

ORIGINS UNKNOWN ADVISORY COMMITTEE
FINAL RECOMMENDATIONS

December 2004

Introduction

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

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

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

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

Duration of the term of the current liberalized restitution policy

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

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

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

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

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

Recommendation 1

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

Recommendation 2

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

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

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

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

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

Recommendation 3

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

Recommendation 4

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

Unreturnable stolen works of art

a. The current NK collection

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

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

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

Recommendation 5

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

b. The artworks auctioned at the start of the fifties

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

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

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

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

Recommendation 6

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

c. Intended recipients of monies

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

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

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

Recommendation 7

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

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

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

payment intended for the cultural charities referred to in the above paragraph according to the same allocation ratio.

Recommendation 8

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

Preserving the results of the research carried out

When at the close of 2004, the historical research into the history of the artworks recuperated after the war which now belong to the NK collection has been concluded, the results of this research will have to be preserved as comprehensively as possible and where necessary will have to be brought up to date. The committee recommends that the documentation compiled by the Origins Unknown Agency (Bureau Herkomst Gezocht), which primarily consists of the database and the individual documentation files per artwork should be lodged in the National Archives (Nationaal Archief) in the immediate vicinity of the archives of the SNK, where they should be made fully and permanently accessible to official interested parties, which is also taken to mean members of the Restitutions Committee and the Ekkart Committee, and – in due course – when the existing term of limitation of public access in connection with privacy aspects has passed, also to any other interested party. The government should take suitable measures in order to preserve this documentation and to keep it accessible.

Recommendation 9

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