

Please note that this is not an official English translation of the original. In the event of divergence in the translated version, the original Dutch text of the “Besluit van de Minister van Onderwijs, Cultuur en Wetenschap en de Minister voor Basis- en Voortgezet Onderwijs en Media van 20 september 2018, nr. 1381345 tot wijziging van het Besluit adviescommissie restitutieverzoeken cultuuroederen en Tweede Wereldoorlog in verband met de oprichting van een Expertisecentrum Tweede Wereldoorlog en Restitutieverzoeken, alsmede enkele technische aanpassingen” will prevail.



GOVERNMENT GAZETTE

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Decree of the Minister of Education, Culture and Science and the Minister for Primary and Secondary Education and Media of 20 September 2018, no. 1381345 amending 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 establishment of an Expertise Centre on the Second World War and Restitution Applications, as well as a number of technical adjustments

The Minister of Education, Culture and Science and the Minister for Primary and Secondary Education and Media,
Acting in accordance with the views of the Council of Ministers;

In view of Section 15 (3) of the 1995 Public Records Act,

Decree as follows:

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

With the full stop at the end of part d being replaced by a semi-colon, a new part is added to Article 1, reading as follows:

e. *Expertise Centre*: Expertise Centre on the Second World War and Restitution Applications of the NIOD (National Institute for War Documentation) Institute for War, Holocaust and Genocide Studies.

B

Two paragraphs are added to Article 2, reading as follows:

7. The Committee may request the Expertise Centre to initiate a factual investigation.
8. Through the intermediary of the secretary referred to in Article 5 and notwithstanding the first and second paragraphs, the Minister may, possibly?? before seeking advice from the Committee, request the Expertise Centre to initiate a factual investigation, at the joint request of the parties and with the aim of achieving a solution that is satisfactory to them.



C

Article 3 is amended as follows:

1. In the first paragraph '7' is replaced by 'seven'.
2. In the third and fourth paragraphs of the Dutch version, 'Tenminste' is replaced by 'Ten minste'.
3. The sixth paragraph is amended to read as follows:
 6. The chairman, the deputy chairman and the other members may be reappointed once at most.

D

In Article 4, first paragraph, 'vice-chairman' is replaced by 'deputy chairman'.

E

Article 5 is amended as follows:

1. The second paragraph is deleted, with the third paragraph being renumbered as the second paragraph.
2. In the (new) second paragraph 'The secretary' is replaced by 'The secretariat'.

F

Article 6, fifth paragraph, is amended to read as follows:

5. The restrictions relevant to the public accessibility of records, referred to in Section 1, subsection c, under 1 and 2, of the 1995 Public Records Act, which the Committee or the employees of the Expertise Centre need for the execution of their tasks, referred to in Article 2, and which are filed in state archives, shall not be applicable to the Committee or the employees of the Expertise Centre.

G

Article 8 is deleted.

ARTICLE II

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

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

*The Minister of Education, Culture and Science,
I.K. van Engelshoven*

*The Minister for Primary and Secondary Education and Media,
A. Slob*



EXPLANATORY NOTES

1. Background

On 2 July 2018 the Royal Netherlands Academy of Arts and Sciences (KNAW) and the Minister of Education, Culture and Science (hereinafter: the Minister) signed the *Covenant on the Establishment of the Expertise Centre on the Restitution of Items of Cultural Value and the Second World War at the NIOD Institute for War, Holocaust and Genocide Studies of the KNAW*. The agreements entered into by the parties in this covenant result from the letter from the Minister to the Lower House of Parliament of 4 October 2016.¹ That letter announced the establishment of an Expertise Centre in the field of war art and the Second World War, which among other things will be tasked with conducting the investigations for the Advisory Committee on the Assessment of Restitution Applications for Items of Cultural Value and the Second World War. This Expertise Centre, based at the NIOD, came into existence with the signing of the covenant.

2. Review of implementation of the restitution policy

The responsibility for the national government policy on the restitution of war art from the Second World War rests with the Minister. Among other things the Minister adopts the policy, makes budget available for that policy, awards project subsidies and is responsible for appointing the members of the Restitutions Committee.

Before the Expertise Centre was established, there were three separate organizations which, each in a different way and from a different perspective, dealt with investigations into and advice on art stolen by the Nazis. Those were the Origins Unknown Agency, based at the National Archives, the Restitutions Committee and its support office, and the Museum Association.

2.1 The Restitutions Committee

The Restitutions Committee advises the Minister of Education, Culture and Science on claims on items of cultural value of which the owners involuntarily lost possession in the years 1933-1945 as a result of the Nazi regime. The Committee was established in 2001 by a decree of the then Minister for Culture as a result of social developments that placed the theme of 'stolen art' high on the political agenda.

According to its establishing decree, the Restitutions Committee has two tasks:

1. Advising the Minister on decisions to be taken on applications for the restitution of items of cultural value in the possession of the State of the Netherlands, including the Netherlands Art Property Collection (NK collection).
2. Issuing an opinion, at the Minister's request, on disputes concerning the restitution of items of cultural value which are not in the possession of the State of the Netherlands.

The Restitutions Committee's remit covers all items of cultural value of which the owners involuntarily lost possession in the years 1933-1945. The restitution claims relate not only to works of art, such as paintings, drawings and sculptures, but also to objects of applied art, antiques, Jewish ritual objects and other objects of cultural value. These items of cultural value may be in the possession of the Dutch State or in the possession of parties other than the State, for example a provincial or municipal government institution, a foundation or a private individual. There are different procedures for items of cultural value which are in the possession of the State and those which are not in the possession of the State. In the first case, the Restitutions Committee issues a recommendation to the Minister, while in the latter case the Restitutions Committee issues a binding opinion to the two parties involved (the current owner and the possible former owner or the latter's heirs).

2.2 Origins Unknown Agency

The Origins Unknown Agency (hereinafter: BHG) was established in 1998 by order of the then Minister for Culture. It was formed in response to the results of the pilot study on the NK collection conducted in 1997. The original intention was that BHG would cease to exist on 31 December 2004, but as a direct consequence of the high demand for information, the work has been continued until today, first at the RKD Netherlands Institute for Art History and since 2007 under the aegis of the National Archives. In addition to the research into the NK collection, BHG performed various tasks relating to stolen art, particularly public information.

¹ Parliamentary papers II 2016/17, 25 839, 42.



BHG's work includes digitization and access to data and where possible identifying works of art lost in the Netherlands during the war years. The registration of missing art objects, comprising around 15,000 declaration forms and associated images from the archives of the Netherlands Art Property Foundation (SNK), formed the basis for this project.

2.3 Museum Association: Museum acquisitions from 1933

In 2009 the Museum Association asked Dutch museums to investigate the provenance history of their collections. The aim was to produce an inventory of objects whose provenance history indicated possible theft, confiscation, forced sale or other suspicious circumstances occurring from 1933 to the end of the Second World War. This investigation, *Museum Acquisitions from 1933 Onwards*, focuses exclusively on art objects and Jewish ritual items in Dutch museums and is a follow-up to the *Museum Acquisitions 1940-1948* investigation which the Museum Association had its members carry out in the years 1998-1999.

A large part of the *Museum Acquisitions from 1933 Onwards* investigation has been completed, but a number of museums are still working on it. The Museum Association provides guidelines for the investigation and support with its implementation. It is being advised by the *Committee on Museum Acquisitions from 1933 Onwards*. The findings of the museums that have now completed their investigation can be found on a specially created website (<https://www.musealeverwervingen.nl/>). Works whose provenance history between 1933 and 1945 cannot be determined and which arouse suspicions of theft or forced sale during the Nazi regime are published on this website.

3. New situation: combining and embedding knowledge and expertise

In 2015 the Minister ordered an investigation into the implementation of the restitution policy. Following the results of that investigation, the Expertise Centre was established in order to combine and embed the knowledge and expertise gained by the Restitutions Committee, BHG and the Museum Association over the past 15 years. This has created an identifiable, national contact point for applicants, current possessors and owners, museums, the press, researchers and other interested parties.

On the basis of the aforementioned covenant, the Expertise Centre will in any case carry out the following tasks for the agreed period:

1. factual investigations (a) at the request of the Restitutions Committee or (b) at the joint request of the applicant and the current possessor;
2. investigations at the request of the Minister within his policy responsibility;
3. independent, innovative scientific research into the history and current developments concerning stolen art and restitution, particularly with regard to the Second World War.
4. providing information: the Expertise Centre will provide general information for stakeholders and interested parties, references to archives, factual information on the progress of restitution procedures and assistance with research questions from third parties, such as journalists and students;
5. promoting awareness of the study of stolen art and restitution, particularly with regard to the Second World War, by means of publications, conferences and other activities, including within higher education.

Points 1 to 3:

The work of the prospective Expertise Centre includes an investigative function. This involves different types of investigations. In the first place, the factual investigations that were previously carried out by the support office of the Restitutions Committee will be carried out under the responsibility of the NIOD (see point 1). Factual investigations are important for applicants, current possessors and museums in the context of actual or potential restitution applications. However, the Expertise Centre will not only carry out factual investigations on behalf of the Restitutions Committee, but will also be able to carry them out at the joint request of an applicant and the current possessor. With this new variant envisaged in the aforementioned letter from the Minister to the Lower House of Parliament of 4 October 2016, the instructing party is not the Restitutions Committee but the Minister, who, by the provisions of the amended Article 5, third paragraph, has authorized the secretary of the Restitutions Committee to assign the factual investigation to the Expertise Centre. The secretary will thus expressly not perform that task as an official of the Restitutions Committee but as an official of the Minister. This dual function, combined in the person of the Secretary, has been adopted in order to coordinate the key points of the processes relating to the different variants of the factual investigation.

The Expertise Centre may also conduct specific or themed research at the Minister's request (see point 2). This concerns more general research under his policy responsibility rather than an investigation into a specific claim.



Finally, the Expertise Centre can conduct independent, innovative scientific research into the history and current developments concerning stolen art and restitution (see point 3). This will of course not be based on an instruction from the Restitutions Committee or the Minister.

Points 4 and 5:

In addition to the investigative function, the Expertise Centre has an information function which will be designed in a recognizable way as a separate information point and which will include particularly the activities of the current BHG and the information activities of the Museum Association.

The Expertise Centre's processes and working methods will be organized in such a way that researchers can carry out their work without any pressure from the parties involved and that no conflicts arise between information tasks with regard to potential applications on the one hand and the independent factual investigations for a restitution application on the other.

4. Access to restricted public access archive

For restitution claims an extensive investigation is conducted before the Restitutions Committee provides advice. Many of the archives which are essential for this type of factual investigation and which are held in the repository of the National Archives are subject to restricted public access. When the Restitutions Committee was established, provision was therefore made to remove the Committee from the scope of the restrictions imposed on public access to such archive documents that it requires in order to fulfil its task (see the original Article 6 of the Decree establishing the Advisory Committee on the Assessment of Restitution Applications for Items of Cultural Value and the Second World War). Given that in the current situation the factual investigation will no longer be performed by the Restitutions Committee (or its support office), but by the researchers of the Expertise Centre, it was also necessary to disapply the restrictions to these researchers. That is provided for in this Amendment Decree (see Article I, part F). The disapplication to researchers of the Expertise Centre concerns only the factual investigations which they conduct either by order of the Restitutions Committee or by order of the Minister of Education, Culture and Science (through the intermediary of the secretary of the Restitutions Committee), and thus expressly not the other tasks of the Expertise Centre. Although it was also the case in the original situation that the members of the Restitutions Committee did not conduct the archival research for their claims advice themselves, they must of course still be able to *inspect* specific archive documents where appropriate. The existing disapplication has therefore been maintained for the Committee.

Comments on individual articles

Article I

Part B

The new seventh paragraph of Article 2 assigns the factual investigations previously conducted by the Restitutions Committee's support office to the Expertise Centre. A discretionary provision was chosen so that in cases where it is clear that a submitted claim does not require a factual investigation, the establishing decree does not compel the Restitution Committee to issue an investigation assignment to the Expertise Centre. In all regular cases the Restitutions Committee will of course always issue an investigation assignment. The Expertise Centre's factual report is a very important – if not the most important – resource for the Restitutions Committee's advisory role. Notwithstanding the above, the Restitution Committee may judge, *inter alia* on the basis of answers to – written or oral – questions which it directs to parties after the Expertise Centre has issued its factual report, or on the basis of its own insights, that some facts differ or may differ from the content of the factual report, or that other facts have been omitted from the factual report. In other words, the Restitutions Committee remains responsible for ascertaining that the factual investigation has been conducted in a careful manner.

The new eighth paragraph includes the basis for a factual investigation at the joint request of the applicant and the current possessor. For more details, see section 3 of the general part of these explanatory notes.

Parts C and D

The amendments to the first, third and fourth paragraphs of Article 3 are purely of a linguistic nature. The amendment to Article 3, sixth paragraph, relates to the Minister's announcement in her letter to the Lower House of Parliament of 4 October 2016 concerning the limiting of reappointments of the members of the Restitutions Committee. This amendment provides that members of the Restitutions Committee can be



reappointed no more than once. The opportunity has been taken to use clear function-related terminology. In that regard Article 4, first paragraph, has also been amended.

Part E

The secretariat of the Restitutions Committee has been reorganized in connection with the transfer of the tasks and employees to the Expertise Centre. In view of the limited number of employees who will remain in the secretariat and their employment-law position with the Centre for Public Sector Labour Relations (CAOP), it is no longer necessary to assign management tasks to the secretary. The provision that the secretariat is headed by the secretary has therefore been deleted. There is no change to the provision whereby employees of the secretariat are only accountable to the Committee for their work *for the Committee*, and not to the Minister (nor to the CAOP). In addition to his work for the Committee, in the new situation the secretary also has a role to fulfil as an official of the Minister. With regard to that role (see section 3 of the general part of the explanatory notes) the secretary must of course comply with any instructions from the Minister.

Part F

On this matter see section 4 of the general part of these explanatory notes.

The archives policy, and hence also the decision-making under Section 15 (3) of the 1995 Public Records Act, falls within the portfolio of the Minister for Primary and Secondary Education and Media. This amending decree has therefore also been signed by this Minister. The signature relates solely to this part of the Decree. For the remainder the Minister of Education, Culture and Science is the responsible Minister.

Part G

Having regard to the Advisory Bodies and Committees Remuneration Act, there is no longer a requirement for a separate provision on members' remuneration in the Restitutions Committee's establishing decree. The Decree on Fixed Remuneration of the Restitutions Committee remains in force under the transitional law for the aforementioned act.

*The Minister of Education, Culture and Science,
I.K. van Engelshoven*

*The Minister for Primary and Secondary Education and Media,
A. Slob*