



Report 2002

Previous history

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Cases handled in 2002

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

Report 2002

Visiting address: Lange Voorhout 9
Postal address: P.O. Box 556
2501 CN The Hague, The Netherlands
Tel.: (0031)(0)70-3765992
Fax: (0031)(0)70-3629654
e-mail: info@restitutiecommissie.nl
website: www.restitutiecommissie.nl

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Frequently used abbreviations

BHG

Origins Unknown agency

Bureau Herkomst Gezocht

ICB

Inspectorate of Cultural Heritage

Inspectie Cultuurbezit

NBI

*Administrative Department
(of the Council for the restoration of rights)*

Nederlands Beheersinstituut

ICN

Netherlands Institute for Cultural Heritage

Instituut Collectie Nederland

NK collection

National Art collection

Nederlandse Kunstcollectie

OCenW

Education, Culture and Science

Onderwijs, Cultuur en Wetenschappen

SNK

National Art Collection Foundation

Stichting Nederlands Kunstbezit

1. The Advisory Committee on the assessment of restitution applications for items of cultural value and the second World War

The Advisory Committee on the assessment of restitution applications for items of cultural value and the second World War, known as the Restitutions Committee, was set up by Decree of the State secretary for the Ministry of Education, Culture and Science (OCenW) dated 16 November 2001 for a period of three years.¹ Under this Decree, the Restitutions Committee has been given the task of providing the State secretary for OCenW with independent advice in respect of individual applications for the restitution of items of cultural value that the owner involuntarily lost possession of, due to circumstances directly related to the Nazi regime.

Since 22 December 2001, the date on which the Decree establishing the Restitutions Committee came into force, the committee has consisted of the following members:

Mr. J.M. Polak (chairman)
Mr. B.J. Asscher (vice-chairman)
Prof. J.Th.M. Bank
Prof. J.C.M. Leijten
Dr. E.J. van Straaten
Mrs. H.M. Verrijn Stuart

Since 1 July 2002, the committee has been supported in the execution of its tasks by the Secretariat, consisting of E. Campfens (secretary/reporter), P. Teulings (deputy secretary) and L. Zandstra (assistant). Mr. P. Teulings resigned from his position as deputy secretary in December 2002. His tasks were taken over by H.D. Tammes at the beginning of December. The secretariat of the Restitutions Committee is housed at the offices of the CAOP located on Lange Voorhout, The Hague.

In the period 1 January - 31 December 2002, twelve cases were submitted to the Restitutions Committee. All these cases (bar one) were related to objects in the possession of the State of the Netherlands. The committee members met on 17 occasions to consider the applications for restitution.

During the above period, the Restitutions Committee issued advice on five cases. In four out of these five, the advice was adopted by the State secretary in its entirety, and in the other case adopted in part. This last case related to an application for the restitution of a painting that could no longer be located, where the Restitutions Committee has

¹ Decree establishing the Advisory Committee on the assessment of restitution applications, dated 16 November 2001, (WJZ/2001/45374(8123), see Appendix 1.

recommended the payment of compensation. The State secretary has deferred his decision on this last case.

As at 31 December 2002, seven of the Restitutions Committee's cases are pending. When the Restitutions Committee was set up, it was expected that it would receive between 30 and 50 applications for restitution.

In accordance with the provisions of Article 7 paragraphs 1 and 2 of the Decree establishing the Restitutions Committee, we will now report on the state of affairs regarding the tasks assigned to it. As this is the Restitutions Committee's first annual report, a history of its development will also be included.

2. History of the development of the Restitutions Committee and assessment criteria

2.1 Previous history

It was already known at an early stage of the second World War that the Nazis were removing to Germany a large number of valuable objects, including art treasures, from the areas they were occupying. The Dutch government in exile in London naturally tried to counteract this economic plundering, and proclaimed emergency laws that, amongst other measures, prohibited all transactions with the enemy and declared them null and void in advance.² In addition, on 5 January 1943 it signed the *Inter-Allied Declaration against Acts of Dispossession committed in Territories under Enemy Occupation or Control*, as a basis for post-war repatriation of property to its country of provenance (i.e. the recuperation). In this so called *Joint Declaration*, the Allies declared that they were reserving all rights in respect of property obtained by the enemy that originated from the occupied areas, irrespective of whether they were obtained through outright theft or through ostensibly voluntary transactions.³

After the liberation in August 1945, the Council for the Restoration of Rights (Raad voor het Rechtsherstel) was set up in the Netherlands, and charged with the task of restoring the pre-war legal system as far as possible.⁴ It was given the power to intervene in civil-law legal relationships (such as proprietary relationships) in accordance with the requirements of reasonableness and fairness. The so-called ‘London emergency legislation’ formed the basis for this restoration of rights.⁵ The Council had a Jurisdiction Department (Afdeling Rechtspraak), to which, up to 1 July 1951, it was possible to submit an application for restoration of rights and which also acted as an appeal court for rulings made by bodies concerned with the restoration of rights. In addition, the Council had an Administrative Department (NBI), which was charged with the task of tracking down, administering and liquidating enemy and collaborationist assets and assets of absent and unknown owners.

At the end of 1945, the National Art Collection Foundation (SNK) was set up by the authorities.⁶ In the first few years after the war, the SNK mainly concentrated on the

² Besluit Rechtsverkeer in Oorlogstijd (Decree on Legal Matters in Wartime) , 7 June 1940, published in het Staatsblad van het Koninkrijk te London, year 1940, series A [in Dutch].

³ Bulletin of Treaties, year 1951, no. 39.

⁴ The restoration of property rights is dealt with extensively in the Final report and appendices by the Contactgroep Tegoeden WOII (Van Kemenade Committee), Amsterdam 12/1/2000 [in Dutch].

⁵ Besluit Herstel Rechtsverkeer (Decree on Restoration of Legal Transactions), 21 September 1944, published in het Staatsblad van het Koninkrijk te London, year 1944, series E, see in particular Articles 22 ff [in Dutch].

⁶ For a detailed overview, see: ‘Betwist Bezit, De Stichting Nederlands Kunstbezit en de teruggave van roofoorkunst na 1945’ (‘Disputed ownership, the SNK and the restitution of stolen works of art after 1945’), by Eelke Muller and Helen Schretlen, Waanders Uitgevers , Zwolle, 2002 [in Dutch]. This research was carried out on the instructions of the Ekkart Committee.

recuperation of Dutch art treasures, driven by concern about the major losses also suffered by the Netherlands in respect of its cultural assets. Immediately after the war, many works of art found their way back to the Netherlands, partly through the efforts of the Foundation. Apart from recuperation, the SNK was also charged with the return (i.e. the restitution) of the works of art to the former owners or their heirs, this work being supervised by the NBI. In 1949 and 1950, it organised three so-called 'claim exhibitions' in order to give people the chance to recover their works of art, and actively tried to trace the original owners, in particular from 1949 onwards. The Foundation's internal guidelines that it applied to restitution applications were based on the principle of proven involuntary loss of possession during the war. In addition, the restitution of previously owned property was only possible if the sales proceeds (if applicable) received during the war, together with the cost of recuperation by the Foundation, were paid to the latter. It turns out that decisions rejecting applications for the restitution of recovered works of art were rarely submitted to the Jurisdiction Department of the Council for the Restoration of Rights.

In 1950, the tasks of the SNK, which had become discredited in 1948 due to its involvement in various scandals, were taken over by Hergo, the bureau for restoration payments and the restoration of property. When the deadline for submitting an application for restitution passed in the 1950s, Hergo was wound up too. It appeared that the difficult chapter 'Art restitution' could now be closed. The works of art recuperated that were retained as part of the national art collection are now known as the 'NK collection'. This collection is part of the Dutch National Art Collection and is managed by the Netherlands Institute for Cultural Heritage (ICN) of the Ministry of OCenW.

From the end of the 1990s, the restitution of works of art and other property stolen during the second World War has once again been receiving a lot of attention, both at a national and international level. The Dutch government set up committees - some of which are still active - that investigate property theft during the second World War and post-war restitution, namely the Van Kemenade Committee (Assets WWII Contact Group), the Scholten Committee (Financial Assets WWII), the Kordes Committee (Liro archives), the Van Galen Committee (Indian Assets) and the Ekkart Committee (Art). In an international sphere, attention has been focussed on the issue of art treasures stolen during the war at an international conference in Washington in 1998, for instance. This conference led to the adoption of the *Washington Principles on Nazi Confiscated Art*.⁷ In addition, in 1999 the Parliamentary Assembly of the Council of Europe enacted a resolution in respect of *Looted Jewish cultural property*.⁸ In both declarations, a flexible policy of restitution to the original owner of art treasures stolen during the war was urged.

Hereinafter follows a chronological overview of the developments in the restitution policy of the government with regard to stolen works of art held by the State of the Netherlands. The policy intentions as a whole as set down in the various documents form the assessment framework issued to the Restitutions Committee at the time it was set up in 2001.

⁷ See also below, paragraph 2.6.

⁸ Resolution 1205, 1999.



ill. 1 Claim exhibition, 1949-1950.

2.2 Ekkart Committee and basic principles of restitution policy

The Origins Unknown Committee has played an important role in the history of the development of the Restitutions Committee. Usually denoted by the name of its chairman Dr. R.E.O. Ekkart, it was set up in 1997 to supervise a test inquiry into the provenance of works of art that belonged to the NK collection.

The Ekkart Committee published its test inquiry findings in its April 1998 report. It concluded, amongst other things, that further investigation was urgently needed to lift the 'veil of secrecy' surrounding the NK collection and in order to be able to guarantee the best handling of individual questions from potential previous owners or their dependants. It also made a number of recommendations. For example, in cases where there were indications that works of art from the NK collection were subject to third-party rights that had not previously been made known, or that could place previously rejected claims in a

different light, the Ekkart Committee stated that active investigation of these claims was necessary. With regard to the execution thereof, it concluded that this was not part of the mandate either of itself or of the project bureau to be set up for normal NK research, but was instead a task of the Inspectorate of Cultural Heritage (ICB). With regard to such active investigation that had been deemed necessary, State secretary A. Nuis of the Ministry for OCenW stated in his submission letter that accompanied the report to the Lower House:

“Recommendation 5 relates to an investigation - where a claim has been submitted - into such property that further provenance investigation indicates could have been subject to involuntary transfer of ownership during the war. It is not the intention to repeat the post-war process of restoration of property rights in this respect. Accordingly, the only claims that will be dealt with are those not previously submitted or those where there is new, relevant information.”

From: Letter [in Dutch] from the State secretary for OCenW to the Lower House dated 20 May 1998, parliamentary year 1997-1998, 25 013, nr. 23.

In the same letter, he stated that in his opinion further investigation into the provenance of the entire NK collection was necessary. This verdict struck a sympathetic chord with the government; on 1 September 1998 the Origins Unknown agency (BHG) was set up and charged with the investigation of the historical provenance of the NK collection. This investigations agency was placed under the supervision of the ICB. On 1 April 1999, the Ekkart Committee started its work. Its tasks include both the supervision of investigations and the advising the Minister for OCenW - based on the results of these investigations - on the policy to be pursued in respect of works of art in the NK collection. The explanatory notes to the Decree establishing the Restitutions Committee make it clear that said advising does not refer to the settlement of individual cases but to the policy to be pursued in general.⁹



ill. 2 NK 940

⁹ Besluit instelling tijdelijk adviescollege herkomst kunstvoorwerpen WO-II (Decree establishing the temporary advisory committee in respect of the provenance of works of art WWII) dated 20 September 1999, Staatscourant 1999, nr. 203 [in Dutch].

2.3 Government position on second World War Assets, 21 March 2000

In a letter dated 21 March 2000, the government set out its general response to the results of investigations into the theft and restoration of property rights carried out by the various committees dealing with second World War Assets that had so far been published. In this letter, the government states that following the second World War attempts were made (depending on available capacity) to restore each person's property rights as far as possible and that, according to the reports published by the various committees, this work had been reasonably successful. However, this does not alter the government's opinion that it must be recognised that the restoration of property rights at that time, when measured by present-day criteria, could and should have been carried out with more understanding. In its opinion, some procedures used must now be deemed to be bureaucratic and unfeeling, and in a single respect even in violation of the legislation in force at that time.

Although the government kept to its previously formulated principle that the process of restoration of property rights should not be repeated, they stated that the overriding principle must be that entitled parties still have to be able to submit applications for restitution of possessions. On 18 April of the same year, the Lower House declared its support for the government position expressed in the above letter of 21 March.

“Subject to certain conditions, the Kingdom shall continue to take on and deal with individual claims of entitled parties or their dependants arising from the restoration of property rights. On the grounds of fairness, no case shall be rejected on the basis of mere prescription”.

From: Letter [in Dutch] from the Prime Minister and Ministers of General Affairs, of Health, Welfare and Sports, and of Finance, dated 21 March 2000, Lower House, parliamentary year 1999-2000, 25 839, nr. 13.

2.4 Government memorandum on restitution and recuperation of items of cultural value, 14 July 2000

On 14 July 2000, the State secretary for OCenW, Dr. F.W. Van der Ploeg, sent a government memorandum to Parliament.¹⁰ In doing so, he was responding to a request by the Standing Committee for OCenW in respect of Resolution 1205 (1999) on Looted Jewish cultural

¹⁰ Brief en regeringsnotitie inzake restitutie en recuperatie van cultuurogoederen (Letter and government memorandum in respect of restitution and recuperation of items of cultural value) d.d. 14 juli 2000, Tweede Kamer, vergaderjaar 1999-2000, 25 839, nr. 16 [in Dutch].

property by the Council of Europe. In the government memorandum, and in anticipation of the recommendations by the Ekkart Committee in respect of the restitution policy to be pursued by the government, he provides information on the state of affairs regarding the restitution of Jewish cultural property by the Dutch government. In addition, he formulates provisional policy rules for the handling of individual applications for restitution of works of art, “without wishing to anticipate the findings of the Ekkart Committee”.

In the memorandum, he declares that the policy rules relating to items of cultural value that are part of the NK collection as formulated in the letter dated 20 May 1998 also apply to works of art that belong to other parts of the Dutch national art collection.

“In general, it can be stated that applications for the restitution of items of cultural value that as a result of the second World War or the settlement thereof have come into the possession of the State shall be dealt with in the following cases:

- New applications, i.e. not applications that have already been settled by means of a decision by an authorised body for the restoration of property rights or by means of amicable restoration of property rights (i.e. by a settlement)
- Applications that have already been settled within the context of the restoration of property rights but where new, relevant, facts have actually become available.

Accordingly, prescription will not be invoked in such cases.”

From: Letter and government memorandum [in Dutch] in respect of restitution and recovery of items of cultural value, Lower House, parliamentary year 1999-2000, 25 839, nr. 16.

He notes here these policy rules are aimed at the assessment of whether a restitution application is eligible for consideration. In other words, these rules do not relate to the actual allowance or rejection of such an application. This must still be decided according to the rules set down by the post-war restoration of property rights. The most important criteria are the involuntary nature of the loss of possession and the establishment of the rights of the applicant as the (heir of the) original owner. Should the results of the investigation by the Ekkart Committee give cause to do so, then the policy pursued in respect of applications for restitution of works of art shall be reviewed in the light of these results.

2.5 Interim recommendations of the Ekkart Committee, 26 April 2001

On 26 April 2001, the Ekkart Committee presented its interim recommendations to the State secretary for OCenW.¹¹ Prompted by the serious concern regarding delays in implementation of the policy of restitution, the committee decided that the investigation that they had conducted up to that time had already provided so much information that it felt that it was justified in formulating interim general recommendations in respect of private art treasures lost during the second World War. Notice was also given of future recommendations regarding other aspects of the policy in respect of the NK collection, such as the issue of art dealers placed under *Verwalters* (administrators) and the duration of the period for which the government should refrain from invoking prescription in respect of claims to works of art from the NK collection.

The nine recommendations of the Ekkart Committee in respect of restitution of private art treasures lost during the war all played an important role in defining the mandate later given to the Restitutions Committee.

At the request of the State secretary for OCenW, the Ekkart Committee provided information on 13 June 2001 as to the reasons why it felt that decisions made by the SNK should not count as restoration of property rights (see recommendation 1). It argues that the SNK cannot be seen as an authorised body for the restoration of property rights, as it was never granted this authority. Under the emergency legislation, “the authority to pass judgement on restoration of property rights matters was assigned to the Council for the Restoration of Rights. The NBI and the Jurisdiction Department were departments of the Council for the Restoration of Rights and were accordingly just as much authorised bodies. In contrast, the SNK was no department of the Council, but instead a separate organisation charged with the recovery of works of art and with the administration of recovered objects”.¹² Investigation had shown there were never any official guidelines for the SNK’s work. Draft guidelines, which despite their unofficial status were followed in practice, state that the SNK had to have each restitution assessed by the NBI before it was actually carried out. The Ekkart Committee concludes from this that the SNK did not have any authority itself in respect of restoration of property rights and that accordingly any claims that it rejected were not authorised decisions, which means that the cases it ruled on cannot be seen as ‘settled cases’. It follows from this that the handling of such claims does not mean that the process of restoration of property rights is being repeated as such, but that property rights are finally being restored in cases where no body authorised in this respect has issued a ruling on them yet.

¹¹ ‘Origins Unknown’, Recommendations by the Ekkart Committee dated 26 April 2001, see Appendix 2.

¹² Quote from letter from the chairman of the Ekkart Committee to the State secretary for OCenW dated 13 June 2001 [translated from Dutch].

Interim recommendations by the Ekkart Committee in respect of the restitution policy to be pursued by the government with regard to private art treasures lost during the war:

1. The Committee recommends that the notion of "settled cases" be restricted to those cases in which the Council for the Restoration of Property Rights or another competent court has pronounced judgment or in which a formal settlement was made between the lawful owners and the bodies which in hierarchy rank above the SNK.
2. The Committee recommends that the notion of new facts be given a broader interpretation than has been the usual policy so far and that the notion be extended to include any differences compared to judgments pronounced by the Council for the Restoration of Property Rights as well as the results of changed (historic) views of justice and the consequences of the policy conducted at the time.
3. The Committee recommends that sales of works of art by Jewish private persons in the Netherlands from 10 May 1940 onwards be treated as forced sales, unless there is express evidence to the contrary. The same principle should be applied in respect of sales by Jewish private persons in Germany and Austria from 1933 and 1938 onwards, respectively.
4. The Committee recommends that the sales proceeds be brought into the discussion only if and to the extent that the then seller or his heirs actually obtained the free disposal of said proceeds.
5. The Committee recommends that for the purposes of applying this rule the rightful claimants be given the benefit of the doubt whenever it is uncertain whether the seller actually enjoyed the proceeds.
6. The Committee recommends that whenever it is necessary to couple a restitution to the partial or full repayment of the sales proceeds, the amount involved be indexed in accordance with the general price-index figure.
7. The Committee recommends that the authorities, when restituting works of art, refrain from passing on the administration costs fixed by the SNK at the time.
8. The Committee recommends that a work of art be restituted if the title thereto has been proved with a high degree of probability and there are no indications of the contrary.
9. The Committee recommends that owners who did not use an earlier opportunity of repurchasing works of art be reafforded such opportunity, at any rate insofar as the works of art do not qualify for restitution without any financial compensation according to other applicable criterions.

2.6 Government responses to the interim recommendations, 29 June 2001 and 16 November 2001

The government largely followed the recommendations made by the Ekkart Committee and turned them into policy. This can be seen from the government response dated 29 June 2001¹³ in conjunction with a supplementary government response dated 16 November 2001.¹⁴

However, the government made a proviso in respect of the term “formal settlement” in Recommendation 1. They defined this term more explicitly thus: “A case is a settled case if either the claim for restitution resulted in a conscious and deliberate settlement the claimant expressly renounced his claim for restitution”. And Recommendation 9, the general opening-up of the option to repurchase, was only adopted in so far as after the war indications of “manifestly negligently settled offers to repurchase” existed. Only in such cases (said the government) should the option to repurchase still be granted. The government also proposed an extension of eligibility in respect of recommendation 3. It stated that not only should sales by Jewish private individuals be seen as ‘involuntary’ in principle but that this principle should also be applied to such sales made by other persecuted population groups.

Regarding the Ekkart Committee’s recommendations, the government argued that the decision had been made to approach the issue of restitution not purely from a legal viewpoint, but more from a policy viewpoint. In this context, it deemed it appropriate to set up an advisory committee to assess individual restitution applications. This was partly prompted by the international policy on this matter, as expressed in the Washington Principles. These also advocate such measures as the setting-up of national alternative dispute resolution mechanisms for resolving ownership issues. Countries such as France and the United Kingdom had already taken steps in this respect.

“The government has taken its inspiration from these examples and will in the near future establish an advisory committee which is to advise on individual applications for the restitution of items of cultural value forming part of the NK collection. The main reason for setting up an advisory committee has been the distance to the authorities this will create. Since the authorities, being the possessors/administrators of the State collection, are directly concerned in the matter, the existence of an advisory committee will enhance the independence of the decision process. This will certainly contribute to a greater acceptance of the Dutch policy in this field.

¹³ Letter dated 29 June 2001 from the State secretary for OCenW to the chairman of the Lower House in respect of recommendations made by the Ekkart Committee, DCE/01/25248, see Appendix 3.

¹⁴ Supplementary letter dated 16 November 2001 from the State secretary for OCenW to the Speaker of the Lower House in respect of recommendations made by the Ekkart Committee, DCE/01/43415, see Appendix 4.

The government has the following set-up in mind for such an advisory committee:

- The committee will advise the State secretary of Education, Culture and Sciences on individual applications for restitution of items of cultural value which are in the NK collection.
- The committee will give its advice within the frameworks and policy lines laid down by the government.
- The responsible cabinet member will carry out a marginal examination whether the committee has carried out its advisory role within its mandate.
- The committee will be composed of a number of leading lawyers and other experts such as historians and art historians.
- If private persons so request, the responsible cabinet member will submit their mutual disputes about goods of cultural value that were transferred during or as a result of the second World War to the committee for advice.”

From: Letter from the State secretary for OCenW to the Speaker of the Lower House, dated 29 June 2001.

The State secretary for OCenW used the letter in which he explained the supplementary response of the government to the recommendations of the Ekkart Committee to present the Decree on the Advisory Committee on the Assessment of Restitution Applications for Items of Cultural value and the second World War (Decree establishing the Restitutions Committee) and the Explanatory Notes on this to Parliament.¹⁵ The tasks and policy framework of the Restitutions Committee are mainly defined by Article 2, which states:

Article 2 Decree establishing the Restitutions Committee

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.

¹⁵ Decree establishing the Advisory Committee on the assessment of restitution applications, dated 16 November 2001, (WJZ/2001/45374(8123), see Appendix 1.

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.

2.7 General Consultation with the standing committee for the Ministry for OCenW, 22 November 2001

At the request of the Standing Committee for OCenW, on 22 November 2001 a general consultation was held with the OCenW State secretary Van der Ploeg regarding the recommendations of the Ekkart Committee, the government responses as expressed in the letters of 29 June and 16 November 2001 and the Decree establishing the Restitutions Committee.¹⁶ During this consultation, representatives of the CDA, D66, Groen Links, PvdA and VVD political parties made statements that included critical comments on the delays experienced in settling restitution claims and advocated a generous restitution policy, as expressed by the Ekkart Committee in its recommendations. In doing so, they also expressed their desire that relevant adjourned cases, and in particular the Gutmann case, should also see a speedy and generous settlement.

The representatives also made critical comments regarding the co-ordinating role assigned to the Ministry for OCenW by virtue of Article 2 of the Decree establishing the Restitutions Committee. The State secretary replied in this respect that the impression must not be created that the committee is not independent. Applications for the restitution of objects from the Dutch national art collection are submitted to the State, which is deemed to be their owner. The minister would not utilise his discretionary authority to refrain from asking for advice. The fact that the applications have to go via the Minister means that the Restitutions Committee is not unnecessarily burdened with applications that are not part of its mandate and that the Minister knows which claims the committee is dealing with. The provision that it is the Minister who ultimately decides whether an object from the Dutch national art collection should be restituted is also to do with the fact that the State of the Netherlands could be deemed to be its owner. Only in those cases where the Restitutions Committee has clearly gone outside the policy framework set when giving its advice could the State secretary have grounds for deviating from the Committee's advice. In cases where the State secretary has a say, he is of the opinion that objects should be restituted immediately. With regard to the composition of the committee, he said that it should enjoy the confidence of the parties involved, without it being seen as representing the interests in the case, and that he felt the abilities and reputation of the members being petitioned were of an exceptionally high level.

¹⁶ Verslag van een Algemeen Overleg (Report of a General Consultation), adopted on 3 January 2002, Tweede Kamer, vergaderjaar 2001-2002, 25 839, nr. 28 [in Dutch].

During the General Consultation, a number of attendees also asked questions about the consent required of both parties in disputes where the State of the Netherlands was not the current possessor of the work of art in question (Article 2, para. 3). The State secretary's response to this was to comment that it only makes sense for the Restitutions Committee to advise on a case if both parties are willing to travel down this road together and wish to commit themselves to this process. Given that the consequences of this requirement of consent were not completely clear yet, he would consider it again and discuss it. Cases where the consent of both parties is required by virtue of the third paragraph of Article 2, will be adjourned until he has submitted a written response to the government in respect of this issue.



ill. 3 Fragment of tapestry, Gutmann collection (NK 3208).

3. The Restitutions Committee's way of working

From the second day after placement of the Decree establishing the Restitutions Committee in the *Staatscourant* onwards, the Decree came into force, that is to say on 22 December 2001. The members of the Restitutions Committee were appointed for a period of three years from this date. In order to decide on the way the committee would work when carrying out its advisory task, the members felt that first of all it made sense to map out the framework within which they would have to carry out their tasks.

3.1 Framework

Policies set by the government

The Decree establishing the Restitutions Committee states in Article 2, paragraph 1, to be read in conjunction with paragraph 4, that the Restitutions Committee shall, in so far as it relates to applications for the restitution of objects in the Dutch national art collection, carry out its advisory task with due observance of the government policy in this matter. In such cases, the framework within which the committee issues advice shall be the relevant policies set by the government. This primarily refers to the general government policy in respect of Second World War Assets, which is set down in the government letter dated 21 March 2000. In addition, attention must be paid to the rules more specifically related to the restitution of items of cultural value. This refers to the policy that the government set out in its memorandum to the Lower House dated 14 July 2000 and the significant relaxing of this policy as a result of the recommendations made by the Ekkart Committee, as expressed in the government responses dated 29 June and 16 November 2001. Should a restitution application relate to a work of art that is in the possession of a party other than the State of the Netherlands, then the Decree establishing the Restitutions Committee states that the committee must pass judgement in accordance with the requirements of reasonableness and fairness (Article 2, paragraph 2, to be read in conjunction with paragraph 5).

General considerations set by the Restitutions Committee

The Restitutions Committee has itself formulated general considerations, which it has used to date as a basis for its advice and has incorporated into them. These considerations are based on the assessment framework as set for it in the statutes.

General considerations, formulated by the Restitutions Committee

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

3.2 Procedure

The procedure for handling a case by the Restitutions Committee can broadly be divided into an investigatory phase and an advisory phase.

Investigatory phase

After receiving the request for advice, the Restitutions Committee writes the applicant a letter in which it sets out the procedure it will follow. As in many cases it is not yet clear on whose behalf the applicant is acting, what his relationship is to the original owner and which documentation the applicant himself possesses to substantiate his application, a questionnaire is enclosed with the letter. The committee then investigates the original type of ownership, the nature and circumstances of loss of possession and the settlement of any application for restitution previously submitted. This investigation also looks at the legal and actual status of the work of art at the moment the application was submitted. The nature of the investigation depends on the documentary materials (if any) available

when the request for advice is made, including investigatory information from BHG or information that the applicant provides. In its more extensive investigation, the Restitutions Committee utilises the expertise of its members and the secretariat and, if necessary, that of external specialists. The investigatory phase is concluded with a report, which the applicant is offered the opportunity to respond to. This may lead to further investigation. In some cases, the committee may consider it necessary to invite the applicant and/or third parties for a discussion.

Advisory phase

The advice issued by the Restitutions Committee is arrived at after internal consultation. Once it has been signed by all members, this advice is sent to the State secretary for OCenW. The committee informs the applicant that the advice has been submitted to the State secretary. The State secretary endeavours to inform the applicant of the content of the advice and of his decision not later than four weeks after receiving the advice. The responsibility for the decision regarding a restitution application and its implementation rests with the State secretary.

3.3 Deadlines

The time it takes to process a request for advice regarding restitution depends on the information available and on the number of applications that the Restitutions Committee is handling. In many cases, the 12-week deadline that the State secretary for OCenW initially set for the issuing of advice turned out to be too short. After consultation with the Ministry, it was decided to extend the term to 16 weeks. It did prove possible in the first few cases to issue the advice within the deadline set, as in these cases the investigation into the facts had already been completed and a report from the ICB had already been received by the time the committee received the request for advice. In the subsequent cases, however, the Restitutions Committee was responsible for the actual investigation into the facts. Given that the committee for the gathering of facts is partly dependent on third parties, such as archives inside or outside the Netherlands, the duration of this investigation into the facts can vary widely.

If necessary in respect of the handling of a request for advice, it is possible to implement further 16-week extensions (previously further 12-week extensions) to the initial deadline. In all cases, the committee will inform the applicant and the State secretary for OCenW of such deadline extensions. If the applicant states that the (advanced) age of the parties involved is a reason why his restitution application should be given priority, the committee will take this into consideration.

3.4 Confidentiality, disclosure and privacy

The Restitutions Committee issues advice to the State secretary for OCenW, who then makes a decision in the case. This means that the disclosure of the content of advice and the decision made are the responsibility of the Ministry of OCenW. As stated above, the committee will inform the applicant that advice has been issued but will refer the applicant to the State secretary for OCenW in respect of the actual content of the advice. Only after disclosure of the advice by the State secretary would the committee be able to go public with its advice.

In connection with the sensitive nature of the material, the committee asks the applicant to consent to the investigation into personal data and their incorporation in reports or in the advice issued. The protection of the privacy of the parties involved is also guaranteed by the fact that their names are deleted from any report or advice disclosed.

The documents deemed to be relevant for the advice will be listed in the research reports. In doing so, the committee has a duty of confidentiality in respect of documents from archives that are subject to restrictions on public access and/or confidential documents. This means that it will not be able to release them independently. In its research reports, the committee will use quotes and acknowledgements of sources.



ill. 4 Gutmann collection (NK 3253).

4. Cases handled by the Restitutions Committee in 2002

Since the Restitutions Committee started its work in January 2002, the State secretary for OCenW has submitted twelve applications for restitution to it. With one exception, these cases relate to objects from the Dutch national art collection and accordingly fall under the committee's main task as set out in Article 1 paragraph 1 of the Decree establishing the Restitutions Committee. These cases relate to objects from the NK collection, with the exception of one case that involves a painting bequeathed by private individuals to a former national museum. This painting is in the possession of the Kingdom of the Netherlands but is not part of the NK collection. No advice has yet been issued in this case.

In addition to the cases involving objects in the possession of the Kingdom of the Netherlands, a single case was submitted to the Restitutions Committee in 2002 involving a painting that is in the possession of a foreign museum. No advice has yet been issued in this case.

4.1 Cases on which the Restitutions Committee has issued advice

In 2002, the committee has issued advice in respect of five cases. These five cases relate to applications by private individuals for the restitution of works of art from the NK collection. In four of these five cases, the State secretary adopted the advice given in full. In the other case, so far the advice issued has only been adopted in part; the decision on an application for the restitution of a missing painting, where the committee recommended that compensation be paid, has been adjourned. This case will be discussed below (RC 1.5).

When the Restitutions Committee started its work, there were three applications for the restitution of works of art that were being dealt with by the Ministry of OCenW, in anticipation of a decision by the State secretary. In these cases, the investigation into the facts had already been completed by the ICB of the Ministry of OCenW and had been embodied in research reports. These cases were submitted to the Restitutions Committee for advice in the first few months of 2002. Further investigation turned out to be unnecessary. The advice given in these cases was drafted in the first half of 2002 (RC 1.1, 1.2 and 1.3). The investigation for the next two cases submitted to the committee had not yet been completed. The committee was responsible for the completion of the research reports in these cases, which led to the issuing of advice at the end of 2002 (RC 1.5 and 1.7).

RC 1.2 the Gutmann collection

The previous history of the Gutmann claim commences in May 1998. In that year, the first (test) report of the Ekkart Committee was published, which listed some objects which, it was concluded, belonged to the former Gutmann collection. This prompted the first contacts between the Gutmann family and the ICB. An application for the restitution of these objects dates from 1999. At that time it was not yet clear how many objects were involved, what the circumstances of the loss of possession were, and why these objects were part of the NK collection. The ICB started an investigation into the objects with Gutmann provenance in the NK collection, which was concluded in September 2000 with a report. This was submitted to the State secretary for OCenW and the Gutmann family. In the following weeks and months, the case attracted some public and media interest, and was discussed during the consultation between State secretary Van der Ploeg and the Standing Committee for OCenW. On 24 January 2002, the case was submitted to the Restitutions Committee. The State secretary asked the committee to provide him with its advice within 12 weeks in respect of the application for the restitution of the Gutmann collection. The advice to be issued by the Restitutions Committee was decided on in the meeting of 25 March 2002.

Summary of documentary report

The banker and art collector F.B.E. Gutmann, who was originally of German nationality, took up residence in the Netherlands in 1919, together with his wife. In 1924 he was granted Dutch nationality. Building on his father - Eugen Gutmann-'s collection, the couple amassed a large number of works of art at their country house 'Bosbeek' in Heemstede. During the years 1939 to 1942, circumstances in connection with the fact that under the German race laws they were classified as Jewish led to the couple disposing of their art collection. The most valuable objects had already been sent to Paris in 1939; these would be stolen from their depository during the occupation of Paris. Also in 1939, Mr. Gutmann brought a number of objects to the Amsterdam art dealer Rosenberg: these would be purchased by Göring in 1940. Gutmann then sold all the remaining works of art to the German art dealers Böhler and Haberstock during the years 1941 and 1942. This sale involved a large number of objects of applied art, as well as objects from his family's silver collection and a number of paintings. In 1943, before the couple could flee the country, they were arrested by the Nazis. Both Mr. and Mrs. Gutmann lost their lives in concentration camps.

After the war, it only proved possible to recover a few of the works of art brought to Paris. Those works recovered in Germany and brought back to the Netherlands were returned to the Gutmann heirs by the SNK. In contrast to the objects stored in Paris, many of the objects that Mr. Gutmann had sold to Böhler and Haberstock were recovered from Germany after the war. The Gutmanns' children, who survived the war in a foreign country, applied to the SNK for restitution of these objects. A disagreement regarding the right to restitution of these objects then arose between the SNK and the Gutmann family. The SNK took the view that the sale was voluntary, which meant that restoration of

property rights was not applicable. This led, in 1952, to a ruling by the restoration of rights judge. This judge ruled that the intended sale may not have been made under direct duress but, however, was made “under the influence of the special circumstances” that had arisen. On these grounds, the judge ruled that this sale could be contested. In his judgement, he restored the heirs to their legal position as owners but ruled that they had to pay to the State of the Netherlands the consideration that Mr. Gutmann received during the war. The Gutmann heirs were thus actually given the option of repurchasing the objects from the Dutch government. Although the children of the Gutmann couple argued that their father had never actually received the sales proceeds, they repurchased a number of objects during the 1950s.

In the year 2000, the NK collection still contained more than 200 works of art from the former Gutmann collection. These objects, including 9 paintings, can be classified into three separate main categories:

1. Three silver objects that were offered for sale to the Amsterdam art dealer Rosenberg in 1939, which in the end sold them to Göring in 1940. These objects were not the subject of any post-war application for restitution, and it may be that the heirs never knew that these objects had returned to the Netherlands.
2. The objects that Mr. Gutmann sold to Böhler and Haberstock and which the judge had commented on in 1952. This ruling restored the heirs to their position as owner, on condition that they repaid the sales proceeds received during the war. The heirs did not utilise this option, probably for financial reasons. Most of the works of art with provenance Gutmann that were found in the NK collection belong to this group.
3. Twelve works of art found in the NK collection about which little was known apart from the fact that Gutmann provenance had been proven. These were probably part of the group of works sold to Böhler and Haberstock. Since the heirs after the war obviously did not know about these objects, they were not part of their restitution application.



ill. 5 Gutmann collection (NK 3220).



ill. 6 Gutmann collection.

Advice (see appendix 5)

The advice to be given by the committee to the State secretary for OCenW was decided on during the committee meeting on 25 March 2002. After studying the case and taking everything into consideration, the Restitutions Committee recommended, on the basis of the documentary report, the restitution of all works of art listed in the report to the heirs of F.B.E. Gutmann. The committee concluded that the loss of possession by Mr. Gutmann during the war should be deemed to have been involuntary. With regard to the post-war handling of the application for restitution, the committee felt that the changed insights into the policy pursued at that time, under which the works of art could only be recovered upon payment of a cash sum, could be deemed to be a novum within the context of the current government policy. The committee felt that no forfeiture of rights was involved, as more is required for this than just refraining from the repurchasing of objects or making a conscious choice.

The State secretary for OCenW adopted this advice and ruled in favour of restitution to the heirs of Mr. F.B.E. Gutmann.

RC 1.1 'Paschal Lamb' by De Beuckelaer (NK 2646)

On 8 February 2002, the State secretary for OCenW asked the Restitutions Committee to issue advice on the decision pending on the application for the restitution of the painting 'Paschal Lamb' by De Beuckelaer. In June 2001, the B. heirs had submitted such an application to the Ministry.

Summary of the documentary report

The painting 'Paschal Lamb' by the 16th century Flemish painter De Beuckelaer was part of the Dutch national art collection, under inventory number NK 2646. The SNK recovered the work from Germany in 1946, under the assumption that it came from an Amsterdam art dealer who sold it voluntarily during the war. However, it was discovered fairly quickly (in 1950) that this assumption had been incorrect, but the identity of the owner was still a mystery. In 1999 BHG too concluded that the original owner of this painting (NK 2646) was unknown.

In the year 2000, the Austrian Kommission für Provenienzforschung, the equivalent of the Dutch Ekkart Committee, contacted the ICB with information indicating that 'Paschal Lamb' was not of Dutch but instead of Austrian provenance. It appeared that up to 1938 the painting had been in the possession of the Austrian Jewish couple B. The investigation established the pre-war ownership of the painting by the couple, thanks to documents from Vienna and a slide of the painting that was in the possession of the family. It proved

more difficult to establish how the painting was lost during the war. However, the events were reconstructed step by step, with the help of the B. family.



ill. 7 'Paschal Lamb', also known as the 'The Jewish Passover' and 'The Paschal Feast'. This work is now credited to Huybrecht Beuckeleer (NK 2646).

It turned out that during the course of 1939, just before the family had managed to escape from Austria and make their way to the United States, the painting had been smuggled out of the country. A Dutch friend of the family proved to have been very helpful here. The family's works of art, including 'Paschal Lamb', were entrusted to an art dealer in Belgium, a service for which the couple apparently even paid a storage charge. Various documents were recovered showing that the Belgian art dealer sold the painting to the German Mühlmann at the end of 1941. In this way, the painting ended up in the Göring collection, from where it was seized by the Allies after the war. Based on the assumption (later shown to be false) that the painting had come from the Netherlands, it was sent to this country and thus ended up in the NK collection. The B. couple, who had by now taken up residence in the United States, were unaware of what had happened to the painting. Until recently, the painting hung in the Bonnefanten Museum in Maastricht.

Advice (see appendix 6)

In its advice, decided on in its meeting on 25 March 2002, the Restitutions Committee recommended the restitution of the painting to the B. heirs. The ownership of the painting by the B. couple had been proven and the loss of possession of the painting had to be deemed to be involuntary. In this respect, the committee referred to the recommendation by the Ekkart Committee that loss of possession in Austria from 1938 onwards should fall within the scope of the restitution policy. There could be no question of repayment of any sales proceeds, given the absence of any evidence that this had ever been received.

The State secretary for OCenW adopted this advice and ruled in favour of the restitution of the painting to the B. heirs.

RC 1.3 'Venus in Vulcan's Smithy' after Boucher (NK 3298)

On 2 April 2002, the State secretary for OCenW asked the Restitutions Committee for its advice regarding an application for the restitution of the painting 'Venus in Vulcan's Smithy' after F. Boucher (NK 3298). On 10 October 2001, Mr. M. had, also on his sister's behalf, applied to the State secretary for restitution of this painting, which originally had been owned by his Jewish grandparents.



ill. 8 'Venus in Vulcan's Smithy' after Boucher (NK 3298).

Summary of documentary report

The painting 'Venus in Vulcan's Smithy', a copy (dated to the second half of the 18th century) after a painting by F. Boucher, was part of the Dutch national art collection (inventory number NK 3298). It was discovered that before and during the war the painting had belonged to Mrs. M.-M, who originally was of Hungarian nationality. During the war, as a result of the anti-Jewish measures, she had been forced to surrender the painting to Lippmann, Rosenthal & Co., the German body specialising in looting. The records of this body, part of which had been preserved and were found after the war, provided a detailed list of the valuables that she had surrendered. As was common practice for these bodies during the war, this painting was re-sold to a German art dealer. Mrs. M.-M. did not survive the war, and neither did many of the members of her immediate family.

In 1948, the painting was recovered and initially deemed to be the former property of Mrs. M.-M. However, an application for the restitution of the painting by the son of Mrs. M.-M would prove to be a long and difficult process. In the end, at the end of the 1950s, the claim foundered on complications regarding tax debts of Mrs. M.-M.'s spouse, Mr. M., as the tax authorities tried to confiscate assets from his estate. Aside from questions that arose regarding the tax assessments imposed on Mr. M. during the war, it appeared in addition that an important aspect of property law had been overlooked at that time. The painting had been classified as part of Mr. M.'s estate whereas in fact it had belonged to Mrs. M.-M. Even though Mr. M. and Mrs. M.-M. were married, they did not have any matrimonial property and had lived apart. Therefore, the painting had never been part of Mr. M.'s assets.

Advice (see appendix 7)

In the meeting on 22 April 2002, the Restitutions Committee decided on its advice, namely that the painting should be restituted to the heirs of Mrs. M.-M. The committee considered it proven that Mrs. M.-M. was the former owner of the painting and that the loss of possession during the war had been involuntary. In the committee's opinion, the application by the grandson of Mrs. M.-M. had, within the context of the government policy, to be seen as a new claim. Now that it had been established that the earlier decision was based on the erroneous assumption that Mr. M. was the owner of the painting, a decision made on this basis could not be deemed to be valid.

The State secretary for OCenW adopted this advice and ruled in favour of the restitution of the painting.

RC 1.5: 'Portrait of a woman with a little dog' (NK 2181) and
'View of Binnen-Amstel and the Blauwbrug' (NK 2115)

In his letter dated 2 April 2002, the State secretary asked the committee for advice on the application for the restitution of the paintings 'Portrait of a woman with a little dog' (NK 2181) and 'View of Binnen-Amstel and the Blauwbrug' (NK 2115) that had formerly been in the possession of the H. family. This was based on an application for restitution by the H. heirs to the State secretary for OCenW dated 7 February 2002.

Summary of documentary report

Until the war, both 'Portrait of a woman with a little dog' and 'View of Binnen-Amstel and the Blauwbrug' had been part of the very extensive collection of the Jewish H. family. This ownership was evidenced by various recovered lists and documents. When war broke out, the family stored the collection in a safe before managing to flee to Switzerland. During the war, in 1943, the safe was broken open, by order of the occupying forces. The individual works of art, 126 in number, then found their way into the hands of various buyers at home and abroad. These events are documented in a protocol (and in other documents) that was drawn up when the safe was broken open during the war.



ill.9 'View of Binnen-Amstel and the Blauwbrug' (NK 2115).
This painting has disappeared.

After the war, both paintings, together with five other works from the H. collection, were recovered in Germany and returned to the Netherlands. After the war, the original owners of the collection, Mr. and Mrs. H., submitted an application for the restoration of property rights. However, the family felt that the conditions imposed on them for the restitution of the paintings were unacceptable. These conditions consisted of payment to the SNK of the cash sum that appeared to have been credited to an account at the Liro-bank held in the H. family's name for the resale of the paintings during the war, plus the repayment of the administration costs for the recovery.



ill. 10 'Portrait of a woman with a little dog' (NK 2181).

Of the total of seven works recovered after the war that had been owned by the H. family, five were auctioned off by the Dutch State in the 1950s. Since that time, the two paintings to which the application related had been part of the Dutch national art collection.

However, during the investigation it was discovered that one of the two paintings, 'View of Binnen-Amstel and the Blauwbrug', could not be found. According to information from the painting's borrower, the Ministry of Defence, the painting had disappeared during the period 1996-2001 under circumstances that are still unclear. The administrator of the NK collection, the ICN, believes that there is only a very small chance that this work can still be recovered.

Advice (see appendix 8)

In its advice, decided on during the meeting on 23 September 2002, the committee recommended that the painting 'Portrait of a woman with a little dog' (NK 2181) should be returned to the heirs of Mr. J. H. In respect of the 'View of Binnen-Amstel and the Blauwbrug' (NK 2115), it recommended that the heirs of Mrs. L. H.-W. be compensated.

The Restitutions Committee's first consideration in reaching the above conclusion was that the H. family could be deemed to be the owner of both paintings. The committee also deemed the loss of possession during the war to be involuntary. The changed insights regarding the financial conditions imposed on the restitution after the war should in this case be seen as new facts within the context of the current restitution policy, which meant that in principle the application for restitution could be granted. However, should the painting 'View of Binnen-Amstel and the Blauwbrug' prove untraceable, so that no actual restitution could take place, the committee felt that compensation should be paid. Since it could not be proven that the owner had at any time received the sales proceeds, in the committee's opinion there could be no question of demanding repayment of the proceeds.

By means of his letter dated 26 November 2002, the State secretary reported to the Restitutions Committee that he would adopt its advice in respect of the painting 'Portrait of a woman with a little dog' (NK 2181). In respect of 'View of Binnen-Amstel and the Blauwbrug' (NK 2115), the State secretary informed the committee that he felt further policy rules should be instated before making his decision. So far, this decision has been adjourned.

After an article on the case in the NRC Handelsblad newspaper on 2 December 2002, the committee received information on the possible location of the painting, but this did not lead to the recovery of the painting. The Restitutions Committee does not know whether the painting has now been traced or whether it must be definitively deemed to be lost.

RC 1.7 'Portrait of Don Luis de Requessens y Zuñiga' by an anonymous artist (NK 3409)

By means of his letter dated 22 July 2002, the State secretary for OCenW asked the Restitutions Committee for advice on the application for the restitution of the painting 'Portrait of Don Luis de Requessens y Zuñiga' by an anonymous artist (NK 3409). This application was submitted on behalf of the heirs of the original owner, the Jewish artist J.H. Gosschalk, on 21 June 2002.

On the instructions of the Restitutions Committee, BHG carried out an (art-)historical investigation. Further investigation was felt by the committee to be unnecessary.



ill. 11 'Portrait of Don Luis de Requessens y Zuñiga' (NK 3409)]

Summary of documentary report

'Portrait of Don Luis de Requesens y Zuñiga', a painting from the second half of the 16th century of a Spanish noble by an anonymous artist, was owned by the Jewish artist J.H. Gosschalk when war broke out. As with so many Jewish Dutch persons, during the course of the war he was forced to surrender his valuables to Lippmann, Rosenthal & Co., the German body specialising in looting. The painting was one of the objects that he had to surrender. The Liro-bank's records show that it was then resold and thus found its way to Germany. Mr. Gosschalk probably never knew that the painting had returned from Germany after the war.

Advice (see appendix 9)

In the meeting on 28 October 2002, the Restitutions Committee decided on its advice. It advised restitution of the painting to the heirs of Mr. Gosschalk. The committee considered it proven that the painting was the former property of J.H. Gosschalk and that Mr. J.H. Gosschalk had lost possession of the painting involuntarily, as the result of persecution by the Nazi regime. Given that no previous application for the restitution of the painting had been submitted, the committee deemed that this application was allowable, in accordance with the restitution policy implemented by the Minister for OCenW.

The State secretary reported to the committee by letter dated 6 December 2002 that he had adopted this advice and would allow the application.

4.2 Restitutions Committee cases pending as at 31 December 2002

As at 31 December 2002, the Restitutions Committee has seven cases pending. As stated above, most of these cases involve NK objects. A single application for restitution relates to a work of art in the possession of the State of the Netherlands that is not part of the NK collection. Another application relates to the restitution of a work of art that is in the possession of a foreign museum. The cases vary in complexity and scope, which is why it is difficult to predict how long these cases will take to settle.

Given that these seven cases are currently being dealt with by the committee, they will not be addressed in further detail here.

Appendices

1. Decree establishing the Advisory Committee on the assessment of restitution applications of 16 November 2001 (WJZ/2001/45374(8123)) and explanatory notes.
2. 'Origins Unknown', recommendations by the Ekkert Committee dated 26 April 2001.
3. Letter dated 29 June 2001 from the State secretary for OCenW to the chairman of the Lower House of Parliament in respect of recommendations made by the Ekkert Committee, DCE/01/25 248.
4. Supplementary letter dated 16 November 2001 from the State secretary for OCenW to the Speaker of the Lower House of Parliament in respect of the Ekkert Committee's recommendations, DCE/01 43 415.
5. Advice (with names deleted) in respect of RC 1.2
6. Advice (with names deleted) in respect of RC 1.1
7. Advice (with names deleted) in respect of RC 1.3
8. Advice (with names deleted) in respect of RC 1.5
9. Advice (with names deleted) in respect of RC 1.7

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

Explanatory notes

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 Advisory Committee by private individuals, nor is it clear how many years the Committee is going to need to fulfil its tasks. The figures mentioned seem to point to a term of 3 to 5 years.

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)

Origins Unknown

Recommendations Ekkart Committee

April 2001

Supervisory committee Origins Unknown/Herkomst Gezocht
Prins Willem Alexanderhof 20
NL - 2595 BE 's Gravenhage
00 31 (0)70 - 3717200
00 31 (0)70 - 3852958

www.herkomstgezocht.nl
www.originsunknown.org

RECOMMENDATIONS REGARDING THE RESTITUTION OF WORKS OF ART

Recommendations:

1. The committee recommends that the notion of "settled cases" be restricted to those cases in which the Council for the Restoration of Property Rights or another competent court has pronounced judgment or in which a formal settlement was made between the lawful owners and the bodies which in hierarchy rank above the SNK.
2. The committee recommends that the notion of *new facts* be given a broader interpretation than has been the usual policy so far and that the notion be extended to include any differences compared to judgments pronounced by the Council for the Restoration of Property Rights as well as the results of changed (historic) views of justice and the consequences of the policy conducted at the time.
3. The Committee recommends that sales of works of art by Jewish private persons in the Netherlands from 10 May 1940 onwards be treated as forced sales, unless there is express evidence to the contrary. The same principle should be applied in respect of sales by Jewish private persons in Germany and Austria from 1933 and 1938 onwards, respectively.
4. The Committee recommends that the sales proceeds be brought into the discussion only if and to the extent that the then seller or his heirs actually obtained the free disposal of said proceeds.
5. The Committee recommends that for the purposes of applying this rule the rightful claimants be given the benefit of the doubt whenever it is uncertain whether the seller actually enjoyed the proceeds.

6. The Committee recommends that whenever it is necessary to couple a restitution to the partial or full repayment of the sales proceeds, the amount involved be indexed in accordance with the general price-index figure.
7. The Committee recommends that the authorities, when restituting works of art, refrain from passing on the administration costs fixed by the SNK at the time.
8. The Committee recommends that a work of art be restituted if the title thereto has been proved with a high degree of probability and there are no indications of the contrary.
9. The Committee recommends that owners who did not use an earlier opportunity of repurchasing works of art be reafforded such opportunity, at any rate insofar as the works of art do not qualify for restitution without any financial compensation according to other applicable criterions.

RECOMMENDATIONS REGARDING THE RESTITUTION OF WORKS OF ART

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RECOMMENDATIONS FOR THE RESTITUTION OF WORKS OF ART

1. Introduction

The primary task of the supervisory committee: *Origins Unknown*, usually designated as the Ekkart Committee, is to instigate investigations into the provenance of what is known as the NK collection, which consists of the works of art repatriated from Germany after World War II that are still in the custody of the State. In addition, the committee has been assigned the task of investigating the working methods of the Netherlands Art Property Foundation (abbreviated as "SNK") which in the years 1945-1952 was responsible for the recovery and restitution of works of art; and the task of making recommendations to the Dutch government, based on the insights gained by the research, for the policy to be pursued on the restitution of works of art of the NK collection.

The investigations into the provenance of the individual works of art were initiated in September 1998. Research is carried out under the substantive responsibility of the Committee by the project bureau *Origins Unknown*, which comes under the jurisdiction of Cultural Heritage Inspectorate. In the mean time two subreports (dated October 1999 and October 2000) have been published, recording the traced provenance information of approximately 1000 items. As from the end of April 2001 the information contained in the subreports will also be available on the Internet in two languages. The provenance research will be completed in the autumn of 2002. The historical inquiry into the SNK, carried out by two researchers of the same project bureau, has also been taken in hand and will be completed in the autumn of 2001.

Initially, the intention was to include the restitution policy recommendations to the government in the Committee's final report, which is expected in the fourth quarter of 2002 after the completion of the provenance investigations. The Committee believes, however, that it is extremely desirable to speed up the restitution policy advisory process, provided that this does not harm the carefulness with which the process is carried out. The Committee is confirmed in its view by the concern, appearing from the questions asked by several parliamentary parties in February of this year, that the restitution process will be

seriously hampered if a revised restitution policy is too long in forthcoming. In spite of the fact that the investigations into the provenance of the works of art of the NK collection are still in full progress, as is the historical inquiry into the working method of the SNK that is partially based on these investigations, the Committee has decided to submit part of its recommendations ahead of its final report and to bring forward its report on those inter-related aspects of the restitution policy that have already been sufficiently clarified by the research done so far. This phased presentation of recommendations is aimed at giving the government the opportunity to adopt a new policy for immediate implementation, allowing at least part of the restitution cases to be settled in the near future based on the wider criteria which are considered advisable.

It is true that at the present stage of the investigations it is not yet feasible to present balanced and unambiguous policy recommendations regarding certain elements of the restitution policy, for instance with respect to the Jewish art shops that were placed under the supervision of Verwalters; yet thanks to the work done so far we now do have a clear picture of the policies to be followed with respect to private Jewish art property which got out of the owners' possession during the war years. Since the Ekkart Committee holds the opinion that precisely this aspect is a matter of the greatest urgency, this first set of its recommendations is devoted to this aspect. The designation private art property is used here to include all art works owned for non-commercial purposes, whether held as purely private property or with legal title vested in the collector's family business.

We state emphatically that the fact that we are not yet making any recommendations about other aspects must not have the effect of postponing decisions on cases which already qualify for restitution under the policy that has been followed so far by the government, as set forth in the letter dated 14 July 2000 from the State Secretary of Education, Culture and Science to the Speaker of the Lower Chamber of Parliament. It is only in the case of claims belonging to a category on which the Committee has not yet made any recommendations and falling outside the scope of the restitution policy currently followed by the government, that it may be advisable for the State Secretary to defer his decision until a revised policy has been adopted in respect of the category in question as well. This applies in particular, therefore, to claims concerning works of art sold in the war years by Jewish art dealers.

2. General research findings

In general, the research work done since September 1998 in implementation of the project *Origins Unknown* confirms the conclusions laid down in the pilot study report of April 1998. Meticulous provenance research often makes it possible to recover information concerning the history of works of art that was unknown to the SNK and in some cases such new information will produce evidence of property having been lost involuntarily while the rightful owners did not submit a claim for such loss after the war. In some cases it also turns out to be possible after all to establish a link between objects still present and objects whose involuntarily loss was reported by the original owners but which were not recognised at the time. In such cases the concepts of *new claim* and *new facts* used in the current government restitution policy may serve to initiate a restitution procedure.

As was already observed in the pilot study report, apart from the items referred to above there are many items whose origin can be traced with certainty and which came into German hands for instance because they were sold voluntarily by Dutch persons not belonging to the persecuted population groups and which therefore came and remained in the custody of the Dutch State quite lawfully after their recuperation. The investigations also confirm the finding that there is a large number of works of art from the NK collection for which it is impossible to reconstruct a full provenance history, so that only reactions to the publication of the information that is now available may cause evidence of the possible involuntary loss of the property to emerge. For this reason the full publication of the research that has been done so far in reports including publication via the Internet must still be considered an important instrument for discovering cases of looting, confiscation and forced sale. The fact that the investigations occasionally make it possible to unearth unknown and/or unidentified information which may lead to restitutions makes it clear that these investigations must be continued and completed in conformity with the project plan. At the same time, moreover, the investigations are producing a lot of information about the methods used for the restitution of works of art in the years 1945-1952 and thus provide material for formulating recommendations to the government on the policy to be conducted henceforth.

The findings are entirely in agreement with those of other government committees that have tackled the issues of war losses and restoration of property rights. In general, the

finding of the Scholten Committee that in several respects the system of legal restitution was characterised by a strictly bureaucratic approach without any flexibility and turning a blind eye on the exceptional position and interests of the victims, is very much applicable to the conduct of the Netherlands Art Property Foundation (hereinafter referred to as the SNK). The remarks of the Kordes Committee about the formal and businesslike approach taken by the authorities and others are fully applicable to the SNK, while the critical comments of the same committee about the fact that the administration costs of the system for the restoration of property rights were charged to Jewish estates are directly applicable to the guidelines adopted by the SNK for charging the costs of the art restitution process to the rightful owners when restituting works of art.

Based on our examination of the documents relating to a great number of post-war claims we must describe the way in which the Netherlands Art Property Foundation generally dealt with the problems of restitution as legalistic, bureaucratic, cold and often even callous.

3. Private art property: basic principles

The current restitution policy of the Dutch government in respect of items from the NK collection is based on the principle that a claim may be submitted only if it is a *new claim* or if *new facts* have become available in respect of a claim already dealt with before.

Another condition is that the rightful owner must have lost the property *involuntarily*. Of these requirements only the notion of *new claim* is capable of unambiguous and systematic application. Different views may be held of the concept of *new facts*, while different interpretations of the concept of *involuntary loss of the property* were already used as early as in the period 1945-1952.

The general government position on World War II Assets dated 21 March 2000 is based on the principle that the process of restoring property rights will not as such be repeated. It follows that *settled cases* will not be reopened. Since there may be serious uncertainty about the question what must be considered to fall within the category of settled cases, the committee, having examined a large number of files, recommends that the term "settled case" be restricted to the two categories regarding which a general consensus does exist, namely judicial decisions and formal settlements made between the bodies which in hierarchy rank above the SNK (Council for the Restoration of Property Rights and the

Netherlands Custodian Office) and claimants and signed by both parties. Formal settlements made at a later date with the Kingdom of the Netherlands likewise belong to the category of settled cases. According to this view a decision taken by the SNK does not make a case a settled case, and even less does an unsigned note made by an SNK official on a document stating that the case has been (officially) settled. On the same principle decisions of the SNK followed by a letter from the claimants communicating that under the conditions stipulated by the SNK they have decided not to accept restitution, likewise do not fall within the category of formal settlements.

It has been found that in only a few cases claims refused by the SNK were eventually submitted to the court, in this case the Judicial Division of the Council for the Restoration of Property. This happened mainly in a period in which the SNK already considered most cases as closed. It is the opinion of the committee that the judgments given in these cases must be viewed as containing criteria for reviewing the assessments by the SNK that were never submitted to the court by the claimants concerned. The resulting differences between judicial judgments and SNK decisions must be considered to constitute *new facts* in any claims that may be submitted. A judgment like the one given in the Gutmann case (1952), for instance, expresses a clearly broader interpretation of the notion of involuntary loss of the property than was usually given to the notion by the SNK. This is expressed in the finding that a sale "under the influence of the special circumstances of the war" also qualifies for annulment. Although the other judicial judgments may operate less directly as precedents, they do make it clear that the courts took a more lenient view of the matter than the SNK (see e.g. the judgment in the case of Rebholtz, 1953, which annulled the decisions of the SNK and the Netherlands Custodian Office). Whenever a claim is submitted by a claimant who invokes such a judgment and makes a reasonable case for the view that the application of the norms used in that judgment might have resulted in a different decision than the one taken by the SNK, such claim should qualify for consideration on these grounds.

The concept of *new facts* must likewise be given a broader interpretation than has been customary so far, since at present only new, hard facts about the history of the work of art, i.e. new information obtained from the provenance research, are considered to be *new facts*.

Although we must take great care that the application of new norms does not result in legal inequality in comparison to cases fully disposed of at the time, it must also be examined whether according to our present-day sense of justice the methods used by the SNK at the time are sufficiently in agreement with the then existing legal principles as laid down in Royal Decree E 100. There is no need to call into question these basic principles of the restitution policy, but we should examine their implementation by the SNK. In this connection it is important to point out that the ministries involved never gave the draft guidelines set up in late 1946 by the SNK based on the informal 1945 guidelines to help establish the foundation's actual procedure, the official status of instructions to the SNK. It is clear, moreover, that these draft guidelines, which the SNK by all appearances used in practice as rules of conduct, also left much room for different interpretations.

Summarising, it may be stated that the criteria used by the government for not pleading the statute of limitation in respect of claims are practicable, but that the notions of *settled case* and *new facts* need to be given a broader interpretation.

In addition the committee would like to make recommendations for the following points:

- the interpretation of the term forced sale (§ 4)
- the need to repay the sales price (§ 5)
- the use of the concept of proof (§ 6).

Furthermore, a recommendation will be made in respect of a rule which is not laid down anywhere but which the investigations show the SNK to have applied in practice, viz. that where the SNK was willing to reconstitute an object, the right to "repurchase" the object was valid only for a short period (§ 7).

Recommendations:

- **The committee recommends that the notion of "settled cases" be restricted to those cases in which the Council for the Restoration of Property Rights or another competent court has pronounced judgement or in which a formal settlement was made between the lawful owners and the bodies which in hierarchy rank above the SNK.**

- **The committee recommends that the notion of *new facts* be given a broader interpretation than has been the usual policy so far and that the notion be extended to include any differences compared to judgements pronounced by the Council for the Restoration of Property Rights as well as the results of changed (historic) views of justice and the consequences of the policy adopted at the time.**

4. Forced sale

Article 11 of the last draft of the *General Policy Guidelines for the Netherlands Art Property Foundation* of 1946 formulates as a condition for restitution that "there must be no doubt as to the involuntary nature of the loss of the property". In explanation hereof the same article 11 adds:

"Involuntary loss of the property will be basically defined as cases in which the original owners did not lend their co-operation to the loss of the work or works of art belonging to them. Cases will also be included in which such co-operation was given, but where it can be demonstrated to the satisfaction of the Foundation that this took place under force, duress or improper influence, direct or indirect, of the enemy. If in the opinion of the Foundation the conditions stated here have not been satisfied, no restitution shall be made for as long as the claims of the applicants have not been recognised by the competent court."

In carrying out its activities the SNK seems to have acted in accordance with this rather narrow definition of the term "involuntary loss of the property".

It must also be recalled, moreover, that a very high number of registration forms about war-time sales of works of art were filled out by the SNK itself by way of "internal registration forms" and that consequently the only significance that may be attached to the designation *free sale* on such forms is that this was the view taken by the SNK.

It was already pointed out before that only very few cases were eventually submitted to the courts, but there is at least one judgement which makes it clear that the courts took a broader position in this matter than the SNK. This is the judgement given on 1 July 1952 by the Council for the Restoration of Property Rights in the Gutmann case. In this judgement the Council reversed the judgement of the SNK that sales made in 1941 and in the first quarter of 1942 could not have been forced sales. In reaching its decision the

Council took the ground that even though the buyers of the works of art may not have used any direct coercion, the special circumstances might nevertheless warrant the plea of forced sale.

This judgement provides an unambiguous basis for a policy principle to the effect that the characterisation of forced sale may be applied to all sales of works of art by Dutch Jews from 10 May 1940 onwards, unless there is express evidence to the contrary. For the fact is that often the driving motives for selling off works of art consisted of existing or imminent measures of the occupying forces ordering the surrender of works of art to an occupation agency and the fact that possessions left behind by a person fleeing to save his life would be confiscated. So in this respect it is immaterial whether the initiative for the sale came from the buyer or from the seller and likewise immaterial whether the buyer must be deemed to have been acting in good faith or in bad faith. Sales by Jewish owners in Germany and Austria from 1933 and 1938 onwards, respectively, can also be deemed to have been forced sales except for proof to the contrary.

In the case of other private persons the current principle, viz. that it must be proved that a sale was definitely or in all probability made involuntarily, will continue to apply.

Recommendation:

- **The Committee recommends that sales of works of art by Jewish private persons in the Netherlands from 10 May 1940 onwards be treated as forced sales, unless there is express evidence to the contrary. The same principle should be applied in respect of sales by Jewish private persons in Germany and Austria from 1933 and 1938 onwards, respectively.**

5. Repayment of sales proceeds

As already stated, one of the features of the SNK policy was that in the case of works of art that had been sold, the owner had to refund the price paid therefor if he wanted to repossess the works of art sold involuntarily. The Committee holds that the strict application of this principle can only be described as extremely cold and unjust, in particular because many Jewish owners used the proceeds exclusively to try and flee the country and because in many cases the proceeds did not actually benefit the owners of the works of art.

Although it would seem to be a simple solution just to refrain from demanding any repayment, in the opinion of the Committee this would conflict with the principles of equality before the law, since in the years after 1945 some owners of works of art did in fact repay the asked price and since it was precisely the requirement of repayment which in many cases presented an obstacle that frustrated the actual restitution of works of art. Entirely declining all repayments would therefore be diametrically opposed to the principles of the restoration of property rights applying at the time and would stamp with pointlessness the efforts of rightful claimants who in those days scraped together money, often clearly at very great pains, to buy back works of art. It is however necessary to relax the implementation of the repayment rule considerably. The basic principle governing this point should be that repayment of the sales proceeds is required only if it can be proved that the then owners or their heirs received money which they were free to spend, including any sums used in repayment of prior, normal debts or loans. There are no grounds for requiring any repayment in all cases in which the money received was probably spent solely on attempts, whether or not successful, to leave the country or to go into hiding. Likewise, no repayment should be demanded if the sales proceeds never directly reached the persons entitled (payment into an inaccessible account).

Such a relaxation of the rules is entirely within the policy lines established after the war, since article 27(5) of Royal Decree E 100 (Restitution of Legal Rights Decree) provides expressly that the Council for the Restoration of Property Rights "*may* direct that the sales price must be transferred in part or in full to the State (...)", contrary to an earlier wording of this article which provided for the compulsory reclamation of the sales price.

Under the rules of such a policy, only sums received in connection with forced sales that actually accrued to the seller's capital as well as sums received after the war by the entitled parties by way of payment of blocked accounts would have to be repaid, at any rate to the extent that there is any certainty on these points. In deciding whether there are grounds for demanding repayment, the rightful claimants should, where necessary, always be given the benefit of the doubt: if there are sufficient grounds to doubt whether the party concerned actually made some money out of a sale at the time, no repayment should be required.

If the inquiry results in the conclusion that it is justified to require partial or full repayment of the sales price, such repayment should be indexed in conformity with the general price-

index figure. Such indexation is necessary for the sake of equality before the law compared to those who did buy back their property in the after-war years and will moreover prevent extra profits being gained now by those who at the time very consciously opted for money instead of restitution of works of art. The Committee is aware that for some rightful claimants changes in the market value of the individual works of art concerned may bring either a profit or a loss, but it sees no possible way of also incorporating this factor, which varies from one object to the next, in a general policy,

Any sums still to be paid should be appropriated to a specific cause, which may be identified at a later stage. In the opinion of the Committee these sums must not be added to the general public fund in order to avoid even the semblance of any profit coming to the State from the sufferings of war.

The Ekkart Committee, like the Kordes Committee, takes an extremely critical attitude toward passing on the costs of the restitution machinery to the rightful claimants, as the SNK did in the years 1945-1952 because the Dutch government expected the foundation to be self-supporting in the matter of costs. Whenever a restitution is made, whether or not coupled to repayment of the sales price, the authorities should always refrain from charging any such costs.

Recommendations:

- **The Committee recommends that the sales proceeds be brought into the discussion only if and to the extent that the then seller or his heirs actually obtained the free disposal of said proceeds.**
- **The Committee recommends that for the purposes of applying this rule the rightful claimants be given the benefit of the doubt whenever it is uncertain whether the seller actually enjoyed the proceeds.**
- **The Committee recommends that whenever it is necessary to couple a restitution to the partial or full repayment of the sales proceeds, the amount involved be indexed in accordance with the general price-index figure.**
- **The Committee recommends that the authorities, when restituting works of art, refrain from passing on the administration costs fixed by the SNK at the time.**

6. Proof of title

It is clear that it will often be difficult to produce conclusive evidence of title and of the truth of the facts stated by the former owners concerning the loss of the property, among other things because in many cases the relative documentary evidence will have been lost due to the war situation. In assessing the evidence the benefit of the doubt should be given to the private person and not to the State. When it is proved that a claim is probably valid and there are no indications of the contrary, the claim should not meet with a blunt refusal. In this type of cases the judgement given by the Council for the Restoration of Property Rights in the Rebholtz judgement of 23 November 1953 may be taken as a precedent; one of the grounds taken in this judgement reads as follows: "Whereas with respect to this issue: in the first place the Council holds that the applicants have produced sufficient prima facie evidence that the painting at issue was the property of Mrs Rebholtz, while it is not possible to infer sufficient indications of the contrary from the exhibits submitted in evidence by the State after the oral hearing; furthermore".

Nevertheless, a more lenient interpretation of the concept of "proof" must leave fully intact one basic principle that was quite rightly applied by the SNK, namely that "there must be no mutually inconsistent claims submitted and there should be no reason to suppose that such claims will be entered in the future" (draft Guidelines SNK, article 11(b)). This basic principle led to the requirement, which was also applied by the SNK, that the restitution of a work of art must be preceded by a careful examination whether there is sufficient certainty that the claim does in fact relate to the designated work of art. Based on the present research it may be added that it must also be examined, perhaps more thoroughly than was done by the SNK, whether the work of art in question may not have changed hands involuntarily a second time during the war. Cases of conflicting claims should be submitted to the regular courts or to arbitration.

Recommendation:

- **The Committee recommends that a work of art be restituted if the title thereto has been proved with a high degree of probability and there are no indications of the contrary.**

7. Period allowed for repurchasing

The research done so far has revealed a number of cases in which the SNK recognised claims to recovered items and gave the rightful claimants the opportunity to "repurchase" these items, which items were however never actually restituted. In some cases there is a letter from or on behalf of the owners saying that they have decided not to make use of the opportunity offered them in view of the conditions attached thereto, sometimes there are only indirect indications that the owners renounced their rights.

In some cases owners who initially did not have sufficient funds to repurchase their property, subsequently still tried to do so on the conditions stated on the earlier occasion. In 1958 the application of Wassermann was refused over the telephone following an opinion of the State Inspector that restitution would create a precedent (Subreport of October 2000, p. 109) and the applications of Busch were likewise refused in 1965 and in 1973, in 1965 among other things based on an opinion of the State Inspector that "it is desirable for the painting of Floris van Schooten to be retained in the possession of the State " (Subreport of October 2000, p. 71).

If the policy criteria are revised in conformity with the recommendation set forth in § 5, it is probable that in some of such cases the condition of repayment of the sales price would no longer apply. Where such a condition would still apply, it is advisable in accordance with the above recommendations to allow the rightful claimants an ample period, to be determined at a later stage, in which they may still repurchase the works of art in all those cases in which the owners were given the opportunity of repurchasing works of art and in which no formal settlement was made but the owners merely acquiesced in the fact that they were forced to decide not to use the opportunity offered by the SNK. For this purpose, moreover, the recommendations for price indexation and not passing on administration costs set forth in § 5 must also be taken into account.

Recommendation:

- **The Committee recommends that owners who did not use an earlier opportunity of repurchasing works of art be reafforded such opportunity, at any rate insofar as the works of art do not qualify for restitution without any financial compensation according to other applicable criteria.**

To the chairman of the Lower House
of Parliament
P.O. Box 20018
2500 EA THE HAGUE

Our reference
DCE/01/25248

Contact
ms S. Gimbrère

Zoetermeer
June 29th, 2001

Re: Enclosure(s)
Ekkart Committee recommendations

Direct dial number
4483

Introduction

On 26 April the Ekkart Committee presented recommendations to the Dutch government. The following contains the government's reaction to these recommendations.

As appears from its letter of presentation the Ekkart Committee, urged by serious concern about a threatening delay in the restitution policy, decided to speed up the advisory process. With its recommendations the Committee makes an important contribution to the discussion which various parties have expressed a wish to start about the basic principles of the Dutch policy. The government wishes to extend its gratitude for this contribution.

Although on a number of points the recommendations are very critical of the current policy, the work of the Committee deserves appreciation only. The recommendations are very well-founded. The fact that Committee did not have eyes only for the results of its own research but also for criticisms of the Dutch policy both at home and abroad makes the recommendations even more pertinent. The cabinet greatly appreciates the fact that the Committee has already managed to give an indication of the subjects on which the Committee will formulate additional recommendations at a later stage. This could be a reason in the intervening period for not anticipating such issues in individual cases and for postponing decisions on certain points in the interest of the parties concerned.

In the present letter the government presents its first reaction to the recommendations; given the available time for preparing this reaction it will be clear that it is not possible now to discuss all the Committee's recommendations in detail.

In view of the express request of the Committee to make haste with determining a position, the government has opted for the procedure of presenting a first reaction at this short notice so as to create as much clarity as possible at this early stage for all parties concerned. With regard to further instructions for advice to which this reaction refers in connection with some issues the government will not only call in the Ekkart Committee but the government attorney as well. In this letter the government not only sets forth its reaction to the recommendations but also presents a proposal to you

regarding the possible establishment of a committee which will have the task of advising the government about individual applications for restitution. Although the Ekkart Committee has not brought up this subject for discussion, the government nevertheless believes that this letter provides a proper framework for presenting its proposals on this matter to you. This is in keeping with the wish of the Lower House Committee on Education, Culture and Sciences, as embodied in a letter dated 7 June of this year, to consider establishing a committee after the English model which is to decide on applications for the restitution of works of art stolen in the war.

Government reaction to the recommendations

General research findings

The Committee states that even at this early stage it can already be concluded, in keeping with the conclusions of the other committees of inquiry, that the restoration of property rights in works of art after the war was carried out in a cold and bureaucratic manner. I will confine myself here to a reference to the comments of the government about the post-war restoration of property rights in its reply of 21 March 2000 (Parliamentary papers II, 1999/00, 25 839, nr. 13).

Private art property; basic principles

In its recommendations on works of art originating from private ownership the Committee subscribes to the general government position that the restoration of property rights which took place after the war will not as such be repeated. The Committee concludes that this position entails that *settled* cases will not be re-opened and then presents its interpretation of the notion of 'settled case'. The Committee recommends that this term be restricted to those cases in which the Council for the Restoration of Property Rights or another competent court has pronounced judgment or in which a formal settlement was made between the interested parties and bodies which in hierarchy rank above the SNK.

This recommendation of the Committee implies the assumption that the activities of the SNK did not, at the time, constitute a restoration of property rights. Since this implicit conclusion of the Committee is highly relevant to the compatibility of the recommendation with the general principle, to which the Committee subscribes, that the restoration of property rights will not be repeated, the government asked the Committee for a further opinion on this point. This additional opinion (see enclosure) has convinced the government of the fact that in the formal sense the SNK was not a body having authority to decide cases involving the restoration of property rights and that consequently its decisions cannot be deemed to be final decisions on the restoration of property rights.

Therefore the government is prepared to adopt this recommendation of the Committee but it does hold the opinion that the notion of 'formal settlement' may lead to a lack of clarity. In the opinion of the government a case is a settled case if either the claim for restitution resulted in a conscious and deliberate settlement or the claimant expressly renounced his claim for restitution.

The second recommendation of the Committee concerns the interpretation of the concept of 'new facts'. Although the exact implications of this recommendation will have to be considered in further detail and it is therefore not possible to adopt the exact examples given by the Committee at this stage, the government can already at this stage endorse the general purport of the recommendation, viz. that the concept of

new facts must be given a broad interpretation. This involves in particular the judgments pronounced by the Council for the Restoration of Property Rights. It would seem to be more natural to use the criteria formulated in the case law on the restoration of property rights for the purpose of determining the substantive examination of restitution claims than for the purpose of defining the concept of new facts. To the extent that the proposed wider interpretation of the concept of new facts relates to changed views, the government will further consider the matter.

Forced sale

The recommendation of the Committee that *in principle* all sales by Jewish owners be considered as forced sales, which is in keeping with the judgment pronounced by the Council for the Restoration of Property Rights, meets with the approval of the government because of the accompanying 'in principle' proviso, which leaves open the possibility of approaching cases on an individual basis. At present the government cannot calculate the implications of the second part of the third recommendation, viz. that sales by Jewish private persons in Germany from 1933 and in Austria from 1938 be likewise treated as forced sales. The government will seek further opinions on this issue and will return to the subject in a sequel to the present reaction. In its further considerations the government will also include the question whether it is advisable and feasible to restrict the recommendation to *Jewish* private property.

Repayment of sales proceeds

With regard to repayment of the sales proceeds received at the time the Committee recommends a relaxation of the rules. Actually, this is in keeping with the current implementation of the government memorandum of 14 July 2000 on this point. At present the rule is already that there must be proof that the claimant did receive a consideration. Only then will repayment of the sales price received at the time be demanded.

More in detail the Committee proposes that repayment of sales proceeds be demanded only 'if and to the extent that the then seller or his heirs actually obtained the free disposal of said proceeds'. The government is willing to adopt this recommendation, while the recommendation to give rightful claimants the benefit of the doubt is likewise acceptable. In this connection the government construes the words "free disposal of proceeds" to mean the sums which actually accrued to the sellers capital. Likewise acceptable is the recommendation that in cases where repayment is required, the amount be indexed in accordance with the general price-index figure. The same holds true for the recommendation not to pass on the administration costs in case of restitutions, as the SNK did at the time.

Proof of title

The government admits that as a result of the war situation many important papers were lost, including documentary proof of former owners' title to works of art. Although it is the duty of the authorities to ensure as far as possible that works of art are returned to the persons actually entitled to them while it is up to the claimants to prove their title, the government recognises the practical problems that claimants may encounter in furnishing proof in view of the lapse of time. In view of the special circumstances the government thinks it is acceptable to adopt the recommendation of the Committee to restitute a work of art if the title thereto has been proved with a high degree of probability and there are no indications of the contrary.

Period allowed for repurchasing

The last recommendation of the Committee is about the possibility of repurchasing objects that were not repurchased on an earlier occasion. The Committee recommends that heirs who did not use earlier opportunities to repurchase works of art be reafforded such opportunity, at any rate insofar as other applicable criterions would not already result in restitution without financial compensation. In the opinion of the government this recommendation addresses two different issues, viz. the question whether there should be a possibility of claiming a work of art which on an earlier occasion the rightful claimants decided not to repurchase and the question whether the conditions on which such restitution might take place are satisfied. The latter question is discussed elsewhere in this reaction. So there remains the question whether an opportunity should still be offered this late in the day to invoke rights which were previously waived. The government will seek an opinion on the implications of this recommendation as well. Subsequently, the government will present a definitive position.

Advisory Committee for considering individual applications for restitution.

In its reaction to the recommendations of the Ekkart Committee the government has not opted for a purely legal approach to the restitution issue but rather for a more policy-based approach. It is in keeping with such a policy-oriented approach to establish an advisory committee for judging individual restitution applications, also in the light of international developments in these matters as expressed 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 the principles is the establishment of national "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 government has taken its inspiration from these examples and will in the near future establish an advisory committee which is to advise on individual applications for the restitution of items of cultural value forming part of the NK collection. The main reason for setting up an advisory committee has been the distance to the authorities this will create. Since the authorities, being the possessors/administrators of the state collection, are directly concerned in the matter, the existence of an advisory committee will enhance the independence of the decision process. This will certainly contribute to a greater acceptance of the Dutch policy in this field.

The government has the following set-up in mind for such an advisory committee:

- The committee will advise the State Secretary of Education, Culture and Sciences on individual applications for restitution of items of cultural value which are in the NK collection.
 - The committee will give its advice within the frameworks and policy lines laid down by the government.
 - The responsible cabinet member will carry out a marginal examination whether the committee has carried out its advisory role within its mandate.
 - The committee will be composed of a number of leading lawyers and other experts such as historians and art historians.
-

- If private persons so request, the responsible cabinet member will submit their mutual disputes about goods of cultural value that were transferred during or as a result of World War II to the committee for advice.

A more detailed mandate for the committee will be presented to you before long.

The State Secretary for Education, Culture and Sciences.

[signed]

dr. F. van der Ploeg.

To the Speaker of the Lower House
of Parliament
P.O. Box 20018
2500 EA THE HAGUE

Our reference
DCE-01/43415

Contact
S. Gimbère

Zoetermeer
November 16th, 2001

Subject
Ekkart Committee recommendations

Extension
4483

In my letter of 29 July 2001 conveying the government's reaction to the Ekkart Committee recommendations, the government refrained from stating its definitive response to two of those recommendations. In addition, the government made a reservation regarding the more liberal interpretation of the notion of 'new facts' as recommended by the Ekkart Committee.

In this letter, the government sets forth its additional reactions, as promised. The letter I received from the Ekkart Committee dated 4 July 2001 in response to the government's initial reaction already contained some elements that helped the government determine its position on these additional matters. In the meantime, the government has also had an informal meeting with the Committee chairman on this issue. The additional information thus obtained eventually led to the government position as presented in this letter. There was no need, therefore, to call in the government attorney for further advice. His general response to the Ekkart Committee recommendations was taken into account in the formulation of the government's reaction of 29 June 2001.

As regards the second part of the third recommendation, concerning the sale of art objects by Jewish people in Germany from 1933 and in Austria from 1938, the government will, in principle, assess any of these transactions that are directly associated with the Nazi regime in Germany against the same criteria as those applied to sales in the Netherlands from 10 May 1940.

As regards sales in the Netherlands from 10 May 1940, the government advocates a broader interpretation of the third recommendation. In principle, the government intends to regard as forced sales not only sales by Jewish people, but also sales by other persecuted sections of the population, including Sinti and Roma and other groups of persecution victims as referred to in the government response on World War II assets of 21 March 2000 (Parliamentary papers II, 1999-2000, 25839 No. 13) and as elaborated in the various implementing regulations. The government wishes to point out, however, that the facts and circumstances before May 1940 are already being taken into account in the current attempts to determine ownership of art objects.

In effect, the integral adoption of the ninth recommendation would mean that in a number of cases the restoration of property rights would be repeated. This is incompatible with

the government's general position that the restoration of property rights should not be repeated – a position the Ekkart Committee endorses. The government does assume, however, that the Advisory Committee for the Assessment of Individual Restitution Applications, should it find that any offer made at the time was settled in an evidently careless manner, will incorporate this finding in its advice.

In its reaction of 29 June 2001, the government makes a reservation regarding the Ekkart Committee's recommendation that the notion of 'new facts' should be given a broader interpretation, stating that it will further consider the matter "to the extent that the proposed wider interpretation of the concept of new facts relates to changed views." As regards the examples of changed views as presented by the Ekkart Committee, such as the criteria formulated by the Council for the Restoration of Property Rights, the government has already indicated its willingness to adopt them. However, given that it is still unclear to the government what changed views, other than those mentioned, should play a role in the interpretation of the concept of 'new facts', the government will maintain its reservation concerning this matter. In its letter of 4 July 2001, moreover, the Ekkart Committee indicates that it appreciates the government's objections: "We can understand this general reservation, given that you have adopted the examples of changed views as we defined them. If we believe that other changed views call for a broader interpretation we will present these to you, as well as the arguments that support them."

Consequently, in this respect, too, the government, to all intents and purposes, endorses the general purport of the Committee's second recommendation.

Please find enclosed the Decree establishing the Advisory Committee for the Assessment of Restitution Applications.

The State Secretary for Education, Culture and Science

[signed]

F. van der Ploeg

Advice concerning the application for restitution of the Gutmann collection

(case number RC 1.2)

By letter of 24 January 2002 the State Secretary for Education, Culture and Science (OCenW) asked the Restitutions Committee for advice about the decision to be taken concerning the application for restitution of the art objects in the NK-collection originating from the Gutmann collection.

The facts

In connection with the application for restitution, which was filed at the end of 1999, the Inspectorate of Cultural Heritage (ICB) carried out an investigation into the facts. The findings of the investigation were included in a research report, dated 27 September 2000, which was sent to the applicant.

General considerations

The Restitutions Committee has drawn up its opinion with due regard for the relevant lines of policy as issued by the Ekkart Committee and the government, as referred to in the Decree establishing the Advisory Committee on the Assessment of Restitution Applications.

The committee asked itself whether it is acceptable that an opinion to be issued is influenced by its potential consequences for decisions in other cases. The committee resolved that such influence cannot be accepted, save cases where special circumstances apply, since allowing such influence would be impossible to justify to the applicant concerned.

The committee then asked itself how to deal with the circumstance that certain facts can no longer be traced, that certain data has been lost or has not been retrieved, 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 cases where exceptional circumstances apply.

Finally, 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.

Special considerations

The basis for the Restitutions Committee's considerations is formed by the research report mentioned above and Article 2 paragraph 4 of the Decree establishing the Advisory Committee on the Assessment of Restitution Applications, which states that the committee performs its advisory task with due regard for the relevant government policy as indicated in further detail in the explanatory notes.

In the conclusion of the research report, four categories of art objects in the NK collection originating in the Gutmann collection are distinguished. These categories are described below, followed in each case by the committee's considerations.

Group 1. Art objects offered for sale by Mr F.B.E. Gutmann to the Amsterdam art dealer Rosenberg in 1939 and sold, eventually, to Hofer on behalf of Göring (NK 3219-3221) in 1940. No post-war decision on an application for restitution has ever been made regarding these objects. More information must be obtained concerning the circumstances of the sale.

Concerning this matter the committee considers that, contrary to the statement in the research report, there is no need for further information and that the objects in this category should be returned. In view of the facts and circumstances that have been established and in consideration of the recommendations issued by the Ekkart Committee, there are sufficient indications to assume that the sale was involuntary.

Categories 2 and 3 can be dealt with together. In the research report they are described as follows:

Group 2. The seven paintings (NK 3248-3254). These paintings were sold to Böhler/Haberstock in 1942. An application for the restoration of property rights with respect to these paintings was settled after the war. Correspondence shows that in July 1954 the heirs opted to abandon their rights with respect to these 7 paintings. Of the paintings, two also appear in "List Z".

Group 3. Art objects sold to Böhler/Haberstock in 1941 and 1942 and included in "List Z" (NK 3131-3200, 3227, 3230, 3251 and 3254). After the war, these objects were the subject of court proceedings in which the court gave its judgement on the rights and the conditions for restitution to the heirs.
The execution of this judgement eventually resulted in the selection by the heirs from "List Z" between 1954 and 1960.

The Restitutions Committee made the following considerations concerning this description of categories 2 and 3.

The application for the restoration of property rights referred to resulted in a judgement by the Jurisdiction Department of the Council for the Restoration of Rights, dated 1 July 1952, a copy of which has been attached to the research report as an appendix. The Council allowed the restoration of property rights and ordered the National Art Collection Foundation (SNK) to release the items referred to in the proceedings, but added a reservation to the effect that the purchase price of those items should be refunded to the SNK. In the grounds for its judgement the Council justified this reservation as follows: "...that the Council, in assessing the reasonableness of this intervention, also takes into account that the State, in recovering items originating from private collections and transported to Germany during the occupation, must be deemed to have done so with a view to restoring those items to their original owners, on the understanding that the restitution should not lead to an enrichment of said owners, which entails that they should refund to the State any compensation they might have received."

The committee is of the opinion that this reservation has become unacceptable in view of the present government policy (also see the general considerations above). In its second recommendation, the Ekkart Committee advised giving a more liberal interpretation to the concept of new facts than has been common policy practice so far, such that the concept also covers deviations from the judgements issued by the Council for the Restoration of Rights, as well as the results of changed (historical) insights regarding the justification and consistency of the policy pursued at the time. As regards the sale and restitution of the art objects at issue, new facts have been presented. In view of the special circumstances in which the sales transactions took place, it cannot be assumed that the heirs would be unlawfully enriched by the restitution if they did not refund the sales proceeds. The particular circumstance that the heirs refrained from repurchasing the art objects at the time or made a conscious selection from the art objects that had been recovered has no decisive influence in the assessment of the claim at issue. The present case cannot be deemed to involve forfeiture of rights, since the mere fact that the owners refrained from repurchasing the objects and made a conscious selection does not constitute forfeiture of rights in itself. Moreover, the situation has changed since then because, at the time, objects could not be restituted unless an amount of money was paid in return. This lends additional poignancy to the case and in this connection the committee believes it is significant that the aforementioned report considers the financial problems of the heirs to be plausible. Consequently, these art objects must be returned without the need for any further investigation.

Group 4. The last category comprises 12 NK numbers (NK 3203 - 3212, 3231 and 3232) that have largely remained obscure. These objects of applied art were probably part of the sale to Böhler/Haberstock during the war, although this is only certain of NK 3206. Given that none of these objects are mentioned in any of the post-war documents relating to the settlement of the restoration of property rights, the heirs may not have been aware that they had come to light again.

As regards this category of art objects, the committee considers it safe to assume that the heirs' title to these works is certain and that the claim cannot be deemed to be prescribed. Since there are enough indications to suggest that there are no other objections to restitution, and since no further information is deemed to be required, restitution of these objects can be effected.

Conclusion

In view of the above, the Restitutions Committee advises the State Secretary for OCenW to return all art objects involved in this case to the heirs of F.B.E. Gutmann.

Adopted at the meeting of 25 March 2002.

J.M. Polak (Chairman)

B.J. Asscher (Vice Chairman)

J.Th.M. Bank

J.C.M. Leijten

E.J. van Straaten

H.M. Verrijn Stuart

Advice concerning the application for restitution of NK 2646

(case number RC 1.1)

By letter of 8 February 2002 the State Secretary for Education, Culture and Science (OCenW) asked the Restitutions Committee for advice about the decision to be taken concerning the restitution of the 'Paschal Lamb', a painting by J. De Beuckelaer (NK 2646).

The facts

The Inspectorate of Cultural Heritage (ICB) carried out an investigation in connection with the application for restitution filed in June 2001. The findings of the investigation were included in a research report dated 8 November 2001, which was sent to the applicant.

General considerations

The Restitutions Committee has drawn up its opinion with due regard for the relevant lines of policy issued by the Ekkart Committee and the government, as referred to in the Decree establishing the Advisory Committee on the Assessment of Restitution Applications.

The committee asked itself whether it is acceptable that an opinion to be issued is influenced by its potential consequences for decisions in other cases. The committee resolved that such influence cannot be accepted, save cases where special circumstances apply, since allowing such influence would be impossible to justify to the applicant concerned.

The committee then asked itself how to deal with the circumstance that certain facts can no longer be traced, that certain information has been lost or has not been retrieved, 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 cases where exceptional circumstances apply.

Finally, 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 nova (new facts).

Special considerations

It appears from the aforementioned research report that the Jewish couple B., owners of the painting 'Paschal Lamb' by J. De Beuckelaer (NK 2646), involuntarily lost possession of that painting between 1938 and 1941.

As confirmed in a letter by the State Secretary for OCenW dated 16 November 2001, cases involving the sale or involuntary loss of art objects that are directly related to the Nazi regime in Germany from 1933 and in Austria from 1938 should, in principle, be assessed against the same criteria as those applied to sales and involuntary losses in the Netherlands from 10 May 1940.

These criteria warrant the conclusion that the application for restitution may be allowed. It is very likely that the applicant indeed holds title to the work. In view of current policy on this matter, prescription of the application, which was not previously filed with the appropriate bodies for the restoration of property rights, will not be invoked. In the event that the involuntary loss was accompanied by the involuntary sale of the object, restitution of the proceeds that may have been generated by that transaction cannot be claimed as there are no clues that might help to identify the amount involved.

Conclusion

In view of the above, the Restitutions Committee advises the State Secretary for OCenW to return the painting 'Paschal Lamb' by J. De Beuckelaer (NK 2646) to the B. heirs.

Adopted at the meeting of 25 March 2002.

J.M. Polak (Chairman)
J.Th.M. Bank
E.J. van Straaten

B.J. Asscher (Vice Chairman)
J.C.M. Leijten
H.M. Verrijn Stuart

Advice concerning the application for restitution of NK 3298

(case number RC 1.3)

By letter of 2 April 2002 the State Secretary for Education, Culture and Science (OCenW) asked the Restitutions Committee for advice about the decision to be taken concerning the application by F.M. for restitution of the painting 'Venus in Vulcan's Smithy' after F. Boucher (NK 3298).

The facts

In connection with the application for restitution, which was filed on 10 October 2001, the Inspectorate of Cultural Heritage (ICB) carried out an investigation into the facts. The findings of the investigation were included in a research report dated 18 March 2002, which was sent to the applicant.

General considerations

The Restitutions Committee has drawn up its opinion with due regard for the relevant lines of policy issued by the Ekkart Committee and the government.

The committee asked itself whether it is acceptable that an opinion to be issued is influenced by its potential consequences for decisions in other cases. The committee resolved that such influence cannot be accepted, save cases where special circumstances apply, since allowing such influence would be impossible to justify to the applicant concerned.

The committee then asked itself how to deal with the circumstance that certain facts can no longer be traced, that certain data has been lost or has not been retrieved, 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 cases where exceptional circumstances apply.

Finally, 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.

Special considerations

The research report mentioned above states that the painting 'Venus in Vulcan's Smithy' was the property of a Mrs H. M.-M, who was of Jewish descent. She involuntarily lost possession of the painting during the occupation. Her claims of title to the painting are plausible and have indeed been acknowledged by the Dutch authorities.

The application for restitution should be regarded as a new claim, since the request for restoration of property rights made at the time never resulted in a valid decision, due to the erroneous notion that tax debts incurred by Mrs M.'s husband, Mr E.M. M., could be recovered from the painting.

Given that the proceeds on the sale of the painting at the time, to an amount of NLG 1.000.- were never transferred to Mrs M., no refund can be claimed. Since the government, in accordance with its policy in cases like the present one, refrains from invoking prescription, there is nothing that would obstruct restitution of the painting.

Conclusion

In view of the above the Restitutions Committee advises the State Secretary for OCenW to return the painting 'Venus in Vulcan's Smithy' to the heirs of Mrs H. M.-M.

Adopted at the meeting of 22 April 2002.

J.M. Polak (Chairman)

B.J. Asscher (Vice Chairman)

J.Th.M. Bank

J.C.M. Leijten

E.J. van Straaten

H.M. Verrijn Stuart

Advice concerning the application for restitution of NK 2181 and NK 2115
(case number RC 1.5)

By letter of 2 April 2002 the State Secretary for Education, Culture and Science (OCenW) asked the Restitutions Committee for advice about the decision to be taken concerning the application filed on 7 February 2002 by P.H., on behalf of the heirs of Mr J. H., for restitution of the paintings ‘Portrait of a Woman with a Little Dog’ (NK 2181) and ‘View of Binnen-Amstel and the Blauwbrug’ (NK 2115).

The facts

In connection with the application for restitution, an investigation into the facts was carried out by order of the Restitutions Committee. The findings of the investigation were included in a research report dated 4 September 2002, which was sent to the applicant. In a letter dated 14 September 2002 Mr P.H., on the committee’s request, stated to have filed his application also on behalf of the heirs of Mrs L. H.

General considerations

The Restitutions Committee has drawn up its opinion with due regard for the relevant lines of policy issued by the Ekkart Committee and the government.

The committee asked itself whether it is acceptable that an opinion to be issued is influenced by its potential consequences for decisions in other cases. The committee resolved that such influence cannot be accepted, save cases where special circumstances apply, since allowing such influence would be impossible to justify to the applicant concerned.

The committee then asked itself how to deal with the circumstance that certain facts can no longer be traced, that certain data has been lost or has not been retrieved, 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 cases where exceptional circumstances apply.

Finally, 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.

Special considerations

1. The applicant must be regarded as a representative of both the heirs of Mr J. H. and of the latter’s sister-in-law, Mrs L. H.
2. The research report mentioned above indicates that Mr J. H. was the owner of ‘Portrait of a Woman with a Little Dog’ (NK 2181) and, furthermore, that Mrs L. H. must be regarded as the owner of the painting ‘View of Binnen-Amstel and the Blauwbrug’ (NK 2115).
3. The two paintings were involuntarily lost from Mr J. H.’s and Mrs L. H.’s estates as a result of persecution by the Nazi regime.
4. The H. family’s claims of title to ‘View of Binnen-Amstel and the Blauwbrug’ (NK 2115) were acknowledged by the Dutch authorities after the war. In the committee’s view, changed insights into the financial conditions imposed upon the H. family after the war constitute ‘new facts’ as referred to in the policy. The application for restitution is therefore allowable.
5. Given that no previous applications for restitution of ‘Portrait of a Woman with a Little Dog’ have been filed (NK 2181), this application for restitution is allowable as well.
6. One problem concerning ‘View of Binnen-Amstel and the Blauwbrug’ (NK 2115) is the circumstance that although restitution is fully allowable, the painting itself has proved to be untraceable. Consequently, in its conclusion the committee cannot advise that it should be returned but will have to restrict itself to an opinion to the effect that the claim by the heirs of Mrs L. H. should be honoured in the form of an indemnification in case the painting continues to be untraceable.
7. Since no evidence has been found to suggest that the sales proceeds were transferred to the owner at any point in time, no refund can be claimed.

Conclusion

In view of the above the Restitutions Committee advises the State Secretary for OCenW to return the painting 'Portrait of a Woman with a Little Dog' (NK 2181) to the heirs of Mr J. H. and indemnify the heirs of Mrs L. H. with respect to 'View of Binnen-Amstel and the Blauwbrug' (NK 2115).

Adopted at the meeting of 23 September 2002.

J.M. Polak (Chairman)

B.J. Asscher (Vice Chairman)

J.Th.M. Bank

J.C.M. Leijten

E.J. van Straaten

H.M. Verrijn Stuart

Advice concerning the application for restitution of NK 3409

(case number RC 1.7)

By letter of 22 July 2002 the State Secretary for Education, Culture and Science (OCenW) asked the Restitutions Committee for advice about the decision to be taken concerning the application filed on 21 June 2002 by Mr K.O.N. on behalf of the heirs of Mr J.H. Gosschalk for restitution of 'Portrait of Don Luis de Requessens y Zuñiga', a painting by an anonymous artist (NK 3409).

The facts

In connection with the application for restitution, the Inspectorate of Cultural Heritage (ICB) carried out an investigation into the facts. The findings of the investigation were included in a historical report drawn up by the Origins Unknown agency (BHG), dated 12 September 2002, which was sent to the applicant. According to the Restitutions Committee, no further investigations are required.

General considerations

The Restitutions Committee has drawn up its opinion with due regard for the relevant lines of policy issued by the Ekkart Committee and the government.

The committee asked itself whether it is acceptable that an opinion to be issued is influenced by its potential consequences for decisions in other cases. The committee resolved that such influence cannot be accepted, save cases where special circumstances apply, since allowing such influence would be impossible to justify to the applicant concerned.

The committee then asked itself how to deal with the circumstance that certain facts can no longer be traced, that certain data has been lost or has not been retrieved, 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 cases where exceptional circumstances apply.

Finally, 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.

Special considerations

1. The research report mentioned above indicates that the 'Portrait of Don Luis de Requessens y Zuñiga' (NK 3409) was owned by Mr J.H. Gosschalk.
2. Mr J.H. Gosschalk involuntarily lost possession of the painting due to persecution by the Nazi regime.
3. Given that no previous application for the restitution of the 'Portrait of Don Luis de Requessens y Zuñiga' (NK 3409) has been processed, this application for restitution is allowable.
4. Given that no evidence has been found to suggest that the sales proceeds were transferred to the owner at any point in time, restitution of the proceeds cannot be claimed.

Conclusion

In view of the above, the Restitutions Committee advises the State Secretary for OCenW to return the painting 'Don Luis de Requessens y Zuñiga' (NK 3409) to the heirs of Mr J.H. Gosschalk.

Adopted at the meeting of 28 October 2002.

J.M. Polak (Chairman)

B.J. Asscher (Vice Chairman)

J.Th.M. Bank

J.C.M. Leijten

E.J. van Straaten

H.M. Verrijn Stuart

This report can be ordered by telephone or mail:

Advisory Committee on the assessment of restitution applications
for items of cultural value and the second World War

P.O. Box 556

2501 CN The Hague, The Netherlands

Tel.: (0031)(0)70-3765992

Fax: (0031)(0)70-3629654

e-mail: info@restitutiecommissie.nl

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