



A. Dürer, *The holy family*, approx. 1494 (NK 3550)

Advice concerning the application for
restitution of the Koenigs collection

Advice concerning the application by Christine Koenigs for restitution of the Koenigs collection¹

(Case number RC 1.6)

In the letter dated 3 May 2002, the State Secretary of Education, Culture and Science asked the Restitutions Committee for advice on the decision to be taken concerning the application dated 18 March 2002 by Mrs C.F. Koenigs (hereinafter referred to as 'the applicant') for restitution of paintings and drawings from the former estate of her grandfather, Franz W. Koenigs, insofar as these objects are part of the NK collection administered by the State of the Netherlands.

In the letter dated 26 November 2002, the State Secretary asked the Committee to include in its advice on the Koenigs collection an application dated 15 October 2002 by the applicant for restitution of the painting *Cadmus sowing dragon's teeth* by P.P. Rubens, which is in the collection of the Rijksmuseum in Amsterdam.

Finally, in the letter dated 8 May 2003, the State Secretary asked the Committee for advice on a request by Mr W.O. Koenigs, dated 24 March 2003, for the application for restitution of the Koenigs collection to be rejected.

Procedure

Both the applicant and Mr W.O. Koenigs had legal representation acting on their behalf during this procedure. The applicant engaged the services of Mr A.H.J. van den Biesen, a lawyer from Amsterdam, and Mr R.W. Polak, a lawyer from The Hague, represented Mr W.O. Koenigs.

With the request for advice of 3 May 2002 the State Secretary enclosed a comprehensive file that includes the results of an investigation carried out by the applicant. In addition to these results, the applicant included a Statement of Case dated 30 August 2002 (hereinafter referred to as 'Statement') as well as information that had been sent with various letters. At a hearing on 10 March 2003 the applicant and her counsel gave a verbal presentation of the application and submitted a memorandum and appendices (hereinafter referred to as 'Notes'). On 12 August 2003 comments were made on behalf of the applicant (hereinafter referred to as 'Reaction') on a first version of the investigation report drawn up under the responsibility of the Committee (dated 19 May 2003).

Mr W.O. Koenigs wrote to the Committee in a letter dated 17 October 2002. In a conversation on 8 January 2003 and by means of various letters, Mr Koenigs explained as part of the examination of the facts how his father's collection had been lost from the estate. At a hearing on 10 March 2003 he informed the Committee about the events relating to the loss of the collection from the estate and his point of view regarding the application for restitution of the Koenigs collection.

¹ Translation from the Dutch original. In the event of any discrepancy the Dutch original shall prevail.

The facts

With respect to the factual basis for this advice, the Committee refers to the investigation report on the present case (hereinafter referred to as the 'Report'), which is attached to this advice and is considered to be a part of it.

An earlier version of this investigation report (dated 19 May 2003) was revised in respect of a number of points, partly as a result of the Reaction from the applicant.

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 other cases. The Committee resolved that such influence cannot be accepted, save cases where special circumstances apply, since allowing such influence would be impossible to justify to the applicant concerned.
- c. The Committee then asked itself how to deal with the circumstance that certain facts can no longer be traced, that certain information has been lost or has not been 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 herself and her mother, Mrs A.C. Koenigs-Hers, both being heirs of Mr Franz W. Koenigs, the grandfather of the applicant.
2. The Committee has taken note of the request dated 8 May 2003 from Mr W.O. Koenigs, the son of F.W. Koenigs and the uncle of the applicant, requesting that the application for restitution of the Koenigs collection be rejected.
3. The applicant is seeking restitution to Koenigs' heirs of 37 drawings and 34 paintings, which are part of the Dutch national art collection. With the exception of the painting *Cadmus sowing dragon's teeth* by Rubens, which has been in the Rijksmuseum collection in Amsterdam since it was donated in 1961, all of these works of art belong to the NK collection of works of art recovered after the war.
4. It has been determined in respect of the majority of these works of art – 37 drawings and 28 paintings (categories 1, 2 and 3 in the Report) – that they belonged to the former collection of Franz Koenigs. This could not be established in respect of six paintings – those described in the Report as category 4. The applicant and the Committee are in agreement that this category should be considered separately.
5. The Committee therefore concludes that there is insufficient basis to issue advice in respect of the paintings in category 4 (NK 1915, NK 2075, NK 1848, NK 3577, NK 3387 and NK 2071). Consequently the remainder of this document does not concern the objects in category 4.

6. The following circumstances, which are described in the Report, are of prime importance in the assessment of the loss from the estate of the 37 drawings and 28 paintings that belonged to the Koenigs collection.
Monetary measures came into force in Germany in 1931, as a result of which Koenigs, who was resident in the Netherlands, no longer could dispose of his assets in Germany. In order to rectify his resulting financial problems he took out a loan in agreements dated September 1931 and June 1935 from the (Jewish) bank Lisser & Rosenkranz, the director of which, Mr Kramarsky, was a good friend of his. He pledged or transferred (fiduciary) ownership of his art collection as security for the loan.
Although the Committee was not able to determine the exact content of the agreements between the parties, it is sufficiently clear that the agreement provided Koenigs with money in return for which the bank was entitled to sell the collection and subtract the amount owed to it from the proceeds if Koenigs did not repay the loaned amount when it became due. The loan had a term of five years from June 1935 and repayment would also be due if the bank went into liquidation.
7. Because of the threat of war Lisser & Rosenkranz subsequently went into liquidation on 2 April 1940, as a result of which the loan granted to Koenigs became due two months before the expiry of the agreed term. In application of the agreement, the collection was given as payment (i.e. sold) when it became clear that Koenigs was unable to repay the loan.
8. On 2 April 1940 Koenigs gave the collection of drawings to Lisser & Rosenkranz to pay off his debt. The collection was then sold via a mediator – Director Hannema of the Boymans Museum (now the Boijmans van Beuningen Museum in Rotterdam). The buyer was the Rotterdam businessman D.G. van Beuningen. The intention was that the collection would be kept together under the Koenigs name in the museum in Rotterdam. This did not occur. (Category 1)
9. It is difficult to determine the moment when the transaction was made or the nature of the transaction in which Koenigs lost possession of the paintings, particularly because it was not possible to gain sufficient insight into the agreements between the bank and Koenigs. The applicant was equally unable to provide definitive information in this regard.
In addition to the dates when the credit agreements were concluded in 1931 and 1935, a number of other dates are also important:
 - Although the bank presented itself to the outside world on 8 April 1940 as the owner of the paintings, it is not certain that Koenigs gave up the paintings by way of payment of the loan in the same way that he did with the drawings;
 - At the beginning of May 1940 the painting *Cadmus sowing dragon's teeth* was sold on behalf of Lisser & Rosenkranz to a Dutch couple called De Bruijn (Category 3);
 - In June 1940 Koenigs sold the other 27 paintings to the German banker Miedl. Koenigs may have acted as owner/possessor of the paintings in this sale. Given the relationship between the two parties and the background of the credit agreement, it is equally possible that Koenigs did not act for himself but on behalf of Lisser & Rosenkranz in this sale to Miedl. (Category 2)
10. It did not become clear to the Committee exactly how the loan agreement between Koenigs and Lisser & Rosenkranz was finally settled and how the outstanding debt was set off against the selling prices. However, the Committee considers there to be sufficient evidence to assume that this final settlement occurred in good harmony.

11. The applicant includes the following in support of her application in (the conclusion to) the Statement:

"It has become clear that Koenigs lost his (not only financially) valuable collection because of the pressure of the circumstances of war that prevailed at that time in Europe. In respect of the months immediately preceding 10 May 1940, these circumstances of war must specifically include the threat of occupation of the Netherlands, which had already been expected many times before 10 May, including on 12 November 1939.

Koenigs lost his collection in an exchange where what he received was significantly less than he could have reasonably expected if the circumstances directly relating to the Nazi regime had not been present – assuming that he would then have had to sell, which would not have been the case. The instances relating to loss of estate that are relevant in this matter should always be regarded as involuntary, regardless of the precise nature of what was agreed on 2 April 1940; it should also be noted that, of all those involved, only Koenigs (and not Van Beuningen or the L&R bank) was genuinely and very significantly disadvantaged.

Given this background, it would clearly be fair and reasonable if the NK items concerned in this matter were restored to Koenigs' heirs. I hereby request that the Restitutions Committee advise accordingly."

12. In support of her application the applicant invokes fairness and reasonableness and centres her argument on the concept of 'circumstances of war'. In so doing she refers to the statutory norm from the post-war restoration of property rights, and in particular to articles 1, 22 and 23 of Royal Decree E 100 (the *Decree on Restoration of Legal Transactions* of 21/9/1944), and to jurisprudence in the restoration of property rights (Jurisdiction Department of the Council for the Restoration of Rights). She argues that this jurisprudence gives a broad scope to this concept of 'an environment of war'.

She further argues that the Committee should apply the E 100 norm, and by extension that this 'environment of war' was prevailing at the time of Koenigs' loss of estate because the threat of war was present.

13. However, in regard to its mandate the Committee considers that it is not the aforementioned E 100 Decree to which primary attention must be given, but rather that the Decree of 16 November 2001 establishing the Committee must be the basis for its advice in this matter. In that Decree establishing the Committee the Committee's task is limited in article 2 as follows: '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'. In this connection the relevant government policy must be taken into account, at least insofar as the application concerns restitution of works of art that are in the possession of / administered by the State of the Netherlands, as is the case in the present matter. The question that the Committee will have to answer is therefore whether Koenigs' loss of estate must be regarded as involuntary as a result of circumstances that were directly related to the Nazi regime.

14. The applicant answers this question strongly in the affirmative and states that the loss of possession of the collection would never have occurred without the threat of war.
15. The Committee is unable to follow the applicant's argument in this respect. It is her judgement that Koenigs' loss of estate was not a result of circumstances that were directly related to the Nazi regime but only of the economic circumstances in Germany, which had been the reason for the *Stillhalte*, a measure that resulted in Koenigs being unable to freely dispose of the German part of his assets. Consequently he was obliged to take out a loan in the Netherlands with his collection as security. This was therefore a loss of estate for an exclusively economic/business reason.
The threat of war on all sides at the time of the negotiations and the actual sale of the collection does not detract from the foregoing.
16. In the Reaction to the investigation report the applicant argues that Koenigs' negative attitude to the Nazi authorities and his spying for the English meant that he risked the fate that befell the openly persecuted population groups and therefore that he must be equated with the persecuted population groups. The applicant includes the following in paragraph 20 of the Reaction:

"In the interests being fair and reasonable the information given should therefore include not only that Koenigs did not belong to a persecuted population group, but precisely that in the assessment of this matter he should be equated with members of the persecuted population group. This is all the more true because his fate in respect of these works of art was irrevocably linked to the fate of the – Jewish – bank."

On that basis, government policy means that Koenigs' loss of estate would have to be deemed involuntary, in the absence of evidence to the contrary, insofar as the sale took place after 10 May 1940.

17. The Committee cannot follow the applicant in this respect either. In spite of his anti-Nazi attitude and his supposed spying activities, the data and statements regarding Koenigs as a person draw a picture of an influential businessman who – certainly in comparison with the Jewish part of the population – was able to move about freely; and he used this freedom in the 1938-1940 period to continue to do business, including with Germans/Nazis. In addition to altruistic motives – the interests of his Jewish friends – his own financial interests and his interests as an art collector undoubtedly played a role.
18. In respect of Koenigs' loss of estate, the reversal of the burden of proof – as applies for involuntary sales by members of the persecuted population groups in the Netherlands from 10 May 1940 – is therefore not applicable in this case.
19. In addition, the Committee is of the opinion that the – real and acute – threat of a German invasion for the Jewish management of Lisser & Rosenkranz could not constitute an argument in favour of Koenigs.
20. The Committee therefore considers that the applicant has failed to sustain her standpoint that Koenigs' loss of estate was involuntary as a result of circumstances that were directly related to the Nazi regime.
21. The attitude of and statements by members of the Koenigs family themselves provide convincing support for that conclusion. Koenigs' widow indicated on declaration forms in September 1945 that Koenigs' sale of the paintings to Miedl in the summer of 1940 was voluntary: on the pre-printed line where she had to indicate whether the loss of estate was due to 'confiscation, theft, forced or

voluntary sale', she marked the last option. She made this declaration in compliance with an obligation to provide information about works of art that had disappeared from the Netherlands during the war, and as such this declaration cannot – as the applicant argues – be seen as an application for restitution or a claim of ownership.

22. In view of all of the above, the other arguments made by the applicant need not be addressed and the Committee also does not need to express an opinion on the request by Mr W.O. Koenigs.

Conclusion

The Committee advises the State Secretary for Education, Culture and Science to reject both applications made to the Committee by Mrs Christine F. Koenigs.

Adopted at the meeting of 3 November 2003.

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

REPORT CONCERNING KOENIGS

On 3 May 2002 the Restitutions Committee received an application from Mrs Christine Koenigs for the restitution of paintings and drawings from the former estate of her grandfather, Franz W. Koenigs. This application was taken under consideration insofar as it referred to objects that are in the NK collection¹. Subsequently, on 26 November 2002, the Committee received an application from Mrs Koenigs for restitution of the painting *Cadmus sowing dragon's teeth* by P.P. Rubens, which is part of the Dutch national art collection but not of the NK collection.

This application concerns 37 drawings and 34 paintings from the former Koenigs collection that were in the Dutch national art collection in 2002.² An overview of these works of art is enclosed as *Appendix* at the end of this Report. For the purposes of this investigation they can be divided into four categories:

1. 37 drawings that Koenigs gave to the Lisser & Rosenkranz bank on 2 April 1940 by way of payment of a debt, and that the bank sold on to D.G. van Beuningen;
2. 27 paintings, mainly works by Rubens, that Koenigs sold to the German A. Miedl at the beginning of June 1940;
3. One painting, *Cadmus sowing dragon's teeth* by P.P. Rubens, that a Dutch couple called De Bruijn purchased from the Koenigs collection at the beginning of May 1940 via the art dealer Jacques Goudstikker;
4. A 'remaining category' of six paintings that may or may not have belonged to the Koenigs collection.

In order to assess the application for restitution it is first of all necessary to consider the fortunes of the 'Koenigs collection' in its entirety. In 1935 the collection was on loan to the Boymans Museum in Rotterdam (currently the Boijmans Van Beuningen Museum) and consisted of 2145³ drawings and 47 paintings.

Responsibility

This report represents the result of the investigation carried out under the responsibility of the Restitutions Committee and is partly based on information that was submitted by Mrs Koenigs (the so-called 'Red Book', a 'Statement', 'Notes' and a 'Reaction' to an earlier

¹ The NK collection [*Nederlands Kunstbezit-collectie*] is that part of the Dutch national art collection that was mostly recovered from Germany after the war and that came to be administered by the State of the Netherlands.

² See the Statement, 43, (appendix 24 in the Committee's file 'Report and appendices RC 1.6', hereinafter referred to as 'appendix [no.] RC') and the subsequent exchange of letters.

³ A.J. Elen, *Missing old master drawings from the Koenigs collection*, The Hague, 1989, p. 11, (2145 numbers but in fact 2671 items); according to an inventory dated 15/6/35 and compiled by Dr J.H.F. Lütjens, there were 2140 drawings, see archive of the Boijmans Van Beuningen Museum in Rotterdam (Boymans archive); Mrs Koenigs refers to 2144 (Reaction by Mrs Koenigs, dated 12/8/2003) (appendix 24 RC).

version of this investigation report).⁴ Account has also been taken of information that was provided by or on behalf of Mr W.O. Koenigs, the son of Franz Koenigs. After all, what follows is not a complete overview of the information that has now been compiled: the intention is to provide a factual – and more or less chronological – overview of the events that are considered important in assessing the application for restitution of the drawings and paintings. The choice of themes was of course partly determined by the arguments used by the applicant.

In the Statement drawn up on behalf of Mrs Koenigs the following qualification is included and is also fully applicable here: ‘An attempt is made below to put various things in the correct perspective. It is clear in advance that it will not be possible here to have the last word on this issue, if only because the necessary insight into the relevant facts – because of the passage of time and the disappearance of supporting documentation – can simply not be obtained. All the same, many facts are known and many documents are still available.’⁵

1. Koenigs and his collection

Franz W. Koenigs was born on 3 September 1881 in Kierberg, Germany as the son of a wealthy Protestant (Lutheran) family.⁶ In the context of the current claim it is important to establish that Koenigs did not belong to one of the population groups who were persecuted by the Nazis. He is reported to have been an outspoken opponent of the Nazi regime.⁷ This does not mean that Koenigs avoided (business) contacts with German rulers⁸ - as will be shown below.

In 1920 Koenigs and his nephew Rhodius set up the company *N.V. Rhodius Koenigs Handelmaatschappij* in Amsterdam because of the restrictions placed on German companies and banks after the First World War. Koenigs became director of N.V. Rhodius Koenigs, from 1926 together with fellow director A. Flesche. In the 1930s Flesche revealed himself to be a supporter of the Nazi regime⁹ - and was even supposed to have ran a spy network out of

⁴ The Statement, the Notes, the Reaction and the minutes of the hearing (appendices 24 and 25 RC).

⁵ Statement, p. 3, point 3.

⁶ For information about Koenigs’ life, see J.R. ter Molen, ‘F.W. Koenigs, 1881-1941’ in: *150 jaar Museum Boymans van Beuningen R’dam*, Rotterdam (1999), and A.J. Elen, *Missing old master drawings from the Koenigs collection*, The Hague (1989), and information provided by Mrs Koenigs and Mr W.O. Koenigs (appendices 24 and 25 RC).

⁷ There are various statements to this effect that can be found in the Nationaal Archief of the Dutch Administrative Institute (*Nederlandsch Beheersinstituut*) (NBI), list no. 1446621, and in the archives of the Dutch National Bank (*De Nederlandsche Bank*) (DNB): Rhodius Koenigs file. Documents of the ‘British Legation The Hague’, which Mrs Koenigs submitted as appendix 2 to the Statement, indicate that Koenigs was providing the English authorities with information about the situation in Germany in September 1939 (appendix 24 RC).

⁸ See below, paragraphs 6 and 7.

⁹ Central Archive on Special Jurisdiction (*Centraal Archief Bijzondere Rechtspleging*) (CABR), 423I-III and NBI 144662.

Rhodus Koenigs -¹⁰ which is said to have caused problems in his relationship with Koenigs.¹¹ N.V. Rhodus Koenigs ran the banking business and gave credit mainly to German industry. The business was a commercial success and in 1922 Koenigs and his wife and children moved permanently to the Netherlands.

In the economic prosperity of the 1920s Franz Koenigs was able to amass an exceptional collection of drawings and paintings in a relatively short period of time. The collection of drawings in particular turned out to be of lasting importance in art history and Koenigs was most attached to this part of his collection. The expression 'Koenigs collection' usually refers to this collection of drawings.¹²

Koenigs was granted Dutch citizenship in 1939, a decision that was influenced by the fact that he had done a service to Dutch society by loaning his art collection to a museum.¹³

On 6 May 1941 Koenigs died in a train accident in Cologne.¹⁴

2. International economic situation in the 1930s

The economic prosperity that Koenigs enjoyed in the 1920s came to an abrupt end in 1931 because of the international economic situation. 1931 was the year in which all international debts were frozen in Germany,¹⁵ which had major consequences for the Rhodus Koenigs company and for Koenigs' personal financial situation. From that moment onwards his assets in Germany were no longer at his disposal. Later that same year, 1931, Koenigs was forced to take out a considerable loan, for which he turned to his (Jewish) friend Kramarsky – also originally a German – who at that time was in charge of Lisser & Rosenkranz bank. He used his art collection as security for this loan.

In order to understand the circumstances that forced Koenigs to encumber his art collection one must consider the international situation at the beginning of the 1930s. Professor J.Th.M. Bank, a member of the Restitutions Committee, has the following thoughts in respect of money transfers between the Netherlands and Germany in the 1930s:

¹⁰ J. Meihuizen in his thesis: "*Noodzakelijk Kwaad, de bestraffing van economische collaboratie in Nederland na de Tweede Wereldoorlog*", Amsterdam (2003), p. 484: "The German banker Alfred Flesche, [...], was sentenced to six years in prison in 1949 because of a fairly innocent case of military espionage committed shortly before the German invasion in May 1940. His participation in the industrial espionage undertaking Cellastic, which worked for the German war effort and was set up in 1937 with the help of *Rhodus Koenigs Handelsmaatschappij* [...] was entirely covered up." Cellastic was not investigated further.

¹¹ See, for example, the letter dated 11/5/49 from E.A.C. Meijlink, Deputy Head of the Coordination Office of the Ministry of Justice, which he sent to the NBI (NBI 144662); see also the statement by A. Rhodus on 30/9/47 in CABR 423 III. Flesche's role seems to be the reason why the British Ministry of Economic Warfare put the *Rhodus Koenigs* company on the 'black list' at the beginning of 1940 and why it was taken into administration after the war, see the 'initial report by the management/administrators' ('*beginverslag van de bestuurders/beheerders*') of July 1945 and the exchange of letters between the NBI, the Dutch Ministry of Justice and the British Embassy in The Hague between 10/7/48 and 2/8/49, 'Rhodus Koenigs' file, NBI 144662.

¹² There is another so-called 'second' Koenigs collection, see footnote 43.

¹³ See documents from the Ministry of Justice archive, appendix 3 to the Red Book.

¹⁴ Mrs Koenigs claims that Koenigs was murdered: this has never been proven.

¹⁵ See H.A.M. Klemann, *Nederland 38-48*, Haarlem (2002), p. 37, and J. Houwink ten Cate, *Mannen van de Daad en Duitsland, 1919-1939*, The Hague (1995).

“From 1931 the economic crisis hit Germany harder and harder. It was forced to erect a “Chinese wall” of foreign currency regulations in international money transfers, starting with the (temporary) freezing of short-term debts under the measure known as the *Stillhalte*. This regulation continued to grow in scope until 1934 and remained in place until mid-1938. Two findings are important in relation to the problems surrounding the Koenigs collection. The first is that Germany’s problems in international money transfers were the consequence of the economic crisis that was casting an ever-lengthening shadow in 1931. Hitler’s victory in 1933 was the political result, not the cause. The second finding is that the Netherlands – and also Switzerland – in the knowledge that it was also in their own interests that the German mark remained at the required level, managed to quickly get bilateral money transfers up and running again, resulting in a new trade agreement in December 1933. Ideological considerations hardly played a role in the economic negotiations with the German government.”

3. 1931 and 1935 credit agreements

1931: loan for which Koenigs transferred ownership of his collection of drawings as security

A handwritten statement in German indicates that Koenigs took out a loan for 1.5 million guilders on 9 September 1931 from Lisser & Rosenkranz and that he transferred ownership of his collection of drawings as security:

“Zur Sicherstellung desselben übereigne ich Ihnen hiermit meine Zeichnungsammlung wie sie sich zur Zeit in meinem Haus florapark 8 Haarlem befindet.” [As security I hereby transfer to you ownership of my collection of drawings as in my house at Florapark 8 in Haarlem.]¹⁶

This statement does not contain any further details of the loan, such as a rate of interest or a term. The good friends and business partners Kramarsky and Koenigs apparently entered into the credit agreement as a gentlemen's agreement: they considered their consensus ad idem, without detailed conditions, to be sufficient guarantee that matters would proceed properly.

1935: formalised credit agreement with ‘the collection’ as security

In 1935, possibly at the insistence of De Nederlandsche Bank,¹⁷ Kramarsky and Koenigs formalised the credit agreement. Little of the text of this agreement remains, or at least it is not at the disposal of the Committee. As regards the business content of the agreement, the Committee must therefore base itself on the information provided by Mrs Koenigs (according to the Memorandum, having seen the agreement once),¹⁸ and on information from Mr W.O. Koenigs, who supposedly is still in possession of parts of the agreement.¹⁹ Based on this information, the following can be assumed:

¹⁶ Handwritten statement by F.W. Koenigs to Lisser & Rosenkranz, dated 9 September 1931; from the W.O. Koenigs archive (appendix 2 RC).

¹⁷ Information from W.O. Koenigs (appendix 25 RC).

¹⁸ Statement, 13, 14 and 53 (appendix 24 RC). Incidentally, Mrs Koenigs gives different information in her letter to the Premier, dated 14 May 2000; see also Reaction, point 24 and the letter from A.H.J. van den Biesen, dated 12/8/2003.

¹⁹ Minutes of the hearing on 10 March 2003 with W.O. Koenigs (appendix 25 RC); see also the further information on behalf of W.O. Koenigs regarding the content of the agreement, provided with the letter from R.W. Polak dated 21/5/2003.

Koenigs took out a loan in June 1935 – formalising the loan from 1931 – for the amount of NLG 1,375,000 plus 17,000 English pounds at 4% interest for a term of 5 years. *The Koenigs collection consisting of drawings and paintings as in Boymans since 1935* was given as security. As part of this arrangement, Koenigs apparently gave the bank the right to sell the collection if necessary when the loan became due, which the bank would also be allowed to do if the loan became due before expiry of the five-year term, for example if the bank went into liquidation before the expiry of the five-year term. (See Statement 13 and 14 and comments by W.O. Koenigs.)

Whereas in 1931 (fiduciary) ownership of the collection of drawings was transferred to the bank as security, this seems to have been converted in 1935 into a right of pledge on the collection of drawings *and* paintings. It is not absolutely clear whether the bank's security right did indeed take the form of a right of pledge in the 1935 agreement.²⁰ However, whatever legal form was chosen: what is important is that Koenigs relinquished his right to dispose freely of the art collection in 1931 and in 1935.

A right of pledge implies that the collection must leave the actual control of the owner, and the collection was in fact loaned to the Boymans Museum in Rotterdam. The choice of Boymans was apparently an express condition set by Koenigs²¹ who had previously loaned large parts of his collection to the museum and had good contacts with Director Hannema.²²

The 'Koenigs collection as in Boymans' varied somewhat in size between 1935 and 1940:²³ Koenigs added and withdrew drawings and paintings to and from the collection. In the absence of a document specifying the security it may be assumed that the agreement between the friends Koenigs and Kramarsky was that 'the art collection (as in Boymans)' with no further details was the security for the loan.²⁴

On behalf of Mrs Koenigs, her authorised representative also concludes in a letter dated 7 October 2002 that in the relationship between Koenigs and the bank no relevant difference was made between the paintings and the drawings, and Mr W.O. Koenigs agreed with this opinion in the conversation of 8 January 2003.

4. Repayment of the debt, 1939-1940

The total amount of Koenigs' debt to Lissers & Rosenkranz by the autumn of 1939 is not known because of a lack of information about the settlement between Koenigs and Lissers & Rosenkranz. Given the interest rate of 4% and assuming a base amount of 1.5 million guilders, the debt calculated from 1935 can be estimated as being in the order of 1.8 million guilders. Koenigs might have already repaid part of this debt earlier.²⁵ The Statement assumes a debt of 1.6 or 1.7 million.²⁶ Leaving aside the exact amount of the debt, in the autumn of

²⁰ Information about the credit agreement of June 1935 on behalf of Mr W.O. Koenigs, given in a letter from R.W. Polak of 21/5/2003 and in the reaction to that letter from A.H.J. van den Biesen in a letter dated 12/8/2003.

²¹ Elen, op. cit., p. 13.

²² See the correspondence between Mr and Mrs Koenigs and Hannema in the Boymans archive.

²³ This is indicated in the lists in the archive at the Boymans Museum (appendices 18 and 19 RC).

²⁴ See also a letter from Hannema to Van der Vorm, dated 13/3/1940 (appendix 4 RC).

²⁵ This is likely since more financial consequences were involved: see below, section 7.

²⁶ Statement, 53.

1939 it became clear that Koenigs would not be able to repay the debt, which was due in June 1940, without selling the art collection.

At the end of 1939, in a period when war – also in the Netherlands – seemed inevitable, Koenigs began to look for buyers for the collection. He did everything possible to keep the collection together for the museum in Rotterdam. The Amsterdam art dealer Jacques Goudstikker was brought in for the sale of the collection. In September 1939 Goudstikker approached Director Hannema of the Boymans Museum to “continue negotiations with you and the other gentlemen in Rotterdam regarding the purchase of the collection”.²⁷ From the beginning of 1940 it was also clear to the outside world that the negotiations were being conducted partly on behalf of Lisser & Rosenkranz. In a letter (probably) written in February 1940 to Hannema, Goudstikker states that he was acting not only on behalf of Koenigs, but also for “the Amsterdam Bank, which, as you will know, has a say in matters regarding this collection”. The following quote from a letter from Goudstikker sets out the various issues:

“...all who had an interest in this Koenigs collection would rather see it permanently in Rotterdam than anywhere else, not only because this city has played host to this collection for many years without interruption, but also because this collection,, would as a result remain in the Netherlands almost in its entirety. I therefore believe that Rotterdam can count on significant concessions from the occupiers, if a possibility is sought to acquire the collection, and therefore all proposals otherwise that had thus far been made were provisionally put to one side. [...] “On behalf of my principal, I offered the entire collection summarised here in August 1939 to the Boymans Museum for the sum of 2,200,000 guilders, and at the same time Mr Koenigs asked me to inform Director Hannema that in the event of a purchase he would be prepared to hand over his collection of old paintings to the Museum, a collection that made a not insignificant contribution to the fame of his collection as a whole. There are 47 pieces, .. [...] The circumstances make it advisable for one of the interested parties to take the security for a significant loan, namely the Koenigs collection, abroad for reasons that will be easily understood [...]. The negotiations can of course continue if the collection is abroad. However, an immediate sale would remove all risk,, Nevertheless, if there are objections to an immediate purchase ... then it seems that the following would be possible; The Foundation [that is the Boymans Museum Foundation (*Stichting Museum Boymans*), which had been established a short time previously, EC], or on its behalf a bank, provides the sum of fl. 1,800,000 with the Koenigs collection as security, which gives Rotterdam the right to purchase the collection for a number of years for a sum to be agreed. ... Mr Koenigs is prepared by way of additional security, as cover therefore, to also hand over, in addition to those parts of his collection previously offered, the other parts of his collection, namely the 19th century French paintings, 17 in number, In addition, there are the French drawings from post-1800, This would avoid parts of the collection having to be sent abroad presently, whilst at the same time, as I wish to see happen, if all the evidence is anything to go by, the sum of money to be provided will be far exceeded.”²⁸

These negotiations, which concerned the takeover of the debt owed to the bank, were unsuccessful. Subsequently, on 13 March 1940, Koenigs telephones Hannema to inform him that “everything will be shipped to Lisbon in 14 days.”²⁹ Kramarsky was at that time resident

²⁷ Letter of 4/9/1939 from Goudstikker to Hannema, (appendix 3 RC).

²⁸ This letter comes from the ‘Red Book’ compiled by Mrs Koenigs; the letter is not dated but must have been written in February or March 1940 (appendix 3 RC).

²⁹ *Supra*, note 24.

in Lisbon, having fled the Netherlands in November 1939.³⁰

Liquidation of Lisser & Rosenkranz, 2 April 1940

Two months before expiry of the loan, on 2 April 1940, *N.V. Bankierskantoor Lisser & Rosenkranz* went into liquidation. The reasons for the decision to go into liquidation can be found, for example, in a statement made after the war by Mr Flörsheim, who was director of the bank in addition to Kramarsky:

“In April 1940, the Directors of L.&R. decided, with a view to measures expected to be taken with respect to Jewish bankers, to take the firm of L.&R. into liquidation. This was a success following the German occupation of our country because the ban on Jews doing business was also applied to managing a business. Since it was not considered possible to manage a company in liquidation, L.&R. remained free from German interference. No *Verwalter* was appointed and the non-Jewish authorised representatives, Messrs Herrndorf and Rikkert, were able to remain in office after Mr Flörsheim had resigned.”³¹

In accordance with the conditions of the credit agreement, Koenigs’ debt became due when the bank went into liquidation. Consultations between Koenigs and the bank followed; it is not known what agreements were made in those consultations.

5. Loss of the collection

Given as payment to Lisser & Rosenkranz

On 2 April 1940 Lisser & Rosenkranz also presented itself as the sole owner of the art collection. On 2 April 1940 the bank wrote the following to the Boymans Museum regarding the drawings:

“We are pleased to report that we have acquired by way of payment from Mr F. Koenigs the collection of drawings that he previously loaned to you (...) Following this transaction, which has transferred the said drawings to our full and unrestricted ownership, we intend to have the drawings removed by our shipping agent in the course of this week”³²

Koenigs confirmed this in a letter dated 2 April 1940 to the museum:

“Since I have not heard anything more from you regarding the collection of drawings that I previously loaned to you, I have been compelled to give these drawings by way of payment to N.V. Bankierskantoor Lisser & Rosenkranz (in liquidation) of this city, which means that full and unrestricted ownership of these drawings has been transferred to said party.”³³

³⁰ Kramarsky resigned as Director of L&R as per 31/1/1940, see the minutes of the General Meeting of Shareholders of NV Bankierskantoor Lisser & Rosenkranz on 2 April 1940 (Appendix 5 RC).

³¹ DNB archive, file on ‘Bankierskantoor Lisser & Rosenkranz N.V.’ (Appendix 5 RC). Information from an investigation at DNB confirms this course of events; see DNB memo to RC, dated 10/9/2002.

³² Boymans archive (appendix 6 RC), EC italics.

³³ Idem, EC italics.

On 8 April 1940 a letter from Lisser & Rosenkranz followed regarding the paintings:

“We are pleased to inform you that the paintings, which Mr F. Koenigs previously loaned to you, were transferred to our full and unrestricted ownership on 2 April 1940.”³⁴

The bank then also reported to Goudstikker on 8 April 1940:

“that negotiations regarding the sale of the collection of drawings and paintings in our possession will only take place with you as intermediary (...) We would ask that you take into account that we, because of national considerations and in order to respect the wish of the previous owner, wish to obtain, as you know, the best possible price from the Boymans Museum. In this connection we would draw your attention to the fact that Mr Van Beuningen expressed the wish in a conversation last Friday with the left-hand signatory below to acquire a number of paintings for his collection. You would therefore be doing us a service if you were able to open negotiations on this subject with Mr v.B.”³⁵

A statement from Koenigs confirming that the ownership of the paintings was also transferred to the bank with his approval has not been found.

COLLECTION OF DRAWINGS

Lisser & Rosenkranz: sale of collection of drawings to Van Beuningen

The pressure on the negotiations regarding the sale of the collection to a third party was now increased. Koenigs remained actively involved in the negotiations. All efforts were geared to retaining at least the collection of drawings for the Boymans Museum,³⁶ and other interested parties were kept away.³⁷ Koenigs, Lisser & Rosenkranz, Hannema and Van Beuningen were all directly involved in these negotiations, which took place between 2 and 9 April 1940.³⁸ The events are set out in the following quote from a letter from Hannema to Lisser & Rosenkranz:

“I had already received your two letters of 2 April last; this morning your two letters of 8 April last also reached me. On Friday 5 April last we had a conference in the Boymans Museum with Mr Koenigs, who was then to inform you of the latest situation. That afternoon Mr D.G. van Beuningen also visited you and made an offer for the collection as it is in the Boymans Museum. Today Mr Goudstikker had a conversation on your behalf in Rotterdam with Mr Van Beuningen, at which you were made a new offer, which is valid until 10 o'clock this evening. In my view this new offer is more than a good one under the circumstances and I am convinced that you will not easily obtain a better offer from elsewhere. We have now started to prepare the entire collection for transport. (...) You should therefore be able to collect the entire collection from Tuesday morning onwards (...)”³⁹

³⁴ Idem.

³⁵ Letter from Lisser & Rosenkranz to Kunsthandel J. Goudstikker, dated 8 April 1940, W.O. Koenigs archive (appendix 6), underlining by EC.

³⁶ Letters dated 13 and 21 March 1940 to Van Beuningen and Van der Vorm, Boymans archive, (appendix 4 RC), see also appendix 6 RC.

³⁷ As indicated in a letter from the Rosenberg art dealers to Professor Sachs of the Fogg Art Museum (appendix 7 RC).

³⁸ See, for example, the letter of 9 April 1940 from Hannema to Lisser & Rosenkranz, (appendix 7 RC).

³⁹ Letter, dated 9/4/1940, from Hannema to Lisser & Rosenkranz, Boymans archive (appendix 7 RC).

On 9 April 1940 a sale took place between Lisser & Rosenkranz and Van Beuningen: the collection of drawings as in Boymans and 12 of the 47 paintings became the property of Van Beuningen for NLG 1 million.⁴⁰ Koenigs apparently included the twelve paintings in the sale to ensure that the sale went ahead.⁴¹

Given the mutual congratulations⁴² the agreement was obviously considered the best that could be achieved with the intention being – and this must have been clear to all those involved – that the collection would stay together: it was believed that Van Beuningen would leave the collection of drawings under the Koenigs name, either as a gift or as a loan, in the Boymans Museum. As a gesture of thanks for Hannema acting as intermediary Koenigs donated to the museum another two drawings by Carpaccio from his so-called 'second collection'.⁴³

Later publications reveal that the purchase by Van Beuningen actually did not proceed in a manner that was to everyone's satisfaction. This was because it was Hannema's original plan that Van Beuningen and Van der Vorm, who was another important Maecenas of the museum, would acquire the collection *together* and then donate it to the Stichting Boymans. Hannema and Van der Vorm apparently did not appreciate Van Beuningen for not sticking to the original plan and instead acquiring the collection in his own name.⁴⁴

Van Beuningen: resale of 527 drawings to Posse / Hitler

Contrary to what was intended, on 15 January 1941 Van Beuningen, following extensive negotiations, sold 527 drawings from the Koenigs collection for a sum of NLG 1.4 million to the German Posse for Hitler's museum in Linz.⁴⁵ The drawings in question – hardly surprisingly – were the German drawings plus a selection from the other categories. In addition, Posse apparently paid a further NLG 100,000 in commission to Van Beuningen's son-in-law who acted as intermediary in this purchase.⁴⁶

This transaction was undoubtedly disappointing for Franz Koenigs who had made every effort to keep together the collection of drawings that he had assembled. In May 1942, one year after the sudden death of Franz Koenigs, Anna Koenigs would write the following on this subject to Hannema: "I am happy about everything that has remained in the Boymans Museum and in the Netherlands because it was always my husband's wish for his collection to remain in our country."⁴⁷

⁴⁰ Letter dated 8/4/40 from Hannema to Van Beuningen, Boymans archive: "stick to 1 million and let a few paintings go"; NB: no primary source has been found for this selling price.

⁴¹ Minutes of the hearing with W.O. Koenigs on 10/3/2003, p. 3 (appendix 25 RC); letters from Goudstikker, Boymans archive (appendix 3 RC); this is not directly important because these paintings are not part of the claim.

⁴² See, for example, letters from L&R to Boymans dated 9 April 1940, from Anna Koenigs dated 14 April 1940, and from Franz Koenigs dated 17 April 1940, (Boymans archive) (appendix 7 RC).

⁴³ After Koenigs transferred ownership of his collection to Lisser & Rosenkranz in 1931 as security for the loan, he continued to collect, although to a more modest extent. Hence, when he died in 1941, Koenigs left behind a second collection consisting of some 200 drawings, and there was also a collection of French 19th century paintings (17 in number). This is important because confusion can arise when reference is made to 'the Koenigs collection'.

⁴⁴ Professor H.A. van Wijnen in his article on Van Beuningen in: *150 jaar Boymans*, Rotterdam (1999).

⁴⁵ C. Koenigs "Under duress: the sale of the Franz Koenigs collection" in: *Spoils of war*, New York (1997), p. 240; Elen, (1989), p. 15; see also information submitted by the applicant (appendix 24 RC).

⁴⁶ Koenigs (1997), 240.

⁴⁷ Letter dated 8/5/42 from A. Koenigs to Hannema, Boymans archive (appendix 7 RC).

Of these 527 drawings 37 were recovered after the war – at the end of the 1980s – from (mainly) the former DDR⁴⁸ as art that had unlawfully disappeared from the Netherlands,⁴⁹ after which these drawings became part of the NK collection. These 37 drawings are currently part of the claim made by Mrs Koenigs (**category 1**). The other drawings sold to Posse were most likely transported to the former Soviet Union with the Red Army in the latter days of the war and have for years been the subject of negotiations between the Dutch and Russian authorities regarding restitution to the Netherlands.

Van Beuningen: donation of drawings to the Stichting Museum Boymans

At the end of 1940 Van Beuningen donated the other drawings from the Koenigs collection of drawings⁵⁰ and 8 of the paintings that he had acquired to the Stichting Boymans. On 9 December 1940 Hannema informed his colleague Bierens de Haan accordingly:⁵¹

“It gives me great pleasure to inform you that Mr Van Beuningen has donated the remaining and largest part, well over half, to the Stichting Boymans. This donation, the biggest that the Museum has received since it was founded, is worth f 2,000,000.”⁵²

Van Beuningen: private collection

Van Beuningen kept the other 4 paintings and a number of drawings from the Koenigs collection in his private collection. After Van Beuningen died in 1958 his heirs sold these paintings and drawings to the Municipality of Rotterdam, and they therefore ended up in the Boymans collection after all. None of these works is part of the Dutch national art collection.

THE 35 PAINTINGS

Goudstikker collected the 35 paintings that were not part of the sale to Van Beuningen from Boymans on 19 April 1940 on behalf of Lisser & Rosenkranz. Goudstikker took these paintings on consignment for Lisser & Rosenkranz and acted as intermediary in the sale of four of these paintings to private parties just before the outbreak of the war at the beginning of May 1940. The other 31 paintings remained in the art dealers after Jacques Goudstikker fled the country and were sold in the summer of 1940 to the German Alois Miedl following direct intervention by Koenigs.

Lisser & Rosenkranz: 4 paintings sold via Goudstikker to private parties

a. One painting, *Cadmus sowing dragon's teeth* by P.P. Rubens, was sold at the beginning of May 1940 to a Dutch couple called De Bruijn for NLG 14,500. The exact date of

⁴⁸ 33 drawings from the DDR in 1987; in the years that followed another 4, each separately, from different countries.

⁴⁹ Under Royal Decree A6 such a sale was prohibited and null and void; the Interallied Declaration is often used as the international basis for restitution; see also the draft (EC, 19 May 2003) *overzicht van naoorlogse regelingen inzake recuperatie en restitutie van kunstvoorwerpen* ('overview of post-war arrangements regarding recovery and restitution of works of art').

⁵⁰ The exact number is not known; based on the actual total number of drawings, which was 2671 (see Elen, 1989, p. 11), this number would have been over 2000.

⁵¹ The donation was officially declared on 17 April 1941 at the meeting of the Stichting, Boymans archive (appendix 8 RC).

⁵² Letter from Hannema, dated 9/12/1940, to Bierens de Haan, Boymans archive (appendix 8 RC).

the sale is not known. A postcard from Mr De Bruijn indicates that on 27 April 1940 he ordered his authorised representative, who was an employee of the Rijksmuseum in Amsterdam, to purchase the painting. The proof of payment shows that from the price paid by De Bruijn a commission of 20% went to the Goudstikker art dealers, and the sum that was booked to the account of Lisser & Rosenkranz on 4 July 1940 for this painting was NLG 11,600.⁵³

In 1961 the De Bruijns bequeathed *Cadmus sowing dragon's teeth* to the Rijksmuseum in Amsterdam, and so the painting became part of the Dutch national art collection. It is in that capacity that it is included in the current claim by Mrs Koenigs (**category 3**).

2. Also in May 1940,⁵⁴ just before the outbreak of the war, three paintings were sold on behalf of Lisser & Rosenkranz to Count A.M. Seilern for a sum (according to Mrs Koenigs' documentation) of 24,000 US dollars. According to the exchange rate at that time this would have been NLG 45,240.⁵⁵ Given how matters were conducted, it was presumably also the case in this instance that the price received was the selling price minus the 20% commission for Goudstikker, i.e. NLG 36,192. These paintings are not part of the Dutch national art collection.

Koenigs: 31 paintings sold to A. Miedl

At the beginning of June 1940 – the exact date is not known – a sale took place between Koenigs and the German A. Miedl for the remaining 31 paintings, which had been transferred to the Goudstikker art dealers a month and a half before on the orders of Lisser & Rosenkranz, for an amount (very probably) of NLG 800,000.⁵⁶ It was not Lisser & Rosenkranz but Koenigs himself who was in the forefront as the seller. After the war 27 of these 31 paintings were recovered and became part of the Dutch national art collection (NK Collection) (**category 2**).

The so-called 'Von Saher report', which was drawn up after the war by the widow Goudstikker's lawyer and concerned the events during the war in *Kunsthandel Goudstikker*, contains the following regarding this sale:

'In June 1940 Miedl bought Koenigs' Rubens collection for fl. 800,000.' (p. 13)⁵⁷

'Alois Miedl was on the move, as it were, as soon the Nazis entered Amsterdam. He first ensured that a large amount in cash – which the Dutch police had impounded at Miedl N.V. and deposited at De Nederlandse Bank during the battle for Amsterdam (10/14 May 1940) – was returned to him. He then contacted Lisser & Rosenkranz and Franz W. Koenigs. This was when Mr Koenigs' Rubens collection was purchased. At the end of these discussions, once the purchase was concluded, Alois Miedl said that he intended to offer a Rubens painting as a gift to the "Generalfeldmarschall" whose visit to the Netherlands had been announced. He was interested to know "ob er nimmt". The late Koenigs said that he might have been happy to pay part of the costs of this painting. It was indeed worth the trouble to know how to deal with the

⁵³ Archive of the Rijksmuseum Amsterdam (appendix 9 RC). See also Statement no. 22 and appendices 3 and 4 to the Statement.

⁵⁴ Supra, note 53; according to the information provided by Mrs Koenigs, this was on 6 and 8 May 1940 (see p. 10 Reaction).

⁵⁵ According to information from the Ministry of Finance the exchange rate of the dollar at that time was NLG 1.885, which means that \$ 24,000 was worth NLG 45,240.

⁵⁶ As the sum of NLG 800,000 is named in most sources, we will continue to use it here.

⁵⁷ Submitted as appendix 5 to the Notes (appendix 24 RC).

Nazi bosses. It seems almost unnecessary in the context of this overview to add that Goering “accepted” the painting.’ (p. 18)⁵⁸

This course of events is confirmed elsewhere, including in the post-war report on the interrogation of Miedl:

“Koenigs collection: This collection was bought by Miedl in the name of the Goudstikker firm and the transaction was in no way connected with Goering or any German Authorities. One Fritz Markus, the son-in-law of the Dutch banker Andriessen, acted as intermediary between Miedl and Koenigs. The latter was in financial trouble and owed a great deal of money to the Lisser Rosencranz Bank which at that time had refused to give him any more credit. The sale took place in the garden of the Lisser Rosencranz Bank in the presence of Florsheim, the deputy director in the absence of Kramarsky who had left for America. [...] Koenigs at first asked 800.000 and finally accepted 700.000. Miedl admits that this was very cheap but says Koenigs was no Jew and was eager to sell to clear himself of his financial obligations because the banks in Holland would not take pictures as security. Having bought the collection, Miedl presented its best picture, Diana at the Bath, to Goering. Koenigs enthusiastically approved of this action because he saw a way of ingratiating himself with one of the highest German authorities whose help he might need in the future.’ *There then follows a correction: 'Koenigs was actually paid 800.000 gulden by Miedl, and Flörsheim supplied the difference.'*⁵⁹

The sale to Miedl is also documented in – various versions – of the financial accounts kept during the war at the Goudstikker art dealers. The German version is based on a selling price of NLG 800,000, but one of the two Dutch versions is based on an amount of NLG 650,000.⁶⁰

“Laut einem Schreiben der NV Bankierskantoor Lisser & Rosenkranz in liq. wurde von Ihrem [*that is Miedl's, EC*] Auftrag einen Betrag vergütet von fl. 800.000,- für 31 Bilder nämlich ...” (‘According to a letter written by NV Bankierskantoor Lisser & Rosenkranz (in liquidation), the amount paid on your order (*that is Miedl's, EC*) was fl. 800,000 – this was for 31 paintings’)
(There then follows a list of the 31 paintings from the Koenigs collection, EC)⁶¹

It could therefore be concluded that the amount was paid *to Koenigs by Lisser & Rosenkranz on the orders of Miedl*. After all, Lisser & Rosenkranz – in the person of Flörsheim as Director after the departure of Kramarsky – ‘supplied the difference’ (according to the Miedl report) of NLG 100,000 to Koenigs. Leaving aside the lack of clarity regarding the flow of funds, which is considered in section 7, that would indicate a sale directly by Koenigs to Miedl. See section 7 for an overview that provides a better understanding of the overall situation in which Koenigs, Miedl, and Lisser & Rosenkranz were operating at that time and of the different conflicting interests involved. First of all, for the sake of completeness, an overview of what happened to these 31 paintings after Koenigs sold them.

⁵⁸ Mr A.E.D. von Saher, “NV kunsthandel J. Goudstikker, Overzicht van de gebeurtenissen in de periode van 31/12/39 tot april 52”, p. 18, GAA, 1341, 95 (appendix 10 RC).

⁵⁹ Archive of the Netherlands Art Property Foundation (Stichting Nederlandsch Kunstbezit) (SNK), National Archive, no. 186 (appendix 11 RC); see also the Statement.

⁶⁰ An explanation of this discrepancy can be found in the statement by Von Saher, *supra* note 58, that the administration must be considered “unreliable” (appendix 10 RC).

⁶¹ See the so-called Elte Report ‘inzake de Kunsthandel v/h Goudstikker i.o. te Amsterdam’, dated 13 September 1940, SNK 186 (appendix 12 RC).

Miedl: resale of the 31 paintings

1) 19 paintings sold to Göring

The financial accounts kept at Kunsthandel Goudstikker during the war indicate who Miedl, now trading under the name 'Goudstikker', sold these paintings to and for what price: "Of the aforementioned paintings, 19 were sold to Field Marshall Göring as part of a sales transaction for an amount of NLG 300,000." This sale to Göring is described as follows in the report on the post-war investigation into Göring's activities on the Dutch art market:

"Hofer [Göring's buyer, EC] viewed the collection with Miedl during his first visit to Holland. Miedl, who had in fact started to trade on a large scale, asked his advice regarding the purchase of such a collection. Hofer advised him to buy it, but insisted that Goering should have first choice. Miedl bought the collection for 700,000 guilders. [...] Goering received the paintings in the first transaction with Goudstikker. [...] They arrived at Karinhall on 10 June 1940. Koenigs was a German who had lived in Holland since the last World War. He was from a well-known Hamburg family and was the owner of the Rhodius Koenigs Bank. He was a major financial speculator and it was not known that he had ever sold anything before. The fact that Miedl obtained the collection was considered a sensation at the time..."⁶²

The following can also be found in the same report as regards the dates of the series of events relating to the sale of these paintings:

"Goering was well aware of the richness of the Dutch art market. The fact that he sent Hofer on his first trip on 20 May 1940, five days after the surrender, proves that he did not want to miss any chance offered to him by the occupation. He himself [i.e. Göring, EC] followed a few weeks later."⁶³

The information submitted by the applicant⁶⁴ has Koenigs under arrest in Germany between 10 and 20 May 1940, together with a Dutch trade delegation, and being confronted at the beginning of June 1940 with the *fait accompli* that Göring had already selected the 19 paintings from the Koenigs collection and had them sent on to him. The following comment can be made in this regard: there is no real clarity as regards the time of purchase, but even if it was known at the time of the sale that Göring (via his buyer Hofer) wanted to buy the paintings, none of the sources indicates that Koenigs was put under pressure when he sold to Miedl.⁶⁵

2) 12 other paintings

On 24 July 1940 Miedl gave the intermediary Hoffmann 7 paintings, which were sold to the *Reichskanzlei* in Berlin on 29 August 1940. On 19 February 1942 one painting was sold to Mühlmann. In addition, according to the books kept by the company *N.V. voorheen kunsthandel J. Goudstikker*, one painting was put in 'storage', one was sold to Miedl privately, one was sold to the company Firma Joh. Witzig & Co, and one was sold to Mr Rahusen who was liquidator of the Lisser & Rosenkranz bank.⁶⁶

According to Goudstikker's records, these 12 paintings were sold for a total amount of

⁶² SNK, 714 (Göring file).

⁶³ Idem.

⁶⁴ 32 Reaction, 23 Statement (appendix 24 RC).

⁶⁵ See also Lynn H. Nicholas, *The rape of Europa*, USA (1994), p. 105.

⁶⁶ See the overview attached as appendix.

NLG 197,000.⁶⁷ This means, calculating back, that Miedl alias Kunsthandel Goudstikker would have received NLG 497,000 for the paintings that he bought from Koenigs for NLG 800,000. At least, that is what Kunsthandel Goudstikker recorded during the war, and it would represent a loss of NLG 303,000. This could be explained by the fact that Göring received the most valuable painting, *The bath of Diana* by Rubens, as a gift from Miedl. However, it must be remembered that Miedl's administration is not known for its reliability.

6. Beginning of the occupation

Cooperation between the two bankers, Koenigs and Miedl, started from the beginning of the German occupation of the Netherlands (15 May 1940)⁶⁸ in a number of areas – which partly overlapped one another. They set up the new company '*Kunsthandel voorheen J. Goudstikker*' together, and Koenigs (Rhodius Koenigs) and Miedl (Buitenlandsche Bankvereniging) also took joint action in respect of Bankierskantoor Lisser & Rosenkranz. Koenigs' aim in these actions appears to have been mainly to safeguard 'Jewish' assets against seizure by the Nazis – as will be shown below – but that cannot always be determined with absolute certainty.

Goudstikker / Miedl

Alois Miedl was a German businessman who had been resident in Amsterdam since 1932. In 1940, after the capitulation, he found himself with the opportunity to enter the art trade. That opportunity was offered when Jacques Goudstikker, owner of N.V. kunsthandel J. Goudstikker, fled the Netherlands. Miedl bought the art dealers' trading stock and real estate, after which the 'old Goudstikker' went into liquidation.⁶⁹ On 13 August 1940 the widow Dési Goudstikker turned to Koenigs, in a telegram, with the question as to whether this sale and liquidation was in fact legal without her cooperation as major shareholder. On 17 August 1940 Koenigs answered by telegram: "Am informed that business sold legally with bewindvoerders consent"⁷⁰.

Then, on 14 September 1940, 'Kunsthandel voorheen J. Goudstikker N.V.' was founded before notary A. van den Berg of Amsterdam. In addition to Miedl, Koenigs – with 5 of the 600 shares – was one of the founders. Miedl, as the major shareholder, became the sole director from that moment onwards.⁷¹ He brought the works of art, which he had purchased earlier that year in his own name, (back) to the art dealers.

Herrndorf / Lisser & Rosenkranz

When Lisser & Rosenkranz went into liquidation on 2 April 1940 F.W. Koenigs owned 42 shares in the bank.⁷² Following the enforced departures of the Jewish directors Kramarsky (in November 1939) and Flörsheim (stepped down at the end of 1940 and was later arrested) the non-Jewish authorised representative Herrndorf took office. A close cooperation ensued

⁶⁷ Supra, note 61 (appendix 12 RC).

⁶⁸ Date from information provided by Prof. J.Th.M. Bank.

⁶⁹ An initial purchase by Miedl was reversed, as result of which Göring still acquired most of the works of art; E. Muller and H. Schretlen, *Betwist Bezit*, Zwolle (2002), and GAA, 1341.

⁷⁰ Telegram from F. Koenigs to Desi Goudstikker, dated 17 August 1940, GAA, 1341, 56 (appendix 14 RC).

⁷¹ Deed of incorporation of the public limited company established in Amsterdam under the name Kunsthandel voorheen J. Goudstikker N.V.; NBI 857 (appendix 15 RC).

⁷² 'Proces-Verbaal van de Algemene Vergadering van Aandeelhouders N.V. bankierskantoor Lisser & Rosenkranz op 2 april 1940'.

between Herrndorf and Koenigs, which also involved Miedl. Herrndorff threw some light on these transactions in a witness statement given on 13 December 1945. The prominent role played by Koenigs, who can be described as the ‘brain behind the transactions’, is clearly highlighted:

“I had almost daily discussions, including about L.&R., with Mr F. Koenigs, with whom I had by that time built up a close relationship. In these conversations we became convinced that the situation there, given that the majority of the shares were in Jewish hands, would finally become untenable and that it would be in the interests of the company if the shares held by Mr F. [Flörsheim, EC] were to pass into other hands. The measures already taken by the occupiers and those still expected made it impossible for Mr F. personally to represent the interests of the company. As a very good friend Mr Koenigs felt obliged to stand up for the interests of L.&R. and to actually protect the company. His attitude and feelings of friendship towards L.&R. led to Rhodius Koenigs taking over 540 shares from Mr F. on 9-9-1940 at 75%. It was already clear to Mr Koenigs that his position was not strong enough to properly protect L.&R. These considerations as well as the general situation led to the shares being taken over by the B.B.V. [Buitenlandsche Bank Vereniging; Miedl’s bank, EC]. On 18-9-1940, when Mr F. had to resign as liquidator, I was appointed to succeed him, at the suggestion of Mr Koenigs, in order to represent and protect the interests of L.&R. in the spirit of the actual owners. This appointment was obviously fully approved by Mr F. As a result of the actions already mentioned, Mr Koenigs felt that it was also necessary for the 678 shares held by Mr S. Kramarsky to pass into other hands. He was convinced that this best served the interests of his friend Kramarsky, and B.B.V. subsequently took over Kramarsky’s shares as well via L.&R. He felt that he had to bring in L.&R. so that the proceeds would go to L&R. and not to B.B.V. This plan was a magnificent success.”⁷³

Under Koenigs’ direction, the shares in Lisser & Rosenkranz held by the two former directors and major shareholders Kramarsky and Flörsheim therefore came into Miedl’s hands in October 1940. In the report drawn up by the Dutch Administrative Institute (*Nederlandsch Beheersinstituut*)(NBI) in May 1946⁷⁴ the conclusion was drawn that the above-mentioned plan had had the desired result:

“The Jewish company remained spared from plundering by the Germans thanks to the course of action followed during the war. The fact that Mr Herrndorf, the liquidator of N.V. Lisser & Rosenkranz, also held an important position at the Buitenlandsche Bankvereniging (Alois Miedl’s bank) was not unconnected to this course of events. Therefore, there was in fact zero interference from third parties in the affairs of the company in liquidation.”

However, a comment on this positive assessment is necessary. Namely, it is stated in the same NBI report that the selling price of the shares, which would go to Flörsheim and for which he was credited at Lisser & Rosenkranz, was transferred to the German looting organisation *Lippmann Rosenthal & Co.* as a result of the anti-Jewish measures that were in force. In addition, Kramarsky was protesting already during the war against what was happening in his company. It is not known whether he had sufficient information in the US regarding the ‘untenability of the situation’. In any case, after the war he expressed his opinion regarding the transactions as follows via his lawyer:

⁷³ Statement by H.H.F. Herrndorff, 13 December 1945, CABR 86942 III; accountant’s reports in the NBI archive confirm this course of events, NBI 120199; (appendix 16 RC).

⁷⁴ NBI, 120199.

“the ..shares were sold and transferred to the NV without proper authority in October 1940; this was without the knowledge, prior or otherwise, of Mr Kramarsky, who did not fail to protest as soon as he became aware of what had happened.”⁷⁵

7. Value, selling prices and return for Koenigs

The applicant partly supports her assertion that the loss of estate must be considered involuntary by pointing to the discrepancy between the value and the selling price of the collection: 'parting with a collection worth over four and a half million for around one million'. A more detailed comparison of the value of the collection with the selling price received is therefore required.

Value

The 'Koenigs collection' as loaned to Boymans varies in size. For example, the number of paintings varies between 1935 and 1940: in 1935 there were 46, but in 1938 *the* 47 paintings that were ultimately sold were already in Boymans. It is also striking that in the appraisals there is a difference of 100,000 guilders in the value of the category *French drawings*, although the category as such was part of the on-loan collection from 1935 onwards. This category had probably been extended by the addition of new acquisitions in the intervening period. An attempt to determine *the* value would therefore have to take account of all these variations. In addition, it is very important to be clear whether the value is an appraisal value or an insured value, neither of which needs to be the value assumed by an interested party. This is all without even considering the enormous fluctuations in the price of works of art before and during the war. A number of comments about 'the value' of the Koenigs collection are given below:

- On 2 April 1935 Hannema informed B & W of Rotterdam in a letter that the Boymans Museum had taken receipt on loan of “old paintings and drawings from the estate of Mr Koenigs. The amount for which this collection is insured, namely 3.5 million, proves the unique importance of the collection.”⁷⁶

- A document dated 15 May 1935 and written by the insurance company De Waal & Zoon, which Mrs Koenigs cites in her article in ‘Spoils of War’, apparently indicates that the Koenigs collection was insured for 2.2 million.⁷⁷

- On 6 February 1936 Hannema confirmed the receipt of the “collection of drawings and paintings” in a letter to F. Koenigs. In this letter Hannema states: “The collection is insured against fire for the sum of 2.5 million”. An appraisal of the Koenigs collection in (presumably) 1935/36 confirms this amount of 2.5 million. This covered 56 paintings (i.e. 9 more than the number ultimately sold) as well as the French drawings. This amount was repeated in an appraisal that presumably took place in 1937, concerning again 42 paintings.⁷⁸

⁷⁵ Mr Meyer to the NBI, 6 February 1946, NBI 6530 (appendix 17 RC).

⁷⁶ Boymans archive (appendix 18 RC).

⁷⁷ C. Koenigs, “Under duress: the sale of the Franz Koenigs collection” in: *Spoils of War*, New York (1997), p. 273, note 3. In the Reaction of 12/8/2003 it is stated on behalf of Mrs Koenigs that this is based on a mistake and that the sources reveal that the insured value was 2.5 million (appendix 24 RC).

⁷⁸ The appraisal lists found in the archive of the Boymans Museum are not clearly dated. The dates are based on the year as printed on the letter paper on which the list was drawn up (appendix 19 RC).

- A document entitled “Taxatie van de verzameling F. Koenigs, zooals zij zich bevindt in het Museum Boymans te Rotterdam op 20 Febr. 1940” indicates that 37 paintings (i.e. 10 fewer than the number ultimately sold) were valued at NLG 400,000 and that the collection of drawings was valued at 1.85 million. The total appraisal value of the Koenigs collection was therefore NLG 2.25 million.⁷⁹

- On 21 March 1940 Hannema wrote the following about the Koenigs collection in a letter to Van Beuningen: “In 1935 this collection was insured for 4.5 million, which was approximately the amount that Mr Koenigs had spent to assemble the collection over the years. It is now being offered for 2.2 million. [...] My appraisal may be considered low.”⁸⁰

- On 9 December 1940 Hannema informed his colleague Bierens de Haan as follows: “It gives me great pleasure to inform you that Mr Van Beuningen has donated the remaining and largest part [of the collection of drawings, EC], well over half, to the Stichting Boymans. This donation,, is worth f 2,000,000”.⁸¹

Selling prices

By way of comparison, the following gives an overview of the selling prices received for the 'Koenigs collection', in other words the collection of drawings and the 47 paintings. The figures are explained above in section 4.

<i>Object</i>	<i>Amount</i>	<i>Received from</i>	<i>Date of transaction</i>	<i>Paid to</i>
Collection of drawings + 12 paintings	NLG 1,000,000	Van Beuningen	9 April 1940	L&R
3 paintings	NLG 36,192	Seilern, via Goudstikker	Beginning of May 1940	L&R
1 painting	NLG 11,600	De Bruijn, via Goudstikker	Beginning of May 1940	L&R
31 paintings	NLG 800,000 ⁸²	Miedl	10 June 1940	Koenigs
Collection of drawings and 47 paintings	NLG 1,847,792			L&R/Koenigs

The total selling price of the collection was therefore NLG 1,847,792. This amount is probably approximately correct, although without the records of Lisser & Rosenkranz or of Koenigs the amount can no longer be determined exactly.

⁷⁹ Idem (appendix 20 RC).

⁸⁰ Idem (appendix 21 RC).

⁸¹ See supra note 52 (appendix 8 RC).

⁸² There is an indication that this amount was lower, namely NLG 650,000.

Settlement of the amounts between Lisser & Rosenkranz and Koenigs

For the same reason it is not known how the amounts were settled between Lisser & Rosenkranz and Koenigs, but it seems almost certain that settlement did take place. The most likely course of events is that Koenigs' debt, which may have reached NLG 1.8 million in 1940 (1.6 or 1.7 million according to the Statement), was reduced each time by the selling price received by Lisser & Rosenkranz.

If that was the course of events, Koenigs, following the three payments mentioned that seem to have been made directly to Lisser & Rosenkranz for a total amount of NLG 1,047,792, would still have owed over five hundred and fifty thousand to Lisser & Rosenkranz at the start of the war. Koenigs presumably handed over this amount to the bank from the price that he received from Miedl for the 31 paintings (NLG 800,000), but no indications have been found that he did so. Strangely enough, as regards the last sale (in June 1940 to Miedl), there are indications that the amount was paid directly to Koenigs by Lisser & Rosenkranz – maybe they were acting as Miedl's banker – and there is nothing that indicates that this was a settlement of accounts. This may be evidence that Koenigs, by 'giving as payment' his collection of drawings and the 12 plus 4 paintings (to Van Beuningen and to Seilern and De Bruijn), had fully paid off his debt (it is not known how much it was at that time), and the proceeds from the sale of the paintings to Miedl were not involved in the settlement of his debt to the bank. However, this remains guesswork.

Koenigs certainly did enter into more financial transactions with Lisser & Rosenkranz and/or Kramarsky in addition to the credit transaction with his collection as security, and these other transactions will obviously have played a role in the settlement of the debt. For example, at the end of May 1938 Koenigs bought three post-impressionist paintings – one by Cézanne (*Quarries*) and two by Van Gogh (*Portrait of Dr. Gachet* and *The garden at Daubigny*) – from Göring for 12,000 English pounds and 800,000 Reichsmarks,⁸³ and shortly afterwards (in September 1938) these paintings were recorded as the property of Lisser & Rosenkranz.⁸⁴ These paintings were so-called *Entartete Kunst*⁸⁵ seized from German museums. It is very probable that Koenigs had already paid part of his debt to the bank via this transaction, which means that it is uncertain what the level of Koenigs' debt to Lisser & Rosenkranz was on the eve of the war – and therefore it is equally uncertain what Koenigs received in return.

In retrospect a loss on the sale

Van Beuningen sold a quarter of the drawings (527 pieces), less than a year after he bought them, for one and a half times the price that he had had to pay for the entire collection of drawings and 12 paintings. The transaction with the Koenigs collection therefore enabled him to keep some paintings and drawings for himself, as well as the goodwill that resulted from the donation to the Boymans Museum, in addition to the selling price of almost half a million guilders.

⁸³ *Geheimes Staatsarchiv Preussischer Kulturbesitz*, Berlin, I. HA Rep. 90A, State Ministry / No. 2464; memoranda and a letter of confirmation from F. Koenigs attest to this transaction (appendix 29 RC).

⁸⁴ Letter of 3/9/2003 from Mr W. Feilchenfeldt to the author with information regarding the records kept by the art dealers Cassirer Amsterdam, indicating that the three works were kept at Cassirer's in Amsterdam on behalf of the owner 'Lisser & Rosenkranz' between 17/9/1938 and 14/8/1939. (appendix 29 RC).

⁸⁵ Described in detail by Cynthia Saltzman in *Portrait of Dr. Gachet, the Story of a Van Gogh Masterpiece*, (1998), p. 192 ff; see also L.H. Nicholas, *The rape of Europa*, NY (1994).

This was because the prices on the art market had plummeted on the eve of the war (this is a well-known given on the art market) and Van Beuningen was able to make a record profit from this situation.

Price movements

The fact that the prices on the art market in the Netherlands had risen enormously immediately after the start of the occupation was indicated in the report '*Omtrent het prijzenverloop kunstwerken*' ('Regarding the price movements for works of art') by Douwes, dated 29 October 1947. This report was commissioned by the Council for the Restoration of Rights as a reference for determining the 'value' of paintings.⁸⁶

	1940	1943	1947
Old paintings (up to ca. 1750)	100	600	180
Romantic School (1750 to ca. 1860)	100	800	240
Modern Masters (Hague School, etc.)	100	300	180

This flourishing of the Dutch art market was also described in various investigative reports drawn up after the war:

“The Dutch art market, which had almost completely shut down in 1938 and 1939 because of the fear of war, revived after the German occupation and slowly began to develop in an almost unprecedented way. This was mainly due to the large number of Germans with unlimited financial resources who visited the country looking for works of art. All witnesses questioned on this subject agree that the purchasing opportunities were unlimited, both for dealers and private collectors. Goering and his henchmen took full advantage of these opportunities.”⁸⁷

Aalders also wrote about price movements:

“The Dutch art market had significantly flourished almost immediately as a result of the environment of war. The crisis in the 1930s had had a negative effect on the trade, as had the outbreak of the war in September 1939. [...] These factors in turn encouraged rock-bottom prices. When war broke out in the spring of 1940 the art trade could therefore 'have been knocked over with a feather'. A look in the catalogue of the Frederik Muller auction house from April 1940 shows that the prices at that time had sunk to an all-time low. Besides, one cannot be too careful when comparing prices. [...] However, the malaise on the art market was over almost immediately after the invasion of the Netherlands.”⁸⁸

⁸⁶ SNK, no. 137; the Council was the central body involved in post-war restitution of property rights, see section 2.1 of the annual report of the Restitutions Committee, *Verslag 2002*, The Hague (February 2003).

⁸⁷ SNK archive, 714, (appendix 22 RC).

⁸⁸ G. Aalders, *Roof*, Amsterdam (1999), p. 85 (appendix 22 RC).

8. Declaration after the war by the widow Koenigs

On 20 September 1945 the widow Koenigs posted a number of forms on which she declared the sale of 31 paintings by F.W. Koenigs to A. Miedl in the “summer of 1940”.⁸⁹ On the pre-printed line where she had to indicate the nature of the loss of estate, “as a result of confiscation/ theft/ forced/voluntary sale came into possession of”, she crossed out the first three possibilities and therefore indicated that she believed it was a *voluntary sale*. The fact that she also indicated that the paintings were “presumably now with Goering” shows that she was aware of the events surrounding the sale. The widow Koenigs made this declaration under an obligation to declare, which had been announced by means of an advertising campaign and was based on article 5 of the “Enemy Property Decree”⁹⁰ and on the Military Powers Ordinance of 13 June 1945.⁹¹

The announcement was as follows:

“All art treasures, antiquities and libraries that have come into the possession of the enemy during the enemy occupation must be declared. Declaration is obligatory for anyone who relinquished any of the said items in any way during the enemy occupation, whether or not voluntarily, to an enemy state, enemy subject or a person living, residing in or located in enemy territory, as well as for anyone who was involved or who can provide information including about transport or storage. The declaration must be made without delay and only on the specially designated forms...”

In order not to scare off the many people who, against the regulations, had voluntarily sold items to the enemy during the war the announcement also included the following commitment:⁹²

“There is no fiscal aim whatsoever behind the obligation to declare. The obligation to declare is intended only to result in complete documentation for re-claiming the art taken out of the Netherlands. The information will only be available to the Netherlands Art Property Foundation.”

Claim?

Mrs Koenigs argues that the declaration made by the widow Koenigs should be seen as a claim and that it is very possible that such a claim was also submitted for the four paintings for which forms have not been found. It is not possible to follow this interpretation of the facts, given the obligation to declare stated above, and given the 'voluntary' nature of the sale indicated by the widow Koenigs herself. The widow Koenigs made her declaration not by way of a 'claim' but because she was obliged to make a declaration. She was not obliged to make a declaration concerning the sale of the four paintings for which no declaration form has been found, firstly because the buyers – Count Seilern and the De Bruijns – were not 'enemy subjects' and secondly because the sales in question were concluded outside the period for which declarations had to be made (i.e. before the occupation).

⁸⁹ There was no obligation to declare in respect of the sale of the other four paintings.

⁹⁰ Royal Decree E 133, Stb. E133; for example see J.W. Kersten, *Theorie en praktijk van het naoorlogse rechtsherstel*, a publication of the Ministry of Finance, p. 88.

⁹¹ Military Powers Ordinance no. 133 of 13/6/45, published in the Notices from the Military Powers on 2/8/45.

⁹² Appendix 23 RC, see also E. Muller and H. Schretlen, *Betwist Bezit*, Zwolle (2002), chapter 1.

9. Period until the application for restitution submitted by Christine Koenigs

Franz Koenigs' widow, A.L.E.P.E. Countess von Kalckreuth-Koenigs, died on 30 November 1946 in Haarlem. There are no indications that the Koenigs family laid claim to the art collection before 1997.

On behalf of the applicant this is explained as follows:

“Christine Koenigs only took up the matter in the mid-1990s in part because it was only then that any of the surviving relatives of Koenigs became aware of what had happened concerning the collection in the first half of 1940. They did not know and therefore were certainly not able to thoroughly analyse what had happened.” (Notes, 22)

“Only after the publicity surrounding the question of recovery in 1987 (the return of the Koenigs drawings from the DDR) did the family start to wonder what had happened, but none of the children of F.W. Koenigs took action as a result. The family did continue to discuss among themselves what in fact might have happened, but no-one got to the heart of the matter.” “... and it was therefore in that period that my client started her investigation. It took a number of years before she realised that Koenigs' heirs had in fact been disadvantaged in an unusually unreasonable manner as a result of the special circumstances that prevailed at the time of the transactions from April 1940 up to and including June 1940.”⁹³

Mr W.O. Koenigs states the following on this subject:

“that none of his brothers or sisters ever spoke in terms of involuntary loss of estate. His father's wish to donate the collection of drawings could not be granted because of the developments at the time, but the sale would also take place on condition that the drawings would all stay at Boymans”⁹⁴

However, in the 1950s the family did have an investigation carried out into whether Van Beuningen's sale of the 527 drawings to Posse, which was not as planned, could be reversed. The following comments were made in this regard on behalf of W.O. Koenigs:

“The works were sold at the time in the “understanding” that they would remain in Boymans. That was investigated after the war. The Koenigs family took legal advice on this subject after the war, in the 1950s. The advice was that there was an indication that the collection had to remain in the Boymans, but that this could not be enforced in law – it was not a third-party clause – and Mr Van Beuningen had therefore been entitled to sell. No rights could therefore be asserted in respect of the Van Beuningen family. For the Koenigs family this meant the end of the issue at that time. The situation is complicated because Franz Koenigs transferred the rights of ownership to Lisser & Rosenkranz: the sale was therefore via the bank. (...) the bank had more interest in the matter proceeding with all due speed and in payment in convertible currency than in a legally enforceable third-party clause.”⁹⁵

Since 1997 Mrs C.F. Koenigs has been in contact with the Ministry of Education, Culture and Science regarding her grandfather's collection and has been laying claim to the works of art in this collection. Mrs Koenigs submitted her application for restitution, as is now being considered by the Restitutions Committee, in her capacity as heir of Franz W. Koenigs. Notarial deeds sent to the Committee with letters dated 19 December 2002 and 21 February

⁹³ Minutes of the hearing with C.F. Koenigs, and Notes 23 (appendix 24 RC).

⁹⁴ Minutes of the hearing with W.O. Koenigs (appendix 25 RC).

⁹⁵ *Idem*.

2003 show that Mrs Koenigs must be considered one of the heirs of Franz W. Koenigs since the death of her father F.F.R. Koenigs on 27 February 2000.⁹⁶

10. Six paintings that do not form part of the described 'Koenigs collection' (category 4)

Six paintings (NK 1915, NK 2075, NK 1848, NK 3577, NK 3387 and NK 2071) that are part of the claim do not form part of the history of the 'Koenigs collection' as described in this report and in the Statement. These paintings do not appear in the lists of the Koenigs collection from 1935 onwards. After the war the widow Koenigs declared neither the sale nor the loss of these works, unlike in respect of the other paintings that were sold during the war. Other than the inclusion by the Netherlands Art Property Foundation (*Stichting Nederlandsch Kunstbezit / SNK*) of the name Koenigs in the provenance data for the paintings stated below under 1 and 2,⁹⁷ no indications have been found that the paintings belonged to the Koenigs collection. Mrs Koenigs does confirm in a letter dated 7 October 2002 that these paintings do not form part of the case as described. An investigation into the provenance data has revealed the following⁹⁸:

- 1) NK 1915 (F. del Cossa, *The angel of the Annunciation*) is listed in Göring's records as a purchase in December 1940 from Rhodius Koenigs Handelmaatschappij.⁹⁹ Based on this information and the fact that the SNK gave the name Koenigs under provenance on the so-called internal declaration form, it is very possible that Koenigs sold the work on behalf of Rhodius Koenigs to Göring. In addition, it is known that there were earlier business contacts between Göring and Koenigs.¹⁰⁰ However, no further data has to date been found to indicate that this painting was the personal property of Koenigs or the property of Rhodius Koenigs.
- 2) NK 1848 (Domenico di Michelino, *The expulsion from Paradise*). The indication that this painting belonged to Koenigs' estate is a declaration form completed by the SNK on which it is stated that "Königs" sold this painting to Göring in 1942. Given that Koenigs died at the beginning of 1941, the date of the sale in any case cannot be correct. It is known that this painting was in the possession in 1933 of the German collector G.F. Reber who had lived in Switzerland since the 1920s. In the 1930s he got into financial difficulties and had to sell parts of his collection: nothing is known about the sale of this specific painting. At the start of the war Reber was working for Göring's buyer, Andreas Hofer. Given this collector's contacts it is possible that Reber was an acquaintance of Koenigs, and that Koenigs bought this painting from Reber and sold it on to Göring during the war. A second possibility – which is also distinctly possible given Reber's relationship with Göring – is that there is some confusion here and that Reber himself sold the painting to Göring in 1942.¹⁰¹

⁹⁶ Appendix 26 RC.

⁹⁷ After the war the SNK only gave the name Koenigs under provenance for these 2 paintings (NK 1905 and 1848).

⁹⁸ Appendix 27 RC.

⁹⁹ *Bundesarchiv Koblenz*, B 323, no. 574.

¹⁰⁰ See above, note 83.

¹⁰¹ Data from the investigations agency Origins Unknown (Bureau Herkomst Gezocht / BHG).

- 3) NK 2075 (copy of Rembrandt van Rijn, *Old man in a fanciful costume holding a stick*). There is a lot of uncertainty about the provenance of this painting.¹⁰² According to the SNK data, the art dealers Katz in Dieren sold this painting during the war to Miedl (Kunsthandel Goudstikker), after which it was sold on to Germany. This information is not entirely certain. The name Koenigs also appears in the information at the Ministry of Education, Culture and Science, but this seems to be based on incorrectly interpreted archive material – namely a list drawn up after the war by the Boymans Museum of 'wishes' for loans.¹⁰³ This list included a category called 'Koenigs paintings' and another category called 'not in the Koenigs collection'. The painting in question falls into the latter category, but has still been given as provenance Koenigs in the Ministry's information (the so-called ICN inventory card).¹⁰⁴ Since the painting does not appear on any of the other lists of the Koenigs collection – nor in the SNK data – it seems likely that a mistake has been made.
- 4) NK 3577 (P.P. Rubens, *Perseus and Andromeda*). It has been determined that this painting was in the possession of the collector Mannheimer in 1939. It is not known exactly when he bought this work from Koenigs, but in any case it was before 1939.¹⁰⁵
- 5) NK 3387 (A. van Ostade, *People carrying turf into a house*). It has been determined that this painting was the property of Baron Koenigswarter of Vienna in 1906. In the period between 1906 and 1936 – it is not known precisely when – he sold it to Goudstikker and the art dealers Duits of London jointly (a so-called meta-painting). During the war it passed into Göring's hands via Miedl. The name Koenigs does not appear in the provenance data for this painting.¹⁰⁶
- 6) NK 2071 (P.P. Rubens *The arrest of Christ*). There is not a single indication that this painting was part of the Koenigs collection. The Hague art dealers Parry sold it during the war to Hitler for the Führermuseum.¹⁰⁷

11. Summary: what objects are involved?

This application for restitution concerns 37 drawings that belong to the Koenigs' drawings collection as it is in 2003 in the Boijmans Van Beuningen Museum in Rotterdam, as well as 34 paintings, mainly works by Rubens, most of which are also in the Boijmans Van Beuningen Museum. *Appendix 1* to this Report contains an overview of these works of art. Based on the investigation described above, they can be divided into four categories:

1) The 37 drawings

These drawings belong to F.W. Koenigs' drawings collection that was security for a loan

¹⁰² Idem.

¹⁰³ BHG information from a document in the Rotterdam Municipal Archive, Boymans archive, no. 660.

¹⁰⁴ BHG information.

¹⁰⁵ Idem.

¹⁰⁶ Idem.

¹⁰⁷ Idem.

from September 1931 onwards. Koenigs gave these by way of payment of his debt on 2 April 1940 to the Lisser & Rosenkranz bank that thereby became sole owner of the drawings. On 9 April 1940 Lisser & Rosenkranz sold the collection to Van Beuningen. The proceeds from this sale, NLG 1 million, were presumably subject to a settlement arrangement between Lisser & Rosenkranz and Koenigs by which his debt to the bank diminished by this amount. The drawings are part of the 527 drawings that Van Beuningen, contrary to expectations, sold to the German Posse. At the end of the 1980s these 37 drawings were recovered by the Dutch authorities and became part of the NK collection.

2) The 27 paintings

In 1935 Koenigs pledged or transferred (fiduciary) ownership of these 27 paintings to Lisser & Rosenkranz in return for a loan, and these paintings were on loan at the Boymans Museum in Rotterdam until 19 April 1940. In June 1940 Koenigs himself – possibly (partly) on behalf of Lisser & Rosenkranz – sold them to the German Miedl. The selling price for the total of 31 paintings was (very probably) NLG 800,000.

Miedl sold the 27 paintings to various German buyers, including Göring. After the war they were recovered from Germany and they then became part of the NK collection.

3) *Cadmus sowing dragon's teeth* by P.P. Rubens

This painting also belonged to the Koenigs collection and was part of the security for the loan from Lisser & Rosenkranz. At the beginning of May 1940 – the exact date is not known but it was possible to date the order to purchase at 27 April 1940 – this painting was bought by a Dutch couple called De Bruijn with Jacques Goudstikker acting as intermediary. The selling price received by Lisser & Rosenkranz was NLG 11,600, and it is believed that Koenigs' debt was reduced by this amount.

Cadmus sowing dragon's teeth was owned by the De Bruijns until 1961. In 1961 it was bequeathed to the Rijksmuseum (Dutch National Museum) in Amsterdam where it became part of the national art collection.

4) Six paintings that may or may not have belonged to the Koenigs collection

Six paintings (namely: NK 1915, NK 2075, NK 1848, NK 3577, NK 3387 and NK 2071) that are part of the application for restitution were not part of the collection of which Koenigs lost ownership as described in this Report and in the Statement. It is not certain whether these paintings belonged to the estate of F.W. Koenigs.

The drawings and paintings described in this Report are part of the Dutch national art collection. With the exception of the painting *Cadmus sowing dragon's teeth*, they were recovered from Germany as 'art that illegally disappeared from the Netherlands' during the war. In 2003 the drawings and most of the paintings are on loan to the modern-day Boijmans Van Beuningen Museum in Rotterdam.

E. Campfens,
Reporter / Secretary

SURVEY
of the
CLAIMDED WORKS OF ART

CLAIMED DRAWINGS (translation of titles and information on medium and artists derived from the Origins Unknown agency's information)

Category nr.	NK nr.	Title	Medium	Artist
1	NK 3542	A hermit in an landscape	ink	Master of the Stuttgart Sketchbook
2	NK 3543	The Circumcision - verso: A barely visible drawing of a town or large church on a river	paint, ink	N.A. Mair
3	NK 3544	A seated man, perhaps Job	ink	M. Schongauer
4	NK 3545	The Virgin and Child seated on a bench	ink	copy after M. Schongauer
5	NK 3546	Head of a bald and beardless old man	ink	copy after M. Schongauer
6	NK 3547	Christ as the Man of Sorrows	ink	school of M. Schongauer
7	NK 3548	The Virgin feeding the Child at a window	ink	copy after M. Schongauer
8	NK 3549 a-b	Coat of arms with a man leaning against a stove - verso: Kneeling Madonna	ink	A. Dürer
9	NK 3550	The Holy Family	ink, paint and gold	A. Dürer
10	NK 3551	St. Barbara	ink	A. Dürer
11	NK 3552	The Virgin feeding the Child	ink	A. Dürer
12	NK 3553	Design for a coat of arms with four winged putti	ink	A. Dürer
13	NK 3554	The Three Fates spinning the thread of life	watercolour, ink	A. Dürer
14	NK 3555	Allegory of Virtue conquering Death and Fortune	watercolour, ink	after the fashion of A. Dürer
15	NK 3556	The Virgin and a swaddled Child	ink	A. Dürer
16	NK 3557	Head of an Angel	chalk	after de fashion of A. Dürer
17	NK 3558	Studies of four women and a lancer	ink	H.L. Schüpflein
18	NK 3559	The martyrdom of St. Sebastian	ink	H.L. Schüpflein
19	NK 3560	Christ carrying the cross	ink	attributed to H.L. Schüpflein
20	NK 3561	The consecration of a marriage by a bishop	chalk	in the fashion of H.L. Schüpflein
21	NK 3562	The Adoration of the Magi	ink	Anonymous
22	NK 3563	Portrait of a young Venetian woman	chalk	uncertain attribution to B. Beham
23	NK 3564	Patience: a rocky landscape with a castle and a man resting	ink	Monogrammist "B.S."
24	NK 3565	The Judgement of Paris	ink	E. Schön
25	NK 3566	The camp of the Israelites (below); Moses receiving the Ten Commandments on Mount Sinai (above)	ink	E. Schön
26	NK 3567	Standing lancer with his sword drawn	ink	V. Solis
27	NK 3568	Horseman and three lancers standing before city walls	ink	V. Solis
28	NK 3569	Angel sounding two trumpets	ink	V. Solis
29	NK 3570	Emblematical device showing a landscape with a bow and an arrow, a burning heart and anchor in the foreground, a city in the distance	ink	C. I. de Passe
30	NK 3571	Emblematical device showing a squirrel on the trunk or branch of a tree floating in a river, a city in the background	ink	C. I. de Passe
31	NK 3572	The Adoration of the Magi	ink	Ostendorfer, M.
32	NK 3573	Battle scene - 25 November 1627 Leaf from an album amicorum	ink	M. Merian I
33	NK 3574	A view of Cleves	ink	Anonymous
34	NK 3575 a-b	Portrait of a boy turned three-quarters to the left - verso: Head of a child	silverpoint, chalk, ink, paint	A. Holbein
35	NK 3576	The Virgin feeding the Child	ink	H. Baldung Grien
36	NK 3582	The Judgement of Paris - verso: The Incredulity of St. Thomas	chalk	A. Altdorfer
37	NK 3583	Portrait of Sir Charles Wingfield	chalk	H. Holbein II

CLAIMED PAINTINGS (translation of titles and information on artists derived from the Origins Unknown agency's information)

Category nr.	NK nr.	Title	Artist	Catalogue '35	remarks
1	NK 1408	Christ on the cross with Mary, Mary Magdalena and John the Evangelist	in the style of P.P. Rubens	18	Sold to Miedl, approx. June '40
2	NK 1409	Héleïne Fourment (1614-1673), the artist's second wife	follower of P.P. Rubens	36	Sold to Miedl, approx. June '40
3	NK 1546	Head of a young woman	follower of P.P. Rubens	38	Sold to Miedl, approx. June '40
4	NK 2660	Winter landscape with skaters	H. Avercamp	1	Sold to Miedl, approx. June '40
5	NK 2661	Portrait of a young man	Master of the Royal Portraits	6	Sold to Miedl, approx. June '40
6	NK 2662	Still life with herring	H. Francken II	7	Sold to Miedl, approx. June '40
7	NK 2663	Hans Höchstäter	Anonymous	8	Sold to Miedl, approx. June '40
8	NK 2664	Portrait of a man	Monogrammist H.B.	9	Sold to Miedl, approx. June '40
9	NK 2665	Diana hunting with one of her nymphs	A. van Dyck	10	Sold to Miedl, approx. June '40
10	NK 2667	St. Ivo	J. Jordaens I	13	Sold to Miedl, approx. June '40
11	NK 2668	Windmills in the evening twilight	A. van der Neer	14	Sold to Miedl, approx. June '40
12	NK 2669	Winter landscape with skaters	A. van der Neer	15	Sold to Miedl, approx. June '40
13	NK 2670	Landscape with the burning Sodom and Gomorrah	J. Patenier	16	Sold to Miedl, approx. June '40
14	NK 2671	The Last Supper	J. Ratgeb	17	Sold to Miedl, approx. June '40
15	NK 2672	Diana and Actaeon, fragment (right hand part): The Bath of Diana	P.P. Rubens	22	Sold to Miedl, approx. June '40
16	NK 2673	Hercules as victor over Discord	P.P. Rubens	23	Sold to Miedl, approx. June '40
17	NK 2674	Diana and her nymphs discover the pregnancy of Callisto	P.P. Rubens	30	Sold to Miedl, approx. June '40
18	NK 2675	Two Roman generals, possibly Romulus en Titus Tatius	P.P. Rubens	33	Sold to Miedl, approx. June '40
19	NK 2676	Landscape with a farmhouse; in the distance a view of a town	G.C. de Hondecoeter	40	Sold to Miedl, approx. June '40
20	NK 2677	Rocky coast with dark sky	copy after P.P. Rubens	42	Sold to Miedl, approx. June '40
21	NK 2678	Fire in a city at night	D. van Heil	43	Sold to Miedl, approx. June '40
22	NK 2679	Diana and Actaeon	copy after D. Teniers II, copy after P.P. Rubens		Sold to Miedl, approx. June '40
23	NK 2680	Achilles discovered among the daughters of Lycomedes	P.P. Rubens	31	Sold to Miedl, approx. June '40
24	NK 2681	Mountainous landscape with village in the distance	C.G. de Hondecoeter	44	Sold to Miedl, approx. June '40
25	NK 2682	Rocky landscape with a village	follower of H.P. Seghers	45	Sold to Miedl, approx. June '40
26	NK 2683	Diana and Actaeon	copy after Titian	46	Sold to Miedl, approx. June '40
27	NK 3382	Minerva fighting Mars	P.P. Rubens	32	Sold to Miedl, approx. June '40
28	RMA	Cadmus sowing dragon's teeth	P.P. Rubens	29	Sold to The Bruijn, beginning of May, '40
29	NK 3387	People carrying turf into a house	A. van Ostade		Ownership Koenigs unknown (see § 10)
30	NK 3577	Perseus and Andromeda	P.P. Rubens		Ownership Koenigs unknown (see § 10)
31	NK 1848	The expulsion from Paradise (fragment)	Domenico di Michelino		Ownership Koenigs unknown (see § 10)
32	NK 1915	The angel of the annunciation	F. del Cossa		Ownership Koenigs unknown (see § 10)
33	NK 2071	The arrest of Christ	P.P. Rubens		Ownership Koenigs unknown (see § 10)
34	NK 2075	Old man in fanciful costume holding a stick	copy after Rembrandt van Rijn		Ownership Koenigs unknown (see § 10)

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