



## Report 2004

Previous history

Cases handled

Policy framework

Working method

Advice



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

## Report 2004

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**Frequently used abbreviations in this report:**

BHG	Bureau Herkomst Gezocht (Origins Unknown Agency)
ICN	Instituut Collectie Nederland (Netherlands Institute for Cultural Heritage)
NK-collectie	Nederlands Kunstbezit-collectie (Netherlands Art Property Collection)
OCW	Onderwijs, Cultuur en Wetenschap (Education, Culture and Science)

## Foreword by the Chairman

The reporting period was marked by a number of notable events that were important for the work of the Committee.

The Committee members, who had been appointed for a three-year period (with the possibility of re-appointment for a maximum of a further three years), came to the end of their period of appointment on 22 December 2004. Our Chairman, Mr J.M. Polak did not make himself available for re-election, but he is fortunately prepared to act as advisor to the Committee where necessary. The other members were all reappointed with effect from 23 December, with myself as Chairman of the Committee. The Committee is extremely grateful to Mr Polak for the way in which he led the Committee's activities. Under his chairmanship, advice was issued in relation to fourteen cases, and without exception the advice was adopted by the State Secretary. Furthermore, when Mr Polak stood down, the Committee lost its expert in the notarial profession and administrative law. That gap has since been filled by the appointment of Prof. I.C. van der Vlies, Professor of Administrative Law at the University of Amsterdam and Mr P.J.N. van Os, former Amsterdam notary. The Committee would like to warmly welcome these two new members and looks forward to a successful collaboration.

Although the Committee had thirteen cases pending in the reporting period, advice was issued in only two cases. This was partly due to the date of submission of five cases, which were only submitted to the Committee in December 2004 and partly because more information has to be collected in a number of cases and that information is not yet available. But it was primarily due to the influx of art trade cases. Those cases pose a number of specific problems, for example the fact that the purpose of the art trade – unlike that of private individuals – is to buy and sell works of art, so a significant number of the transactions performed were part of normal trading.

The Committee is very much looking forward to continuing its activities with its new membership and with the support of its excellent Secretariat.

B.J. Asscher  
Chairman



1. Dutch art property recuperated from Germany, Amsterdam, 1950

# 1. Introduction

## 1.1 Brief previous history

Early in the Second World War it was already known that large numbers of works of art were being stolen under the Nazi administration or that they were being bought up by the Nazis and then taken out of the occupied territories. As part of the post-war repatriation of goods to their country of origin (recovery) many of these works of art returned to the liberated Netherlands. The government offered the original owners or their surviving relatives the possibility of submitting an application for restitution of their work(s). The works of art for which no application for restitution was submitted, or for which the application was rejected, became part of the national art property collection. All of these works are now collectively called the Netherlands Art Property Collection (or 'NK collection' from the Dutch 'Nederlands Kunstbezit-collectie'). The NK collection, which is part of the National Art Collection, is administered by the Netherlands Institute for Cultural Heritage (ICN) and the Ministry of Education, Culture and Science (OCW).

The return (restitution) of art property stolen during the Second World War has been the subject of renewed national and international interest since the end of the 1990s. The subject was addressed, for example, at an international conference in Washington (1998), which resulted in the *Washington Principles on Nazi Confiscated Art*. In 1999 the Parliamentary Assembly of the Council of Europe passed a resolution on *Looted Jewish cultural property*.<sup>1</sup> Both the principles and the resolution stress the need for a flexible policy on the return of works of art stolen during the Second World War to the original owners or their heirs. The governments of various countries have also set up committees that addressed (or continue to address) the issue of stolen works of art and their restitution.

In 1997 the Dutch government set up the Origins Unknown Committee to supervise a test investigation into the provenance of works of art from the NK collection. The Origins Unknown Committee – which is usually called the 'Ekkart Committee' after its Chairman, Prof. R.E.O. Ekkart – concluded in April 1998 that further investigation was urgently needed to remove the 'shroud of secrecy' around the NK collection and guarantee optimum handling of individual applications for restitution from potential owners or their surviving relatives. Later in 1998 the government reacted by setting up the Origins Unknown Agency (BHG), which is charged with investigating the provenance history of the NK collection. BHG is supervised in the execution of this work by the Ekkart Committee, which also has the task of advising the Minister of OCW<sup>2</sup> – based on the results of the BHG investigations – about the restitutions policy to pursue in the general sense with regard to works of art from the NK collection. On 26 April 2001 the Ekkart

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<sup>1</sup> Resolution 1205, 1999.

<sup>2</sup> Under the distribution of portfolios the State Secretary of Culture is currently responsible for the restitutions policy.

Committee presented nine recommendations as regards the restitutions policy to be pursued by the government concerning private art property lost during the Second World War. The government broadly adopted these recommendations and translated them into policy.<sup>3</sup> Given that they chose a more policy-oriented approach to restitution – rather than a purely legal one – the government considered it appropriate to set up an advisory committee to assess individual applications for restitution. By Decree dated 16 November 2001, the government consequently set up, for an indefinite period, the Advisory Committee on the Assessment of Restitution Applications for Items of Cultural Value and the Second World War.<sup>4</sup> This advisory committee, which is usually referred to as the ‘Restitutions Committee’, started its work on 1 January 2002. Since then the Restitutions Committee has issued advice on fourteen applications for restitution following a request to do so from the State Secretary of Culture (Dr. F. van der Ploeg, then Mr C.H.J. van Leeuwen, mr., and currently Ms M.C. van der Laan, mr.).

More information about the history of the development of the Restitutions Committee and the relevant Dutch parliamentary documents can be found in the Committee’s Report 2002, which is available on the Committee’s website as well as in printed form.<sup>5</sup>

## 1.2 Composition of the Restitutions Committee

Article 3 of the Decree establishing the Advisory Committee on the Assessment of Restitution Applications states that the Committee shall comprise no more than seven members who are appointed for a period not exceeding three years and may be reappointed once at most.<sup>6</sup> From the date when this Decree came into effect on 22 December 2001 until 22 December 2004 the Restitutions Committee consisted of the following members:

Mr J.M. Polak, mr. (Chairman): Lawyer; former notary, Head Counsel for the Ministry of Justice, judge and Professor of Law at the University of Agriculture in Wageningen, Member of the Netherlands Scientific Council for Government Policy and Member of the Council of State.

Mr B.J. Asscher, mr. (Vice-Chairman): Lawyer; former solicitor, judge and Vice-President of several district courts and, for a period of ten years, President of the Amsterdam District Court; after retiring Mr Asscher was a ‘Cleveringa’ Professor at Leiden University.

Prof. J.Th.M. Bank: Historian; Professor of Dutch History at Leiden University with a special expertise in Dutch cultural history.

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<sup>3</sup> Lower House of the Dutch Parliament, 2000-2001 parliamentary session, 25 839, nos. 26 and 27 [in Dutch].

<sup>4</sup> Decree establishing the Advisory Committee on the Assessment of Restitution Applications for Items of Cultural Value and the Second World War (Decree establishing the Restitutions Committee), 16 November 2001, see Appendix 1.

<sup>5</sup> See [www.restitutiecommissie.nl](http://www.restitutiecommissie.nl).

<sup>6</sup> See footnote 4.

Prof. J.C.M. Leijten, mr.: Lawyer; former solicitor, judge and justice at the Arnhem Court of Justice; former Solicitor General of the Supreme Court and retired professor of Introduction into law and civil litigation law at the Catholic University of Nijmegen.

Dr. E.J. van Straaten: Art historian; Director of the Kröller-Müller Museum, former member of the Committee on Museum Acquisitions 1940-1945, which was founded under the auspices of the Netherlands Museum Association.

Ms H.M. Verrijn Stuart, mr.: Lawyer; legal reporter/analyst, essayist, member of the Advisory Council on International Affairs, former scientific employee at the Clara Wichmann Institute.



2. Art looted by the Nazis, found by the American 7th Army in tunnels underneath Neuschwanstein Castle, 13 May 1945

The Chairman, Mr J.M. Polak stepped down with effect from 23 December 2004. He will continue to act as an advisor to the Committee. By Decree dated 9 December 2004 the State Secretary reappointed the Committee members Asscher (Chairman), Bank, Leijten, Van Straaten and Verrijn Stuart for a period of three years.<sup>7</sup> In this Decree the State Secretary also appointed the following two new members:

Mr P.J.N. van Os, mr.: Lawyer, former notary, deputy justice at the Amsterdam Court of Justice; Chairman of the Supervisory Board of the Dutch Association of Real Estate Brokers and Real Estate Experts (NVM).

Prof. I.C. van der Vlies: Lawyer; Professor of Constitutional and Administrative Law at the University of Amsterdam; previously a member of the Dutch Council for Culture, member of the Public Administration Council and Chair of the Committee evaluating the Cultural Heritage Preservation Act.

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<sup>7</sup> Decree (Re-)appointing the members of the Advisory Committee for the assessment of restitution applications for items of cultural value and the second World War, dated 9 December 2004, DCE/04/58302, Government Gazette, nr. 11, see Appendix 2.

### 1.3 Secretariat

In the execution of its tasks the Committee can rely on the support of its secretariat, which was run once again in 2004 by Committee Secretary/Reporter Ms E. Campfens, mr. In addition Ms T. Bodenhorst was appointed as Office Manager and Ms A. Marck worked as permanent researcher for the Committee in 2004. From mid-December 2004 to the end of April 2005 Ms Campfens will be on maternity leave. For that period she will be replaced by Ms N. Hagemans, mr.

In addition to day-to-day matters, the Secretariat takes care of the investigations and the reports on investigations, and the Secretary/Reporter regularly acts as spokesperson for the Restitutions Committee. In a number of cases in 2004 the special expertise of the Origins Unknown Agency (BHG) and of other external investigators was called upon for the purposes of an investigation.

### 1.4 Preview of the contents of Report 2004

In this Report 2004 – which is now the third such report by the Restitutions Committee and can be considered a continuation of Reports 2002 and 2003 – an overview is given in chapter 2 of the total number of cases on which the Committee has issued advice (positive and negative). The two cases on which advice was issued in 2004 are also addressed in chapter 2. As described in Report 2003, the Ekkart Committee made a number of recommendations to the government in 2003. These ‘Recommendations for the restitution of artworks of art dealers’ are appended (see Appendix 3). Chapter 3 gives information about cases on which the Committee issued advice in previous years, in so far as this information is not included in Report 2003. Chapter 4 discusses the mandate and policy framework of the Restitutions Committee, including as regards the possible significance for the work of the Restitutions Committee of the Final Recommendations of the Ekkart Committee, which were published in December 2004.<sup>8</sup> As the government has not yet reacted to these recommendations at the time of writing this Report, it is not yet possible to talk about government policy on this matter. Finally, the Committee’s working method is explained in Chapter 5, including as regards the procedure and investigation that precede the issuing of meticulous advice.

In contrast to the previous Reports, the appendices to Report 2004 contain not only the relevant government documents, recommendations by the Ekkart Committee and the advice issued (with the names deleted). A number of media reports relating to the work of the Restitutions Committee have also been included.

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<sup>8</sup> See Appendix 4.

## 2. Situation in 2004

The State Secretary of Culture has asked the Restitutions Committee for advice on twenty-five applications for restitution since the Committee came into existence in January 2002.

To date the Committee has issued advice on fourteen cases, all of which related to privately owned works of art. In three cases the Restitutions Committee recommended rejection of the application for restitution and in eleven cases the Committee advised in favour of the applicant. These cases involved the restitution of a total of more than two hundred works of art, ranging from paintings by 17<sup>th</sup> century Dutch masters to antique Meissner porcelain cups.<sup>9</sup> In one case part of the claim was granted;<sup>10</sup> in another the claim was granted on condition that a certain amount of money be paid.<sup>11</sup> In this latter case the Committee posed the question as to whether the amount in question should go into general funds or be earmarked for a particular purpose but left it explicitly to the Ekkart Committee and the State Secretary to provide the answer. This year, in its Final Recommendations (8 in conjunction with 7), the Ekkart Committee put forward a proposal in this regard (see section 4.4).



3. *The sleeping innkeeper*  
after Nicolaas Maes (NK 1624)

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<sup>9</sup> This picture is somewhat misleading, since the advice issued in respect of the Gutmann collection (RC 1.2) concerned over two hundred works of art (mostly applied-art objects), and the other ten cases where the advice was to honour application concerned twelve paintings, one antique cupboard (RC 1.12) and one drawing (RC 1.17).

<sup>10</sup> See the advice issued on RC 1.18, which is described below and can be found in Appendix 6 to this Report as well as in the overview of advice issued on the Restitutions Committee's website.

<sup>11</sup> See the advice issued on RC 1.4, which can be found in Appendix 2 to Report 2003 as well as in the overview of advice issued on the Restitutions Committee's website.

The State Secretary has always followed the advice issued by the Restitutions Committee. The decisions ultimately taken by the State Secretary have always been substantiated by references to the relevant advice of the Restitutions Committee.

At the end of 2004 the Restitutions Committee still has eleven applications pending. Three of the pending cases concern the restitution of works of art that were part of the trading stock of an art dealer, and eight of the cases involve private art property, five of which were submitted to the Committee in December 2004. Two of the pending cases have been put on hold until the State Secretary responds to the request from the Restitutions Committee for further information.

## 2.1 Cases where the Committee issued advice

In 2004 the Restitutions Committee issued advice on two applications for restitution of works of art from the Dutch National Art Collection. In one of the two cases it advised the State Secretary to honour the application for restitution. In the other case, which involved four works of art, the Committee advised in favour of restitution of three of the claimed works and against the application for restitution of the other work. A case-by-case review is presented below. The advice, in each case with the names deleted, can be found in the appendices to this Report.

## 2.2 Review per case

### 1. *Fisherman on horseback* by Jozef Israëls (RC 1.17)<sup>12</sup>

In a letter dated 23 October 2003 the State Secretary asked the Restitutions Committee for advice regarding an application for restitution of the crayon drawing *Fisherman on horseback* by Jozef Israëls (NK 1399).<sup>13</sup> This drawing was recovered from Germany in January 1949 by the Dutch authorities and since then had been part of the Dutch National Art Collection under inventory number NK 1399. In recent years the drawing had been on loan to the Haags Gemeentemuseum.

In 2003, having been in contact with the Origins Unknown Agency (BHG), a grandson of the original owner tracked down the drawing. Subsequently, on 9 September 2003, he submitted a claim to the Ministry of OCW, on behalf of his grandfather's heirs. After receiving the request for advice at the end of October 2003, the Restitutions Committee, in the light of the art history aspects of the investigation, asked an employee of the Origins Unknown Agency to draw up a report on the investigation. This report was completed in February 2004.

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<sup>12</sup> An RC number refers to the number of the Restitutions Committee file.

<sup>13</sup> An NK number refers to the inventory number that identifies a work of art in the records that are kept on the Dutch National Art Collection.



4. *Fisherman on horseback*  
by Jozef Israëls (NK 1399)

The investigation into the facts of the case showed that the applicant's grandfather moved his collection of sixty two paintings and other works of art to the furniture transport company De Gruyter of Amsterdam shortly before he left for the United States in 1939. During the occupation the Nazis seized this collection under the so-called 'Liro decrees' and the individual works of art were then sold by the German looting organisation known as the 'Liro bank'. In the archives of this Liro bank a list was found of the works booked

under the name of the applicant's grandfather that were sold during the war. One of the works listed was a drawing entitled *Fisherman on horseback* by Jozef Israëls. After the liberation the applicant's grandfather – from the United States where he was then living – declared the loss of his collection to the Dutch authorities. However, in 1948 the authorities informed him "...that we have not brought back any of the items that you listed". There is no post-war documentation available on the drawing by Jozef Israëls, which became part of the National Art Collection under inventory number NK 1399 following its recovery in 1949. As a result, it is no longer possible in 2004 to determine precisely where this drawing was found after the war and on the basis of what information it was allocated to the Netherlands. In any event, it must be assumed that the post-war authorities at that time did not link the drawing recovered from Germany with the drawing lost by the applicant's grandfather.

Given that the subject of a 'fisherman on horseback' occurs many times in the oeuvre of Jozef Israëls, the Restitutions Committee had an investigation carried out to determine whether NK 1399 was the drawing from the lost collection. As part of this investigation, the investigators contacted Dr D.P. Dekkers, who is the author of the thesis 'Jozef Israëls, een succesvol schilder van het vissersgenre' ['Josef Israëls, a successful painter of the fisherman genre']. According to Dr Dekkers, there was only one other drawing by Jozef Israëls that could be relevant for identification purposes. However, further investigation revealed that this other drawing was of the type described in art-historical terminology as 'brown washed'. This did not tally with the description of the lost drawing as 'Fisherman on horseback, crayon'. Given that NK 1399 was a chalk drawing, it best fitted the description of the work from the collection owned by the applicant's grandfather.

The Restitutions Committee adopted its advice on this case at its meeting on 22 March 2004.<sup>14</sup> One of the considerations in the advice was that the loss of the art collection by the applicant's grandfather would be deemed involuntary under current government policy. Based on the results of the investigation, the Restitutions Committee then concluded that, in all likelihood, the drawing in the Dutch National Art Collection entitled *Fisherman on horseback* by Jozef Israëls (NK 1399) was the drawing left behind at the De Gruyter furniture transport company in 1939 in Amsterdam. Therefore, and with reference to its general considerations that the risk of further evidence being lost as a result of the passage of time should be borne by the government, the Restitutions Committee advised the State Secretary to honour the application for restitution of the drawing entitled *Fisherman on horseback* by Jozef Israëls (NK 1399).

On 11 June 2004 the State Secretary of Culture decided according to the advice of the Restitutions Committee. The Committee has since been informed by the Netherlands Institute for Cultural Heritage (ICN) that the drawing has now been returned to the family.

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<sup>14</sup> See Appendix 5.



5. *Cottages on the edge of a wood*  
by A. Schelfhout (NK 2394)

2. *Four 19<sup>th</sup> century landscapes* (RC 1.18)

This case concerned an application for restitution of the following four paintings from the Dutch National Art Collection:

- *Cottages on the edge of a wood*  
by A. Schelfhout (NK 2394)
- *Landscape with water mill and peasants driving cattle along a sandy road*  
by B.C. Koekkoek (NK 2389)
- *Winter landscape with deer*  
by P.G. van Os (NK 2526)
- *Italian landscape in the evening*  
by an anonymous artist, previously attributed to A. Govaerts (NK 3072).

In a letter dated 16 December 2003 the State Secretary asked the Restitutions Committee for advice regarding restitution of these paintings. The claim was based on a postcard sent from Westerbork concentration camp, which came into the hands of the applicant sixty years after it had been sent. On this postcard, which was addressed to the applicant's

mother, the writer expresses his wish to make a gift of five paintings to the applicant. This postcard, which is dated 2 July 1942, reads as follows:

*“Dear Anne, Remove D. Willinkplein 3-2, Amsterdam, Schelfhout, Cottage with wood, Pieter G. van Os, Winter with deer, Jacob van Loo, Still life of flowers, Abram Govaerts, Italian Mountains, B.C. Koekoek, Landscape with water mill and peasant cattle Anne for 5/9-'29 Kind regards, V.”*

The applicant, who was born on 5 September 1929, saw the card for the first time at the end of August 2002 during a visit to his seriously ill mother. She told him that she had gone to the address indicated on the postcard around August 1942 to collect the paintings but the house had already been looted. She also confirmed that day that V., a Jewish art dealer, was the applicant's natural father. As a child, the applicant had visited his father a few times before the war and he had precious memories of those visits. The postcard prompted the applicant to look more deeply into the events surrounding his father's art collection during the Second World War.



6. *Winter landscape with deer*  
by P.G. van Os (NK 2526)

After he had visited the Origins Unknown exhibition in 2003 in Leeuwarden, which clearly showed the fate of 'art in wartime' using a number of NK works from the National Art Collection as examples, the applicant contacted the Origins Unknown Agency (BHG) to ask whether the paintings described by his father could still be located. BHG informed him that four of the five paintings mentioned on the postcard might be identical to paintings in the NK collection, namely the paintings with inventory numbers NK 2389, NK 2394, NK 2526 and NK 3072. The applicant made one further visit to BHG where he looked at a number of photographs of the four paintings in question. He was certain that he had seen the first three works during holidays at the end of the 1930s at his father's house. He was also able to give a number of specific details about these paintings, such as their dimensions, which could not be derived from the photographs that he had been shown. As regards the painting *Italian landscape in the evening* (NK 3072), he remembered that his father had had such a painting hanging on the wall, but he was not certain that he recognised this painting unlike with the other three. What he found during this visit to BHG prompted the applicant to apply for restitution of the four paintings in a letter to the State Secretary of Culture dated 29 September 2003. This application was subsequently submitted to the Restitutions Committee for advice on 16 December 2003.

In this case the Restitutions Committee was confronted with various questions. In the first place, it was necessary to find out whether the four works from the NK collection that were the subject of the application for restitution were the paintings that had been removed from V.'s house in the summer of 1942. An investigation carried out by BHG showed that three of the four NK works had appeared on the Amsterdam art market shortly after the arrest of the applicant's father in the summer of 1942: *Cottages on the edge of a wood* (NK 2394), *Landscape with water mill and peasants driving cattle along a sandy road* (NK 2389) and *Winter landscape with deer* (NK 2526). The investigation provided no clear answer to the question as to the location of the paintings before then. Given this gap in the provenance history, it is possible that the paintings in question were in the possession of the applicant's father until 1942. Given the rarity of exhibitions of the oeuvre of the artists concerned, BHG concluded that such a provenance was very probable for numbers NK 2389 (Koekkoek) and NK 2626 (Van Os) and certainly very possible for number NK 2394 (Schelfhout). However, as regards the fourth painting, *Italian landscape in the evening* (NK 3027), it was not possible to determine when it appeared on the art market and whether this appearance was before or after the applicant's father was arrested. BHG concluded in respect of this painting, based on the existing documentation (i.e. the description of the work on the postcard and the oeuvre of the artist in question), that it was not possible to make any statement about its identity.

Another question concerned the applicant's position in inheritance law as an unrecognised child of V., the original owner of the works. A ruling by the Leeuwarden District Court dated 26 November 1931 indicates that it may be assumed that V. was the applicant's biological father and that he was deemed liable to pay maintenance for the applicant even though he had not recognised the applicant. This last point means that the applicant

cannot be an heir to his father under civil law. However, in its advice the Restitutions Committee considers that the postcard clearly states that V. intended to make a gift of the paintings to the applicant. Although this gift did not entirely meet the relevant statutory conditions at that time – namely that a notarial deed be drawn up – the Committee felt that the informal act by which V. tried to make the gift could be considered legally valid partly because of the special circumstances involved, namely that V. was a prisoner in Camp Westerbork at the time.

In order to assess whether the gift could be contested under inheritance law, the Committee investigated whether there were any forced heirs when V.'s estate was divided up, V. having been murdered in Auschwitz shortly after he was arrested. Among other places, this investigation led the Committee to notarial archives in Switzerland where V.'s wife had lived until she died. The investigation showed that there were no forced heirs to the estate of the applicant's father who could have contested the gift on the grounds of infringement of their forced share.

The Restitutions Committee adopted its advice on this case at its meeting on 18 May 2004.<sup>15</sup> In its advice the Committee advised the State Secretary to grant the application for restitution as regards the three paintings *Cottages on the edge of a wood* (NK 2394), *Landscape with water mill and peasants driving cattle along a sandy road* (NK 2389) and *Winter landscape with deer* (NK 2526). In respect of these three paintings, the Committee believed that sufficient evidence had been provided that they were the paintings indicated on the postcard from the applicant's father that he had given as a present to the applicant in July 1942.

In its advice, it was the Committee's judgement in respect of the painting *Italian landscape in the evening* (NK 3027) that there was insufficient evidence to make it highly likely that this was the painting owned by the applicant's father and described on the postcard as *Italian Mountains* by Govaerts. The Restitutions Committee therefore advised rejecting the application for restitution of NK 3027.

On 13 July 2004 the State Secretary of Culture decided according to the advice of the Restitutions Committee. The Committee has since been informed that the paintings have now been returned to the applicant. The applicant informed the Committee in November 2004 that he would like to loan out the work by Koekkoek once again to the Rijksmuseum Twenthe in Enschede, where it was on loan for many years. The Rijksmuseum Twenthe subsequently informed the Committee that, as requested by the applicant, there will be a plate next to the painting by Koekkoek indicating the work's wartime history.<sup>16</sup>

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<sup>15</sup> See Appendix 6.

<sup>16</sup> In the 16 July 2004 edition of the newspaper NRC Handelsblad there was a comprehensive article on this case written by Annelies Kool and Eelke Muller, who were both associated with the Origins Unknown Agency as scientific investigators, see Appendix 7 [in Dutch].



*7. Landscape with water mill and peasants driving cattle along a sandy road*  
by B.C. Koekkoek (NK 2389)

### 3. Information in connection with settled cases

Investigations have revealed a lot of information about the wartime history of the works of art about which the Restitutions Committee issues advice. Therefore, although what happens to a work of art after the Committee has issued its advice is not part of the scope of the Committee's investigation, the Committee is obviously interested in the final outcome of a case.

As described in Chapter 2, the Restitutions Committee advised in favour of restitution of the painting *Landscape with water mill and peasants driving cattle along a sandy road* by B.C. Koekkoek, among other works of art, in May 2004. This painting had been on loan for a long time at the Rijksmuseum Twenthe in Enschede. Following the announcement of the decision taken by the State Secretary – who followed the Committee's advice – various newspapers wrote about this case. The article by Annelies Kool and Eelke Muller (both scientific investigators for the Origins Unknown Agency) that appeared in the arts section of the newspaper NRC Handelsblad on 16 July 2004 is appended to the present Report.<sup>17</sup> In the article the writers describe the events before, during and after the war, which came to light during the investigation in this case and which played a major role when the Restitutions Committee drew up its advice. The current owner recently made it known that he wishes to loan out the painting again to the Rijksmuseum Twenthe where *Landscape with water mill and peasants driving cattle along a sandy road* will be exhibited together with information about its wartime history.

In December 2003 the Restitutions Committee advised that the painting *Elegant company making music on a terrace* by Dirk Hals should be returned to the heirs of the original owner.<sup>18</sup> This painting had been on loan for a long time to the Frans Hals Museum in Haarlem and in 2003 had been part of the 'Origins Unknown' exhibition in the Fries Museum. The State Secretary decided according to the advice issued by the Committee, so the Netherlands Institute for Cultural Heritage (ICN) handed the painting over to the rightful claimants who then loaned out this Dirk Hals again to the Frans Hals Museum. At the time of writing the museum is restoring the painting *Elegant company making music on a terrace*, after which it will be exhibited together with a description of its wartime history. It is also worth mentioning that the restoration of this painting has prompted the museum to decide to restore all the Dirk Hals paintings in its collection.

The cover of Report 2003 features a picture of *Still life with kippers, oysters and smokers' accessories* by Floris van Schooten (1585-1656). In 2003 the Restitutions Committee

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<sup>17</sup> See footnote 16.

<sup>18</sup> See the advice issued on RC 1.16, which can be found in Appendix 2 to Report 2003 as well as in the overview of advice issued on the Restitutions Committee's website.

advised that this 17<sup>th</sup> century panel should be returned to the heirs of the original owner.<sup>19</sup> The State Secretary adopted this advice and the ICN handed the panel over to the heirs. A catalogue published by Christie's Auction House, with a picture of this work by Floris van Schooten on the cover, revealed that the heirs put the panel up for auction.

The advice issued by the Restitutions Committee at the end of 2003 to reject the application for restitution of the works of art from the F.W. Koenigs collection that are in the Dutch National Art Collection and the State Secretary's decision to follow this advice drew a lot of attention.<sup>20</sup> The applicant, a granddaughter of F.W. Koenigs, has made it known in the media that she does not accept the State Secretary's decision.

The ICN informed the Restitutions Committee that the 17<sup>th</sup> century Frankfurt cupboard – about which the Committee issued advice in 2003 stating that it should be returned to the applicant – has now been returned to the applicant.<sup>21</sup> The cupboard was recently put up for auction in Cologne.



8.

8. *Elegant company making music on a terrace* by Dirk Hals (NK 1456)
9. *Portrait of a boy* by A. Holbein (NK 3575 - A, Koenigscollectie)
10. *Head of a young woman* by a follower of P.P. Rubens (NK 1546, Koenigscollectie)
11. *Still life with kippers, oysters and smokers' accessories* by Floris van Schooten (NK 1644)



9.



10.



11.

<sup>19</sup> See the advice issued on RC 1.8, which can be found in Appendix 2 to Report 2003 as well as in the overview of advice issued on the Restitutions Committee's website.

<sup>20</sup> See the advice issued on RC 1.6, which can be found in Appendix 2 to Report 2003 as well as in the overview of advice issued on the Restitutions Committee's website.

<sup>21</sup> See the advice issued on RC 1.12, which can be found in Appendix 2 to Report 2003 as well as in the overview of advice issued on the Restitutions Committee's website.

## 4. Mandate and policy framework

### 4.1 Mandate and (re)appointment of the members of the Committee

The Restitutions Committee was established for an indefinite period. However, under Article 10 of the Decree establishing the Committee, the members were appointed for a period of three years from the date when the Decree establishing the Committee came into force. Given that the Decree came into force on 22 December 2001, the members' term of office expired on 22 December 2004. Mr Polak, who until then had been the Chairman of the Committee, stood down. He will henceforth act as advisor to the Committee in the execution of its duties. Under Article 3 paragraph 6 of the Decree establishing the Committee, the State Secretary reappointed by Decree dated 9 December 2004 Messrs Asscher, Bank, Leijten, and Van Straaten and Ms Verrijn Stuart for a further period of three years.<sup>22</sup> By this same Decree, Mr P.J.N. van Os and Ms I.C. van der Vlies were appointed as new members of the Restitutions Committee (see also section 1.2 of this Report). This brings the number of Committee members to seven.<sup>23</sup> Since 23 December 2004 Mr Asscher has been Chairman of the Restitutions Committee.

The three-year period of the (re)appointment takes into account the number of claims that the Restitutions Committee still has pending, and allows for the period recommended by the Ekkart Committee in its Final Recommendations as the period in which potential claimants should still be able to submit applications for restitution of works of art from the NK collection.<sup>24</sup> The Ekkart Committee advises the government to leave the possibility of submitting an application for restitution open for two years following publication in the Netherlands Government Gazette (*Staatscourant*) of the government policy formulated based on the Ekkart Committee's Final Recommendations (see also section 4.4). A (re)appointment period of three years is in line with this recommendation and allows the Restitutions Committee the opportunity to issue advice on the applications for restitution submitted during those two years, which the Ekkart Committee estimates will number between fifteen and twenty. How much time remains after the end of those two years to process the claims for restitution will depend on when the government policy based on the Final Recommendations is published in the Government Gazette. At the time of writing of this Report it is not possible to say when that will be.

As in the previous two years, the cases that the Restitutions Committee handled in 2004 concerned works of art belonging to the Dutch National Art Collection. Therefore, in carrying out its activities in 2004, the Committee was performing its main task, as

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<sup>22</sup> See footnote 7.

<sup>23</sup> Article 3 paragraph 1 of the Decree Establishing the Advisory Committee: 'The Committee shall comprise no more than 7 members, including the chairman and the deputy chairman'.

<sup>24</sup> Recommendation 1 in the Final Recommendations, Ekkart Committee, December 2004, see Appendix 4.

described in Article 2 paragraph 1 in conjunction with paragraph 4 of the Decree establishing the Committee.<sup>25</sup>

#### 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.
  
4. The Committee shall carry out its advisory role as referred to in the first paragraph in accordance with the relevant government policy.

However, if the Restitutions Committee advises rejection of an application for restitution of a work of art that is in the possession of the Dutch State, that does not mean that the Committee is allocating the work in question to the Dutch State. The Committee advises rejection if there is insufficient evidence that the applicant has rights in respect of the work of art under the applicable restitutions policy. Of course, the Committee gives the considerations behind its conclusion in the advice that it issues. However, the Committee's remit does not include determining who, if not the applicant, is the legal owner of the work of art in question.

#### 4.2 Government policy and recommendations of the Ekkart Committee

The Restitutions Committee performs its main task in accordance with government policy.<sup>26</sup> The relevant government policy is described in the Restitutions Committee's Reports 2002 and 2003, which are posted in their entirety on its website, as are the Ekkart Committee's recommendations, which form the basis for this policy.

As described in Report 2003, the government made it clear in December 2003 – in its reaction to the Ekkart Committee's Recommendations for the Restitution of Artworks of Art Dealers<sup>27</sup> – that it would fully adopt those recommendations.<sup>28</sup> In the course of 2004 the State Secretary submitted various so-called 'art dealer cases' to the Restitutions Committee for advice. These cases do not concern a single work of art previously owned by

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<sup>25</sup> See Appendix 1.

<sup>26</sup> Decree Establishing the Advisory Committee, Article 2 paragraph 1 in conjunction with paragraph 4. See Appendix 1.

<sup>27</sup> Recommendations for the Restitution of Artworks of Art Dealers, Ekkart Committee, submitted to the government with an accompanying letter dated 28 January 2003. See Appendix 3.

<sup>28</sup> See Report 2003, Appendix 3.

a private party, but rather more than one work of art (often many) that were part of an art dealer's trading stock. The Committee has to determine whether these works of art were lost involuntarily according to the criteria laid down in the specific 'art dealers policy'. In handling these art dealer cases in the course of 2004 the Restitutions Committee was faced with a number of general questions. As a result, it asked the Ekkart Committee in October 2004 for clarification of its sixth recommendation in respect of art dealer policy:

#### Recommendation 6

In all cases in which after the war the party involved, his heirs or his immediate representative appointed by him or his heirs have filled in the qualification 'involuntary sale' on a declaration form and there are no indications that contradict this qualification, such a qualification should be accepted. In all cases in which such a declaration form is missing, clues - which make it highly probable that coerced sale took place - serve as the point of departure for the restitution policy. Clues indicating involuntary sale in any case include the threat of reprisal and the promise of the provision of passports or safe conduct as part of the transaction. Involuntary sales are also taken to mean sales by Verwalters or other managers not appointed by the owner from the stocks under their management in as far as the original owners or their heirs have not fully benefited from the transaction and have explicitly waived their rights after the war.

Via its chairman, Professor R.E.O. Ekkart, the Ekkart Committee responded to the Restitutions Committee's request at a meeting held on 2 November 2004. The explanation given means that the last sentence of recommendation 6 can be read as follows:

*"Involuntary sales shall also include sales - against the will of the art dealer - by Verwalters or other administrators not appointed by the owner, from the old trading stock placed under their administration, in so far as the original owners or their heirs have not enjoyed the full benefit of the transaction and have not expressly waived their rights after the war ended."*

### 4.3 General considerations of the Restitutions Committee

When it started its work in January 2002 the Restitutions Committee formulated general considerations based on the assessment framework that it was given in the Decree establishing the Committee. To date the Committee has always based its advice - which

has always been about private art property – on these general considerations, which are included in the advice issued. These general considerations are as follows:

General considerations,  
formulated by the Restitutions Committee

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

#### 4.4 Final Recommendations of the Ekkart Committee

The Ekkart Committee submitted its Final Recommendations to the government at the beginning of December 2004.<sup>29</sup> At the time of writing of this present Report the government had not yet given its reaction to these final recommendations and there was therefore no government policy in respect of the subjects on which the Committee made recommendations. However, because of the importance of the Final Recommendations for the continuation of the work of the Restitutions Committee, the Committee has decided to include them in this Report – in so far as they are directly connected to the work of the Restitutions Committee – as well as to look ahead to the implications of a government policy based on these recommendations. The recommendations concerned are as follows:

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<sup>29</sup> For the full version of the Final Recommendations, including the Ekkart Committee's explanatory notes, see Appendix 4.

Final recommendations,  
by the Ekkart committee

Recommendation 1

The committee recommends the government to provide the opportunity to submit claims on works of art from the NK collection within a period of two years following publication in the Staatscourant of the government policy formulated on the basis of these final recommendations.

Recommendation 2

One year prior to the termination of the period in which claims may be submitted, the government should widely publicize the impending lapse of this opportunity.

Recommendation 3

Claims from foreign private individuals on works of art possibly unjustly recuperated to the Netherlands should be dealt with conform the claims of (the heirs) of owners who lost works of art within the Netherlands.

Recommendation 4

The committee recommends that possible claims from another country on works of art in the NK collection should not be submitted to the Restitutions Committee, but should be dealt with in bilateral consultations with the government of the country concerned.

Recommendation 7

The committee recommends the allocation of half the amounts referred to in Recommendation 5 and 6 to the Cultural Heritage Foundation of the Portuguese-Israeli Community and the remainder to the Jewish Historical Museum, which should use the fund thus created to stimulate a wide range of expressions of contemporary Jewish culture.

Recommendation 8

The committee recommends the allocation of any possible incoming repayments for the restitution of works of art in accordance with Recommendation 7.

Recommendation 9

The committee recommends that the documentation compiled during the Origins Unknown Project Agency's research should be preserved permanently and as complete as possible and be lodged in the National Archives. There, the material must be made accessible to official interested parties and – in due course – to all interested parties. The government should take suitable measures in order to preserve this documentation and to keep it accessible.

Depending on the date when the government policy on this matter is published in the Government Gazette, Final Recommendation 1 means that the Restitutions Committee with its current members will have a maximum of one year to handle requests for advice after the final date for submitting applications for restitution.

Given recommendation 2, the Restitutions Committee will have to allow for an increase in the number of cases submitted to it for advice during the final year in which applications for restitution can be made.

Unlike the other Final Recommendations, recommendation 3 concerns the assessments by the Restitutions Committee of individual cases: claims by foreign private individuals to works of art returned to the Netherlands should be handled in the same way as the claims by (heirs of) owners who lost works of art within the Netherlands. In fact, the Restitutions Committee has already had to deal with claims of this type and assessed them within the meaning of this recommendation. One example was the advice issued in respect of the painting *Paschal Lamb* (RC 1.1), which an Austrian owner lost during the annexation of Austria by Nazi Germany.<sup>30</sup>

The explanatory notes to the third recommendation also make clear that the Ekkart Committee believes that the first loss of ownership should generally prevail in the case of conflicting claims to a work of art. The notes add the qualification that the Restitutions Committee should be given room to consider the relative weight of such conflicting claims, depending on the specific circumstances.

Recommendation 4 is important for the scope of the mandate of the Restitutions Committee. According to this recommendation, the Restitutions Committee is not the right body to advise the government on applications for restitution that are submitted by other states and relate to works in the NK collection that may have been wrongly returned to the Netherlands.

Recommendation 8 can be seen as a response to the advice issued by the Restitutions Committee in case RC 1.4 in which the Committee recommended that the works of art concerned – a painting by Thomas de Keyser and a copy after Nicolaas Maes – be returned to the heirs of the original owners subject to the payment of a particular sum of money.<sup>31</sup> The Committee added the following consideration to this recommendation: “*The Committee will leave it to the Ekkart Committee and the State Secretary to decide whether the money thus received by the government should be earmarked for any particular purpose.*”<sup>32</sup>

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<sup>30</sup> For a description of this case see Report 2002, section 4.1, and the advice (with the names deleted) in Appendix 9 to Report 2003.

<sup>31</sup> For a description of this case see Report 2003, section 2.2, and the advice (with the names deleted) appended to Report 2003.

<sup>32</sup> Consideration 15 in the advice issued in respect of RC 1.4. See Appendix 2 to Report 2003.

In accordance with the Ekkart Committee's Final Recommendations 7 and 8, half of these repayments should be earmarked for the Cultural Heritage Foundation of the Portuguese-Israeli Community (*Stichting Cultureel Erfgoed Portugees-Israëlietische Gemeente*) and the other half should be paid to the Jewish Historical Museum (*Joods Historisch Museum*), which should use the money to create a fund for promoting a wide range of expressions of contemporary Jewish culture.

Recommendation 9 is very important as regards the conditions under which the Restitutions Committee performs its advisory role. After all, the Restitutions Committee would be greatly hindered in its investigation if it no longer had access to the basic documentation compiled by the Origins Unknown Agency on works of art in the NK collection because those works are often the subject of applications for restitution on which the Committee is asked to issue advice. At a meeting on 2 November 2004 the Director-General for Culture and Media of the Ministry of Education, Culture and Science (OCW), Ms Van Kranendonk, was able to allay the Committee's concerns in this regard.



12. American soldiers show paintings stolen by the Nazis, 1945

## 5. Working method

In 2004 the Restitutions Committee met thirteen times to discuss the cases submitted to it. At least five members of the Committee were present at each of these meetings. All six committee members were involved in the discussions regarding the two cases on which the Committee issued advice in 2004.<sup>33</sup> In both cases, the advice issued concerned applications for restitution submitted by private individuals. The Restitutions Committee has also had a number of cases pending since early 2004 concerning the restitution of works of art from the former trading stock of an art dealer. The working method when handling these art dealer cases is largely the same as the working method when handling applications for restitution submitted by private individuals. However, the Restitutions Committee was faced with a number of special aspects in its investigations in art dealer cases (see section 5.2).

### 5.1 Procedure

The only change to the procedure used by the Restitutions Committee when handling a case since the Committee began its work in January 2002 concerns the amount of time allowed. As described in Report 2003, the twelve weeks originally allowed for processing a case in practice proved to be too short. This period was subsequently increased in the course of 2002 to sixteen weeks and when this also proved too short, it was further increased in 2003 to thirty-two weeks. If the Committee needs more time to produce considered advice it can repeatedly extend this period, each time by a further period of thirty-two weeks. In the case of such an extension the Committee informs the State Secretary and the applicant in writing accordingly. Where applicable, the age of the applicant or of other concerned parties will cause the Committee to prioritise a case. Since there have been no other changes to the procedure the Committee has restricted itself to giving a brief summary below. A more detailed description can be found in the Committee's previous Reports and on its website.

As soon as the State Secretary submits a case to the Restitutions Committee, the Committee informs the applicant accordingly by letter. In that letter the Committee explains the procedure and asks the applicant to use the enclosed questionnaire to indicate, among other things, any special features of the work of art that is the subject of the application for restitution, as well as explaining his or her relationship to the original owner under inheritance law and the circumstances in which the work of art was lost. In the case of applicants in art dealer cases the Committee does not ask about the heirs of the original owner but about the art dealer's legal successors. Before actually issuing the advice, the Committee initiates its own independent investigation (see below), and it drafts a report based on the results of the investigation. The applicant is then given the opportunity to respond to this report. The definitive report on the investigation is subsequently used as the

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<sup>33</sup> See section 2.2 and the appended advice (with the names deleted) for cases RC 1.17 and 1.18.

basis for the advice that the Committee issues. All members of the Committee are involved in drawing up the advice. Once the Committee has issued its advice to the State Secretary it informs the applicant accordingly.

Given its duty of confidentiality in respect of documents that come from (partly) confidential archives and/or other documents, the Committee only includes quotations from these documents and source references in the investigatory reports and in the advice that it issues. The Ministry of Education, Culture and Science (OCW) is responsible for the initial publication of the advice. In any event, the Restitutions Committee only goes public with its advice once the State Secretary has informed the applicant. As agreed with the Ministry, the Ministry ensures that the advice is sent to the applicant within four weeks of the State Secretary receiving it. Given the sensitive nature of the subjects involved, the Committee will not reveal the identity of the applicant of its own accord.



13. Registry office in Arolson, 1956

## 5.2 Investigation

The Committee's investigation focuses first of all on the information that the applicant has provided on the questionnaire, and on what the administrator/current possessor knows about the work (or works) of art as revealed by the investigation carried out by the Origins Unknown Agency (BHG) in the last few years into the provenance of the NK collection. The Ekkart Committee supervised this 'NK investigation'. However, the data from this investigation does not usually provide sufficient clarity to form the basis for issuing advice, as can be seen, for example, from the description of the two applications for restitution on which advice was issued in 2004 (see section 2.2). In such cases the Committee initiates a further investigation in which it makes use of its members' expertise and that of its Secretariat. The Committee also brings in external specialists where applicable to provide information about particular aspects of a case, which it then mentions in the advice that it issues.

It became clear to the Restitutions Committee in handling the art dealer cases submitted to it in 2004 that the investigation in those cases in the general sense differs, for various reasons, from the investigation in cases where private individuals apply for restitution of

works of art. For example, in the first place there is often not enough documentation, or no documentation at all, to enable advice to be issued concerning the individual works of art in the trading stock for which an application for restitution has been made. The investigation into the facts is also made more difficult by the following factors, which the Ekkart Committee names in the introduction to its Recommendations for the Restitution of Artworks of Art Dealers:

- the art trade's objective is to sell the trading stock so that the majority of the transactions even at the Jewish art dealers' in principle constituted ordinary sales;
- it is often unclear whether a transaction was made by a Jewish art dealer or by a ('good' or 'bad') Verwalter; it is even often unclear whether an artwork was part of the trading stock before a Verwalter was appointed or whether the Verwalter himself purchased it.

In 2004 the Committee increased its own investigation capacity because of the increase in the amount of investigation work. Since February 2004, Ms A. Marck has been providing support to the Committee and the Secretary/Reporter in the investigation of pending cases.

At the end of December 2004 BHG concluded its investigation into the history of the works of art recovered after the war and now part of the NK collection. The results of this investigation into provenance are extremely important to the Restitutions Committee for the basic investigation in cases that concern works of art from the NK collection. This is why the Committee has urged the Ministry of OCW to ensure that this information remains available to the Committee and the expertise is not lost after BHG closes.

### 5.3 Website

Since August 2003 the Restitutions Committee has had its own Dutch and English-language website at [www.restitutiecommissie.nl](http://www.restitutiecommissie.nl) or [www.restitutionscommittee.org](http://www.restitutionscommittee.org) where all the advice that it has issued can be found, as well as press releases and publications and other information, for example about the composition of the Committee and its working method. The website, which is linked to the sites of the Ministry of Education, Culture and Science (OCW), the Origins Unknown Agency and the Netherlands Institute for Cultural Heritage, is updated as necessary with the help of Outdare Internet Services. In the course of 2004 the Committee made editorial changes to the website with the help of Ms U.L.F. van Riel.

The usage statistics indicate that the Restitutions Committee website was visited 4800 times between 1 January and 31 December 2004. The greatest number of visitors was recorded in July, which was when the Restitutions Committee issued its advice concerning RC 1.17 and RC 1.18 and the decisions taken by the State Secretary of Culture regarding those cases were announced.<sup>34</sup>

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<sup>34</sup> See footnote 33.



## Appendices

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**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.

## ***Decree establishing the Advisory Committee on the assessment of restitution applications***

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.

*Decree establishing the Advisory Committee on the assessment of restitution applications*

**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.

## *Explanatory notes*

### **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)

*Decree (re)appointing the members of the Restitutions Committee*

DCE/04/58302  
9 DEC. 2004

Under Article 3 paragraphs five and six of the Decree establishing the Advisory Committee on the Assessment of Restitution Applications for Items of Cultural Value and the Second World War;

Having regard to the list of candidates of the aforementioned Advisory Committee of 13 September 2004;

In view of the notice given by Dr J.M. Polak of his intention to step down as Chairman of the aforementioned Advisory Committee with effect from 23 December 2004;

It is herewith decreed as follows:

Article 1

With effect from 23 December 2004 and for a period of three years, the following persons shall be appointed as members of the Advisory Committee on the Assessment of Restitution Applications for Items of Cultural Value and the Second World War:

Mr B.J. Asscher, mr., Chairman;  
Mr P.J.N. van Os, mr.;  
Prof. I.C. van der Vlies.

Article 2

With effect from 23 December 2004 and for a period of three years, the following persons shall be reappointed as members of the Advisory Committee on the Assessment of Restitution Applications for Items of Cultural Value and the Second World War:

Prof. J.Th.M. Bank;  
Prof. J. Leijten, mr.;  
Dr. E.J. van Straaten;  
Mrs H.M. Verrijn Stuart, mr.

This Decree shall come into effect on the second day after the date when it is published in the Government Gazette.

The aforementioned State Secretary,

(Medy C. van der Laan, mr.)



# Recommendations for the restitution of artworks of art dealers

## 1. Introduction

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

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

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

These and other complications make it quite clear that it would be incorrect to judge sales by art dealers in entirely the same way as one would judge sales by private owners. If you wish to continue to apply the course set in prior recommendations with regard to private art property to the art trade in a fair manner, the substantiation of the recommendations will require some adaptations. Particularly the recommendation to view sales by private individuals from the start of the war as forced sales unless emphatically proven otherwise cannot be adopted unaltered for application to the art trade.

## 2. General points of departure

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

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

## ***Recommendations for the restitution of artworks of art dealers***

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

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

### *Recommendation 1:*

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

### *Recommendation 2:*

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

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

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

### *Recommendation 3:*

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

## **4. Theft and confiscation**

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

*Recommendation 4:*

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

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

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

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

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

*Recommendation 5:*

*The committee recommends viewing the qualification binding in all cases in which the art dealer himself, his heirs or an immediate representative appointed by him or his heirs has filled in 'voluntary sale', unless very clear clues are submitted which make it probable that a mistake was made when the form was filled in or that the filling in of the form took place under disproportionately burdening circumstances.*

## **6. Involuntary sale**

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

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

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

***Recommendations for the restitution of artworks of art dealers***

*Recommendation 6:*

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

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

## Recommendations

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



**ORIGINS UNKNOWN ADVISORY COMMITTEE  
FINAL RECOMMENDATIONS**

**December 2004**

## **Introduction**

In implementation of the assignment to advise the government on the policy to be followed with regard to the restitution of works of art recuperated to the Netherlands after the war, which are part of the so-called NK collection administered by the state, the Origins Unknown Advisory Committee – which is usually called the ‘Ekkart Committee’ after its Chairman, Prof. R.E.O. Ekkart – issued recommendations in 2001 and 2003. The first series of recommendations was intended to facilitate the return of works of art to (the heirs of) private owners. The second series applied the main lines of the recommendations concerning private art ownership to the art trade.

Both series of recommendations adopted by the government have created a framework for a liberalized restitution policy, that has already led to visible results. The Restitutions Committee (short for Advisory Committee on the Assessment of Restitution Applications for items of cultural value and the second World War), that was set up in 2001, has assessed the claims submitted within the framework of the recommendations and the government policy which is based on the latter. Circumstances and available clues that differ from case-to-case were hereby taken into consideration. The manner in which the Restitutions Committee has substantiated its advisory task clearly indicates that this committee has been able to translate the spirit and the letter of the recommendations issued in an adequate manner as also the policy based on them into recommendations occasioned by individual applications for restitution.

There are still a few points of a more general nature on which – according to promises made earlier – the committee would advise at the end of research. These points are:

- the duration of the period within which the current liberalized restitution policy is to remain valid
- the position of the artworks which – during the years after the war – prove to have been (possibly) unjustifiably recuperated to the Netherlands
- the position of the works of art in the NK collection which ended up in German hands due to theft, confiscation or forced sale, but for which no potential claimants can be found
- the destination of any possible sums that will have to be paid by the recipients in the event of the return of the works of art
- the necessary steps to be taken in order to conclude the entire process

**Duration of the term of the current liberalized restitution policy**

The committee's recommendations for the liberalization of the restitution policy were intended as a temporary measure, closely connected to the fact that within the framework of the research undertaken since 1998 and the publicity this has attracted, new insight and data have emerged. The liberalized government policy offers legally entitled parties an opportunity to even now submit claims. The point of view now taken is in accordance with the newly acquired insight into what can be considered as fair dealings with the victims of war as also the factual information which has come to light on the manner in which works of art ended up in German hands during World War Two within the framework of the research. Publication of the research results, both in paper and digital form, and the publicity given to both those results and the policy's objectives have created a framework within which the potential legally entitled parties are provided with an optimum opportunity to exercise their rights. In order to guarantee the independence of the assessment of the claims in accordance with the now liberalized policy a temporary advisory committee was instituted.

The committee is of the opinion that after concluding its activities at the close of 2004 - i.e. after concluding the research carried out since 1998- and after the processing of the final recommendations into a point of view on all the recommendations made that is accepted by the government and parliament, a term of two years will be required to enable all the parties concerned to submit claims on the basis of the liberalized government policy. The duration of this term was motivated by the experience that information on government policy and factual information can require quite some time to reach the parties concerned and, moreover, that the personal circumstances of these parties can lead to a delay in responding. Although the committee has continually exerted itself over the past few years to achieve a maximum dissemination of information, and will continue to do so in the last few months of 2004, a term shorter than two years would be irresponsible. On the other hand, it does not seem useful to prolong the term in which claims can be submitted on the basis of the liberalized government policy, also considering the fact that the more time elapses the less time there is to take first and second-hand information concerning the loss of property during the war years into account.

Taking the former into consideration, the committee proposes to limit the term in which the opportunity exists to submit claims to two years after the government policy based on these final recommendations has been published in the *Staatscourant*. Naturally, all the claims submitted prior to the end of this term will then subsequently be examined.

### *Final recommendations*

The committee is of the opinion that it would be desirable to organize a second exhibition with regard to the NK collection in 2005, in emulation of the exhibition held in Leeuwarden in 2003. This could once again draw public attention to the research that has been carried out, to the many queries that have remained unanswered due to a lack of sources and to the opportunity as yet to submit claims.

A year before the term ends, the government is advised to widely publicize the impending lapse of the claim opportunity. To this end, use can be made of advertisements in Dutch newspapers, embassy channels and the aid of Jewish organisations and media both in the Netherlands and abroad.

#### **Recommendation 1**

**The committee recommends the government to provide the opportunity to submit claims on works of art from the NK collection within a period of two years following publication in the Staatscourant of the government policy formulated on the basis of these final recommendations.**

#### **Recommendation 2**

**One year prior to the termination of the period in which claims may be submitted, the government should widely publicize the impending lapse of this opportunity.**

#### **Artworks that were (possibly) unjustly recuperated to the Netherlands after the war**

During the research it came to light that it remains unclear for many of the works of art concerned whether they were justly recuperated to the Netherlands at the time. In some cases this concerns works of art that 'travelled around' during the war years and initially entered the hands of the German occupiers in another country, then left German ownership and ended up in Dutch hands only to be subsequently sold to Germany again. When claims on such artefacts are made by (the heirs of) foreign private individuals, these are dealt with in the same way as those by (the heirs of) former Dutch owners. If such mutually conflicting claims are made on such a work of art, it is the committee's opinion that the first loss of property should generally prevail. However, the Restitutions Committee should be given room to consider the relative weight of such contradictory claims, depending on the specific circumstances.

### *Final recommendations*

Furthermore, there are works of art for which this research has been unable to unearth the reason why they were recuperated to the Netherlands, and for which no clear indications have emerged as to their former individual owners. Such vagueness is partly due to the fact that more than half a century has passed and the motives to assign any individual artefact to the Netherlands have not always been clearly stated, and there is no one directly involved left to provide information. In such cases there is no basis without new data emerging for further action.

In the case that another country should submit a claim to works of art in the NK collection, this claim will have to be dealt with in bilateral consultations with the government of the country concerned.

#### **Recommendation 3**

**Claims from foreign private individuals on works of art possibly unjustly recuperated to the Netherlands should be dealt with conform the claims of (the heirs) of owners who lost works of art within the Netherlands.**

#### **Recommendation 4**

**The committee recommends that possible claims from another country on works of art in the NK collection should not be submitted to the Restitutions Committee, but should be dealt with in bilateral consultations with the government of the country concerned.**

#### **Unreturnable stolen works of art**

##### *a. The current NK collection*

In spite of major research efforts during the past few years and the ensuing results – seen in the light of prior expectations - with regard to the reconstruction of the provenance of the works of art in the NK collection, it must be concluded that the identity of the original owners of many works of art cannot be ascertained. Often, the provenance of a work from the NK collection cannot be further traced than to an art dealer by whom it was voluntarily sold to the Germans between 1940 and 1945, which makes it impossible to determine from whom the dealer concerned acquired the work. On the basis of comparison to the provenances which can be fully documented, it seems probable that in many cases the trade was completely regular, whereby forced sale of property was out of the question. For a number of artworks however, the trail leads to a looting organisation, such as the LiRo Bank, but all clues as to

### *Final recommendations*

from whose property they were taken are lacking. This means that there are artefacts in the collection of recuperated works of art under Dutch state custody which either definitely or highly probably belong to the category of works stolen or confiscated or of which the sale was forced upon their original Jewish owners and for which no legally entitled party can be indicated. This concerns a few dozen works, for the greater part objects of applied art and furthermore a number of primarily 19<sup>th</sup>-century paintings. Provenance research has not shown a single object for which clues exist suggesting that it originates from the property of a persecuted section of the population other than the Jewish community.

Owing to the points of departure for government policy, the committee considers it to be incorrect to tacitly ignore the provenance data on these objects and to continue to keep them in the state collection. The committee is of the opinion that sale of the objects in question and the forthcoming proceeds to be given to a Jewish charity is also an undesirable solution as it would render the objects unattainable to any legally entitled individual who may come forth in the future. Instead, the committee recommends two measures. Firstly, all artworks in this category to be exhibited in museums should be fitted with a plate stating their provenance. Secondly, the committee recommends that these objects be valued and that the counter value ascertained on the basis of this valuation be made available to a Jewish cultural charity. This removes any suspicion that the Dutch government could have enriched its public art collection with works of art that were taken from victims of the war without reciprocation.

#### **Recommendation 5**

**The committee recommends that the works of art from the NK collection, which can definitely or to a high degree of certainty be categorised as stolen, confiscated or lost to their original Jewish owners through forced sale and for which no legally entitled parties can be indicated, should, during an exhibition be fitted with a plate which states their provenance. The committee also recommends that these objects be valued and that the counter value ascertained on the basis of this valuation be made available to a Jewish cultural charity.**

#### *b. The artworks auctioned at the start of the fifties*

The same impression of enrichment exists with regard to the proceeds which ended up in the treasury after the auction – in the early 1950s – of recuperated works of art, which definitely also included material belonging to Jewish owners that had changed hands during the war years through theft, confiscation or forced sale. An accurate determination of the artworks

### *Final recommendations*

involved can hardly be made anymore. Therefore the best solution is to assume that the composition of the works auctioned was comparable to that of the works which have been preserved and which are at present part of the NK collection. The extensive Mannheimer and Lanz collections which disfigure this general impression are to be ignored.

In connection herewith, the committee proposes to add a percentage of the total auction proceeds, minus those of the parts of the Mannheimer and Lanz collections that have been sold, to the abovementioned figure intended for a Jewish cultural charity. This percentage can be calculated by comparing the number of artworks with 'tainted provenances' against the number of artworks in the NK collection as laid down in the Origins Unknown (Herkomst Gezocht) interim reports, minus the number of artworks from the Mannheimer and Lanz collections. The sum of the number of the above under a) mentioned category of stolen works of art from unknown Jewish property on the one hand and the number of restitutions to legally entitled parties since May 1952 - the date of the transfer of the remaining material of the Netherlands Art Property Foundation (Stichting Nederlands Kunstbezit, abbreviated as SNK) to the Ministry of Art and Sciences (Ministerie van Kunsten en Wetenschappen) - on the other can serve as the basis for the term 'tainted provenance'. In order to prevent the so far unknown results of claims pending distorting the calculations, the number of artworks for which as yet unprocessed claims have been submitted as of the closing date of the research (1 December 2004), should be excluded from the calculations and neither be taken into account in the calculation of the size of the NK collection, nor in the inventory of works with tainted provenances.

The percentage of tainted NK artworks (minus the pending claims) with regard to the entire NK catalogue (minus the Lanz and Mannheimer collections, and claims pending) should be applied to the total of the auction proceeds (also minus the Lanz and Mannheimer collections) and then be indexed according to the standards of average price developments for artworks between 1952 and 2004. A carefully grounded calculation method will be submitted by the committee in December 2004.

#### **Recommendation 6**

**The committee recommends making an indexed percentage of the proceeds of the recuperated works of art sold up until 1952 available to a Jewish cultural charity.**

## *Final recommendations*

### *c. Intended recipients of monies*

The committee is of the opinion that the monies to be made available in accordance with the above recommendations should be allocated to general Jewish cultural charities of which half to the support of the preservation of Jewish cultural heritage and the other half for the stimulation of contemporary Jewish cultural expressions. The support for the preservation of Jewish cultural heritage can best be realised by supporting the Cultural Heritage Foundation of the Portuguese-Israeli Community (Stichting Cultureel Erfgoed Portugees-Israëlietische Gemeente), whose objective is to maintain and manage the synagogue on the mr. Visserplein in Amsterdam and to make it accessible to the public. The unique historic importance of this synagogue makes it a symbol of Jewish history in the Netherlands and thereby a fitting destination for a remuneration of the no longer realizable restitution of lost Jewish private property.

The committee recommends allocating the other half of the monies to be paid to the Jewish Historical Museum (Joods Historisch Museum), which should use the fund thus created to stimulate a wide range of expressions of contemporary Jewish culture.

The distribution of the funds among both charities simultaneously benefits aspects of cultural preservation and contemporary cultural development. As the activities of the Cultural Heritage Foundation of the Portuguese-Israeli Community are to take place in close cooperation with the Jewish Historical Museum there is moreover a direct link between both charities which might lead to mutual reinforcement.

### **Recommendation 7**

**The committee recommends the allocation of half the amounts referred to in Recommendation 5 and 6 to the Cultural Heritage Foundation of the Portuguese-Israeli Community and the remainder to the Jewish Historical Museum, which should use the fund thus created to stimulate a wide range of expressions of contemporary Jewish culture.**

### **The allocation of any possible repayments for the restitution of works of art**

In its advice RC 1.4 dated 7 April 2003 the Restitutions Committee with regard to the allocation of any possible repayment of monies received for the restitution of artworks recommended the State Secretary to request the Ekkart Committee for advice. It concerned sums which can be requested to be repaid if the former owners received the purchase price or part thereof to spend as they wished after forced sale during the war. In line with the above,

**Final recommendations**

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## **Advice concerning the application for restitution of the drawing *Fisherman on horseback* by Jozef Israëls (NK 1399)**

(Case number RC 1.17)

In the letter dated 23 October 2003, the State Secretary of Education, Culture and Science asked the Restitutions Committee for advice on the decision to be taken concerning the application dated 9 September 2003 by Mr L. (hereinafter referred to as 'the applicant') for restitution of the drawing *Fisherman on horseback* by Jozef Israëls (NK 1399).

### The facts

Further to this application for restitution, the Committee initiated an investigation into the facts and the results of this investigation were recorded in a report produced in February 2004. In support of his claim, the applicant submitted a report on 9 September 2003, which describes what happened during the war to the art collection owned by his grandfather on his mother's side, the Jew E. d.V. (hereinafter referred to as 'V.') who was born in 1890 and died in 1969. This report from the applicant relates specifically to a watercolour by Breitner that was part of V.'s collection. The report was produced in December 2000 by Dr A.J. Bonke, who had been given the assignment by the Boijmans Van Beuningen Museum. The information compiled by Dr Bonke in his report formed part of the basis for the investigation initiated by the Restitutions Committee to enable it to assess the claim for restitution of the drawing by Israëls (NK 1399). The report on the investigation, which was drawn up under the Committee's responsibility, was sent to the applicant with an accompanying letter dated 25 February 2004. On 27 February 2004 the applicant indicated that he agreed with the facts as presented in the report.

### General considerations

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

1. The applicant is acting on behalf of the joint heirs of V.
2. The circumstances in which V. lost possession of 62 paintings and other works of art from his art collection can be summarised as follows. In connection with his departure for the United States, V. placed his art collection with the furniture-removal company De Gruyter of Amsterdam in 1939. In 1942 the Nazis seized the collection under the so-called 'LiRo decrees' and the German clearing house for stolen property known as the 'LiRo bank' subsequently sold the individual works of art to various, mainly German, buyers. In the archives a list was found of the works of art from V.'s estate that were sold by the LiRo bank, and a drawing by Jozef Israëls, entitled *Fisherman on horseback*, is on the list.
3. The Committee considers that the loss of the drawing from the estate, as described above, should be deemed to have been involuntary under current government policy.
4. After the liberation, V., from his place of residence in the United States, made a declaration to the Dutch authorities of the works of art that he had lost. The list drawn up by V. to help trace the works of art includes a drawing by J. Israëls, entitled *Vissen met paard* [*Fishing with horse*, as opposed to *Visser te paard* – *Fisherman on horseback*] – which the Committee assumes to be the title distorted by typing errors. The post-war authorities informed V. towards the end of 1948 that none of the works of art that he had listed had been found: "...concerning the works of art that you lost during the war I regret to inform you that an investigation has revealed that we have not brought back any of the items that you listed."
5. The drawing by Jozef Israëls that is the subject of this advice was recovered from Germany in January 1949 and added to the Dutch National Art Collection under inventory number NK 1399. Given the lack of post-war correspondence regarding this drawing, it must be assumed that no connection was made at that time between this drawing and the drawing lost by V. It is no longer possible in 2004 to ascertain where NK 1399 was found after the war and on what grounds it was allocated to the Netherlands.
6. Given that the subject of the drawing appears a number of times in the works of Jozef Israëls, the Committee initiated an art-historical investigation to determine whether Israëls' drawing *Fisherman on horseback* from the National Art Collection (NK 1399) was in fact the drawing from V.'s collection. As part of this investigation, the investigators contacted Dr D.P. Dekkers, who is the author of the thesis 'Jozef Israëls, een succesvol schilder van het vissersgenre' ['Josef Israëls, a successful painter of the fisherman genre']. In the opinion of Ms Dekkers, there was only one other drawing by Jozef Israëls that was important for the present investigation. However, further inquiries revealed that that drawing, in contrast to NK 1399, was of the type described in art-historical terminology as 'brown washed'. The conclusion of those further inquiries was therefore that the drawing known as NK 1399 was closest to the description of the drawing lost by V., 'Fisherman on horseback, crayon'.
7. Given the results of the investigation, the Committee finds that the drawing by Jozef Israëls (NK 1399) that is in the National Art Collection is almost certainly the drawing lost by V.
8. In view of the above and with reference to the general considerations of the Restitutions Committee that the risk of the loss of further evidence due to the lapse of time should be borne by the government, the Committee considers the application for restitution of the drawing *Fisherman on horseback* by Jozef Israëls (NK 1399) to be sustainable.

Conclusion

The Restitutions Committee advises the State Secretary of Education, Culture and Science to return the drawing *Fisherman on horseback* by Jozef Israëls (NK 1399) to the heirs of V.

Adopted at the meeting on 22 March 2004.

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 submitted by Mr K. in respect of four paintings from the NK collection (NK 2389, NK 2394, NK 2526 and NK 3072)***

(Case number RC 1.18)

In the letter dated 16 December 2003, the State Secretary of Education, Culture and Science asked the Restitutions Committee for advice on the decision to be taken concerning the application of Mr K. of 29 September 2003 for restitution of the following four paintings from the Netherlands Art Property Collection (NK collection): B.C. Koekkoek *Landscape with water mill and peasants driving cattle along a sandy road* (NK 2389), A. Schelfhout *Cottages on the edge of a wood* (NK 2394), P.G. van Os *Winter landscape with deer* (NK 2526) and Anonymous or A. Govaerts *Italian landscape in the evening* (NK 3072).

The facts

Further to the application for restitution, the Committee initiated an investigation into the facts and the results were recorded in a report produced in February 2004 by the Origins Unknown Agency. This report was submitted to the applicant, who then responded in a letter dated 6 May 2004. In order to better understand the aspects of the application for restitution that relate to family law and inheritance law, the Committee carried out a further investigation from February to April 2004. The results of this further investigation, in so far as they are relevant, have been incorporated into this advice.

General considerations

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

1. Mr K. (hereinafter referred to as 'the applicant') has applied for restitution of the above-mentioned paintings and in so doing has stated that these paintings belonged to his (biological) father V. who designated them as being for the applicant in a postcard sent in July 1942 to the applicant's mother.
2. Because of his Jewish origin, V. was arrested in 1942 and shortly afterwards the Nazis killed him in the Auschwitz concentration camp. The text of the postcard dated 2 July 1942 that V. sent from Camp Westerbork is the basis for this application for restitution and was made available for examination during the investigation. This text reads as follows:

*'Dear Anne, Remove, Amsterdam, Schelfhout, Cottage with wood, Pieter G. van Os, Winter with deer, Jacob van Loo, Still life of flowers, Abram Govaerts, Italian Mountains, B.C. Koekkoek, Landscape with water mill and peasant cattle  
Anne for 5/9-'29. Kind regards, V.'*

3. The applicant supports his claim as follows in his letter of 29 September 2003:

*'At the end of August 2002 I contacted my biological mother (..) who was seriously ill at that time. On that occasion she confirmed something that I had already known for a long time, namely that V. was my natural father. (...). At the same time my mother gave me an envelope and a card, dated 2 July (?) 1942, which my father had sent to her from Westerbork (..). She also told me that the postcard had led to her and her brother going to my father's former address in Amsterdam in around August of 1942 to collect the paintings indicated on the card, but that the house had already been looted. They reported the looting of the house at the time to the police in Sneek (..). Given that my father had written the words "Anne, for 5/9/29" on the postcard in question, thereby instructing my mother to collect the five paintings named on the card for me, I approached the Origins Unknown Agency a few months ago, after I had seen the exhibition in Leeuwarden about art stolen during the war, with the question as to whether it would still be possible to find the paintings in question. The Origins Unknown Agency (...) informed me that four of the five paintings concerned might be identical to paintings that are currently in the NK collection, namely paintings NK 2389, NK 2394, NK 2526 and NK 3072. During my visit I was shown photographs of these paintings, of which I was able to positively identify the first three (Koekkoek, Schelfhout and Van Os) as paintings that I saw in my father's home at that time when I stayed with him during holidays at the end of the 1930s; as regards the fourth painting (Govaerts) I can only remember that my father had a similar painting hanging on the wall, but I cannot positively identify it.'*

4. The Origins Unknown Agency carried out a historical (art historical) investigation in connection with the question that the Restitutions Committee first had to answer, namely whether the aforementioned four works of art from the NK collection can be identified as the paintings that disappeared from V.'s house in the summer of 1942. The investigation revealed that three of the paintings appeared on the Amsterdam art market after V.'s arrest, i.e. towards the end of 1942 and in the course of 1943; the investigation did not reveal whether the fourth painting – *Italian landscape in the evening* (NK 3072) – appeared on the Amsterdam art market before or after V.'s arrest in 1942. However, it is not possible to clearly answer the question as to where the paintings were before that time. Given this gap in the provenance history, it is possible that the NK paintings

in question were in the possession of V. until 1942. Due to the infrequency of exhibitions of the work of the artists concerned, i.e. those artists named on V.'s postcard, the suggestion that the paintings were in the possession of V. is considered very probable in the case of NK 2389 (Koekkoek) and NK 2626 (Van Os) and certainly very possible in the case of NK 2394 (Schelfhout). As regards the painting *Italian landscape in the evening* (NK 3072; Anonymous, previously attributed to Govaerts), it is not possible to reach a judgement based on the documentation. During an interview with the applicant that was held as part of the investigation and on which a report is included in the report on the investigation, the applicant positively identified from the photographs shown to him the paintings by Koekkoek (NK 2389), Van Os (NK 2394) and Schelfhout (NK 2526) as being the paintings that were formerly owned by his father. In addition, the applicant knew particular details about these paintings, such as their dimensions. As regards NK 3072, *Italian landscape in the evening*, the applicant stated that a similar painting had hung on the wall at his father's home, but he was not able to confirm that it had been this particular painting.

5. Based on the results of the investigation that are briefly reported above, the Committee considers that there is sufficient evidence to show that the paintings by Koekkoek (NK 2389), Schelfhout (NK 2394) and Van Os (NK 2526) are the paintings from V.'s collection described by V. in his postcard of 2 July 1942.
6. However, as regards *Italian landscape in the evening* (NK 3072), it is the Committee's judgement that there is insufficient evidence to assume that it is highly likely to be the painting from V.'s collection that is described on the postcard as *Italian mountains* by Govaerts. Therefore the application for restitution of this painting must be rejected at this stage for lack of further evidence.
7. The Committee notes from, for example, a judgement of the District Court of Leeuwarden on 26 November 1931 that the applicant is the natural illegitimate child of V. In that judgement the District Court found that V. had a duty of maintenance towards the applicant, although that same judgement also indicates that V. disowned the applicant. One consequence of V. disowning the applicant is that, under Article 343 of the old Netherlands Civil Code, there is no civil relationship between the applicant and V. and the applicant is therefore not an heir of V.
8. As regards the assessment of the application for restitution of NK 2389, NK 2394 and NK 2526, the Committee considers the following to be important: given the text quoted above from the postcard of 2 July 1942 sent from Westerbork to the mother of the applicant who at that time was a minor, V.'s intention is clear, namely to give the paintings mentioned on the card as a gift to the applicant.
9. However, it must be noted that this gift did not meet the requirements of Article 1719 of the Netherlands Civil Code that was valid at that time, namely that the gift be made by notarial deed. Given the special circumstances in which V. found himself at the time that he made the gift, namely that he had been interned in Camp Westerbork, it may be assumed that the informal manner in which V. attempted to accomplish the gift can be considered legally valid. The Committee

bases this assumption in part on the fact that the report on the investigation and the letter quoted above from the applicant and dated 29 September 2003 both describe events that clearly indicate that V. wanted to make a contribution to the applicant.

10. Partly in order to determine whether this gift could be contested under inheritance law, the Committee initiated a further investigation. This investigation determined, as far as it is possible to do so, that V. did not leave behind any children other than the applicant. V.'s widow, Mrs F., who V. married on 2 April 1941, can be considered V.'s sole heir given that V. did not draw up a will. Mrs F., the Committee discovered, died childless on 19 May 1981 in Zurich (Switzerland) and named Mr B., who is currently resident in Israel, as her sole heir in her last will and testament, which was dated 17 October 1980. This shows in any case that there were no forced heirs to V.'s estate and, in connection with the gift to the applicant, that there can be no question of an infringement of forced shares.
11. Finally, the Committee would like to add the following. If the gift discussed above were not to be accepted under the civil law applicable at that time because of the lack of a notarial deed, the consequence would be that the claim on these paintings would fall to the aforementioned Mr B.
12. The Committee does not find this consequence to be acceptable and rejects it on the basis of the letter from the State Secretary of Education, Culture and Science to the Speaker of the Lower House of the States General, dated 29 June 2001, in which the State Secretary included the following: "In its response to the Ekkart Committee's recommendations, the Government has chosen to take a more policy-oriented approach, rather than a purely legal one, to questions relating to the restitution of property stolen during the Second World War".
13. In view of the above the Committee considers the application for restitution of the paintings by Koekkoek (NK 2389), Schelfhout (NK 2394) and Van Os (NK 2526) to be sustainable.

Conclusion

The Restitutions Committee advises the State Secretary of Education, Culture and Science to grant the application for restitution of the three paintings *Landscape with water mill and peasants driving cattle along a sandy road* by B.C. Koekkoek (NK 2389), *Cottages on the edge of a wood* by A. Schelfhout (NK 2394) and *Winter landscape with deer* by P.G. van Os (NK 2526), and to reject the application for restitution of *Italian landscape in the evening* by an anonymous artist or A. Govaerts (NK 3072).

Adopted at the meeting on 18 May 2004.

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

Trouw van 16 juli 2004

## Oorlogskunst terug naar eigenaren

*Van onze kunstredactie*

**AMSTERDAM - Vier kunstwerken uit de rijkscollectie worden teruggegeven aan nabestaanden van de oorspronkelijke eigenaren. Die raakten de werken in de Tweede Wereldoorlog kwijt. Op advies van de Restitutiecommissie, die claims op oorlogskunst onderzoekt, wijst staatssecretaris Van der Laan (cultuur) de werken aan de familie toe.**

Het gaat om de 19de-eeuwse schilderijen 'Landschap met watermolen en boeren die vee over een zandweg drijven' van B.C. Koekoek, 'Zandweg met boerenwoningen aan een bosrand' van A. Schelfhout en 'Winterlandschap met herten' van P.G. van Os. Een andere rechthebbende krijgt de tekening 'Visser te paard' van Jozef Israëls terug.

Aanleiding voor de eerste claim was een briefkaart waarop de eigenaar van de schilderijen (V.) de wens uitte enkele schilderijen te schenken aan zijn onwettige zoon K., die opgroeide in een pleeggezin. V. werd in 1942 gearresteerd vanwege zijn joodse afkomst en kort daarop in Auschwitz omgebracht. Vanuit kamp Westerbork verstuurde hij op 2 juli 1942 nog een briefkaart aan K's biologische moeder met de tekst: Beste Anne, Haal weg, Amster-herten, dam, Schelfhout, Zandweg boerenhuis met bos, Pieter G. van Os, winter met Jacob van Loo, Bloemstillevens, Abram Govaerts, Italiaanse Bergen, B.C. Koekoek, Landschap met watermolen en boer vee Anne voor K. Hartelijke groeten, V.

Toen zij de werken wilde ophalen was de woning van V. al leeggeroofd. Pas in augustus 2002 kreeg K. de briefkaart van zijn moeder.

Uit onderzoek van de Restitutiecommissie bleek dat de werken van Koekoek, Schelfhout en Van Os in 1942/1943 op de Amsterdamse kunstmarkt waren verschenen. Sinds eind jaren veertig hebben ze deel uitgemaakt van de Nederlands Kunstbezit-collectie. Er waren te weinig aanwijzingen om het anonieme doek 'Italiaans berglandschap bij avond' in de collectie te identificeren als het op de briefkaart genoemde schilderij 'Italiaanse bergen'.

Ook de tekening 'Visser te paard' van Jozef Israëls gaat terug naar de rechthebbende. De oorspronkelijke joodse eigenaar had zijn kunstverzameling in 1939, voor zijn vertrek naar Amerika, opgeslagen in Amsterdam. Tijdens de bezetting namen de nazi's de collectie in beslag. In 1949 belandde het werk in de rijkscollectie. Een kleinzoon kwam de tekening vorig jaar op het spoor.

Sinds de Restitutiecommissie in januari 2002 werd opgericht, werden twintig zaken aan de commissie voorgelegd. In veertien zaken bracht zij advies uit.

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de Volkskrant van 16 juli 2004

# Overheid restitueert opnieuw oorlogskunst

*Van onze verslaggever Merlijn Schoonenboom*

## AMSTERDAM

**Staatssecretaris Van der Laan van Cultuur heeft gisteren twee claims op oorlogskunst gehonoreerd. Het betreft vier kunstwerken waarvan de eigenaren in de Tweede Wereldoorlog vermist raakten, en die nu door erfgenamen worden opgeëist. De eerste teruggave behelst drie landschappen van de 19de-eeuwse Nederlandse schilders B.C. Koekkoek, A. Schelfhout en P.G. van Os. De tweede een tekening van Jozef Israëls.**

De teruggave gebeurt op advies van de Restitutiecommissie, een onafhankelijke commissie die de regering per zaak adviseert. Aanleiding voor de eerste claim is een vanuit concentratiekamp Westerbork verstuurd briefkaart waarop de eigenaar, een joodse kunstverzamelaar en verzetsman uit Amsterdam, de wens uit om een aantal schilderijen te schenken aan zijn niet-erkende zoon, die opgroeide in een pleeggezin.

Sinds haar oprichting in januari 2002 werden twintig zaken aan de Restitutiecommissie voorgelegd. Veertien zaken heeft de Commissie inmiddels behandeld. Niet teruggegeven kunstwerken worden vaak beheerd door de rijksoverheid. Veel kunstwerken zijn echter in het buitenland terechtgekomen.

Zo kwam de Koenigs-collectie onlangs weer in het nieuws omdat er tekeningen uit deze collectie in Oekraïne waren opgedoken. Balkenende heeft ze daar opgeëist, met als argument dat ze uit Nederland weggenomen zijn door de nazi's.

In een interview in de Volkskrant ontkende erfgenaam Christine Koenigs donderdag echter dat het hier roofkunst betreft. Volgens haar is het een vrijwillige verkoop geweest aan de nazi's door verzamelaar D.G. van Beuningen, die inmiddels in het bezit van de tekeningen was gekomen. Volgens haar kan de Nederlandse staat internationaal echter niet de waarheid over de kwestie uitspreken, omdat de staat dan haar aanspraken verliest.

Frans Timmermans, Tweede-Kamerlid van de PvdA, deelt die mening: 'De claim van de Nederlandse staat op de Koenigstekeningen is zwak. De Nederlandse staat kan niet zeggen hoe het echt zit. Dan verliest zij haar aanspraken.' Timmermans was diplomaat in Moskou van 1990 tot 1993, en in de kamer behandelde hij in 2000 de geruchtmakende zaak over de Chardzjiëv-collectie.

'Hebzucht', zegt hij, is vaak het motief in de kwesties rondom oorlogskunst. Op de vraag of de Restitutiecommissie dan niet onafhankelijk van de regering opereert, zegt Timmermans: 'Mijn gevoel is dat in Nederland vooral de wens sterk is om kunst voor Nederland te behouden.'

Eveline Campfens, secretaris van de Restitutiecommissie, vraagt zich af of Timmermans de adviezen wel gelezen heeft: 'Elf van de veertien behandelde zaken zijn inmiddels toegewezen. Drie zijn afgewezen, waaronder die van de kleindochter van Franz Koenig. Van kunst behouden is dus geen sprake. Daarbij betekent een afwijzing van een claim niet een toewijzing aan de Nederlandse staat. Daar doet de Commissie geen uitspraken over.'

# NRC HANDELSBLAD

De teruggave van drie in de oorlog verdwenen schilderijen  
De vergeelde briefkaart

Het ministerie van OCW besloot gisteren drie schilderijen die in de oorlog naar Duitsland verdwenen terug te geven aan de erfgenaam. Hoe een briefkaart uit kamp Westerbork na vijftig jaar goed aankwam.

ANNELIES KOOL EN EELKE MULLER

Bijna twintig jaar was Nienke Leefsma toen ze in 1929 van haar eerste kind beviel. Het was een jongetje, dat ze Bram noemde. Het nieuws van zijn geboorte zal in de familie Leefsma met gemengde gevoelens zijn ontvangen. Nienke was ongehuwd en te arm om haar zoontje op te voeden. Ze was in moeilijkheden geraakt toen ze als inwonende dienstbode voor het joodse echtpaar Van Gelder werkte. Tussen de was en de strijk waren bepaalde zaken voorgevallen tussen haar en Lion van Gelder, de 31-jarige zoon des huizes, en nu moest Nienke met de gevolgen leven. We weten niet hoe de vermeende vader het bericht over de zwangerschap opnam, maar zeker is dat er geen huwelijk volgde en dat hij de baby niet erkende.

Nienke's vader, een stoelenmatter uit Friesland, bracht de zaak in 1931 voor de rechter. In zijn dagvaarding stelde hij dat Lion van Gelder de verwekker van de inmiddels tweejarige peuter was. Nienke had 'tusschen den 301sten en den 179sten dag voorafgaande aan de geboorte van haar kind herhaalde malen vleeschelijke gemeenschap met gedaagde .. gehad'. Leefsma wees de rechters op de moeilijke financiële positie van zijn dochter. Ze was ruim anderhalf jaar na de geboorte van haar zoontje getrouwd met een Friese werkman, met wie ze op de rand van de armoede leefde. Lion van Gelder zat ruimer in zijn geld. Als handelaar verdiende hij zo'n drie- tot vierduizend gulden per jaar, waarvan hij niemand hoefde te onderhouden omdat hij vrijgezel was. Het leek Leefsma dan ook redelijk als Van Gelder vier gulden per week zou afstaan voor zijn kind. De arrondissementsrechtbank te Leeuwarden vond deze vordering 'noch onrechtmatig noch ongegrond' en wees de eis toe.

Nienke kreeg dus financiële steun voor haar zoon. Het jongetje groeide niet op bij zijn moeder, maar werd ondergebracht bij familie. Bram Leefsma: „Af en toe kwam ze bij ons langs. Ik kende haar als tante, hoewel ik op zeker moment begon te vermoeden dat er meer aan de hand moest zijn." In het pleeggezin voelde hij zich dikwijls te veel. Vooral met zijn pleegvader, een rietwerker die met paard en wagen langs de dorpen trok, kon hij slecht overweg. „Mijn kinderperiode was geen goudomrande tijd. Er komt een sterk gevoel van gemis en eenzaamheid boven als ik terugdenk aan die jaren."

Toch zijn er ook mooie jeugdherinneringen. Na het moeizame begin leek Lion van Gelder zich steeds meer van zijn zoontje Bram aan te trekken. „Er werd regelmatig geld gestuurd naar grootvader Leefsma. Daar kon hij een klein huis met een winkeltje op afbetaling voor kopen. Ook correspondeerde mijn vader met de familie om te horen hoe het met me ging." Op zeker moment kwam het tot een ontmoeting tussen vader en zoon, en eind jaren dertig mocht Bram een paar keer komen logeren in Amsterdam.

De overgang van het arbeidersgezin uit de provincie naar het milieu van Van Gelder was enorm. „Mijn vader woonde rond 1938 aan de Noorder Amstellaan in Amsterdam. Toen ik als achtjarig ventje voor het eerst zijn huis binnenstapte, was ik stomverbaasd over de kostbaarheid van het interieur. Ik keek mijn ogen uit, alles was even bijzonder en schitterend." Brams vader maakte indruk op hem met spectaculaire verhalen over zijn reizen naar Frankrijk. Minstens zo spannend was het als Lion 's zondags ging biljarten in café De Kroon, terwijl zijn zoon zich vermaakte in de Tiptop-bioscoop. „Ik kreeg dan limonade uit zo'n glazen kogelfles. Na de film haalde mijn vader me op en gingen we naar zijn moeder, die bij het Olympisch stadion woonde. Oma Van Gelder was altijd heel aardig voor me." Aan het einde van de vakantie zette Brams vader hem op de boot richting Lemmer en vroeg de schipper een beetje op hem te letten. In Lemmer wachtte zijn pleegvader hem weer op.

### Teleurstelling

De volgende vakantie in Amsterdam was in de zomer van 1939. „Mijn vader legde zich in die tijd toe op de schilderijenhandel. Hij praatte de hele dag over niets anders. Het huis hing vol met kunst. De dingen die hij mooi vond, hing hij op, die wilde hij niet kwijt."

Terwijl de zomer van 1939 verstreek, ging de negenjarige Bram steeds meer tegen het afscheid opzien. „Ik wilde dolgraag bij mijn vader blijven, de gedachte terug te moeten naar Friesland benauwde me vreselijk. Op de laatste vakantiedag kroop ik weg en wilde niet meer tevoorschijn komen." Van Gelder bleek gevoelig voor het verdriet van zijn zoon. Hij beloofde Bram dat hij vanaf de volgende zomervakantie in Amsterdam mocht komen wonen. Terug in Friesland telde Bram de dagen af tot het moment dat zijn pleegvader in 1940 contact zou opnemen met Lion: „We hadden thuis geen telefoon; er kon in die tijd alleen gebeld worden uit een café in het dorp. Ik weet nog dat het eindeloos duurde voor de verbinding tot stand kwam. Pas 's avonds lukte het."

Na het maandenlange wachten volgde een teleurstelling: Bram kon dat jaar niet komen logeren. Maar in 1941 was hij welkom en mocht hij van Lion voorgoed in Amsterdam blijven. „Mijn pleegvader gaf niet meteen toestemming, er ontstond geharrewar over geld en ik was even bang dat alles daarop zou afketsen. Maar gelukkig kwamen ze eruit." Opnieuw begon het reikhalzend uitzien naar de zomer. Maar Bram leefde toe naar een hereniging die niet zou komen. Hij heeft zijn vader nooit meer gezien.

Lion van Gelder had een grote belangstelling voor de politiek. Hij was tijdens het interbellum betrokken bij de Communistische Partij Holland en werkte een tijd als parlementair redacteur voor het partijblad *De Tribune*. Na de Duitse inval in mei 1940 ging Van Gelder een actieve rol spelen in de illegaliteit. Zijn huis aan het Daniël Willinkplein (het huidige Victorieplein) in Amsterdam werd een clandestien contactadres. Van Gelder zette zijn ruime financiële middelen in om de uitgave van illegale nieuwsbrieven en het verzetsblad *Het Parool* mogelijk te maken. Ook deed hij actief mee aan de verspreiding ervan, waarbij hij gebruik maakte van zijn goede contacten in de kunstwereld.

Het is te begrijpen dat Lion in de eerste oorlogsjaren geen kans zag om zijn zoon naar Amsterdam te halen. Met de risico's van het illegale werk en de toenemende dreiging van anti-joodse maatregelen was het voor Bram veiliger in Friesland. Intussen veranderde er ook het een en ander in Van Gelders privéleven: in april 1941 trouwde hij met de 24-jarige Elsa Friedheim, een joodse vrouw die uit Duitsland naar Nederland was gevlucht. Hun leven kwam in gevaar toen de groep rond *Het Parool* werd opgerold en het contactadres aan het Daniël Willinkplein bekend raakte. Gelukkig waren Lion en Elsa geen van beiden aanwezig op het moment dat de SD, de Sicherheitsdienst, in januari 1942 een inval in hun woning deed, maar het was duidelijk dat ze onmiddellijk apart van elkaar moesten onderduiken. Ondanks de enorme risico's zette Lion zijn werk in de illegaliteit voort. Hij sliep dan op het ene, dan weer op het andere adres. Een half jaar lang hield hij dit zwerfende bestaan vol, maar plotseling klapte de val dicht. Op 9 juli 1942 deed de SD een inval in het huis van een vriend uit het verzet, waar Van Gelder op dat moment verbleef. Hij werd geboeid afgevoerd. Kort daarna werd hij via Westerbork naar Auschwitz gedeporteerd, waar hij omstreeks 18 juli 1942 om het leven kwam.

Bram Leefsma is getrouwd en leidt een rustig bestaan in een provinciestad. Veel mensen die een rol in zijn jeugd hebben gespeeld, zijn allang overleden. Maar een recente gebeurtenis bracht het verleden ineens weer dichtbij. In augustus 2002 bezocht Leefsma zijn moeder Nienke in Friesland. „Als ik nog een persoonlijk gesprek met haar wilde aangaan, dan was dit het moment: bij iemand die 94 jaar oud en ernstig ziek is, kan je geen dingen meer op de lange baan schuiven. Kort na onze ontmoeting is ze overleden." Die middag stelde Leefsma zijn moeder vragen over zijn complexe familieachtergrond. „Ze bevestigde dat Lion van Gelder mijn biologische vader was, wat ik eigenlijk al jaren wist. Maar daarna gebeurde er iets onverwachts. Mijn moeder haalde een briefkaart tevoorschijn die ze meer dan vijftig jaar had bewaard; een vergeeld ding met een paar regels tekst. Het bleek een boodschap van mijn vader te zijn."

Lion van Gelder had in juli 1942 kans gezien om uit kamp Westerbork een bericht naar Nienke te sturen. De adressering klopte niet, want Nienke was inmiddels verhuisd, maar uiteindelijk was de post toch goed aangekomen. De kaart bevatte een korte instructie: Nienke moest vijf schilderijen weghalen uit het huis van Van Gelder aan het Daniël Willinkplein in Amsterdam. Het ging om kunstwerken van Govaerts, Schelfhout, Van Os, Van Loo en Koekkoek. Onderaan de tekst maakte Lion duidelijk wat

zijn bedoeling met de schilderijen was: „Nienke voor 5/9-'29". Vijf september 1929 was de geboortedag van Bram.

Leefsma: „Na al die jaren stond ik ineens met dit laatste levensteken van hem in handen. Een bewijs dat hij in die moeilijke weken aan mij heeft gedacht."

De moeder van Bram Leefsma vertelde dat ze rond augustus 1942 met een broer naar Amsterdam was gereisd om de schilderijen op te halen. Maar ze kwam te laat. Het huis van Van Gelder was al leeggehaald. De Duitse instantie die het bezit van het joodse echtpaar liquideerde, schreef in een rapport uit 1944: „wer dass hauss geraümt hat, ist unbekannt". Misschien was de woning geplunderd. Het is ook mogelijk dat Elsa Friedheim niets wist van de plannen die haar man met de vijf schilderijen had en ze met de rest van de huisraad had weggehaald en verkocht. Ze kan de opbrengst nodig hebben gehad om als onderduiker te overleven.

Fries Museum

Wat de schilderijen betreft leek het voor Bram Leefsma 'einde verhaal'. Het was onwaarschijnlijk dat de kunstwerken na meer dan een halve eeuw nog zouden opduiken. Maar de kwestie werd na het bezoek van Leefsma aan zijn moeder plotseling weer actueel. Een regionale krant meldde in april 2003 dat het Fries Museum een tentoonstelling organiseerde over kunst met een 'oorlogsverleden'. Het ging om kunstwerken die door de bezetter waren meegenomen naar Duitsland, en die na de bevrijding met hulp van de geallieerden weer naar Nederland waren teruggevoerd. Ruim vierduizend van deze kunstwerken zijn na hun terugkeer in rijksbeheer gebleven en maken nu deel uit van de zogeheten NK- (Nederlands Kunstbezit)-collectie.

Leefsma: „Er was maar een kleine selectie van deze kunst in Leeuwarden te zien, maar mijn vrouw en ik liepen met stille hoop op de expositie rond. Stel dat ik iets zou herkennen dat ik als kind had gezien. Onmogelijk was dat niet, want die logeervakanties staan me nog scherp voor de geest."

Geen enkel kunstwerk op de tentoonstelling deed een lichtje bij hem opgaan. Maar via het Fries Museum kwam Leefsma terecht bij Bureau Herkomst Gezocht van het ministerie van OCW. Dit bureau, dat onder leiding staat van Rudi Ekkart, directeur van het Rijksbureau voor Kunsthistorische Documentatie, onderzoekt sinds 1998 de herkomst van alle voorwerpen in de NK-collectie. Ook vragen van families die in de oorlog kunst zijn kwijtgeraakt, worden hier in behandeling genomen. Met behulp van de database van de NK-collectie probeerde het bureau de vier vermiste schilderijen op te sporen. Al snel werden vier doeken gevonden die misschien correspondeerden met de werken op de briefkaart. Harde bewijzen waren er niet, maar zowel de kunstenaarsnamen als de voorstellingen kwamen overeen. Bovendien ging het in twee gevallen om thema's die binnen het oeuvre van de kunstenaar zeldzaam zijn, wat het vermoeden versterkte dat dit de schilderijen van Lion van Gelder waren. Herkomstonderzoek wees bovendien uit dat de bewuste NK-werken alle vier in 1942 en 1943 waren opgedoken in de Amsterdamse kunsthandel en daarna bij kopers in Duitsland waren terechtgekomen. Wie ze daarvoor in handen had, viel niet te achterhalen. De schilderijen konden dus inderdaad van Van Gelder afkomstig zijn. Er werd geen enkel document aangetroffen dat dit weersprak.

Bram Leefsma kreeg een uitnodiging van Bureau Herkomst Gezocht om zijn informatieverzoek te komen toelichten. Hij gaf een uitvoerige beschrijving van het vroegere huis van zijn vader en noemde allerlei details van kunstwerken die er hingen. Leefsma: „Misschien ongewoon dat een jongen van nog geen tien op dat soort dingen let, maar ik zoog de ervaringen in Amsterdam destijds in me op. Je moet bedenken dat ik vanuit de armoede bijna in een soort hemel terecht kwam. Dan vergeet je dingen niet snel."

Drie van de vier kunstwerken herkende Bram Leefsma onmiddellijk en met stelligheid. „Het landschap van B.C. Koekkoek is ontegenzeggelijk het schilderij dat vroeger in de mooie kamer van mijn vader hing. Hij vertelde altijd dat het de watermolen van Haaksbergen voorstelde, en ik weet nog dat hij me het café en de katholieke kerk op het doek aanwees." Van het tweede kunstwerk, een landschap van A. Schelfhout, wist hij nog dat het in de slaapkamer hing. „Dit is een van de twee kunstwerken die mijn vader gekocht heeft bij kunsthandel Katz in Dieren. Maar er zat toen een fijn lijstje omheen, niet zo'n grote als nu. Ik weet dat nog omdat ik erbij was, hij had me meegenomen naar Dieren. Hij vervoerde de schilderijen in een leren etui."

Over het derde schilderij, een winterlandschap met herten van P.G. van Os, zei Leefsma: „Dit hing bij de open haard.” Over het vierde, een Italiaans berglandschap dat na de oorlog aan A. Govaerts werd toegeschreven, twijfelde hij: „Deze hing vroeger bij mijn vader in de gang - althans, een soortgelijk werk. Ik weet niet zeker of het exact hetzelfde schilderij is.”

Na zijn bezoek aan Bureau Herkomst Gezocht diende Bram Leefsma een restitutieverzoek voor de schilderijen in bij het ministerie van OCW. Op voorspraak van de Restitutie Commissie, die het ministerie bij dergelijke claims adviseert, besloot staatssecretaris Medy van der Laan gisteren om de drie door Bram Leefsma herkende kunstwerken aan hem over te dragen.

Leefsma: „Als je zo weinig tastbaars van je vader hebt, is alles wat erbij komt bijzonder. Ik vind het prachtige schilderijen, maar voor mij weegt nog zwaarder dat ze symbool staan voor die belangrijke periode uit mijn jeugd.”

Uit overwegingen van privacy zijn de namen van de betrokkenen in dit artikel veranderd.  
[www.herkomstgezocht.nl](http://www.herkomstgezocht.nl), [www.restitutiecommissie.nl](http://www.restitutiecommissie.nl). De auteurs zijn als wetenschappelijk onderzoeker verbonden aan Bureau Herkomst Gezocht in Den Haag.

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Oorlogsbuit, foto: Illustrated

Eind jaren negentig vormde zich het beeld dat de nationale kunstcollectie in feite bestond uit geroofde kunst uit joods bezit. Inderdaad bevonden zich kunstvoorwerpen met een dergelijke herkomst in de collectie. Deze waren om diverse redenen niet teruggegeven aan de eigenaren of hun erfgenamen. Maar er zaten ook kostbare objecten bij die door niet-joodse Nederlanders zonder dwang en voor goede prijzen aan de Duitsers waren verkocht. Meer dan zes jaar deed de in 1997 door het Ministerie van wvc opgerichte Commissie Ekkart onderzoek naar de herkomst van de duizenden kunstvoorwerpen die door de geallieerden na de Tweede Wereldoorlog uit Duitsland waren teruggevoerd en onder beheer van de Nederlandse overheid waren gekomen. De leiding van het onderzoek was in handen van de directeur van het Rijksbureau Kunsthistorische Documentatie, kunsthistoricus Rudi Ekkart. Na een eerste steekproef onderzocht een tweede Commissie Ekkart de herkomst van al deze teruggekeerde kunstvoorwerpen, die samen de NK-collectie (Nederlands Kunstbezit-collectie) vormden. Dit projectbureau, toepasselijk Herkomst Gezocht genoemd, ging ook na hoe indertijd de betrokken instanties te werk waren gegaan, met name de Stichting Nederlands Kunstbezit (SNK), een verre voorloper van het Instituut Collectie Nederland (ICN). Archiefmateriaal wijst uit dat de SNK slecht functioneerde, onder meer door een inefficiënte taakverdeling tussen diverse ministeries, mismanagement, onvoldoende mankracht en dubbele agenda's. De toenmalige overheid was niet bijster geïnteresseerd in de problematiek van de SNK en verleende nauwelijks medewerking. Men handelde de zaken bij voorkeur achter de schermen af. Behalve de werkwijze van de destijds betrokken instanties bestudeerde de Commissie Ekkart de rechtvaardigheid van de afhandeling van de in het verleden ingediende claims van de eigenaren. Daarbij was de commissie zich ervan bewust dat het in het verleden aangedane onrecht nooit kan worden uitgewist. Maar met het diepgravende onderzoek poogde ze wel nauwgezet de geschiedenis van elk afzonderlijk stuk te achterhalen en de eigenaars/rechthebbers te vinden, zodat die

*De pijn & moeite van teruggave oorlogskunst*

## Herkomst gezocht, recht gedaan

Dit jaar sloot het Bureau Herkomst Gezocht het onderzoek af naar de herkomst van oorlogskunst. Het merendeel van de claims is inmiddels gehonoreerd.

Een kroon op het werk, vindt Rudi Ekkart, voorzitter van de commissie met zijn naam en hoofd van het onderzoeksbureau. Maar tegelijkertijd een onderzoek met consequenties voor de collecties van met name het Rijksmuseum in Amsterdam en het Rijksmuseum Twenthe in Enschede.

Marika Dickmann-Wijnand

hun familiebezit terug konden vorderen. Dit jaar sloot het projectbureau het onderzoek af, met als resultaat zes lijvige deelopportages en een reeks aanbevelingen voor een coherent overheidsbeleid. Behalve duidelijkheid over de collectie leidde het onderzoek tot tientallen nieuwe, merendeels gehonoreerde restitutieverzoeken.

#### Monnikenwerk

De commissie Herkomst Gezocht onderzocht de herkomst van alle ruim 4.000 uit Duitsland teruggevoerde kunstvoorwerpen. Een monnikenwerk. Uit het onderzoek bleek dat circa 20 % zeker of wellicht door roof, confiscatie of via gedwongen verkoop van eigenaar is verwisseld. Van een deel blijft de herkomst onvolledig bekend of onbekend. 'Helaas zal nooit het moment aanbreken waarop alles helder en klaar is', zegt Rudi Ekkart, onderzoeksleider. 'Archieven zijn nu eenmaal onvolledig. Maar je kunt wel de zaak zo zorgvuldig mogelijk onderzoeken en de resultaten zo goed mogelijk gearchiveerd achterlaten. In tegenstelling tot de swk vlak na de oorlog, zocht de commissie intensief naar de erfgenamen van de toenmalige eigenaren. De resultaten hebben we publiekelijk bekendgemaakt. Dat is van belang omdat families een onmisbare bron van informatie zijn, zeker als documentatie over een kunstwerk ontbreekt.'

De commissie zocht de publiciteit en organiseerde een 'oorlogskunst'-tentoonstelling in het Fries Museum in Leeuwarden. Ekkart: 'Misschien weten mensen niet dat ze rechtgebend zijn. Ze kregen nooit de kans daarachter te komen, want daar was geen beleid voor. En als ze een vermoeden hadden, werden ze van het kastje naar de muur gestuurd. Dat is nu voorbij. De overheid moet zich tot het uiterste inspannen om de stukken van een particulier in rijksbeheer terug te geven en de overheid moet ook de gelegenheid geven die stukken terug te vinden.' Dat is een radicale wending in vergelijking met het beleid van de jaren vijftig. 'Het regeringsbeleid richt zich nu op het rechtzetten van de gemaakte fouten in het verleden. Voorheen ging het belang van de collectie wel eens boven het belang van een rechtgebende. Dat kan niet meer, al houdt dat in dat een museum soms offers moet brengen. De discussie barstte los over de vraag of we de nationale col-

Jacob Ekkart, laat 19de eeuw, mansportret, voormalige Gutmann collectie. Geveerd bij Christie's in Amsterdam/Londen, in 2019. Eerder betwist bezit Rijksmuseum Twente. Enschede, foto: Christie's

lectie moesten openbreken voor het welzijn van één familie. Een museumdirecteur kan daar echter niet over beslissen, want het gaat om een rijkscollectie. Daar hoort dus een coherent beleid over gevoerd te worden. De commissie heeft als taak de overheid daarin te adviseren. Ze levert het fundament voor een rechtvaardig beleid. Er zijn zulke schrijnende zaken bekend. Mensen hebben recht op hun bezittingen, los van de financiële en emotionele waarde – het terugkrijgen van iets tastbaars uit het verleden – ervan.'

**Baarsen: 'Op verkeerde gronden heeft de overheid in het verleden stukken onder beheer van het Rijksmuseum geplaatst.'**

#### Het houdt een keer op

Zijn er nog nieuwe claims te verwachten? Ekkart: 'Sinds de fase van Bureau Herkomst Gezocht zijn er circa twintig claims in behandeling genomen en er kunnen er nog eens twintig komen. De claims zijn voor het merendeel toegewezen, de rest is nog in behandeling. Anders dan vroeger gaan we daarbij niet meer koud, kil en gevoelloos te werk, maar open, helder en rechtvaardig.'

Over de definitieve toewijzing doet de commissie geen uitspraak. Daarom wil Ekkart ook niets over de kwestie Koenigs zeggen [zie kader]. 'De commissie doet aanbevelingen over het te voeren beleid, waarna de Restitutiecommissie op juridische gronden haar oordeel uitspreekt. De waarde of omvang van de geclaimde kunstvoorwerpen is daarbij niet van belang. Het houdt wel een keer op; op een gegeven moment is al het mogelijke gedaan om recht te doen. Je kunt niet zaken blijven openen. Voor latere generaties is het ook steeds moeilijker om met nieuwe bewijzen te komen. En de gevoelswaarde is voor die generaties minder groot dan die voor de (klein)kinderen die kort na de oorlog opgroeiden.'



Ekkart kijkt voldaan terug op een bewogen periode: 'Er was een maatschappelijk probleem ontstaan: het idee dat de overheid duizenden kunstwerken wederrechtelijk in beheer hield. Daar hing een waas van geheimzinnigheid over, die nu is weggenomen. Musea zijn weliswaar objecten kwijtgeraakt, maar er is ook helderheid over de collectie gekomen. Niets is onder tafel geveegd. Er kwam geen stortvloed aan claims, maar wel genoeg om te bewijzen dat het de moeite waard is geweest.'

#### Van teruggave naar veiling

Een van de bekendste, gehonoreerde claims is die met betrekking tot de Gutmann-collectie. De joodse bankier/verzamelaar Friedrich Gutmann verhuisde in 1919 van Duitsland naar Heemstede. In 1924 liet hij zich naturaliseren. Uit vrees voor confiscatie bracht Gutmann een deel van zijn collectie (waaronder schilderijen van Botticelli, Guardi, Degas en Renoir) naar Parijs. Tijdens de oorlog werd Gutmann echter gedwongen delen van zijn verzameling onder de marktwaarde te verkopen. Later zou het echtpaar in een concentratiekamp omkomen. Delen van de in Parijs en Heemstede ondergebrachte collectie werden alsnog geroofd. Na 1945 stelden nabestaanden van Gutmann bijna jaar in jaar uit alles in het werk om de familiecollectie terug te vinden. Gutmanns zoon Bernard overleefde de oorlog in Engeland en nam daar de naam Goodman aan. In 1952 honoreerde de toenmalige Nederlandse rechtsherstelrechter de aanspraken van Bernard en zijn zus Lily en kregen zij enkele schilderijen en meubelen terug. Later bleek dat er nog veel meer van de Gutmann-collectie



## De Koenigs-kwestie

Eind december wees de Restitutiecommissie de spraakmakende claim af van de erfgenamen van de eertijds in Nederland woonachtige Duitse zakenman Franz Koenigs.

De reden: Koenigs sloot al ver voor het uitbreken van de oorlog een lening af, en gaf daarbij zijn collectie als onderpand.

Toen hij in 1939 zijn schuld niet kon betalen, verkocht de bank de 37 tekeningen, die het toenmalige Museum Boymans in bruikleen had, aan D.G. van Beuningen. Zelf deed Koenigs zijn 28 schilderijen van de hand. Omdat de schulden veroorzaakt werden door de economische malaise en niet door het nazi-regime, was er geen sprake van 'oorlogskunst', oordeelde de commissie.

Verder was Koenigs niet joods, dus werd hij niet vervolgd. Inmiddels tekenden de nabestaanden bezwaar aan tegen de uitspraak vanwege vermeende onjuiste feiten.



Terugplaatsing in een niet nader bekend museum van een tijdens de oorlog verstoort paneel.  
Foto: Videns/Hachle, Agenzia Fotografica Internazionale/Press Art Studio

naar Nederland was teruggekeerd, een feit waarvan de Goodmans niet op de hoogte waren. Nick Goodman zette na de dood van zijn vader Bernard de kwestie voort: "Eigenlijk is het afschuwelijk dat de Nederlanders ons indertijd niet de gehele collectie teruggaven. Ze hadden de spullen, wisten dat die van ons waren, maar zeiden niks en deden niks; tot de Commissie Ekkart het onderzoek startte." In 2002 kregen de erfgenamen het restant-in-Nederlands-beheer, circa 230 kunstvoorwerpen, terug. Daarbij zaten Franse 18de-eeuwse meubelen, verguld brons, tapijten, porselein en schilderijen. Een van die schilderijen, een mansportret door Jacob Elsnor (circa 1499), bevond zich al jaren in de collectie van het Rijksmuseum Twenthe. Ook bevatte de Gutmann-collectie drie fabuleuze en kostbare 16de- en vroeg 17de-eeuwse Duitse zilveren objecten die al vijftig jaar als sleutelstukken deel uitmaakten van de collectie beeldhouwkunst en kunstnijverheid van het Rijksmuseum in Amsterdam. Het grootste deel van de teruggekregen kunstvoorwerpen liet de familie veilen bij Christie's in Amsterdam en Londen. Daaronder ook de Elsnor en het zilvergoed. Volgens conservator Paul Knolle van het Rijksmuseum Twenthe besprak het museum vóór de veiling met de familie de mogelijkheid de Elsnor voor het museum te behouden. Het museum beschikte zelf echter niet over de benodigde middelen. Een particulier wilde het schilderij evenwel op de veiling proberen te kopen om het daarna in bruikleen aan het museum geven, zij het voor het geschatte bedrag van Christie's. Maar eenmaal op de veiling werd er veel hoger geboden en bracht het schilderij uiteindelijk € 120.000 op.

#### Gat in de collectie

Het Rijksmuseum had meer geluk en vooral financiële ondersteuning van de Nederlandse staat en de Mondriaan Stichting. Daardoor kon het museum bij Christie's in Londen het belangrijkste stuk van de drie zilveren objecten, de Lencker-kan, voor 1,5 miljoen euro 'terugkopen'. Waarom kocht het museum de drie stukken niet rechtstreeks van de familie terug? Volgens Reinier Baarsen, conservator toegepaste kunst, heeft het museum dat wel degelijk geprobeerd. 'Op basis van de veilingtaxatie deden we een bod. Uiteindelijk koos de familie toch voor de veiling en daar zijn hogere prijzen gerealiseerd. Musea in Detroit en Chicago kochten de andere twee. Maar het belangrijkste is gelukkig voor het Rijksmuseum behouden.

Het Gutmann-zilver behoort tot de absolute top. Het zijn belangrijke meesterwerken van de Duitse edelsmeedkunst in een tijd dat in Nederland de edelsmeedkunst nog van betrekkelijk provinciaal niveau was en de ontwikkelingen in Duitsland volgde. Ze illustreren de overgangsfase waarin de Nederlandse smeedkunst tot bloei komt. De stukken zijn altijd speerpunten in de presentatie geweest en worden ook genoemd in onze publicaties. Met de teruggave aan de familie werd een gat in onze collectie geslagen.'

Wat vindt Baarsen ervan dat zulke belangrijke stukken op de markt gebracht worden? 'Eigenlijk is het niet aan ons daar een mening over te hebben. Elke mening is ondergeschikt aan het recht dat moet worden gedaan. Op verkeerde gronden zijn stukken van de overheid onder beheer van het Rijksmuseum gekomen. Gelukkig wonen we in een land waarin een familie zijn bezittingen terugkrijgt. Maar ik begrijp ook dat zulke kapitale stukken niet

passen in het moderne leven van die mensen. Het zilver moet tegen hoge kosten verzekerd worden vanwege een groot diefstalrisico.'

Zoekt het museum naar vervangende exemplaren van de andere twee objecten? 'Nee', berust Baarsen, 'deze twee zijn de top. Vergelijkbare bestaan niet.' En het Rijksmuseum Twenthe? 'Schilderijen van die kwaliteit zijn te duur voor ons', aldus Knolle. 'Wel bood de icw aan om ons uit de collectie een of twee vergelijkbare werken van die kwaliteit in bruikleen te geven. Maar een van die werken komt weer uit de NK-collectie. Die willen we natuurlijk liever niet vanwege de beladen historische achtergrond. Je kunt daar toch niet op je gemak naar kijken. En je haalt je misschien weer hetzelfde probleem op de hals.'

↑

Marieke Dickmann schrijft in het kunst- en antiekmagazine *Tableau* over veilingen. In april 2003 publiceerde zij hierin een interview met Nick Goodman over de claims van zijn familie.

Nick Goodman, de kleinzoon van Friedrich Gutmann, met een niet geveild schilderij dat aan Albert Cuyper werd toege-

schreven, maar dat hij nadere expertise niet door hem bleek te zijn gemaakt. Het leefde in familiebezit. foto: Christie's



# Lost property

Families whose art was looted by the Nazis still seem reluctant to pursue their property. **Shauna Isaac** speaks to some of the successful claimants about the return of their stolen works, and argues that more needs to be done to encourage others to seek justice

In recent years, there have been many stories in the press about art looted during the Nazi era. In 1998, 44 countries met at the Washington Conference on Holocaust-Era Assets and unanimously agreed that owners of objects looted during the war should be encouraged to file claims on any items that had not been restituted. Despite a flurry of publicity following the conference, the number of families filing claims has been less than overwhelming.

In the United Kingdom, a Spoliation Advisory Panel was established in 2000 to help resolve claims for Nazi era looted art now in national collections, but just half-a-dozen claims have been publicly filed, and only one has seen its way to resolution. This was a compensation claim for Jan Griffier the Elder's *View of Hampton Court Palace*, acquired by Tate in 1961. The Panel upheld the claim and awarded an *ex gratia* payment to the claimant.

The successful outcome of this case might have encouraged more families in Britain to file claims, but this has yet to happen. Sir Nicholas Serota, the Chairman of the Spoliation Working Group of the National Museums Directors Conference, states that 'The issue of restitution is a very important one and we are glad that cases like the Tate's Griffier appear to have been resolved satisfactorily. In matters like this it is impossible to say how many cases there will be in the future, but we would certainly encourage anyone who feels they might have a claim to come forward.'

Organisations in other countries, such as the

Holocaust Claims Processing Office (HCPO), the Commission for Art Recovery (both in the USA), and the Dutch Restitution Committee in Holland, have been instrumental in helping to reunite claimants with their lost treasures. The HCPO has filed 139 claims for thousands of looted objects since it was established in 1997, and they have been able to return, or to reach a settlement on, 12 items. The Dutch Restitution Committee, which has been in operation since the end of 2001, has received 21 restitution applications for over 500 objects. Of the 14 applications the committee has decided on, 11 were ruled in favour of restitution.

Families who have had objects restored to them feel that past injustices are finally being corrected. These families travel through an emotional journey, reliving harrowing stories of death and survival during the Nazi regime. However, the journey does not end when the objects are returned. They then have to determine what to do with their heirlooms, and the decisions are as varied and unique as each family.

In September 2000, Thekla Norwich was given back over 100 objects that belonged to her aunt and uncle. Thekla's uncle was a prestigious Jewish publisher and collector in Leipzig, whose business was confiscated by the Nazis. He died in 1934, and his widow committed suicide in 1939. Before Thekla's aunt died, she made arrangements to send all her property to Thekla's father in the USA, but nothing arrived. The family tried for several years after the war to retrieve their lost property, but were unsuccessful. Thekla eventually received help from the Commission

for Art Recovery, which helped her to find her uncle's works of art and negotiate their return.

In 1999, the German government passed a joint declaration stating that museums should return anything in their collections found to be looted. Thekla's family was the first to get back objects from Germany under this declaration, and they were handed over at a ceremony at the Brandenburg Gate in Berlin. Thekla recalls that 'it was very emotional. It was not a joyous occasion. It brings back a tremendous feeling of sadness, but also some minor feeling of justice.' Although the German government was under no legal obligation to return the objects (since the 1999 declaration was a statement of policy rather than a law), Thekla believes that 'it was an ethical and moral thing to do. I was impressed with the German government and it gave me a very good feeling and helped to mend emotional fences with the German government and the people.' Due to the size and value of the objects in her uncle's collection, including *The Walchsee on St John's Eve* by Lovis Corinth, and *The Lute Player* by Max Klinger, the family decided to auction the items at Sotheby's. Thekla originally felt that keeping any of the art in her house would be too painful, but has since changed her mind. As a thank you for all her hard work, Thekla's family gave her a Georg Kolbe statue, which she is proud to have as a keepsake.

Thekla was well aware of her aunt and uncle's tragic history, but other families have come across such knowledge by chance. Fran Frederick's mother emigrated from Germany to the USA. Fran grew

‘It wasn’t getting  
the painting back  
that moved me, so much as  
**fixing something  
that was wrong**’

up knowing very little about her family’s past, except that as a teenager in Nazi Germany her mother was forced to wear a Jewish star on her lapel. In the early 1990s, a few years after her parents died, Fran’s brother was going through their papers and came across a claim their father had filed with the US Department of Justice in the 1970s. Attached to the claim was a photograph of a painting by Anselm Feuerbach entitled *Head of a Girl*, which was shown hanging on the wall of her grandparent’s salon. Fran marvelled that someone had thought to take a picture of this particular painting, and deemed that it must have been important to her grandparents. In 2001, she filed a claim for the painting with the HCPO, who found it in Berlin’s Prussian Cultural Heritage Foundation (SPK). The SPK investigated the case, confirmed that Fran’s grandparents did indeed own the painting, and decided to give it back to her family. When Fran heard about this, she felt justice had been achieved: ‘It wasn’t getting the painting back that moved me, so much as fixing something that was wrong.’

Fran’s family discussed what to do with the painting once it was returned. The painting was valued at \$18,000 (£10,000), and they decided that it would be logistically difficult for them to keep it. After researching various options, they chose to donate it to the Leo Baeck Institute in New York, which studies German Jewish history. Fran commented that the Institute ‘is where the painting belongs’.

For some, loaning a valuable work to a museum seems like the only reasonable thing

to do. Sidney de Kadt was awarded restitution of his family’s painting *Elegant Company Making Music on a Terrace* by Dirk Hals (brother of Frans). His father, a Dutch businessman, originally owned the painting but sold it to the Nazi confiscation agency Dienststelle Muhlmann in order to obtain an exit visa for himself and Sidney to move to America. In 1946, the painting was found in Germany by the Allies and returned to the Netherlands as confiscated property. In 1948, Sidney’s father filed a claim to get the painting back, but the Dutch government rejected the claim since the sale had been voluntary.

Sidney joined the Dutch armed forces during the war and moved back to Holland in 1955. In 2001, after he came across the painting both in a book and online, he was inspired to try to get back his family’s heirloom. After two years of intensive lobbying, which included consulting lawyers and government officials, as well as obtaining proxies from all the potential heirs agreeing that he would handle the matter, Sidney handed a claim in to the Dutch Restitution Committee. The Committee agreed that this was a forced sale and ruled in favour of returning the painting to him. Sidney was gratified and relieved, commenting ‘The painting has an emotional value because it was connected with my family’s departure from Holland.’ Sidney and his family decided to loan the masterpiece to the State-run Frans Hals Museum in Haarlem if the government agreed to two conditions: that the painting would hang in a prominent location and that there would be a plaque explaining its history.

When looted cultural objects are returned, the families are given back part of their heritage and feel a sense of justice. They can then decide what to do with the items and achieve closure to a dark chapter in history. Many Holocaust survivors are dying of old age, and soon there will no longer be living testimony to what happened. Further work needs to be done to help locate families and their missing treasures.

The National Museum Directors’ Conference has asked museums to go through their collections and publish a list of objects with gaps in their provenance from 1933 to 1945, so that anyone with further information on these works can come forward. This initiative is welcome, but as only 46 leading museums out of an estimated 2,500 museums in the UK have so far published their lists on the NMDC website, we do not have a comprehensive audit of all UK collections. And although many countries have made great strides in establishing claimant organisations and in working together to resolve restitution claims, this should also be considered a first step. These organisations encourage families to come forward and file claims, but more resources should be devoted to tracing families who have had objects confiscated from them. When the rightful owners are found, the number of claims filed and objects restituted will increase, and justice will prevail. <sup>1</sup>

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