

To the chairman of the Lower House
of Parliament
P.O. Box 20018
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Our reference
DCE/01/25248

Contact
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Zoetermeer
June 29th, 2001

Re: Enclosure(s)
Ekkart Committee recommendations

Direct dial number
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Introduction

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

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

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

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

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

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

Government reaction to the recommendations

General research findings

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

Private art property: basic principles

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

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

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

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

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

Forced sale

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

Repayment of sales proceeds

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

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

Proof of title

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

Period allowed for repurchasing

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

Advisory Committee for considering individual applications for restitution.

In its reaction to the recommendations of the Ekkart Committee the government has not opted for a purely legal approach to the restitution issue but rather for a more policy-based approach. It is in keeping with such a policy-oriented approach to establish an advisory committee for judging individual restitution applications, also in the light of international developments in these matters as expressed in the outcome of the conference held in Washington in 1998 for a global discussion of World War II assets (known as the "Washington Principles"). One of the principles is the establishment of national "alternative dispute resolution mechanisms for resolving ownership issues". Countries like France and the United Kingdom have implemented this principle and have established committees charged with judging individual applications for restitution.

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

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

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

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

The State Secretary for Education, Culture and Sciences.

[signed]

dr. F. van der Ploeg.
