

## Recommendations

1. The committee recommends using the same points of departure for the art trade as those laid down in Recommendations No. 1, 4, 5, 6, 7 and 8 of April 2001 with regard to private art property.
2. The committee recommends there where the recommendations refer to loss of property or transactions by Jewish dealers in the Netherlands during the period from the occupation of the Netherlands in 1940 onwards, to have the same recommendations apply to loss of property or transactions by Jewish dealers in Germany as of 1933 and in Austria as of 1938.
3. If there are enough indications that a work of art does not belong to an art dealer's trading stock, but to his private collection requests for restitution will be dealt with according to the standards for private art property.
4. The committee recommends that if in a declaration form after the war the transfer of artworks from the property of an art dealer has been qualified as theft or confiscation, and nothing has been discovered which refutes this the qualification concerned should be accepted. If no declaration form was made or there is only a internal declaration form, clues which make it highly probable that the case concerns theft or confiscation must be considered a reason for restitution, whereby with regard to Jewish art dealers the threatening general circumstances must be taken into account.
5. The committee 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.
6. In all cases in which after the war the party involved, his heirs or his immediate representative appointed by him or his heirs have filled in the qualification 'involuntary sale' on a declaration form and there are no indications that contradict this qualification, such a qualification should be accepted. In all cases in which such a declaration form is missing, clues - which make it highly probable that coerced sale took place – serve as the point of departure for the restitution policy. Clues indicating involuntary sale in any case include the threat of reprisal and the promise of the provision of passports or safe conduct as part of the transaction. Involuntary sales are also taken to mean sales by Verwalters or other managers not appointed by the owner from the stocks under their management in as far as the original owners or their heirs have not fully benefited from the transaction and have explicitly waived their rights after the war.

# Recommendations for the restitution of artworks of art dealers

## 1. Introduction

The recommendation for the restitution of artworks from the NK Collection issued in April 2001 by the *Origins Unknown* supervisory committee (the Ekkart Committee), the main lines of which have since been adopted by the government, was limited to artworks which had belonged to private individuals. It was announced that recommendations concerning the problem of artworks sold by Jewish art dealers placed under *Verwalters* would follow as soon as the research carried out provided a satisfactory basis for a properly considered and unequivocal policy recommendation.

The results of the provenance research carried out so far make it very plain that it is much harder to arrive at clear, cohesive recommendations pertaining to the widening of restitution policy with regard to the art trade than with regard to private individuals. The principle complicating factors are listed below:

- 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' in principle constituted ordinary sales
- It is often unclear whether a transaction was made by a Jewish art dealer or by a ('good' or 'bad') *Verwalter*, it is even often unclear whether an artwork was part of the trading stock before a *Verwalter* was appointed or whether the *Verwalter* himself purchased it
- Besides ordinary art dealers, the majority of whom had been founded long before the war, there were – from 1940 onwards – a growing number of occasional art dealers, both Jews and non-Jewish, who had not established themselves as art dealers, but did engage in the purchase and sale of works of art in a more or less intensive fashion.

These and other complications make it quite clear that it would be incorrect to judge sales by art dealers in entirely the same way as one would judge sales by private owners. If you wish to continue to apply the course set in prior recommendations with regard to private art property to the art trade in a fair manner, the substantiation of the recommendations will require some adaptations. 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.

## 2. General points of departure

Besides the modifications formulated in separate recommendations below, the same points of departure should be used for the restitution of artworks which ended up in German hands from the art trade as those recommended by the committee - the main points of which were adopted by the government - with regard to private art property. This means that:

- Cases in which the *Council for the restoration of rights* or another competent court has issued a judgement or in which a formal settlement has been reached between the claimant and the bodies above the *Netherlands Art Property Foundation* (abbreviated as 'SNK') are in principle considered concluded cases (Recommendations Ekkart Committee April 2001, No. 1)
- Repayment of sales proceeds must only be brought to bear if and in as far as the seller at the time or his heirs could actually dispose of the proceeds freely (ditto No. 4)
- In the event of doubt as to whether those involved actually benefited from the proceeds, the claimants must be given the benefit of the doubt (ditto No. 5)

- If full or partial repayment of the sales proceeds are necessary for a restitution, the sum must be indexed according to the general price index figure (ditto No. 6)
- The charging of management costs as determined by the SNK at the time must be abstained from in the event of restitution (ditto No. 7)
- Restitution can be effected if the property right is highly probable and there are no clues which contradict this (ditto No. 8)

It was also emphasised in the recommendations on private art property that the points of departure which apply to Jewish owners who lived in the Netherlands - which apply from the occupation of the Netherlands in May 1940 onwards - should also apply to Jewish owners in Germany as of 1933 and in Austria as of 1938 (Recommendation No. 3). This standpoint, which was adopted by the government, must be applied in the same manner to the recommendations concerning the art trade.

*Recommendation 1:*

*The committee recommends using the same points of departure for the art trade as those laid down in recommendations No. 1, 4, 5, 6, 7 and 8 of April 2001 with regard to private art property.*

*Recommendation 2:*

*The committee recommends there where the recommendations refer to loss of property or transactions by Jewish dealers in the Netherlands during the period from the occupation of the Netherlands in 1940 onwards, to have the same recommendations apply to loss of property or transactions by Jewish dealers in Germany as of 1933 and in Austria as of 1938.*

### **3. Private property of art dealers**

If it is clear that artworks did not belong to the trading stock of a Jewish art dealer, but were part of his private collection or the decoration of his home before the war, requests for restitution are covered by the existing policy for the restitution of private art property. As the proof as to what does or does not constitute trading stock or private collection is not always equally easy to provide, a certain amount of leniency will have to be exercised in accordance with the first set of recommendations and clear indications that something was private property instead of hard evidence will be considered sufficient. This will almost always concern individual objects or – at most – a small group of objects.

*Recommendation 3:*

*If there are enough indications that a work of art does not belong to an art dealer's trading stock, but to his private collection requests for restitution will be dealt with according to the standards for private art property.*

### **4. Theft and confiscation**

There where theft or confiscation is concerned both Jewish and non-Jewish art dealers or their heirs have a right to restitution. However, here too it must be taken into account that in dealing with these cases – particularly with regard to Jewish dealers – in very many instances hard evidence for the correctness of this qualification is lacking. That is why leniency must be employed. If theft or confiscation was indicated as a qualification on the declaration form after the war and nothing has proven this erroneous the qualification in question should be accepted. If no declaration form was made or only an internal declaration, clues which make theft or confiscation probable must be treated in a magnanimous way.

*Recommendation 4:*

*The committee recommends that if in a declaration form after the war the transfer of artworks from the property of an art dealer has been qualified as theft or confiscation, and nothing has been discovered which refutes this, the qualification concerned should be accepted. If no declaration form was made or there is only an internal declaration form, clues which make it highly probable that the case concerns theft or confiscation must be considered a reason for restitution, whereby with regard to Jewish art dealers the threatening general circumstances must be taken into account.*

## **5. Declaration form voluntary sale**

Generally, it is hard to determine when sales of artworks by art dealers during the war were voluntary or involuntary. The fact that decades have passed and the information can now only be obtained from people who were not actually present at the time makes it necessary to in any case make optimum use of that which those involved or their immediate surviving relatives recorded immediately after the war. The principal sources of information are the declaration forms submitted to the SNK which recorded sales to Germans.

A good point of departure is to consider the qualification binding in cases in which the art dealer himself, his heirs or an immediate representative appointed by him or his heirs filled in 'voluntary sale', unless very clear clues are submitted which make it probable that a mistake was made when filling in the form or that filling the form took place under disproportionately burdening circumstances.

If 'voluntary sale' was only filled in on an internal declaration form, without a supporting document explaining that the qualification voluntary sale was made on the basis of a declaration by the interested party, this statement should be considered worthless.

*Recommendation 5:*

*The committee 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.*

## **6. Involuntary sale**

Great value must be assigned to declaration forms on which the qualification 'involuntary sale' has been filled in by the claimant or their representatives after the war, unless other clues clearly contradict the correctness of this qualification. If no declaration forms are available or only internal declaration forms, clues indicate the likelihood that it indeed concerns involuntary sale must be read in a magnanimous manner. Naturally, in both cases the point of departure referred to in Paragraph 2 and laid down in Recommendation 1 of the Ekkart Committee of April 2001 applies.

In any case, the following situations pertaining to Jewish art dealers are considered involuntary sale:

- Direct sale to representatives of the occupying forces or Dutch citizens convicted of collaboration or other relevant wrongdoings after the war, under threat of reprisals
- Sale whereby the supply of passports, safe conduct, etc. was part of the transaction
- Sale against the art dealers will by Verwalters or other managers not appointed by the owner, unless it can be assumed that the original owner fully benefited from the sale and that he or his heirs or the representative appointed by him or his heirs explicitly renounced his rights after the war.

*Recommendation 6:*

*In all cases in which after the war the party involved, his heirs or his immediate representative appointed by him or his heirs have filled in the qualification 'involuntary sale' on a declaration form and there are no indications that contradict this qualification, such a qualification should be accepted. In all cases in which such a declaration form is missing, clues - which make it highly probable that coerced sale took place – serve as the point of departure for the restitution policy.*

*Clues indicating involuntary sale in any case include the threat of reprisal and the promise of the provision of passports or safe conduct as part of the transaction. Involuntary sales are also taken to mean sales by Verwalters or other managers not appointed by the owner from the stocks under their management in as far as the original owners or their heirs have not fully benefited from the transaction and have explicitly waived their rights after the war.*