the Restitutions Committee, except in cases where the

Restitutions Committee has clearly failed to adhere to the established policy frameworks when issuing its advice.^[5] I hereby repeat this promise. In order to offer certainty to applicants in cases where an application for the restitution of a cultural good belonging to another possessor is submitted, the Restitutions Committee will issue what is known as a 'binding opinion' in response to the application by both parties. This is a binding decision based on a settlement agreement within the meaning of Article 7:900 of the Dutch Civil Code. I will reflect that binding nature in the Decree establishing the Restitutions Committee.

The Kohnstamm Committee recommends that the new assessment framework be included in the Decree establishing the Restitutions Committee. The various recommendations and policy letters on restitution policy over the years have resulted in applicants having less of an overview of the criteria used to assess their applications. I will therefore adopt this recommendation and amend the Decree establishing the Restitutions Committee in the short term to include the full assessment framework. This will make the assessment framework more transparent for the applicant and the possessor.

The new assessment framework shall apply to applications submitted after the amendment of the Decree establishing the Board. In view of the moral duty inherent in the restitutions policy and underlined by the Kohnstamm Committee, I consider it important that the Assessment Framework should also apply to applications for the restitution of items of cultural value already in the possession of the State, including the NK collection, provided that this is what the applicant wants. For it to be applied to a binding recommendation procedure, the consent of both the applicant and the current possessor is required. If both parties agree, the Restitutions Committee can also apply the new assessment framework to these applications.

The Kohnstamm Committee is clear in its opinion that some elements are detrimental to the restoration of rights that should be pursued. These elements are: the importance of the work to the applicant, the importance of the work to its owner, the importance of the public art heritage, and the extent to which the applicant has made an effort to trace the work. Because restoration of rights is the objective of restitution policy, I request the Restitutions Committee to consider applications for reconsideration concerning works of art owned by the State if the original application was rejected on the basis of one of these elements. It is up to the Restitutions Committee to assess this. For a reconsideration of a binding opinion, the applicant and the possessor must jointly submit an application to the Restitutions Committee.

I have discussed the recommendations of the Kohnstamm Committee and my position with the Restitutions Committee, the Expertise Centre for the Restitution of Items of Cultural Value and the Second World War at the NIOD, the Central Jewish Consultation, IPO, VNG and the Museums Association. These organisations agree with the proposed line.

Finally, I would like to note that the policy letters of my predecessors on restitution policy also covered topics other than the assessment framework, such as how to deal with the recovery of cultural goods from other countries. These sections remain unchanged.

VI. The working method of the Restitutions Committee

Restitutions policy is aimed at redressing the wrongs inflicted on victims of the Nazi regime. It is therefore very important to me that the restitution policy is also experienced as contributing to the restoration of rights and that applicants feel they are being heard. The Kohnstamm Committee therefore makes several suggestions for the working method of the Restitutions Committee. The Kohnstamm Committee also recommends that the Restitutions Committee should search more actively for mediating solutions.

The Restitutions Committee will take to heart the suggestions made by the Kohnstamm Committee regarding its working method. The Restitutions Committee will intensify its communication with the applicant during the handling of the application. Part of this is the interview with the applicant and the possessor. This interview is an important element in hearing (an heir of) a victim of the Nazi regime. Current practice is for the Restitutions Committee to ask the parties whether they wish to have an oral hearing in addition to the written procedure. This question is not often answered in the affirmative. Nevertheless, I share the opinion of the Kohnstamm Committee and the Restitutions Committee that an oral hearing of an application can make an important contribution towards ensuring that applicants are more involved in the handling of their application. The Restitutions Committee will therefore adjust its working method and from now on will, in principle, also hold an oral hearing in each case, if desired via digital means. In addition, the Restitutions Committee will be able to enter into talks with the applicant and the owner at any time during the procedure to see whether a settlement is possible.

In addition to this, the Committee aims to clearly communicate and explain its opinions (on works owned by the State) and decisions (on works owned by parties other than the State). To that end, in line with the recommendations of the Kohnstamm Committee, the Restitutions Committee will in future send a draft recommendation or decision to the applicant and the possessor. The applicant and the possessor will then have the opportunity to put forward their views on that draft. Since I consider the independent position of the Restitutions Committee in relation to the State to be important, I will not respond substantively to a draft concerning items of cultural value in the possession of the State.

The Kohnstamm Committee also points out that applications should be processed as quickly as possible. Applicants should not have to wait longer than necessary for their applications to be processed. The Committee therefore recommends periodic consultation between the Restitutions Committee and the Expertise Centre. These periodic consultations are already taking place. Both organisations are currently exploring whether and how the processing of applications can be accelerated. I will also be exploring whether access to archives for provenance research is optimal for employees of both organisations, within the framework of the Archives Act.

Finally, I note that on average it has become more complicated to determine whether a loss of possession was involuntary and to whom restitution should be made. However, the goal of restoring all cultural goods lost involuntarily remains as important as ever. I am in agreement with the international consensus that rightful claimants should still be able to request restitution. This year marks the 20th anniversary of the Restitutions Committee. In these 20

years, the Committee has carried out important and complex work, for which I am very grateful to the Committee and its members.

The Minister for Education, Culture and Science

Ingrid van Engelshoven

[1] Parliamentary Papers 2019/2020, 25 839, no. 44.

[2] Available at: <https://www.rijksoverheid.nl/documenten/kamerstukken/2020/12/07/striving-for-justice-report-Council-for-Culture>

[3] Parliamentary Papers 1999/2000, 25 839, no. 13.

[4] Parliamentary Papers 2011/2012, 25 839, no. 41.

[5] Parliamentary Papers 2001/2002, 25 839, no. 28.