

Please note that this is not an official English translation of the original. In the event of divergence in the translated version, the original Dutch text of the “Besluit van de Staatssecretaris van Onderwijs, Cultuur en Wetenschap van 4 juli 2012, nr. WJZ/420483 (10207), houdende wijziging van het Besluit adviescommissie restitutieverzoeken cultuurobjecten en Tweede Wereldoorlog in verband met evaluatie van het restitutiebeleid” will prevail.



GOVERNMENT GAZETTE

No. 14780

18 July
2012

Official publication of the Kingdom of the Netherlands since 1814.

Decree of the State Secretary of Education, Culture and Science, dated 4 July 2012, no. WJZ/420483 (10207), amending the Decree establishing the Advisory Committee on the Assessment of Restitution Applications for Items of Cultural Value and the Second World War in connection with an evaluation of the restitution policy

The State Secretary of Education, Culture and Science,

Acting in accordance with the views of the Council of Ministers;

Decrees as follows:

ARTICLE I

The Decree establishing the Advisory Committee on the Assessment of Restitution Applications for Items of Cultural Value and the Second World War is amended as follows:

A

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

d. *NK collection*: collection of recovered items of cultural value which are currently in the possession of the State of the Netherlands and have been registered in the NK inventory category at the Cultural Heritage Agency.

B

Article 2 is amended as follows:

1. In the first paragraph ‘and which are currently in the possession of the State of the Netherlands.’ is replaced by: and which:

- a. are part of the NK collection; or
- b. belong to the other possessions of the State of the Netherlands.

2. In the fourth paragraph ‘shall carry out its advisory role as referred to in the first paragraph’ is replaced by ‘shall advise on applications as referred to in the first paragraph under a submitted to the Minister before 30 June 2015,’ and a sentence is added reading as follows: Applications as referred to in Article 1 (a), submitted on or after 30 June 2015, shall be handled by the Committee in accordance with the fifth paragraph.

3. In the fifth paragraph ‘shall carry out its advisory role as referred to in the second paragraph’ is replaced by: ‘shall advise on applications as referred to in the first paragraph, under b, and the second paragraph.’



4. A sixth paragraph is added reading as follows:

6. In its advisory role, referred to in the first paragraph, the Committee attaches great importance to the circumstances of the acquisition by the possessor and the possibility that the suspect provenance was known when the item of cultural value concerned was acquired.

ARTICLE II

Applications submitted under Article 2, first paragraph, of the Decree establishing the Advisory Committee on the Assessment of Restitution Applications for Items of Cultural Value and the Second World War, with the wording that applied before this Decree came into effect, shall be handled in accordance with that decree with the wording that applied before this Decree came into effect.

ARTICLE III

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

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

The State Secretary of Education, Culture and Science, H. Zijlstra



EXPLANATORY NOTES

This amending decree gives effect to the letter from the Lower House of Parliament of 22 June 2012¹, in which it was announced that – in accordance with the advice of the Council for Culture – a means would be introduced to allow more differentiated handling of restitution applications. This possibility will be introduced in the first place for restitution applications relating to items of cultural value held by the State that do not belong to the NK collection. The handling of claims on NK objects will be brought within the new policy framework at a later stage, namely on 30 June 2015.

In the previous situation the same restitution policy applied to all claims on works of art held by the State, regardless of whether the claim was on an NK object or on an object from another part of the state collection. This latter category also includes, for example, works of art which, unlike the NK collection, were acquired through regular channels many years after the Second World War. The difference in provenance between the NK collection and the regular state collections justifies greater differentiation in the handling of claims. The restitution policy applying from 2001 was aimed first and foremost at the NK collection and – according to the Council for Culture – is less suitable for the settlement of claims on works of art from other parts of the state collection, as the ‘NK policy’ provides no scope to take the way in which a work of art was acquired into account in the outcome of a restitution case. When honouring a claim, the Restitutions Committee can only recommend the return of the work of art concerned. The question of whether an object was purchased by the State through regular channels is unimportant. Nor is there scope to consider other possible interests under the NK policy,

Unlike in the handling of claims on works of art owned by parties other than the State (municipality, province, foundation or museum foundation). In the latter cases, the Decree establishing the Restitutions Committee specifies that the Committee will advise on a claim ‘in accordance with standards of reasonableness and fairness’. In these cases, the Committee thus has more discretion and can recommend other desired solutions apart from simply returning a work of art.

The present amending decree brings the handling of restitution applications for works of art held by the State that do not belong to the NK collection into line with the handling of claims on works of art in the possession of ‘third parties’. To this end, the Restitutions Committee’s terms of reference, as set out in Article 2 of the Establishing Decree, have been amended. The amendment to this article means in the first place that claims on works of arts held by the State, other than NK objects, are assessed in accordance with the criteria applying to non-state collections. The Committee will therefore perform its advisory role with regard to these claims in accordance with standards of reasonableness and fairness. The Restitutions Committee will thus have more scope to assess facts and circumstances and the various interests involved.

Naturally the more knowledge the possessor had or could reasonably have had at the time of the acquisition of a work of art with regard to its possible suspect provenance, the less scope there is for such weighing of interests. Possible knowledge of suspect provenance is therefore an important factor. This has been stated in the sixth paragraph of Article 2.

Although the number of claims is gradually drying up more than 10 years after the establishment of the restitution policy for the NK collection, the government has decided not to set a date yet for the termination of the claim filing period. The government endorses the Council for Culture’s opinion that it would be too early to do so at present. A termination of the claim filing period can only be considered once there is international consensus on the matter, replacing the Washington Principles. The Washington Principles adopted in 1998 remain fully in force as an international standard for restitution matters. The Washington Principles were reaffirmed in 2009 at an international conference in Prague, resulting in the Terezin Declaration.

The government has nevertheless adopted the Council’s recommendation to recast the policy on claims on NK objects with effect from 30 June 2015 in such a way that from that date claims on NK objects will also be handled ‘in accordance with standards of reasonableness and fairness’. The Restitutions Committee can of course continue to take account of the specific provenance of these works of art. This will mean in practice that the fact that a certain object comes from the NK collection will weigh heavily. There is of course also scope, for example, to adopt a flexible position with regard to the burden of proof on the surviving relatives of persecuted population groups in terms of evidence of ownership and involuntary loss of possession. Such substantive aspects, which have also been included in the current NK policy, remain significant.

¹Parliamentary papers II 2011/12, 25 839, no. 41.



Implementation and administrative burden

The policy letter to which this amending decree gives effect has been agreed with the Restitutions Committee. The Committee has made known that it endorses the policy response. The change to its terms of reference concerning the advice on claims on the state collection is in line with the Committee's existing advisory role with regard to claims on items not held by the State. The Restitutions Committee can thus readily implement the present provisions.

The present amending decree does not change the existing procedure for the submission and handling of restitution applications. This Decree does not, therefore, increase the administrative burden for applicants.

*The State Secretary of Education, Culture and Science,
H. Zijlstra*