



## Report 2003

Cases handled in 2003

Policy framework

Working method

Advice

Illustration on cover:

*Still life with kippers, oysters and smokers' accessories* by Floris van Schooten (NK 1644)

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

## Report 2003

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## Table of Contents

Foreword by the Chairman of the Restitutions Committee	5
1. Introduction	7
2. Cases handled in 2003	9
2.1 Cases where the Committee issued advice in 2003	9
2.2 Review per case	10
3. Information in connection with settled cases	24
4. Mandate and policy framework	27
4.1 Mandate	27
4.2 Government policy	28
4.3 General considerations of the Restitutions Committee	30
5. The Restitutions Committee's working method	31
5.1 Procedure	31
5.2 Investigation	32
5.3 Website	33
6. Activities	34
Appendices	37



## Foreword

We are pleased to present this Restitutions Committee Report for 2003. The Committee considered devoting part of this report to the general experiences and insights that it acquired in 2003, its second year in existence. It chose not to do so because it believes that it would be preferable to use part of the 2004 report for that purpose since 2004 is when the mandate of the current members of the Committee, who were appointed for a period of three years, will end (unless they are reappointed). The intention is that the 2004 report will also contain the results of a symposium to be held in the course of 2004.

J.M. Polak  
Chairman





# 1. Introduction

Report 2003 is the second report by the Restitutions Committee (the abbreviated name for the Advisory Committee on the Assessment of Restitution Applications for Items of Cultural Value and the Second World War). This report may be considered a continuation of Report 2002.

The Restitutions Committee started its activities on 1 January 2002. The Decree issued by the State Secretary of Education, Culture and Science (OCW), which established this independent advisory committee,<sup>1</sup> states that it is the task of the Restitutions Committee to advise the Minister, at his request, on decisions to be taken concerning individual 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. Since the current distribution of portfolios in the Dutch government makes the State Secretary of Culture responsible for restitutions policy, the Restitutions Committee advises the State Secretary at his/her request. In 2003 the office of State Secretary of Culture was held by Mr C.H.J. van Leeuwen, followed by Ms M.C. van der Laan.

The Committee met fourteen times in 2003. The seven cases on which the Committee issued advice in those meetings are covered in this Report. The advice can be found in the appendices. From the commencement of the Committee's activities until 31 December 2003 a total of sixteen applications for restitution of works of art were submitted to the Committee for advice and in that period the Committee gave its opinion on twelve of those cases. On 31 December 2003 the Committee had four cases pending. Please refer to Report 2002 for information about the five cases on which the Committee issued advice in 2002, as well as for information about the history of how the Committee came into being, the policy framework (in so far as it had been formulated prior to 2003), and the relevant (Dutch parliamentary) documents.<sup>2</sup>

In addition to the advice issued (chapter 2) and the policy framework (chapter 4), this Report also contains information that relates to cases settled in 2002 (chapter 3) and developments in the Committee's working method (chapter 5). Chapter 5 also includes more details about the deadlines for handling a case, and about the Dutch and English-language website that has been available for consultation since August 2003. Finally, Chapter 6 contains a brief account of some of the Committee's activities as part of its remit.

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<sup>1</sup> Decree establishing the Advisory Committee on the assessment of restitution applications dated 16 November 2001, see Appendix 1.

<sup>2</sup> *Report 2002* by the Restitutions Committee, which is available via the Committee Secretariat, and which can also be consulted (as a pdf file) via the Committee's website.

The members of the Restitutions Committee have not changed since the Decree establishing the Committee came into force on 22 December 2001. The Committee therefore consisted of the following members in 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.

There were also no changes in the composition of the Committee's Secretariat in 2003, which consisted therefore of E. Campfens (Committee Secretary), L. van Gorkum-Zandstra (Assistant) and H.D. Tammes (Deputy Secretary). In 2003 E. Campfens worked full-time for the Committee and L. van Gorkum-Zandstra and H.D. Tammes part-time.

## 2. Cases handled in 2003

Since the Restitutions Committee started its work in January 2002, the State Secretary of Culture has asked the Committee for advice on sixteen applications for restitution of works of art. Twelve cases were submitted to the Committee in 2002 and four in 2003. To date all the cases on which the Committee has issued advice have related to works of art from private collections.

### 2.1 Cases where the Committee issued advice in 2003

In 2003, the Restitutions Committee issued advice in respect of seven claims. Including the five cases on which the Committee issued advice in 2002, the Committee has therefore issued advice on a total of twelve cases since it came into existence. During the course of 2003 the Committee advised the State Secretary in four cases to grant the application for restitution – once on condition that a certain amount of money was paid – and in three cases to reject the claim. As in 2002, the State Secretary followed the advice in every case.

The scope of the cases settled in 2003 varied. The number of works of art concerned ranged from an application for restitution of an antique cupboard to an application for restitution of an art collection consisting of over seventy paintings and drawings. The extent of the investigation and the nature of the legal, historical and ethical dilemmas that faced the Committee also varied, and not necessarily according to the number of items involved. As in 2002, all of the settled cases in 2003 concerned works of art that belonged to the Dutch National Art Collection and were therefore in the possession of *casu quo* administered by the Dutch government. The cases are presented individually below. The full advice for each case can be found in the appendices to this report.



1. *Head of a young woman*  
by a follower of P.P. Rubens  
(NK 1546, Koenigs collection)

## 2.2 Review per case

### 1. *Portrait of a man with a greyhound* by Thomas de Keyser and *The sleeping innkeeper* after Nicolaas Maes (RC 1.4)<sup>3</sup>

On 7 April 2003 the Restitutions Committee issued advice to the State Secretary of culture regarding an application for restitution of the paintings *Portrait of a man with a greyhound* by Thomas de Keyser (NK 1407) and *The sleeping innkeeper*, a copy after Nicolaas Maes (NK 1624).<sup>4</sup> The State Secretary had submitted this application to the Committee on 2 April 2002 following a claim relating to both works that had been submitted on 22 April 2001 on behalf of the heirs of the original owner. The Inspectorate of Cultural Heritage (ICB) launched an investigation in 2001 into the provenance of the works and the circumstances of the loss of possession of these works during the war. After the Restitutions Committee was established it took over this investigation.



2. *Portrait of a man with a greyhound*  
by Thomas de Keyser (NK 1407)

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<sup>3</sup> RC numbers refer to the Restitutions Committee file number.

<sup>4</sup> NK numbers refer to the inventory number of the works in the records of the Dutch National Art Collection.

The results of the investigation leave no doubt that both paintings were part of the applicant's father-in-law's collection until the end of 1941/beginning of 1942. It is equally clear that the paintings were purchased from the owner's collection during the war by Hitler's henchmen. They were intended for the so called Führermuseum in Linz. The sale price was 38,000 guilders for the Thomas de Keyser and 78,000 guilders (or Reichsmarks – that remained unclear) for the Maes, which was still considered to be an original at that time. Details about the nature of the sale emerged from the statements made by the former owner after the war to the property recovery authorities. According to his statements, 'Dienststelle Mühlmann' had used a letter from the 'Reichskommissariat' to pressure him into selling the Thomas de Keyser and he had also been pressurised into giving up the Nicolaas Maes to Dr. Göpel, who was working for Hitler. Although he had not wanted to sell the paintings, he had ultimately given in to the pressure.

The owner was neither Jewish, nor was he a member of any other group that was persecuted during the war. For the Committee, this meant that his loss of possession of the paintings could not be assumed to be the result of an involuntary sale – as is possible under the restitutions policy for loss of possession by people who were members of a persecuted group. Further investigation into the nature of the sale proved necessary. The Committee therefore interviewed family members and other witnesses and consulted Professor J. de Vries, a retired professor of economic history, who explained the position of stockbrokers of Austrian origin – such as the owner in question – during the war. He concluded that it was perfectly reasonable to assume that someone like the person in question was blackmailed during the occupation.



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

Based on the results of this further investigation, the Committee believed that there was every reason to assume that the loss of possession was involuntary within the meaning of the restitutions policy. The Committee then considered that the case was not settled: the owner's specific situation after the war stood in the way of his wish to regain possession of the paintings. Based on the investigation of the facts and taking into account the policy framework, the Committee took the view that both paintings could be returned – but not immediately because the Committee also established that the owner had received a reasonable amount of money when he sold the paintings. In determining the extent to which that amount was reasonable the Committee had consulted with Mr Roelofs, an art dealer in Amsterdam and an expert on old masters. Based on the principle that the owner should not be unfairly enriched by restitution, the Committee believed it reasonable to ask the applicant to pay a certain amount upon restitution. The Committee therefore advised that both paintings be returned “..upon payment by those heirs of an amount equal to the current proceeds on the private sale of said paintings, to be appraised by a licensed appraiser and after deducting a 25% commission fee.” This 25 percent represented the amount that might have been paid in commission for the intermediary in the sale at the time. Whether this amount to be paid to the government should go into the public funds or be allocated to a special purpose was a matter that the Committee in its advice ultimately left expressly to the Ekkart Committee and the State Secretary.

The State Secretary followed the Committee's advice and decided on 6 May 2003 that both paintings would be returned subject to the conditions recommended by the Committee.

## 2. *Still life with kippers, oysters and smokers' accessories* by Floris van Schooten (RC 1.8)

For the Committee, this case in a way symbolises the essence of its work. Therefore the painting in question, the 17th century panel *Still life with kippers, oysters and smokers' accessories* by Floris van Schooten (NK 1644), is pictured on the front of Report 2003.

Following an application for restitution, dated 1 August 2002, from the heirs of the original owner, the State Secretary of Culture asked the Restitutions Committee for advice in a letter dated 12 September 2002. The Committee then asked the research bureau Origins Unknown Agency (BHG) to investigate and compile a report. One of the researchers for this bureau had already addressed the provenance history of the painting in some detail in a book of which she was co-author – *Betwist Bezit*.<sup>5</sup> It was therefore possible to complete the investigation in a relatively short period of time.

The provenance history of the still life by Van Schooten reveals that the owner purchased the panel around 1930 and, because of his Jewish background, left it with an acquaintance

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<sup>5</sup> *Betwist Bezit, de Stichting Nederlandsch Kunstbezit en de teruggave van roofkunst na 1945*, by Eelke Muller and Helen Schretlen, Waanders Uitgeverij, Zwolle 2002.

at the start of the war in order to keep it out of the hands of the occupier. However, in 1943 he found himself obliged to sell the panel for a fee of NLG 12,500 via an intermediary to a German or Austrian buyer. He gave the following explanation – confirmed by witnesses – to the post-war authorities: “..Seeing that, as a Jew, I had lost virtually all access to financial resources by 1942, I had no choice but to sell a still life by Floris van Schooten, which I had managed to conceal, to a German buyer through the intermediary services of Mr L. I thought I might need the proceeds to help me fly to England, but I never managed to get there.” After the liberation the still life by Van Schooten was traced in Germany and brought back to the Netherlands by the Dutch property recovery authorities. The owner subsequently tried to recover the painting from the Dutch government on as many as five occasions – in 1947, 1948, 1955, 1964 and 1973 – each time without success. In 1947 and 1948 the application failed because of the requirement that he buy back the painting for the full proceeds of the sale – an amount that he could not raise after the war. In 1955, 1964 and 1973 he did subsequently offer to buy the painting for the full proceeds, but this offer was rejected in each case. The reason given for the rejection was that the painting “..[has] now acquired a specific purpose in one of the museums” and “..that it is desirable for the painting by Van Schooten to be preserved for the State.”



4. *Still life with kippers, oysters and smokers' accessories*  
by Floris van Schooten (NK 1644)



The Restitutions Committee adopted its advice in this case at its meeting on 24 April 2003. The Committee's judgement was that the loss of possession of the painting during the war should be regarded as involuntary. In the Committee's opinion, the owner's repeated offer to buy back the painting should be seen in the light of his attempts to regain possession of the painting, and not construed as a waiver of his claim to regain possession without compensation. The Committee also considered that there were no grounds to conclude that any form of repayment of the sale price received at the time should be required in return for restitution of the painting. In this regard the Committee took into account that the owner would not have been able to freely dispose of the money that he received in 1943, since the owner was obliged to use the proceeds from the painting to finance a (failed) attempt to flee the country and he also had to pay an amount (the so-called 'Sperrung') to avoid transportation to an extermination camp. The Committee concluded with the advice that *Still life with kippers, oysters and smokers' accessories* by Floris van Schooten should be returned to the heirs of the original owner.

The State Secretary followed this advice and decided on 12 June 2003 to return the painting to the heirs of the original owner.

### 3. *The Rhine near Coblenz* by Gerard Battem (RC 1.11)

On 26 November 2002 the State Secretary of Culture asked the Restitutions Committee for advice regarding the application for restitution of the 17th century canvas *The Rhine near Coblenz* by Gerard Battem (NK 1944). In his letter dated 29 August 2002, in which he set out his claim, the applicant referred to the website of the Origins Unknown Agency (BHG). In the summary of the provenance data for the painting *The Rhine near Coblenz* he had come across '1939, Meijer in Amsterdam'. According to the applicant, the person in question was his great-aunt who had owned an extensive collection of paintings and lived in Amsterdam at least until 1939. Given that she was persecuted for being Jewish, she had fled in 1940 to Belgium, where she had been captured by the Nazis in 1943. She died in Auschwitz.

A particular problem in the investigation into the painting by Battem, which was carried out at the request of the Committee by BHG, was that the data found to date did not suffice to outline a conclusive provenance history before the return of the work to the Netherlands in 1948. It was not possible to determine whether and, if so, when any of the possible pre-war owners mentioned in the BHG overview – including Meijer, Van Breemen and the art dealers Goudstikker/Miedl – could be regarded as owners. The investigation obviously looked in more detail into the designation 'Meijer', which turned out to be based on nothing more than a note that read 'Meijer collection, Amsterdam '39' on the back of a photo of the painting in the art-historical archive of the Netherlands Institute of Art History (RKD). However, this designation could not be verified by any other source. Further investigation concerning the art collection of the applicant's great-aunt also provided no indication that the painting by Battem was at any time her property.





5. *The Rhine near Coblenz*  
by Gerard Battem (NK 1944)

Given the results of the investigation, the Restitutions Committee concluded that there was insufficient evidence to indicate a link between the collection of the applicant's great-aunt and the painting by Battem. In this regard the Committee pointed to the fact that the name Meijer was also a very common family name in Amsterdam. The Committee then took into account "...that, in restitution cases such as the present one, some leeway should be allowed with regard to the burden of proof and that the risk of the lack of proof pertaining to the collection under its guardianship, due (partly) to the period of time that has passed, should be borne by the government. However, this does not prejudice the recommendations of the Ekkart Committee that restitution can only take place if the original right of ownership is substantially plausible and if there are no contradictory indications." The Committee concluded that there was insufficient basis in this case to grant the application. The Committee's advice to the State Secretary, adopted at its meeting on 18 September 2003, was therefore to reject the application for restitution of the painting *The Rhine near Coblenz* by Battem. This was the first time that the Committee advised rejection.

In her decision of 12 November 2003 the State Secretary followed the Committee's advice and rejected the claim.

#### 4. *Still life with fish on trestle table* by A. van Beyeren (RC 1.9)

On 24 September 2002 the State Secretary of Culture asked the Restitutions Committee for advice regarding an application for restitution of the 17th century canvas *Still life with fish on a trestle table* by A. van Beyeren (NK 2483). The applicant submitted an application for restitution to the State Secretary on behalf of the heirs of her Jewish grandfather on 9 September 2002. She did so as a result of a publication regarding the provenance history of the painting on the website of the Origins Unknown Agency (BHG), in which she believed she recognised the name of her grandfather in the reference to 'M.v.d. Sluis in Rotterdam'.



6. *Still life with fish on trestle table*  
by A. van Beyeren (NK 2483)

On 3 December 1942 M.v.d. Sluis of Rotterdam sold *Still life with fish on trestle table* by Van Beyeren together with a hunting still life by Van Aelst for NLG 10,000 to the Amsterdam art dealers Douwes. After the war the painting was discovered in Düsseldorf and returned to the Netherlands because it originated from there. The applicant informed the Restitutions Committee that the circumstances in which the painting was lost were unknown, but that her grandfather sold it in 1942, probably under duress. The hunting still life by Van Aelst, which was sold in 1942 at the same time as the fish still life by Van Beyeren, was a lead for the investigation to find out more information about 'M.v.d. Sluis in Rotterdam'.

The investigation into the provenance of the Van Aelst provided information that showed that the painting was in any case in the possession of Mr 'M.Ph.J. van der Sluis', but that this M.Ph.J. van der Sluis was no relation of the applicant's grandfather. Further investigation subsequently led to the daughter of M.Ph.J. v.d. Sluis who had died in the early 1960s. She stated in a letter dated 8 July 2003 that she very clearly remembered the still life with fish by Van Beyeren, including the place where it used to hang in her parents' house in Rotterdam. She also knew the person from whom her father had acquired the painting.

The Restitutions Committee issued its advice on 18 September 2003, in which it concluded that the claim that the applicant's grandfather was the owner of *Still life with fish on trestle table* by Van Beyeren was not sustainable. Given that the applicant was not able to provide any further documentation that would have made the claim sustainable that her grandfather was the owner, the Restitutions Committee saw no reason to doubt the statement by the daughter of M.Ph.J.v.d. Sluis that the painting by Van Beyeren belonged to her father. The Committee concluded that the application for restitution of *Still life with fish on trestle table* (NK 2483) to the heirs of the applicant's grandfather could not be granted.

On 12 November 2003 the State Secretary followed the Committee's advice and rejected the claim.

#### 5. 18th century Frankfurt cupboard (RC 1.12)

On 6 December 2002 the State Secretary of Culture asked the Restitutions Committee for advice on the decision to be taken concerning the application for restitution of an 18th century so-called 'Frankfurt' cupboard (NK 986). This application was submitted to the State Secretary on behalf of the heirs of Mr and Mrs L. on 8 November 2002. In a letter to the Restitutions Committee, dated 14 January 2003, the applicant stated that she had recognised the cupboard from a photo as having previously been her (Jewish) parents' property. She added that she no longer had proof to substantiate her claim: when the family returned after the war from the camp where they had been interned there was practically nothing left of the contents of their house in Amsterdam. The applicant stated that she had heard from a fellow prisoner in Camp Westerbork that the contents of her parents' house had been seized by the Nazis and because of the many valuable items taken directly to Hitler's headquarters.

The information about the provenance history of the cupboard with registration number NK 986, as determined by the investigation carried out by the Origins Unknown Agency (BHG), starts in 1948. It proved impossible to find information about the period before then. However, the NK inventory number does suggest that the cupboard was discovered in Germany after Germany surrendered in 1945, that it was determined on the basis of the information available at the time to 'originate from the Netherlands' and that it was therefore allocated to the Netherlands. In 1948 the Netherlands Art Property Foundation (SNK) loaned the cupboard to the embassy in Berlin and then to the embassy in Bonn before it finally ended up at the Ministry of Defence in The Hague. The investigation



7. *18th century Frankfurt cupboard* (NK 986)

showed that this was the only so-called 'Frankfurt cupboard' in the NK collection.

The following is known about the events surrounding the family's loss of possession of the cupboard. The investigation turned up a document dating from 1957, in which the applicant's mother from the United States listed the property stolen from her house during the war. This list includes a 'Frankfurt cupboard'. The Committee concluded from this that the family in any case owned a Frankfurt cupboard. In order to gain a better insight into the possibility of identifying the cupboard with registration number NK 986, the Committee turned to a furniture expert. Dr. R. Baarsen, conservator at the Rijksmuseum in Amsterdam, described the cupboard as "...an example of a storage cabinet of which a large number were manufactured in the period 1690-1760" but added that the item in question had a number of unusual characteristics, which "...make it fairly exceptional and easily recognisable...". In his opinion, a picture of the cupboard – even if it showed just a small section of the cupboard that corresponded completely to NK 986 – would be enough to determine the identity of the cupboard. However, neither the applicant nor her family had any photos. Nevertheless, the applicant was able to remember a number of characteristics of the cupboard. Although not unique, these were not visible on the photo that the applicant had seen and did correspond to the cupboard registered as NK 986.

The Restitutions Committee adopted its advice at its meeting on 18 September 2003. Its conclusion was that the Frankfurt cupboard with inventory number NK 986 should be handed over to the heirs of Mr and Mrs L. who were the applicant's parents. The Committee's advice took account of the fact that it was impossible to conclusively identify the Frankfurt cupboard (NK 986) as the former property of the applicant's family, if only because the cupboard was a generic item. However, based on the results of the investigation and given the lack of evidence to the contrary, the Committee concluded that the family's right of ownership of the cupboard was sufficiently plausible. In this regard the Committee referred to its general consideration that since it was plausible that the period of time that had lapsed was partly the reason for the proof problems that had arisen, the related risk should be borne by the government.

On 11 November 2003 the State Secretary decided according to the Committee's advice to grant the request for restitution of the Frankfurt cupboard, which had been number NK 986 in the Dutch National Art Collection.

#### 6. *The Koenigs collection* (RC 1.6)

On 3 May 2002 an application was submitted to the Restitutions Committee for restitution of paintings and drawings from the former estate of F.W. Koenigs, insofar as these objects were part of the Netherlands Art Property Collection. A claim in this regard had been submitted to the State Secretary of Culture on 18 March 2002. The application for restitution concerned 33 paintings (mainly works by Rubens) and 37 drawings (mostly by German masters such as Dürer). These works belonged to the Dutch National Art Collection and most of them had been on long-term loan to the Boijmans Van Beuningen Museum in Rotterdam. Subsequently, on 26 November, an application was submitted to the Committee for restitution of the painting *Cadmus sowing dragon's teeth* by P.P. Rubens. This painting belonged to the collection at the Rijksmuseum in Amsterdam and – although it was not part of the Netherlands Art Property Collection – it was part of the National Art Collection. The Committee considered both applications at the same time.

According to the applicant, who was one of the heirs of the collector and businessman F.W. Koenigs, these drawings and paintings were eligible for restitution to the family under the relaxed restitutions policy. Koenigs had lost possession of his very extensive art collection and (most of) the works in question ultimately came into the possession of Hitler and Göring. In 1935 the F.W. Koenigs collection consisted of 2145 drawings and 47 paintings. The applicant submitted the results of her own investigation in support of her application and her counsel submitted a Statement of Case on 30 August 2002. The Restitutions Committee – as usual – initiated its own investigation. As part of this investigation,

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<sup>6</sup> For a list of the works of art that were the subject of a claim for restitution, see the advice on the Koenigs case in the Appendices. The report on the Restitutions Committee's investigation forms part of this advice. Please refer to this advice for the relevant information and a comprehensive overview of the case.



hearings were organised in March 2003, at which not only the applicant but also the son of Mr F.W. Koenigs gave evidence.<sup>7</sup>

The investigation resulted in a draft research report, which was given to the applicant for comments. This report was revised in respect of a number of points following her reaction. Finally, on 3 November 2003, the Committee adopted its advice. The report on the investigation, as drawn up by its Secretary/Observer, is an integral part of this advice.



8. *The Holy Family*  
by A. Dürer  
(NK 3550, Koenigs collection)

In its advice the Committee stated that most of the claimed works of art (28 paintings and the 37 drawings) belonged to Franz W. Koenigs' collection until 1940. However, in respect of a small group of six paintings the Committee concluded that it was uncertain whether they had ever belonged to the Koenigs collection. The application for restitution of this group of paintings therefore failed.

The Committee investigated the question of whether Koenigs' loss of possession of the other works could be considered involuntary within the meaning of the restitutions policy. Referring to the Decree establishing the Committee, the Committee applied the criterion that there had to have been involuntary loss of possession as a result of circumstances

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<sup>7</sup> On 24 March 2003 Mr F.W. Koenigs' son submitted a request to the State Secretary of the claim to be rejected. In a letter dated 8 May 2003 the State Secretary asked the Restitutions Committee to also consider this request in its advice. Please see the advice for an account and explanation of the investigation.

directly related to the Nazi regime. In its judgement this had not been the case: Koenigs had lost possession for an exclusively economic/business reason. In support of this judgement the Committee referred to the international monetary measures that already obliged Koenigs in the early 1930s – without any connection to the Nazi regime – to take out a loan at the Lisser & Rosenkranz bank and transfer ownership of his art collection to that bank as security. When it subsequently became clear on the eve of the war that he would not be able to repay this loan, the art collection therefore had to be sold. In this regard the Committee considered “.. 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.” In addition, the Committee found that Koenigs did not belong to a persecuted population group, nor could he be equated with such a group as the applicant argued. In this regard the Committee considered that “.. regarding Koenigs as a person a picture [is drawn] 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.” This meant, as regards determining whether or not the sale was involuntary, that the burden of proof was not reversed, as would have been the case for a sale by a private Jewish individual during the occupation. Finally, the conclusion that this was not an involuntary loss of estate within the meaning of the restitutions policy was also convincingly supported – according to the Committee – by the attitude of and statements by members of the Koenigs family after the war, including Koenigs’ widow.



9. *Portrait of a boy*  
by A. Holbein  
(NK 3575 - A, Koenigs collection)



10. *Head of a child*  
by A. Holbein  
(NK 3575 - B, Koenigs collection)

In her decision of 10 December 2003 the State Secretary followed the advice and rejected the application for restitution of the Koenigs collection.

Given the confusion that can arise when reference is made to 'the Koenigs claim', it is important to note that the Committee gave its advice about the works of art that belonged to the Dutch National Art Collection in 2003. Its advice does not concern the objects from the former estate of F.W. Koenigs that are in the possession of the Boijmans Van Beuningen Foundation or the Municipality of Rotterdam, or works from the Koenigs collection that ultimately ended up in Russian or other collections.

#### 7. *Elegant company making music on a terrace* by Dirk Hals (RC 1.16)

The Committee's twelfth and also last opinion of 2003 concerned a claim for restitution of the 17th century panel *Elegant company making music on a terrace* (NK 1456) by Dirk Hals, the younger brother of Frans Hals. The claim was submitted to the State Secretary of Culture in March 2003 on behalf of the heirs of the original owner, M. de Kadt. The State Secretary submitted the claim to the Committee for advice on 26 May 2003.

This painting by Dirk Hals had been part of the Dutch National Art Collection under inventory number NK 1456 since 1946. The Origins Unknown Agency (BHG) considers the painting's provenance history in the book *Betwist Bezit*.<sup>8</sup> In 2003 this panel was displayed in the Fries Museum in Leeuwarden as part of the 'Origins Unknown' exhibition. Until then it had been on long-term loan from the Netherlands Institute for Cultural Heritage (ICN)<sup>9</sup> to the Frans Hals Museum in Haarlem.

Towards the end of 1940 De Kadt lost the painting in exchange for an exit visa after he had failed in an earlier attempt to flee the country by ship. He sold the Dirk Hals via a German intermediary, a certain Schönnemann, for NLG 8,000 to the 'Dienststelle Mühlmann'. The same amount was paid to this intermediary for the exit visa. This enabled De Kadt to reach the United States via Berlin and Spain. In November 1946 the painting was found in Germany and returned to the Netherlands as 'confiscated' property.<sup>10</sup> In 1948 De Kadt attempted from his place of residence, New York, to get the work back. This attempt failed because the Netherlands Art Property Foundation (SNK) concluded that the sale had been voluntary since it had taken place on the owner's own initiative. Since then the Dirk Hals had been part of the Dutch National Art Collection.

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<sup>8</sup> *Betwist Bezit*, see note 5 above.

<sup>9</sup> The Netherlands Institute for Cultural Heritage (ICN) manages the Netherlands Art Property Collection on behalf of the Minister of Education, Culture and Science (OCW).

<sup>10</sup> A few years later a still life by Pieter Claesz, which the same owner had lost in 1940, was returned to the Netherlands. This work was put up for auction in 1952 by order of the Ministry of Finance and is therefore no longer part of the Netherlands Art Property Collection; see pp. 168-169 *Betwist Bezit*.



In its advice of 15 December 2003 the Restitutions Committee, based on the current restitutions policy, decided that the owner's loss of possession of the painting by Dirk Hals was involuntary and due to circumstances that were directly related to the Nazi regime. The Committee therefore considered the application for restitution to be sustainable. The Committee's very first consideration in this regard was that, according to government policy, a sale entered into during the occupation by a person belonging to a persecuted population group should be assumed to have been an involuntary loss of estate, unless evidence exists to the contrary. The Committee concluded that the investigation was convincing in indicating that the sale had not been voluntary. According to the Committee, this conclusion was not affected by the SNK having reached a different judgement in 1948 regarding the nature of the sale. In this connection the Committee referred to a ruling as early as 1952 by the Council for the Restoration of Rights (Jurisdiction Department) in which the Council rejected the opinion of the SNK that a seller having taken the initiative to sell was an obstacle to restitution. The Committee also concluded that there could be no question of any repayment of the proceeds of the sale in return for restitution of the painting. The proceeds of the sale had been used to pay for an exit visa and the owner had therefore not been able to freely dispose of said proceeds.

In her decision of 23 January 2004 the State Secretary followed this advice and granted the applicant's claim for restitution of *Elegant company making music on a terrace* by Dirk Hals.



11. *Elegant company making music on a terrace*  
by Dirk Hals (NK 1456)

### 3. Information in connection with settled cases

The ‘war history’ of works of art that the Restitutions Committee recommends for restitution is revealed by investigation. For understandable reasons, there is not usually any publicity given to what happens to the works once they have been returned to the original owner or his/her heirs. And of course this is outside the scope of the Committee’s investigation. The few cases where something was made public about works of art that were returned on the Committee’s advice are described below.

In May and June of 2003 a number of Dutch newspapers reported on the sale by auction of a considerable number of the more than 200 works of art from the Gutmann collection that the Restitutions Committee had recommended be returned to the heirs of F.B.E. Gutmann. One of the showpieces put up for auction was a silver jug made by Johannes Lencker I. From 1954 to 2002 this jug was on loan at the Rijksmuseum in Amsterdam, where it had an important place in the museum’s ‘Treasury’ room. At the auctions the Rijksmuseum bought the jug and a number of other objects that they had also had on long-term loan.



12. *Double-cup* by Hans Petzolt  
put up for auction by the Gutmann heirs



13. *Paschal Lamb*  
attributed to Huybrecht Beuckeleer

Recently the Restitutions Committee received the report that the heir of the original owners, who is resident in the United States, has loaned the painting *Paschal Lamb*, which is attributed to Huybrecht Beuckeleer, to the Ringling Museum in Sarasita in Florida. Before the war this painting belonged to an Austrian-Jewish family. The Dutch government returned it to the heirs of that family in 2002 on the Committee's advice. Before then it was part of the Netherlands Art Property Collection (NK-collection) and had been on show in the Bonnefantenmuseum in Maastricht.

In April 2003 the Committee advised the State Secretary to return two paintings to the heirs of the original owner in return for payment of the amount that the paintings would currently fetch in a private sale (amount to be determined by a licensed assessor) minus a commission of 25%. The paintings were *Portrait of a man with a greyhound* by Thomas de Keyser and *The sleeping innkeeper* after Nicolaas Maes. When it was sold during the war

*The sleeping innkeeper* was still considered to be an original. (See chapter 2 for a summary of the advice on case RC 1.4 and the appendices for the full advice with names deleted.) This advice, which to date is the only case where the Committee has linked restitution to payment of a sum of money, was covered by various Dutch newspapers after it was followed by the State Secretary. As far as the Committee is aware, the paintings have been returned by now under the conditions as set.

In Report 2002 the Committee reported on the painting *View of the Binnen-Amstel and the Blauwbrug*, which belonged to the NK-collection and could not be found. Although the Committee considered the application for restitution of the painting to be sustainable, it could not advise accordingly because the painting was missing. Instead, the Committee advised that compensation be paid to the heirs of the original owner in the event that the painting was not found. The State Secretary postponed his decision. When the painting was found in a Ministry of Defence building, he was still able to grant the heirs' application for restitution in March 2003.

Finally, it is also worth mentioning the 'Origins Unknown' exhibition, which was held from 18 February to 31 August inclusive in the Fries Museum in Leeuwarden. This exhibition, which was based on the questions posed by the Origins Unknown Agency (BHG) in their investigations and on the results of those investigations, used captions and photos to illustrate the war history of the works of art on display. These works had all been handed over to the occupier during the Second World War, either voluntarily or under duress, and brought back after the war to the Netherlands, where they subsequently became part of the NK-collection. The works on display included the painting *Venus in Vulcan's Smithy* after F. Boucher, which was returned to the heir of the original owner in 2002 on the advice of the Restitutions Committee. The painting *Elegant company making music on a terrace* by Dirk Hals, which the Committee advised in December 2003 should be returned, was also on display in this exhibition. In addition to works of art with a known provenance, one exhibition room was dedicated to works of art of unknown provenance. Visitors who could shed light on the provenance of these works were invited to put a note with the relevant information in a box provided for the purpose. This in any event has resulted in one restitution application. The museum initiated this exhibition because it had important works of art on loan itself from the NK-collection.

## 4. Mandate and policy framework

### 4.1 Mandate

As in 2002, the cases handled by the Committee in 2003 concerned works of art that belonged to the Dutch National Art Collection and were therefore in the possession of or administered by the Dutch government. In each case the Committee was therefore performing its main role as described in the Decree establishing the Committee (article 2 paragraph 1 in conjunction with paragraph 4):

#### Article 2

- Par. 1        There shall be a Committee whose task is to advise the Minister, at his request, on decisions to be taken concerning applications for the restitution of items of cultural value of which the original owners involuntarily lost possession due to circumstances directly related to the Nazi regime and which are currently in the possession of the State of the Netherlands.
- Par. 4        The Committee shall carry out its advisory role as referred to in the first paragraph in accordance with the relevant government policy.

As all of the cases handled to date concerned works of art that belonged to the Dutch National Art Collection, the Committee has not yet needed to carry out its role as described in Article 2 paragraph 2 in conjunction with paragraphs 3 and 5 of the Decree establishing the Committee:

#### Article 2

- Par. 2        A further task of the Committee shall be to issue an opinion, on the Minister's request, on disputes concerning the restitution of items of cultural value between the original owner who, due to circumstances directly related to the Nazi regime, involuntarily lost possession of such an item, or the owner's heirs, and the current possessor which is not the State of the Netherlands.
- Par. 3        The Minister shall only submit a request for an opinion as referred to in the second paragraph to the Committee if and when the original owner or his heirs and the current possessor of the item in question have jointly asked the Minister to do so.
- Par. 5        The Committee shall carry out its advisory role as referred to in the second paragraph in accordance with the requirements of reasonableness and fairness.



During a General Consultation on 22 November 2001 at which one of the subjects discussed was the Decree establishing the Restitutions Committee, two members of the Lower House of the Dutch Parliament asked for clarification of the requirement for approval from both parties in disputes where the State of the Netherlands is not the current possessor of the work of art in question.<sup>11</sup> Such applications for restitution (see Article 2 paragraph 3, above) are only submitted to the Committee if the current possessor also agrees with the submission. The State Secretary of Culture returned to the request for clarification of this requirement in her letter dated 5 December 2003 to the Lower House. On behalf of the government she gave the following explanation:

“The decision was taken at the time to require the approval of both parties – in line with the rules for other forms of non-judicial dispute resolution – because it is not obvious that a party that opposes the request for the Restitutions Committee to give advice will follow that advice once it is given. In the light of the heavy burden placed on the Restitutions Committee on account of its current advisory role the government does not see any reason to extend the mandate of the Restitutions Committee to include giving advice in cases where there is little chance that the advice will be followed.”

*From: Letter from the State Secretary of Education, Culture and Science (OCW), M.C. van der Laan, to the President of the Lower House of the Dutch Parliament, dated 5/12/2003, with reference DCE/03/57350 [in Dutch].*

## 4.2 Government policy

The Committee performs its main role under Article 2 paragraph 1 in conjunction with Article 2 paragraph 4 in line with the relevant government policy. Report 2002 describes this government policy and the recommendations by the Ekkart Committee, which are the basis for the policy rules that relate more specifically to the restitution of items of cultural value that were originally owned for non-commercial purposes.<sup>12</sup> In the report by the Ekkart Committee,<sup>13</sup> in which that Committee presents and explains these recommendations, it announces recommendations that will specifically focus on policy concerning the restitution of works of art that were part of the trading stock of an art dealers.

On 28 January 2003 the Ekkart Committee presented its recommendations for restitutions policy 'in respect of the restitution of works of art that were sold by art dealers placed under the management of 'Verwalters'.<sup>14</sup> On 5 December 2003 the

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<sup>11</sup> See Report 2002, section 2.7, page 18.

<sup>12</sup> See Report 2002, chapter 2, pages 7-18 and Appendices 1 to 4 to Report 2002.

<sup>13</sup> *Origins Unknown*, Recommendations Ekkart Committee, April 2001, Appendix 2 to Report 2002.

<sup>14</sup> *Recommendations for the restitution of artworks of art dealers*, Ekkart Committee, presented with an accompanying letter dated 28 January 2003; see Appendix 3.

government responded to these recommendations, which differ to some extent from the policy on private art collections,<sup>15</sup> by stating that it would adopt them in their entirety, thereby converting them into policy.<sup>16</sup> Since the Restitutions Committee, in accordance with the Decree establishing the Committee, performs its advisory role in line with government policy, the policy concerning the restitution of works of art that were part of the trading stock of an art dealers will be extremely relevant for the Committee's activities.

In 2003 the Committee did not handle any claims in respect of objects that belonged to the trading stock of an art dealers where that art dealers or its legal successors were applying for restitution of the object(s). In a letter dated 9 December 2003 the State Secretary of Culture informed the Chairman of the Restitutions Committee that from that date onwards restitution applications from art dealers would also be submitted to the Committee for advice.

Given that the Committee did not have to deal with any cases in 2003 that would have been covered by the policy on the art trade, that policy will not be discussed in any more detail here in Report 2003. The recommendations by the Ekkart Committee can be found in their entirety in the appendices to this Report.<sup>17</sup>



14. Claim exhibition paintings, drawings and tapestries, The Rijksmuseum, Amsterdam, 20 April - 9 Juni 1950.

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<sup>15</sup> For example, it is striking that the broad scope of the concept of 'nova' – as grounds for re-assessing an already settled case – is not included in this policy or in the recommendations by the Ekkart Committee that are the basis for this policy.

<sup>16</sup> In the accompanying letter dated 9 December 2003 from the State Secretary of OCW to the Chairman of the Restitutions Committee, in which the Chairman is informed about the policy, the following explanation is given: "...as you will see, the government will of course be adopting the second series of recommendations by the Ekkart Committee, although it will sharpen the recommendations in respect of a number of points in order to achieve a consistent restitutions policy for both private property and property that originates from art dealers." The sharpening relates to the government's standpoint that, where the Ekkart Committee refers to 'Jewish dealers', this should apply to all 'dealers from the persecuted population groups'.

<sup>17</sup> See Appendix 3.

### 4.3 General considerations of the Restitutions Committee

At the start of its activities in 2002 the Committee itself formulated general considerations, which it has used to date as a basis for, and has incorporated into its advice. These considerations are based on the assessment framework as set down for the Committee in the Decree establishing the Committee. Experience led the Committee to decide in 2003 to replace the term ‘other cases’ in consideration b. with ‘subsequent cases’.

#### General considerations, formulated by the Restitutions Committee

- a. The Committee has drawn up its opinion with due regard for the relevant (lines of) policy issued by the Ekkart Committee and the government.
- b. The Committee asked itself whether it is acceptable that an opinion to be issued is influenced by its potential consequences for decisions in subsequent cases. The Committee resolved that such influence cannot be accepted, save in cases where special circumstances apply, since allowing such influence would be impossible to justify to the applicant concerned.
- c. The Committee then asked itself how to deal with the circumstance that certain facts can no longer be ascertained, that certain information has been lost or has not been recovered, or that evidence can no longer be otherwise compiled. On this issue the Committee believes that, if the problems that have arisen can be attributed at least in part to the lapse of time, the associated risk should be borne by the government, save cases where exceptional circumstances apply.
- d. Finally, the Committee believes that insights and circumstances which, according to generally accepted views, have evidently changed since the Second World War should be granted the status of nova (new facts).



## 5. The Restitutions Committee's working method

Article 4 of the Decree establishing the Committee<sup>18</sup> states that each request for advice shall be considered by at least three Committee members, including in any event the Chairman or the Vice-Chairman, and that the Committee may issue further regulations pertaining to the working method to be adopted. In 2003 the Committee met a total of fourteen times regarding the cases submitted to it. The Chairman was present every time. Once or twice a Committee member was unable to attend a meeting, but there were always at least five members present. A number of additional meetings also took place between the Chairman or Committee members and the Committee Secretary to draw up draft advice. All six Committee members were involved in the assessment of the seven applications on which the Committee gave advice in 2003.

### 5.1 Procedure

The procedure for handling a case hardly changed in 2003 compared with 2002. The only change concerned an extension of the deadline. In Report 2002 it was stated in this regard that the deadline originally set by the State Secretary of 12 weeks in most cases did not allow enough time to formulate well-considered advice. Consequently a deadline of 16 weeks was set. If a particular case required it, this deadline could also be extended repeatedly, each time by a period of 16 weeks. In 2003 it became clear that it takes the Committee an average of 6 months to fully process a case. This is due not only to the increase in the number of cases that are submitted to the Committee, but also to the usually incomplete documentation accompanying applications for restitution and the resulting need for further investigation. Furthermore, applicants are always offered the opportunity of reacting to the results of this investigation and some time often elapses before they react and their reaction is fully processed. All of this led to the decision in consultation with the State Secretary in September 2003 to set the deadline in principle for fully processing a case at 32 weeks. If necessary, the Committee can extend this deadline, each time, by a further 32 weeks, in which case the Committee will then inform the State Secretary and the applicant accordingly in writing.

The increase in the number of cases submitted and the nature of the cases contributed to the decision in 2003 to have the Committee Secretariat draw up a scheme of procedures to provide professional support for the Committee in the execution of its tasks. The Secretariat received assistance in this regard from the organisational consultancy Intraventie.

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<sup>18</sup> See Appendix 1.



15. Interior of a depository, the Nationaal Archief.

## 5.2 Investigation

The investigation that forms the basis for issuing advice is carried out under the Committee's responsibility. In this regard the Committee differentiates between a basic investigation and a further investigation. The basic investigation focuses on the provenance of the work(s) of art that is (are) the subject of the claim – which is generally determined in cooperation with the Origins Unknown Agency – and on the information that the applicant provides in response to a questionnaire. If this basic investigation fails to provide sufficient clarity about a case to enable the Committee to issue advice, a further investigation will be carried out. This is in fact what usually happens (see the description in Chapter 2 of the cases handled in 2003). In this further investigation the Committee uses its members' legal, historical and art-historical expertise<sup>19</sup> and the legal knowledge and research capacities of its Secretary/Observer.<sup>20</sup> In some cases the Committee also obtains information from external specialists, which is then reported in the advice that is issued. The investigation results in a report, which is drawn up under the Committee's responsibility.

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<sup>19</sup> See the Decree establishing the Advisory Committee, Article 3, and the accompanying explanatory notes, in Appendix 1.

<sup>20</sup> See the Decree establishing the Advisory Committee, Article 5, and the accompanying explanatory notes, in Appendix 1.

### 5.3 Website

[illegible]

## 6. Activities

The work of the Restitutions Committee brings it into contact with various different organisations that are directly involved in the restitution of works of art, such as the Ministry of Education, Culture and Science (OCW), the Ekkart Committee, the Netherlands Institute for Cultural Heritage (ICN) and the Origins Unknown Agency (BHG). In addition, the Committee keeps up to date in various ways with the opinions in society regarding subjects that affect its sphere of activity. For example, members of the Committee and the Secretariat attended three symposia in 2003. The Committee is also interested in the developments abroad in the area of restitution of works of art, which is why the first contacts took place in 2003 with people and bodies that deal with this subject in other countries. The Committee also gathers information from (international) publications. An account is given below of the symposia that members of the Committee and the Secretariat attended in 2003, as well as of the contacts made with people and organisations in Great Britain that deal with the restitution of items of cultural value.

### **Symposium on Items of Cultural Value and Periods of Limitation, Christie's Amsterdam**

In May 2002 the Restitutions Committee issued the advice that the claim for restitution of works of art from the Gutmann collection should be granted. The State Secretary followed this advice and granted the claim made by the heirs of F.B.E. Gutmann. As also described in Chapter 3 of this Report, the heirs put some of the works up for auction. A number of paintings and other items from the Gutmann collection were auctioned at Christie's in Amsterdam on 13 May 2003. In advance the auction house organised a symposium on 7 May, which was attended by members of the Committee and its Secretary. Propositions were used as the basis for a panel discussion of subjects such as periods of limitation and restitution. One of the propositions concerned setting a deadline for the submission of applications for restitution.

### **International Symposium on Resolution of Cultural Property Disputes, Permanent Court of Arbitration in The Hague**

On 23 May 2003 the Permanent Court of Arbitration organised a symposium on the 'Resolution of Cultural Property Disputes' in the Peace Palace in The Hague. Representatives of the Restitutions Committee attended this international symposium. Various speakers from different backgrounds discussed the practice and theory of cultural property disputes and the possibilities for resolving such disputes. One of the four sessions was explicitly dedicated to art stolen during the Second World War and considered issues such as the problems encountered by Jewish victims of art theft when they try to get the works back. The importance of keeping good records of all provenance investigations in a

database was also stressed. In the closing session of the symposium it was proposed that the Court of Arbitration should be designated as the body that administers the law in cultural property disputes, but this proposal did not meet with unanimous approval.

### **Autumn meeting of the Art, Culture, Law Association**

On 10 October the autumn meeting of the Netherlands Art, Culture, Law Association [in Dutch: Vereniging Kunst Cultuur Recht] took place in Amsterdam, and the Committee Secretary attended. One of the speakers was Professor Norman Palmer, a member of the Spoliation Advisory Panel in England. The closing plenary discussion addressed the differences in the approach to restitution cases in Great Britain and the approach in the Netherlands and the differences between the Committees involved.

### **Becoming acquainted with the British approach**

In May 2003 representatives of the Restitutions Committee welcomed three guests from England, who worked in the area of restitution of items of cultural value. In November the Vice-Chairman and the Secretary of the Restitutions Committee together with the Secretary of the Ekkart Committee paid a return visit. The aim of these meetings was to exchange information about the approach in the two countries. For example, Great Britain has a so-called Spoliation Advisory Panel. Its tasks include assessing individual claims by owners or their heirs who lost possession during the Nazi regime (1933-1945) of items of cultural value that are now in a national collection or in the possession of another museum or gallery set up for the public good in Great Britain, as well as advising the applicant and the institution involved about a suitable solution. At the time of the visit to England in November the Panel had issued advice on one case, concerning a painting by Jan Griffier, and a number of other cases were pending.

The image shows a fragment of a Dutch 'Intern Aangifte formulier' (Internal Declaration Form). The form is titled 'Intern Aangifte formulier' and contains the following text:

Wordt opgeborgen in de kartotheek-map SCHILDERLIJEN resp. VOORWERPEN. In map Schilderijen op naam schilder, in map Voorwerpen op naam van het voorwerp.

1. Voorwerp: Picture.

2. Kunstenaar, maker, auteur: J. v. Goyen.

3. Voorstelling of titel en beschrijving: Landscape. Country-road in a landscape. To the r. at ...

Volgno.: 17953.

Dat.: 18th January 19...

SCHILDERLIJEN

Naam schilder: Goyen J.v.

Voorstelling: Landscape.

VOORWERPEN

Groep:

Naam:

16. Fragment of 'Intern Aangifte formulier' concerning a painting by Jan van Goyen.



## Appendices

1.	Decree establishing the Advisory Committee on the assessment of restitution applications dated 16 November 2001 (WJZ/2001/45374(8123))	39
2.	Advice	46
1.	Advice concerning RC 1.4	46
2.	Advice concerning RC 1.8	50
3.	Advice concerning RC 1.11	52
4.	Advice concerning RC 1.9	54
5.	Advice concerning RC 1.12	56
6.	Advice concerning RC 1.6	59
7.	Advice concerning RC 1.16	91
3.	Recommendations for the restitution of artworks of art dealers, Ekkart Committee, presented with an accompanying letter dated 28 January 2003	95





**Decree issued by the State Secretary for Education, Culture and Science, F. van der Ploeg, establishing a committee to advise the government on the restitution of items of cultural value of which the original owners involuntarily lost possession due to circumstances directly related to the Nazi regime and which are currently in the possession of the State of the Netherlands (Decree establishing the Advisory Committee on the Assessment of Restitution Applications)**

Reference  
**WJZ/2001/45374(8123)**

Zoetermeer  
16 November 2001

The State Secretary for Education, Culture and Science, F. van der Ploeg,

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

Having regard to Article 15, third paragraph, of the 1995 Public Records Act;

Herewith decrees as follows:

#### **Article 1**

For the purposes of this Decree, the terms below shall be defined as follows:

- a. the Minister: the Minister for Education, Culture and Science;
- b. the Ministry: the Ministry for Education, Culture and Science;
- c. the Committee: the Committee as referred to in Article 2 of this Decree.

#### **Article 2**

1. There shall be a Committee whose task is to advise the Minister, at his request, on decisions to be taken concerning applications for the restitution of items of cultural value of which the original owners involuntarily lost possession due to circumstances directly related to the Nazi regime and which are currently in the possession of the State of the Netherlands.
2. A further task of the Committee shall be to issue an opinion, on the Minister's request, on disputes concerning the restitution of items of cultural value between the original owner who, due to circumstances directly related to the Nazi regime, involuntarily lost possession of such an item, or the owner's heirs, and the current possessor which is not the State of the Netherlands.
3. The Minister shall only submit a request for an opinion as referred to in the second paragraph to the Committee if and when the original owner or his heirs and the current possessor of the item in question have jointly asked the Minister to do so.
4. The Committee shall carry out its advisory role as referred to in the first paragraph in accordance with the relevant government policy.
5. The Committee shall carry out its advisory role as referred to in the second paragraph in accordance with the requirements of reasonableness and fairness.

#### **Article 3**

1. The Committee shall comprise no more than 7 members, including the chairman and the deputy chairman.

2. Both the chairman and the deputy chairman shall be qualified lawyers (*meester in de rechten*).
3. The Committee shall include at least one member whose expertise on matters concerning World War II constitutes a substantial contribution to the work of the Committee.
4. The Committee shall include at least one member whose expertise on matters concerning art history and museology constitutes a substantial contribution to the work of the Committee.
5. The Minister shall appoint the chairman, the deputy chairman and the other members for a period not exceeding three years. They shall not form part of the Ministry or work in any other capacity under the responsibility of the Minister.
6. The chairman, the deputy chairman and the other members may be reappointed once at most.

#### **Article 4**

1. Each request for advice shall be considered by a group of at least three Committee members, to be selected by the chairman, with the proviso that at least the chairman or the deputy chairman shall be involved in the consideration of the request.
2. The Committee may issue further regulations pertaining to the method to be adopted.

#### **Article 5**

1. The Minister shall provide the Committee with a Committee Secretariat.
2. The Secretariat shall be headed by the Committee Secretary, who shall be a qualified lawyer (*meester in de rechten*).
3. The Secretary shall be accountable only to the Committee for the work performed for the Committee.

#### **Article 6**

1. If required for the execution of its task, the Committee may, at a meeting, hear the person that has submitted a restitution application as referred to in Article 2, first paragraph and a Ministry representative or, as the case may be, the parties whose dispute, as referred to in Article 2, second paragraph, has been submitted to the Committee for advice.
2. If required for the execution of its task, the Committee may directly approach any third parties in order to obtain information, and may invite such third parties to a meeting so as to learn their views.
3. The Minister shall ensure that all documents that the Committee needs in order to execute its task and that are in the Ministry's files are made available to the Committee in time and in full.
4. Each and every officer of the Ministry shall comply with a summons or a request issued by the Committee.
5. The restrictions relevant to the public accessibility of records as referred to in Section 1, subsection c, under 1 and 2 of the 1995 Public Records Act that the Committee needs for the execution of its task and are filed in State Archives shall not be applicable to the Committee.

#### **Article 7**

1. Every year the Committee shall report to the Ministry of Education, Culture and Science on the current situation regarding the tasks referred to in Article 2.
2. The first report shall be submitted in January 2003.

**Article 8**

The members of the Committee shall receive a fee plus reimbursement for travel and subsistence expenses in accordance with the relevant government schemes.

**Article 9**

The Committee's records shall be transferred to the archives of the Ministry's Cultural Heritage Department after dissolution of the Committee or at such earlier time as may be dictated by circumstances.

**Article 10**

From the date that this Decree takes effect, the following persons shall be appointed for a period of three years:

- a. J.M. Polak of Ede, chairman
- b. B.J Asscher of Baarn, deputy chairman
- c. Prof. J. Leyten of Nijmegen
- d. E. van Straaten of Beekbergen
- e. Prof. J.Th.M. Bank of Amsterdam
- f. H.M. Verrijn-Stuart of Amsterdam

**Article 11**

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

**Article 12**

This Decree shall be cited as the Decree establishing the Advisory Committee on the Assessment of Restitution Applications.

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

The State Secretary for Education, Culture and Science

[signed]

F. van der Ploeg

## **Explanatory notes**

### **General**

The Ekkart Committee is one of the committees established in the Netherlands since 1997 to carry out research in the extensive field of post-World War II restitutions. The Committee supervises research into the origins of the ‘NK collection’, i.e. the collection of art objects that were recovered from Germany after World War II and have been held by the State of the Netherlands since then. Given the size of the NK collection, which comprises some 4000 objects, and the nature of the research, which involves tracing transactions that took place more than fifty years ago and of which, in many cases, very few documents have survived, the Ekkart Committee will not be able to finalise its research until the end of 2002.

In addition to supervising the research into the origins of collection items, the Committee is charged with issuing recommendations to the Minister of Education, Culture and Science on the government’s restitution policy. The Committee submitted its interim recommendations to me on 26 April 2001. As stated in the accompanying letter, the Committee decided to draw up interim recommendations because in its view the urgency of policy adaptations is such, considering, among other things, the advanced age of some of the interested parties, that they should be implemented before the overall research project has been completed. In formulating its recommendations, the Committee aims to create scope for a more generous restitution policy. In its view, the strictly legal approach as laid down in the government’s policy paper of 14 July 2000 is no longer acceptable.

I sent the Cabinet’s response to these recommendations to the Speaker of the Lower House of Parliament on 29 June 2001, and a supplementary reaction of the government by letter of 16 November 2001. In its reaction to the Ekkart Committee recommendations, the government has not opted for a purely legal approach to the restitution issue, but rather for a more policy-oriented approach, also in the light of international developments in these matters, in which priority is given to moral rather than strictly legal arguments. This view was expressed, for example, in the outcome of the conference held in Washington in 1998 for a global discussion of World War II assets (known as the ‘Washington Principles’). One of these principles is the establishment of “alternative dispute resolution mechanisms for resolving ownership issues.” Countries like France and the United Kingdom have implemented this principle and have established committees charged with judging individual applications for restitution.

The establishment of an Advisory Committee in the Netherlands to consider individual applications for restitution is consistent both with the Ekkart Committee recommendations and with the international developments outlined above. The main reason for setting up an Advisory Committee was the need for the Ministry of Education, Culture and Science to decide on applications for restitution in as objective a manner as possible. Since the Minister of Education, Culture and Science, being the possessor/administrator of the NK collection, is directly concerned in the matter, the existence of an advisory committee will enhance the independence of the decision process. By letter of 7 June 2001 the parliamentary Education, Culture and Science Committee expressed its preference for an independent committee.

Based on its own experience, the Ekkart Committee currently expects that the Advisory Committee will be asked to consider 30 to 50 cases relating to objects currently held by the State. There are no indications as yet about the number of applications that might be submitted to the

Advisory Committee by private individuals, nor is it clear how many years the Committee is going to need to fulfil its tasks. The figures mentioned seem to point to a term of 3 to 5 years.

## **Explanatory notes on each article**

### **Article 2**

The main task of the Committee is to advise the Minister of Education, Culture and Science, at his request, on individual applications for restitution of items that form part of the NK collection. In addition, the Minister may also ask for advice on restitution applications that relate to items in the state collection that do not form part of the NK collection but nevertheless came into the possession of the State due to circumstances directly related to the Nazi regime.

Following the example of similar committees abroad and at the express request of the Lower House of Parliament, the Minister may also refer to the Committee disputes between private individuals, provided that the parties involved have made a request to that effect and provided that the dispute concerns an object of which the original owner lost possession involuntarily due to circumstances directly related to the Nazi regime.

The Minister will ask the Committee to give an opinion if and when he receives an application for restitution that complies with the relevant framework conditions. The Minister himself will only directly deal with applications that evidently fall outside the Committee's remit, for example because they do not relate to the restitution of items of cultural value that were transferred within the context of World War II. It has been decided to present the applications to the Committee via the Minister so as to avoid overburdening the Committee with requests that fall outside its mandate.

The Committee's advisory framework corresponds with the relevant outlines of government policy; first and foremost, the general government policy on World War II assets as laid down in the letter issued by the government on 21 March 2000. In addition, the government has issued rules that more specifically concern the restitution of items of cultural value. These rules form part of the policy the government announced to the Lower House of Parliament in its policy paper of 14 July 2000. However, the Ekkart Committee recommendations and the government's response to them have led to major amendments to that policy. The government's letters continue to be effective and, together with the Ekkart Committee recommendations and the government's response to these recommendations, constitute the policy framework within which the Advisory Committee is to operate. It goes without saying that any further recommendations from the Ekkart Committee in the future may cause the government to make adaptations to this policy framework.

The Advisory Committee will judge any application for restitution in the light of this policy framework. It may then conclude that:

- the application, while being covered by the regular legal rules, falls beyond the Advisory Committee's mandate. If so, the Advisory Committee will incorporate this in its opinion to the Minister.
- the application falls within the Advisory Committee's mandate and therefore qualifies for an opinion.

The government also wishes to make available a facility for the settlement of disputes *between* private individuals concerning an object of which the original owner lost possession involuntarily

due to circumstances directly related to the Nazi regime. In its assessment of such applications from private individuals the Advisory Committee will be guided by the principles of reasonableness and fairness.

The intervention by the Minister – since it is the Minister who refers disputes between private individuals to the Advisory Committee – is the result of pragmatic considerations. As it is the Minister who is responsible for ensuring that the Advisory Committee receives the support it needs, the Minister must be aware of the number of opinions the Advisory Committee is expected to issue.

#### **Articles 3 and 4**

The decisions about the Advisory Committee's size, composition and working method were taken with due regard to the need to balance the requirement of expertise against the requirement of efficiency in the formulation of Committee opinions.

The Advisory Committee is composed in such a way that at least the legal, historical and art history expertise required for the assessment of a restitution application is represented. The requirement that the chairman and deputy chairman be legal experts stems from the fact that in spite of the choice for a moral policy-oriented approach, legal expertise obviously remains indispensable in the assessment of the laws and regulations involved in applications for restitution. The availability of legal expertise is ensured in all cases, given that no opinion is formulated without the involvement of either the chairman or the deputy chairman.

The intention is for the Advisory Committee to comprise seven members from the time of its inception. It is up to the chairman to decide which particular members, in a specific case, should contribute to the formulation of an opinion. The involvement of a member in a particular application for restitution may influence this decision. The number of members to be involved in the opinion on a particular application will depend on the complexity of the case. As a minimum requirement, each application must be considered by the chairman or the deputy chairman and at least two other committee members.

#### **Article 5**

The Minister will provide a Committee Secretariat that is able to give the advisory committee the required level of support. The Committee Secretary must be a qualified lawyer (*meester in de rechten*). In addition, the Secretariat should be able to offer research capacity as well as the required level of administrative and organisational support. The size of the Secretariat will be variable and geared to the Advisory Committee's workload.

#### **Article 6**

It is of the utmost importance that the Advisory Committee has access to all the relevant information in drawing up its recommendations: both information from claimants and information provided by the Ministry or third parties.

I have lifted the restrictions on the public accessibility of records filed in State Archives by virtue of Article 15, fifth paragraph of the 1995 Public Archives Act so as to enable the Advisory Committee to gather all the information it needs in the shortest possible time. This obviously only concerns those records that are relevant to the execution of the Advisory Committee's task. The fact that the Committee is allowed to inspect restricted documents does not automatically open up

those documents to others as well, given that the members of the Advisory Committee themselves are bound to observe secrecy under Article 2:5 of the General Administrative Law Act regarding information that comes to their knowledge and the confidential nature of which is evident.

**Article 10**

By the time this Decree establishing the Advisory Committee was signed, the six persons referred to in this Article had already expressed their willingness to become members of the committee. This is why I have provided for their appointment in this Decree. One more member will be appointed (separately) as soon as possible.

The State Secretary for Education, Culture and Science,

[signed]

(F. van der Ploeg)



## **Advice concerning the application for restitution of NK 1407 and NK 1624 (case number RC 1.4)**

By letter of 2 April 2002 the State Secretary for Education, Culture and Science asked the Restitutions Committee for advice about the decision to be taken concerning the application, dated 22 April 2001, by Mrs I.M. L.-P. for restitution of the paintings "Portrait of a man with a greyhound" by Thomas de Keyser (NK 1407) and "The sleeping inn keeper" after Nicolaas Maes (NK 1624).

### The facts

The Inspectorate of Cultural Heritage (*Inspectie Cultuurbezit*) carried out an investigation in connection with the application for restitution. The findings of the investigation were included in a research report dated 18 March 2002, which was sent to the applicant. The term for requesting the Restitutions Committee's advice was extended several times, due to the further investigations the Committee believed were necessary to arrive at a balanced opinion. In this connection, discussions were held by or on behalf of the Committee with the applicant and her son, Mr M. L., and with Mr H.M. Cramer, son of the art dealer Cramer, who served as the intermediary in the sale of the Nicolaas Maes painting (NK 1624) during the war. Mr H.M. Cramer worked in his father's art business at the time. Other parties who were consulted include professor Dr Joh. de Vries (retired professor of economic history at Tilburg University), the *Israelitische Kultusgemeinde Wien* in Vienna, and Mr Ch. Roelofsz, art dealer in Amsterdam and expert on old masters. Additional research, finally, was carried out into the registration forms of Jewish citizens drawn up on the instruction of the Ministry of the Interior early in 1941 and currently filed at the Netherlands Institute for War Documentation (NIOD), and into personal index cards saved in the Amsterdam municipal archives.

### General considerations

The Committee has drawn up its opinion with due regard for the relevant lines of policy issued by the Ekkart Committee and the government.

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.

The Committee then asked itself how to deal with the circumstance that certain facts can no longer be traced, that certain data has been lost or has not been retrieved, 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.

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 new facts.

### Special considerations

1. The applicant acts on behalf of the heirs of her father-in-law, E.I. L., a stockbroker of Austrian descent.
2. The investigation has confirmed that L. was the owner of the above-mentioned paintings NK 1407 and NK 1624 until into the war.

3. In her letter dated 26 November 2001, the applicant indicated that L. was not a member of a persecuted segment of the population. Despite this unambiguous assertion, the Committee decided to carry out additional research in view of the fact that L. is a common Jewish surname and also in the light of other indications which suggest that L., during the war, was regarded as a person of Jewish descent. In this connection, the Committee held talks with persons involved and performed additional research into various personal data files. In the Committee's view, the results of these investigations have sufficiently confirmed that L. was not a member of a persecuted segment of the population.
4. Given the above, the applicant cannot support the admissibility of her request by referring to the assumption that L. involuntarily lost possession of the painting as a direct consequence of the Nazi regime. This means that other grounds for her request will have to be found.
5. As regards the lost property, both paintings are known to have been sold by L. himself. "The sleeping inn keeper" (NK 1624), which was believed to be an original Nicolaas Maes at the time, was sold to the German citizen Göpel at the end of 1941, via the art dealer Cramer; the painting by Thomas de Keyser (NK 1407) was sold to *Dienststelle Mühlmann* in 1942. Both paintings were purchased in order to be added to Hitler's art collection in the *Führermuseum* in Linz.
6. The primary factors relevant to establishing whether the sale was involuntary are the statement on this subject by L. himself shortly after the Second World War, and the actions he undertook to obtain restitution.
7. In that context, the following facts are in order. Declaration forms exist for both paintings, dated 12 October 1945. On each of these forms L. indicated that the transaction involved was a forced sale. The Nicolaas Maes painting, still regarded as an original at the time, was sold to the father of the above-mentioned Mr H.M. Cramer, who, according to his son's statements – which the Committee believes to be accurate – acted on behalf of the German purchaser for the *Führermuseum* in Linz, a Dr. Göpel. In his explanatory notes L. writes the following: "Dr. Göpel repeatedly tried to buy this painting from me. I refused on several occasions, but in the end I succumbed to his pressure." The De Keyser painting was sold to *Dienststelle Mühlmann* via E. Plietsch. On this transaction, L. writes: "I was put under pressure to sell the painting to Dr. Pflister [evidently he means Plietsch], who visited me and presented me with a document issued by the *Reichs-Commissariat*. Apparently, the fact that the painting was exhibited in the Boymans Museum helped the Germans find out that I was its owner."
8. Just over two months earlier, on 1 August 1945, L. had written a letter to the Netherlands Art Property Foundation (*Stichting Nederlandsch Kunstbezit*, or SNK below). In that letter, L. refers to a telephone conversation he had had a few weeks earlier about the De Keyser painting, "which I was forced to sell to the Germans and would like to regain possession of". The letter makes no mention of the Maes painting, nor has any other letter been retrieved in which he requests its restitution. However, the Committee believes it is highly likely and assumes, therefore, that L. made a similar request in respect of the Nicolaas Maes painting, as no reasonable argument can be found why he should not have made such a request, even less so because at the time the painting was still regarded as an original work by Nicolaas Maes. We cannot but assume that the true facts of the matter have become impossible to retrieve through lapse of time since 1945. The risk incurred in connection with the associated lack of evidence should be borne by the government (also see 'General considerations' above).
9. Nearly four years later, both paintings had returned to the Netherlands. The SNK wrote two letters to L.: one dated 13 September 1949 concerning the painting by De Keyser and the other dated 14 September 1949 concerning the painting by

Maes. In the first letter the SNK evidently assumes that there is no need to prove that this was actually a forced sale, given that the painting was sold to *Dienststelle Mühlmann*. Clearly, the SNK was sufficiently aware of the purchasing practices of that institution. In its second letter, however, the SNK does ask L. to demonstrate that this was a forced sale. Apparently, the SNK assumed that the sale via Cramer could have been a voluntary transaction. However, with reference to the statements issued by Cramer's son, the above-mentioned Mr H.M. Cramer, which show that Mr Göpel was a purchaser whose demands could not be easily refused, the Committee believes there is a sufficient case for the view that this, too, was in fact a forced sale. This view is corroborated by the fact that L., as the Committee has reason to believe, was not in the habit of selling items from his collection.

10. In order to gain further certainty that L. involuntarily lost possession of the paintings, the Committee asked professor Dr Joh. de Vries, retired professor of economic history, to give his view on the position of, among others, stockbrokers in the Second World War. Mr de Vries' advice suggests that unlike bank staff, who clearly felt a sense of mutual solidarity and *esprit de corps*, a stockbroker was left to his own devices and could not rely on his relatives, friends, neighbours or the church to lend a helping hand when he got into trouble. Professor De Vries concluded that if this was true for Dutch citizens, there is all the more reason to assume that it was true for persons of German or Austrian descent, and that they could easily have been blackmailed. Whether the blackmail involved *chantage amicale* would have made no difference in terms of its consequences, according to professor De Vries.
11. On the basis of the statements above and with due regard for their mutual connections, the Committee believes there is every reason to assume that both paintings were lost involuntarily due to circumstances directly related to the Nazi regime.
12. The Committee will now have to answer the question of whether the application for restitution should be regarded as settled, in which case the application would no longer be admissible. In this regard, careful consideration must be given to L.'s written response to the SNK dated 22 September 1949. In it he states, among other things, "that [he did] not intend to (...) repurchase the two paintings". Due to those statements, the file was closed and stamped: 'NO CLAIM BY PREV. OWNER'. Nevertheless, L.'s statement quoted above by no means warrants the conclusion that L. waived his right to restitution, even less so because four years earlier L. had explicitly applied for restitution of the De Keyser painting and, according to the Committee, did so in respect of the Maes painting as well. It is much more likely that the specific circumstances in which L. found himself after the war, including his financial trouble, withheld him from fulfilling his former wish to regain possession of the paintings. The application for restitution, therefore, cannot be regarded as a settled case.
13. The question that remains is whether the applicant should pay any amount in compensation for the restitution of the two paintings. On this particular matter, the Committee has made the following considerations. The Thomas de Keyser painting was sold at the time for NGL 38,000. The painting by Maes, which was still believed to be an original at the time, was sold for NLG 78,000 or German *Reichsmarks*. It is possible and, in the case of the Maes painting, even highly likely that a commission fee was deducted from these amounts; such a fee usually varied between 10 and 25%. The exact amount received by L. in the transaction, therefore, is still uncertain. Nevertheless, this does not alter the Committee's conclusion that the sale of the two works must have generated a fairly substantial amount.
14. With due regard for the guiding principle that the original owner should not be unlawfully enriched, the Committee believes it is reasonable to ask the applicant to

pay a certain amount upon restitution. Of the various methods that are conceivable for determining that amount, the Committee opts for fixing it at the current appraised value of the paintings in a private sale, to be established by a licensed appraiser, decreased by a 25% commission and subject to the Committee's view that the appraisal costs should be borne by the government.

15. The Committee will leave it to the Ekkart Committee and the State Secretary to decide whether the money thus received by the government should be earmarked for any particular purpose.

#### Conclusion

The Committee advises the State Secretary for Education, Culture and Science to return the paintings "Portrait of a man with a greyhound" by Thomas de Keyser (NK 1407) and "The sleeping inn keeper" after Nicolaas Maes (NK 1624) to the heirs of E.I. L. upon payment by those heirs of an amount equal to the current proceeds on the private sale of said paintings, to be appraised by a licensed appraiser and after deducting a 25% commission fee.

Adopted at the meeting of 7 April 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

## **Advice concerning the application for restitution of NK 1644** (case no. RC 1.8)

By letter of 12 September 2002 the State Secretary for Education, Culture and Science asked the Restitutions Committee for advice about the decision to be taken concerning the application, dated 1 August 2002, by Mrs M.P. S.-S. for restitution of the painting "Still life with kippers, oysters and smokers' accessories" by Floris van Schooten (NK 1644).

### The facts

Following the application for restitution, the Restitutions Committee applied for a copy of the research report issued by the Origins Unknown agency (BHG) dated 18 March 2002 and forwarded it to the applicant. Further investigations were conducted by or on behalf of the Committee in the archives of the Netherlands Art Property Foundation (SNK), and the applicant was asked to provide further information as well.

### General considerations

The Restitutions Committee has drawn up its opinion with due regard for the relevant lines of policy issued by the Ekkart Committee and the government.

The Restitutions 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.

The Restitutions Committee then asked itself how to deal with the circumstance that certain facts can no longer be traced, that certain data has been lost or has not been retrieved, 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.

Finally, the Restitutions 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 new facts.

### Special considerations

1. The applicant is the sole heir of her uncle, Mr O.H. B. ('B.' below), witness the statement in the letter to the Committee dated 18 December 2002 by the applicant's authorised representative, Mr R.J.C. van H., civil-law notary in Amsterdam and executor in B.'s estate.
2. According to the research report mentioned above, from approximately 1930 to 1943 "Still life with kippers, oysters and smokers' accessories" by Floris van Schooten (NK 1644) was the property of B., who was designated by the Nazi regime to be of Jewish descent.
3. As regards the loss of the Floris van Schooten painting from B.'s property we know that B., after having successfully concealed the painting from the Nazis for some time, sold the work for NLG 12,500 to a German or Austrian buyer in 1943, via a Dutch intermediary. In his letter to the SNK dated 13 October 1947, B. describes the sale as follows: "Seeing that, as a Jew, I had lost virtually all access to financial resources (...), I had no choice but to sell a still life by Floris van Schooten, which I had managed to conceal, to a German buyer through the intermediary services of Mr J. Looy. I thought I might need the proceeds to help

me fly to England, but I never managed to get there." Several statements from interested parties found in the SNK archives corroborate this description of the facts.

4. The Floris van Schooten painting was involuntarily lost from B.'s possession as a consequence of persecution by the Nazi regime. This means that the application for restitution is admissible.
5. As regards the question of whether the applicant, in respect of the restitution of this painting, should pay any amount in compensation for the proceeds on its sale, the Committee's primary consideration, in accordance with the fourth recommendation by the Ekkart Committee dated 26 April 2001, is that compensation for the proceeds on sale is only in order if and insofar as the seller ever had the free disposal of those proceeds.
6. In view of the implementation of anti-Jewish measures in the Netherlands from the end of 1941 – the so-called Liro regulations – under which Jewish citizens largely lost the power to freely dispose of their property, the Committee believes there is every reason to assume, as long as no evidence to the contrary is produced, that B. could not freely dispose of the money he was paid in 1943. Given that the proceeds on the sale, in the case in hand, were intended to finance an escape to a foreign country and that this plan failed, it is safe to assume – with due regard for the general consideration concerning the lack of further details – that in practice B. could not have freely disposed of the proceeds of NLG 12,500. Further support for this conclusion is provided by the facts that B., shortly after having sold the Floris van Schooten painting, was incarcerated in the camp at Westerbork, and that an amount (*Sperrung*) was paid, as attested by a statement made after the war and filed in the SNK archives, to prevent B. and his wife from being transported to an extermination camp. Hence, there are no grounds to conclude that any form of compensation should be paid.
7. This is not altered by the fact that B., according to the research report, tried to repurchase the painting on as many as five occasions – in 1947, 1948, 1955, 1964 and 1973 – and on three of those occasions – in 1955, 1964 and 1973 – offered the full proceeds of NLG 12,500 in return even though the Committee believes he had never had the free disposal of that amount. B's repeated offer should be seen in the light of his attempts to regain possession of the painting by way of amicable settlement, and must not be construed as a waiver of his claim to regain possession without compensation.

### Conclusion

In view of the above, the Committee advises the State Secretary for Education, Culture and Science to return the painting "Still life with kippers, oysters and smokers' accessories" (NK 1644) to B.'s heir.

Adopted at the meeting of 24 April 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

**Advice concerning the application for restitution of *The Rhine near Coblenz* by Van Battem (NK 1994)**  
(case number RC 1.11)

In the letter dated 26 November 2002, the State Secretary of Education, Culture and Science asked the Restitutions Committee for advice about the decision to be taken concerning the application by Mr S.M., of 29 August 2002, for restitution of the painting *The Rhine near Coblenz* by Van Battem, which is part of the State collection under inventory number NK 1994.

The facts

Further to the application for restitution, the Origins Unknown agency (hereinafter referred to as Bureau Herkomst Gezocht,) initiated an investigation into the facts and the results are recorded in a report issued in May 2003. On 1 July, an English translation of this report was submitted by the Restitutions Committee to the applicant, who then responded on 18 July 2003.

General considerations

The Committee has drawn up its opinion with due regard for the relevant lines of policy issued by the Ekkart Committee and the government.

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.

The Committee then asked itself how to deal with the circumstance that certain facts can no longer be traced, that certain data has been lost or has not been retrieved, 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.

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 new facts.

Special considerations:

1. The applicant is acting on behalf of the heirs of his great-aunt, J. M.-U., who was born in 1894 in Hamburg and who died in 1943 in Auschwitz.
2. The application for restitution was submitted with a reference to the website of Bureau Herkomst Gezocht, where the following is stated in the provenance overview details relating to *The Rhine near Coblenz* by Van Battem (NK 1994): '1939, collectie Meijer te Amsterdam' [1939, Meijer collection in Amsterdam]. To substantiate his request, the applicant submits that - although relevant lists no longer exist - his great-aunt owned an extensive art collection and that she lived in Amsterdam at least until 1939. Given that she was persecuted for being Jewish, she fled Amsterdam in 1940 to Belgium, where she was rounded up by the Nazis in 1943.
3. The investigation revealed that it was not possible to establish any link between the painting by Van Battem and the collection of J. M.-U. The reference to the name 'Meijer' in the provenance overview on the website of Bureau Herkomst Gezocht is based on the entry 'collection Meijer, Amsterdam '39' on the rear of a photo of the painting in the art-historical archives of the Netherlands Institute for



Art History. However, this entry cannot be verified by any other source. In addition, the name is also a very common surname in Amsterdam.

4. Neither was it possible to find an answer to the question of which of the other possible owners as featured in the above-mentioned overview from Bureau Herkomst Gezocht (Felders, Van Breemen and Goudstikker-Miedl) can be designated owners at any moment – just before or during the war. The report concludes that the data found to date cannot be used to sketch a conclusive provenance history of the painting *The Rhine near Coblenz* by Van Battem.
5. In his response, the applicant argued in the investigatory report dated 15 July 2003 that Ms M.-U. owned an art collection which was plundered during the war or was sold under duress and that it is perfectly plausible that she owned the painting by Van Battem.
6. In this respect, the Committee takes into account that, in restitution cases such as the present one, some leeway should be allowed with regard to the burden of proof and that the risk of the lack of proof pertaining to the collection under its guardianship, due (partly) to the period of time that has passed, should be borne by the government. However, this does not prejudice the recommendations of the Ekkart Committee that restitution can only take place if the original right of ownership is substantially plausible and if there are no contradictory indications.
7. The Committee is therefore of the opinion, in the matter in hand, that – given the lack of additional indications – there is an insufficient basis for granting the request for restitution to the heirs of Ms M.-U.

#### Conclusion

In view of the above, the Committee advises the state secretary of Education, Culture and Science to reject the request by Mr S. M. for restitution of the painting *The Rhine near Coblenz* by Van Battem (NK 1994).

Adopted at the meeting of 18 September 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

**Advice concerning the application for restitution of *Still life with fish on trestle table* by A. van Beyeren (NK 2483)**  
(case number RC 1.9)

By letter of 24 September 2002, the State Secretary of Education, Culture and Science asked the Restitutions Committee for advice on the decision to be taken concerning the application of Mrs S.H. H.-M., of 9 September 2002, for restitution of the painting *Still life with fish on trestle table* by A. van Beyeren (NK 2483).

The facts

Further to the application for restitution, an investigation was initiated into the facts and the results were recorded in a report dated 16 January 2003. This report was submitted by the Committee to the applicant, who then responded in the letter dated 8 April 2003. Partly on the basis of this response, the Committee decided to initiate an investigation in order to acquire certainty concerning the identity of the owner of the painting by Van Beyeren in the years between 1939 and 1942.

General considerations

The Committee has drawn up its opinion with due regard for the relevant lines of policy issued by the Ekkart Committee and the government.

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.

The Committee then asked itself how to deal with the circumstance that certain facts can no longer be traced, that certain data has been lost or has not been retrieved, 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.

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 new facts.

Special considerations:

1. The applicant is acting on behalf of the heirs of her grandfather, 'M. v.d.S.' (also referred to as 'M.'), who was held to be a Jew during the war and who was born on 26 February 1884 in Den Briel and who died in Rotterdam on 30 April 1959.
2. The applicant approached the Ministry of Education, Culture and Science as a result of a publication via the website of the Origins Unknown agency (hereinafter referred to as Bureau Herkomst Gezocht). This publication referred, in the reconstruction of events that led up to the loss of the painting by Van Beyeren from the estate, to 'M.v.d.S. in Rotterdam' and the applicant recognised this name as being that of her grandfather. In her letter to the Committee of 5 October 2002, she writes that the circumstances under which the painting was lost are unknown, but that it was probably sold under duress in 1942.
3. The investigation revealed that, between 1939 and 1942, the painting by Van Beyeren belonged to M.v.d.S. in Rotterdam. On 3 December 1942, the painting by Van Beyeren, together with a hunting still life by Van Aelst, were purchased for NLG 10,000 by art dealer Douwes from 'M.v.d.S. in Rotterdam', as stated in this art dealer's archives.

4. The investigation also revealed that it is far from certain that the owner of the two paintings - the otherwise unspecified 'M.v.d.S. in Rotterdam' – is the grandfather of the applicant (M.v.d.S.). In the archives of the Boijmans Van Beuningen museum, data was found on the basis of which it has to be assumed that, in any event, the painting by Van Aelst, which was sold at the same time as the painting by Van Beyeren, did not belong to the grandfather of the applicant (M.v.d.S.), but instead was owned by another resident of Rotterdam with the name M.v.d.S.
5. Further investigation resulted in contact with Mrs M.Th.v.d.S., daughter of M.P.J.v.d.S. who died in 1968. In her letter of 8 July 2002, Ms v.d.S. stated that, "I can remember the painting very clearly, including the place where it used to hang at 's Gravenweg 109. The only thing I know is that he [M.Ph.J.v.d.S.] purchased it from Mr J.D. Klaassen, from whom he had bought all his 17<sup>th</sup> century paintings. He was a friend of the family and we called him uncle Jaap." Given that the applicant has not been able to supply any additional documentation on the basis of which ownership of the painting by her grandfather is plausible, the Committee does not see any reason to doubt this statement by Mrs v.d.S. M.P.J.v.d.S. should therefore be designated the pre-war owner of NK 2483, *Still life with fish on trestle table* by A. van Beyeren.
6. The Committee therefore regards the request for restitution to the heirs of Mr M. v.d.S. as unsustainable.

#### Conclusion

In view of the above, the Committee advises the State Secretary of Education, Culture and Science to reject the request by Mrs S.H. H.-M. for restitution of the painting *Still life with fish on trestle table* by A. van Beyeren (NK 2483).

Adopted at the meeting of 18 September 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

**Advice concerning the application for restitution of NK 986**  
(case number RC 1.12)

By letter of 6 December 2002, the State Secretary of Education, Culture and Science asked the Restitutions Committee for advice on the decision to be taken concerning the application by Mrs S.-L., of 8 November 2002, for restitution of an 18th century Frankfurt cupboard included in the State collection under inventory number NK 986.

The facts

Further to the application for restitution, the Committee initiated an investigation into the facts. Within this framework, the Committee asked the Origins Unknown agency (hereinafter referred to as Bureau Herkomst Gezocht) to carry out an (archive) investigation into the provenance of NK 986. In addition, the Committee contacted the applicant in order to obtain additional information concerning the circumstances in which the property was lost and the characteristics of the cupboard. Moreover, the Committee requested advice from Mr Dr R. Baarsen, Head of the Department of Sculpture and Applied Art at the Rijksmuseum in Amsterdam, and the cupboard was physically examined for the characteristics referred to by the applicant.

General considerations

The Committee has drawn up its opinion with due regard for the relevant lines of policy issued by the Ekkart Committee and the government.

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.

The Committee then asked itself how to deal with the circumstance that certain facts can no longer be traced, that certain data has been lost or has not been retrieved, 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.

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 new facts.

Special considerations:

1. The applicant, resident in New Rochelle in the United States, is acting on behalf of the heirs of her parents.
2. In her letters of 8 November 2002 to the State Secretary of Education, Culture and Science and of 14 January 2003 to the Restitutions Committee, the applicant declares that she recognised the Frankfurt cupboard (NK 986) in a photo which was published on the website of the Bureau Herkomst Gezocht as being her parents' property stolen during the war.
3. The investigation revealed that the protestant family L., which was held by the Nazis to be Jewish, fled Nazi Germany in 1938 and settled on the Minervalaan in Amsterdam. Once the Germans had occupied the Netherlands and after the (natural) death of the father of the applicant, the family was interned in the Westerbork camp in 1943. Regarding the loss of the Frankfurt cupboard, the applicant states that she heard from a fellow prisoner in camp Westerbork that the contents of her parent's house had been seized by the Nazis shortly after their arrest in 1943 and had been sent on in its entirety to Germany. The family

survived the war in the Theresiënstadt camp and emigrated to the United States in 1947.

4. The applicant stated that she did not have any proof to substantiate her claim. However, during the investigation in the archives, a document from 1957 was found in which the mother of the applicant specifies the goods stolen during the war from the residence on the Minervalaan. This list includes a cupboard which complies with the description of the Frankfurt cupboard (NK 986).
5. The Committee therefore assumes that the family L. involuntarily lost a Frankfurt cupboard during the war as a consequence of persecution by the Nazi regime.
6. The investigatory report by the Bureau Herkomst Gezocht shows that nothing is known (any more) about the pre-1948 provenance history of the cupboard included in the State collection under number NK 986. In 1948, the Netherlands Art Property Foundation (Stichting Nederlandsch Kunstbezit / SNK), which is the Dutch authority involved in the recovery of the works of art removed from the Netherlands during the war, gave the cupboard in loan to the embassy in Berlin and it then ended up at the embassy in Bonn in November 1950. Later, the cupboard was returned to the Netherlands and in 2002 was being used at a ministry in The Hague.
7. In the light of the information provided by the applicant, it can be determined that there are no indications that contradict the fact that the cupboard included in the State collection (NK 986) is the same Frankfurt cupboard stolen from the family L.
8. In order to gain a better insight into the possibility of identifying the cupboard, the Committee consulted a furniture expert. Mr Dr. R. Baarsen, Head of the Department of Sculpture and Applied Art at the Rijksmuseum in Amsterdam, provided the following description of the Frankfurt cupboard (NK 986): "This is an example of a storage cabinet of which a large number were manufactured in the period 1690-1760. (...) However, the item in question has a number of unusual characteristics which make it fairly exceptional and easily recognisable, (...) Therefore, it can fittingly be stated that if an illustration exists which shows even just a small section of the cupboard that corresponds completely with the preserved item of furniture, the identification can be regarded as certain".
9. Neither the applicant nor her family have any photos of the cupboard (any more). The applicant was, however, able to remember characteristics of the cupboard, such as woodworm damage and the type of interior of the cupboard which, although not unique, are not visible on the photo published and which correspond to item NK 986.
10. On the grounds of the above, the Committee concludes that the right of ownership of Mr and Mrs L. of NK 986 is sufficiently plausible and that there are no indications that contradict this. Now that, to date, no other application for restitution of NK 986 has been submitted and the Committee regards the chance that a conflicting claim is submitted in the future to be negligible, the application for restitution can be granted, on the basis of the involuntary loss of the property during the war. This conclusion does not change the fact that a conclusive identification of the Frankfurt cupboard (NK 986) as the former property of the family L. is impossible, if only because, as shown by consideration 8, it is a genus case. In this context, moreover, we would like to refer to that stated in the general considerations, namely that it is plausible that the period of time that has lapsed is partly the reason for the proof problems that have arisen, and that the related risk should therefore be borne by the government.

Conclusion

In view of the above, the Committee advises the State Secretary of Education, Culture and Science to hand over the Frankfurt cupboard, which is part of the State collection under inventory number NK 986, to the heirs of P. and E.R. L.-S.

Adopted at the meeting of 18 September 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

***Advice concerning the application by Christine Koenigs for restitution of the Koenigs collection<sup>1</sup>***

***(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.

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<sup>1</sup> 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 collection<sup>1</sup>. 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.<sup>2</sup> 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 2145<sup>3</sup> 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

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<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> 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).<sup>4</sup> 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.’<sup>5</sup>

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## 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.<sup>6</sup> 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.<sup>7</sup> This does not mean that Koenigs avoided (business) contacts with German rulers<sup>8</sup> - 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 regime<sup>9</sup> - and was even supposed to have ran a spy network out of

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

<sup>5</sup> Statement, p. 3, point 3.

<sup>6</sup> 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).

<sup>7</sup> 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).

<sup>8</sup> See below, paragraphs 6 and 7.

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



Rhodium Koenigs -<sup>10</sup> which is said to have caused problems in his relationship with Koenigs.<sup>11</sup> N.V. Rhodium 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.<sup>12</sup>

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.<sup>13</sup>

On 6 May 1941 Koenigs died in a train accident in Cologne.<sup>14</sup>

## 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,<sup>15</sup> which had major consequences for the Rhodium 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 Lissers & 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:

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<sup>10</sup> 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 *Rhodium Koenigs Handelsmaatschappij* [...] was entirely covered up." Cellastic was not investigated further.

<sup>11</sup> 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. Rhodium 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 *Rhodium 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, 'Rhodium Koenigs' file, NBI 144662.

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

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

<sup>14</sup> Mrs Koenigs claims that Koenigs was murdered: this has never been proven.

<sup>15</sup> 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.]<sup>16</sup>

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,<sup>17</sup> 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),<sup>18</sup> and on information from Mr W.O. Koenigs, who supposedly is still in possession of parts of the agreement.<sup>19</sup> Based on this information, the following can be assumed:

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

<sup>17</sup> Information from W.O. Koenigs (appendix 25 RC).

<sup>18</sup> 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.

<sup>19</sup> 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.<sup>20</sup> 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 Koenigs<sup>21</sup> who had previously loaned large parts of his collection to the museum and had good contacts with Director Hannema.<sup>22</sup>

The 'Koenigs collection as in Boymans' varied somewhat in size between 1935 and 1940:<sup>23</sup> 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.<sup>24</sup>

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 Lisser & Rosenkranz by the autumn of 1939 is not known because of a lack of information about the settlement between Koenigs and Lisser & 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.<sup>25</sup> The Statement assumes a debt of 1.6 or 1.7 million.<sup>26</sup> Leaving aside the exact amount of the debt, in the autumn of

<sup>20</sup> 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.

<sup>21</sup> Elen, op. cit., p. 13.

<sup>22</sup> See the correspondence between Mr and Mrs Koenigs and Hannema in the Boymans archive.

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

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

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

<sup>26</sup> 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”.<sup>27</sup> 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 19<sup>th</sup> 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.”<sup>28</sup>

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.”<sup>29</sup> Kramarsky was at that time resident

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

<sup>28</sup> 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).

<sup>29</sup> Supra, note 24.

in Lisbon, having fled the Netherlands in November 1939.<sup>30</sup>

### **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.”<sup>31</sup>

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 ....”<sup>32</sup>

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.”<sup>33</sup>

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<sup>30</sup> 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).

<sup>31</sup> 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.

<sup>32</sup> Boymans archive (appendix 6 RC), EC italics.

<sup>33</sup> 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.”<sup>34</sup>

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.”<sup>35</sup>

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,<sup>36</sup> and other interested parties were kept away.<sup>37</sup> Koenigs, Lisser & Rosenkranz, Hannema and Van Beuningen were all directly involved in these negotiations, which took place between 2 and 9 April 1940.<sup>38</sup> 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 (...)”<sup>39</sup>

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<sup>34</sup> Idem.

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

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

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

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

<sup>39</sup> 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.<sup>40</sup> Koenigs apparently included the twelve paintings in the sale to ensure that the sale went ahead.<sup>41</sup>

Given the mutual congratulations<sup>42</sup> 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'.<sup>43</sup>

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.<sup>44</sup>

### **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.<sup>45</sup> 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.<sup>46</sup>

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."<sup>47</sup>

<sup>40</sup> 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.

<sup>41</sup> 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.

<sup>42</sup> 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).

<sup>43</sup> 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'.

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

<sup>45</sup> 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).

<sup>46</sup> Koenigs (1997), 240.

<sup>47</sup> 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 DDR<sup>48</sup> as art that had unlawfully disappeared from the Netherlands,<sup>49</sup> 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 drawings<sup>50</sup> 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:<sup>51</sup>

“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.”<sup>52</sup>

### **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

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

<sup>49</sup> 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').

<sup>50</sup> 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.

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

<sup>52</sup> 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.<sup>53</sup>

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,<sup>54</sup> 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.<sup>55</sup> 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.<sup>56</sup> 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)<sup>57</sup>

'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

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

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

<sup>55</sup> 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.

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

<sup>57</sup> 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)<sup>58</sup>

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.’*”<sup>59</sup>

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.<sup>60</sup>

“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)<sup>61</sup>

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.

<sup>58</sup> 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).

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

<sup>60</sup> 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).

<sup>61</sup> 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..."<sup>62</sup>

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."<sup>63</sup>

The information submitted by the applicant<sup>64</sup> 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.<sup>65</sup>

### 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.<sup>66</sup>

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

<sup>62</sup> SNK, 714 (Göring file).

<sup>63</sup> Idem.

<sup>64</sup> 32 Reaction, 23 Statement (appendix 24 RC).

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

<sup>66</sup> See the overview attached as appendix.

NLG 197,000.<sup>67</sup> 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)<sup>68</sup> 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.<sup>69</sup> 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"<sup>70</sup>.

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.<sup>71</sup> 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.<sup>72</sup> 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

<sup>67</sup> Supra, note 61 (appendix 12 RC).

<sup>68</sup> Date from information provided by Prof. J.Th.M. Bank.

<sup>69</sup> 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.

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

<sup>71</sup> 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).

<sup>72</sup> '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.”<sup>73</sup>

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 1946<sup>74</sup> 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:

<sup>73</sup> 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).

<sup>74</sup> 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.”<sup>75</sup>

## 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.”<sup>76</sup>

- 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.<sup>77</sup>

- 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.<sup>78</sup>

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

<sup>76</sup> Boymans archive (appendix 18 RC).

<sup>77</sup> 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).

<sup>78</sup> 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.<sup>79</sup>

- 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.”<sup>80</sup>

- 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”.<sup>81</sup>

### 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 <sup>82</sup>	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.

<sup>79</sup> Idem (appendix 20 RC).

<sup>80</sup> Idem (appendix 21 RC).

<sup>81</sup> See supra note 52 (appendix 8 RC).

<sup>82</sup> 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,<sup>83</sup> and shortly afterwards (in September 1938) these paintings were recorded as the property of Lisser & Rosenkranz.<sup>84</sup> These paintings were so-called *Entartete Kunst*<sup>85</sup> 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.

<sup>83</sup> *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).

<sup>84</sup> 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).

<sup>85</sup> 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.<sup>86</sup>

	1940	1943	1947
<b>Old paintings (up to ca. 1750)</b>	100	600	180
<b>Romantic School (1750 to ca. 1860)</b>	100	800	240
<b>Modern Masters (Hague School, etc.)</b>	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.”<sup>87</sup>

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.”<sup>88</sup>

<sup>86</sup> 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).

<sup>87</sup> SNK archive, 714, (appendix 22 RC).

<sup>88</sup> 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”.<sup>89</sup> 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”<sup>90</sup> and on the Military Powers Ordinance of 13 June 1945.<sup>91</sup>

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:<sup>92</sup>

“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).

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

<sup>90</sup> 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.

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

<sup>92</sup> 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.”<sup>93</sup>

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”<sup>94</sup>

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.”<sup>95</sup>

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

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

<sup>94</sup> Minutes of the hearing with W.O. Koenigs (appendix 25 RC).

<sup>95</sup> *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.<sup>96</sup>

#### 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,<sup>97</sup> 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 following<sup>98</sup>:

- 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 Handelsmaatschappij.<sup>99</sup> 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.<sup>100</sup> 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.<sup>101</sup>

<sup>96</sup> Appendix 26 RC.

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

<sup>98</sup> Appendix 27 RC.

<sup>99</sup> Bundesarchiv Koblenz, B 323, no. 574.

<sup>100</sup> See above, note 83.

<sup>101</sup> 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.<sup>102</sup> 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.<sup>103</sup> 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).<sup>104</sup> 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.<sup>105</sup>
- 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.<sup>106</sup>
- 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.<sup>107</sup>

## 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

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<sup>102</sup> Idem.

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

<sup>104</sup> BHG information.

<sup>105</sup> Idem.

<sup>106</sup> Idem.

<sup>107</sup> 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.

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E. Campfens,  
Reporter / Secretary

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. Schäufelein
18	NK 3559	The martyrdom of St. Sebastian	ink	H.L. Schäufelein
19	NK 3560	Christ carrying the cross	ink	attributed to H.L. Schäufelein
20	NK 3561	The consecration of a marriage by a bishop	chalk	in the fashion of H.L. Schäufelein
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	Embletical 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	Embletical 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	Hélène 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 Höchstätter	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 Oostade		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)



**Advice concerning the application for restitution of *Elegant company making music on a terrace* by Dirk Hals (NK 1456)**

(case number RC 1.16)

In the letter dated 26 May 2003, the State Secretary of Education, Culture and Science asked the Restitutions Committee for advice on the decision to be taken concerning the application of Mr. K., of 31 March 2003, for restitution of the painting *Elegant company making music on a terrace* by Dirk Hals (NK 1456).

The facts

Further to the application for restitution, the Committee initiated an investigation into the facts and the results were recorded in a report dated 25 August 2003 by the Origins Unknown agency. This report was submitted to the applicant, who then responded in the letter dated 30 October 2003.

General considerations

- a. The Committee has drawn up its opinion with due regard for the relevant (lines of) policy issued by the Ekkart Committee and the government.
- b. The Committee asked itself whether it is acceptable that an opinion to be issued is influenced by its potential consequences for decisions in subsequent cases. The Committee resolved that such influence cannot be accepted, save in cases where special circumstances apply, since allowing such influence would be impossible to justify to the applicant concerned.
- c. The Committee then asked itself how to deal with the circumstance that certain facts can no longer be ascertained, that certain information has been lost or has not been recovered, or that evidence can no longer be otherwise compiled. On this issue the Committee believes that, if the problems that have arisen can be attributed at least in part to the lapse of time, the associated risk should be borne by the government, save cases where exceptional circumstances apply.
- d. Finally, the Committee believes that insights and circumstances that have evidently changed since the Second World War should, according to generally accepted views, be granted the status of nova (new facts).

Special considerations:

1. Mr. K. has applied for restitution of *Elegant company making music on a terrace* by Dirk Hals (NK 1456) on behalf of the joint heirs of his father, Mr K. sr., who was born in ... and died in ... .

5. In 1948 K. sr., who was now living in New York, submitted an application for restitution to the Netherlands Art Property Foundation (SNK) but without success. The SNK decided that the painting was not eligible for restitution since the sale had to be considered voluntary. They based their reasoning on the argument that the initiative to sell the painting had come from K. sr. The Dirk Hals therefore became part of the NK collection of works of art administered by the government.
6. The Committee's very first consideration in determining the nature of the loss of estate was that the government policy that applies to works in the Dutch national art collection assumes an involuntary sale, insofar as the sale was entered into during the occupation by a person belonging to a persecuted population group, unless there is evidence to the contrary.
7. In this case, a declaration of the sale of *Elegant company making music on a terrace* was made in October 1945 by Mr Mensing, an employee of the Frederik Muller auction rooms and also the brother-in-law of K. sr., in which he indicated that the sale was 'voluntary'. On this subject the applicant states the following in his letter of 30 October 2003:

*"Given the precarious situation in which Jews found themselves, my father was understandably extremely safety-conscious and he said nothing about his attempts to flee to anyone who did not need to be informed. That is why he did not inform his brother-in-law B. Mensing about the actual contents of the (failed) transaction involving the Dirk Hals. I was also not aware of any attempt to obtain an exit visa until my father had finally secured one for us both. Neither my father, nor Schönnemann, nor Mühlmann had an interest – obviously for very different reasons – in informing Mensing about the actual course of events. That is why Mensing was able to state out of ignorance that the sale of the Dirk Hals was voluntary."*

The Committee considers this statement by the applicant to be sustainable. After all, given his earlier attempt to flee the country, it is very unlikely that K. sr. put paintings up for auction with any aim other than to finance a new attempt to flee. This was also the SNK's original point of view – as the investigation showed – before the application for restitution was rejected. The Committee therefore concludes that K. sr. entered into the sale under pressure from the buyer *and* from the circumstances that forced him to secure an exit visa and flee the country. This conclusion is not affected by the SNK having found differently in 1948. In this context, one can rightly point, as the applicant does, to the rejection by the Council for the Restoration of Rights as early as 1952 of the SNK's use immediately after the war of the concept of a 'voluntary sale' whereby the seller having taken the initiative to sell would be an obstacle to the restoration of rights – i.e. restitution. The Council rejects this interpretation as incorrect (Jurisdiction Department of the Council for the Restitution of Rights, Gutmann case of 1/7/52).

8. In view of the above, the Committee finds that the loss of the painting by Dirk Hals from the K. sr. estate was involuntary and due to circumstances that were directly connected to the Nazi regime. The Committee considers the application for restitution to be sustainable.
9. In relation to the question of possible reimbursement of the proceeds of the sale in return for the restitution of the painting, the Committee bases its opinion on the fourth recommendation made by the Ekkart Committee on 26 April 2001, namely that there can only be a question of repayment of sale proceeds if and insofar as the seller was actually able to freely dispose of said proceeds. Since the proceeds from the sale in question were used to pay for an exit visa, it may be assumed that K. sr. was not able to freely dispose of these proceeds.

### Conclusion

The Restitutions Committee advises the State Secretary of Education, Culture and Science to return the painting *Elegant company making music on a terrace* by Dirk Hals (NK 1456) to the heirs of K. sr.

Adopted at the meeting of 15 December 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





Supervisory Committee Origins Unknown  
Prins Willem-Alexanderhof 20  
2595 BE The Hague

## Introduction

In 2001, the Origins Unknown Supervisory Committee presented the government at the time with the first in a series of recommendations on the restitution of artworks which had been recuperated from Germany by the Netherlands Art Property Foundation (SNK) and which are currently held in Dutch State custody. These recommendations pertained to the art property of private owners lost during the war due to theft, confiscation or forced sale.

These recommendations concerning works of art from art trade stock have been formulated in such a manner that they are entirely attuned to the preceding recommendations with regard to private art property and the government policy which has been laid down with regard to the restitution of private art property.

After determining the government standpoint with regard to the first series of recommendations, the supervisory committee, consisting of Mrs H. d'Ancona, R. Naftaniel and the undersigned, started preparing the second series of recommendations. In the Spring of 2002, it was decided – in consultation with the then Secretary of State - to postpone the issue of these recommendations in connection with the elections and the change of government. In the end, the recommendations with regard to the art trade were presented in January 2003.\*

Once again, we employed the results of the provenance research into individual works of art that is executed under the supervision of our committee by the Origins Unknown Project Agency and that of the historical research into the restitution in the years following the war, which is carried out by two members of the same agency and which was published in November 2002, as the point of departure for our recommendations. Four interim reports have already resulted from the provenance research and these include information on all the paintings and some of the other works of art. Finishing the research into the remaining recuperated artworks is taking longer than initially anticipated, particularly as a result of the fact that more relevant sources of information have been accessed which are making a considerable contribution to a more comprehensive research result. The basic research into the NK artworks will be wrapped up in 2003 and will be followed by our committee's final report. The final report will contain concluding recommendations pertaining to aspects which have not been dealt with in the recommendations up

However, we would now like to present you with a cohesive series of recommendations pertaining to the points of departure to be used with regard to the restitution of works of art lost by art dealers during the war.

On behalf of the Origins Unknown Supervisory Committee

R.E.O. Ekkart, Chairman

\* In February Secretary of State C. van Leeuwen notified us that the government's response would have to wait until after the appointment of a new cabinet.

## Recommendations

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

# Recommendations for the restitution of artworks of art dealers

## 1. Introduction

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

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

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

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

## 2. General points of departure

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

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



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

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

*Recommendation 1:*

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

*Recommendation 2:*

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

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

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

*Recommendation 3:*

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

### **4. Theft and confiscation**

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

*Recommendation 4:*

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

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

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

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

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

*Recommendation 5:*

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

## **6. Involuntary sale**

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

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

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

*Recommendation 6:*

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

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

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