

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



**Report 2011**

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# Report 2011

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Cover:  
Miniature slippers, glazed pottery with polychrome decor (NK 302 A-B).

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Foreword

The Decree Establishing the Restitutions Committee was signed on 16 November 2001, and the Committee started its work in January 2002. The general expectation at that time was that within a few years there would be nothing left to do. That expectation has proved to be incorrect. Now, ten years later, there are still eighteen cases awaiting a recommendation from the Committee. Seven of them were initiated in 2011. As a result of the museum investigation, among other things, the end of the Committee’s work is not yet in sight.

‘Shouldn’t this just come to an end?’ This is something that Committee members and staff often hear when they talk to other people about the Committee’s activities. ‘Indeed it should,’ is my response, but then I add straight away that it has to be done with due regard for the legitimate interests of those who believe they have a claim on art that was stolen during the Second World War.

The looting of art has always been with us. We see a growing debate about disputed transfers of works of art from centuries-old Egyptian or Inca settlements to European or American archeological museums. This discussion is also informed by acquisitions of items of a cultural nature that could have come from recent thefts or looting, for example from areas in which there is no effective government authority. In this context it is noted at the end of this annual report that the theme with which the Committee is concerned appears to be becoming broader. However, the Committee has no direct involvement with that under its current task description. The framework within which the Committee works is a structural approach to finding solutions to problems associated with the restitution of art looted during the Second World War. And over the last ten years this is what the Restitutions Committee has done its level best to achieve. The Committee is very well aware that it can only discharge the responsibility for its tasks with the expert and enthusiastic support of all the staff in its secretariat.

Disclaimer

This English version is a translation of the original Dutch report ‘Verslag 2011’, in case of possible differences in translation we refer you to the Dutch report.

Frequently used abbreviations:

|               |  |
|---------------|--|
| BHG           | Origins Unknown Agency   |
| Bureau Hergo  | Bureau for Restoration Payments and the Restoration of Property                    |
| ICN           | Netherlands Institute for Cultural Heritage (now called: Cultural Heritage Agency) |
| NA            | National Archive   |
| NBI           | Netherlands Property Administration Institute                                      |
| NK-collection | Netherlands Art Property Collection  |
| OCW           | Education, Culture and Science   |
| RCE           | Cultural Heritage Agency   |
| RKD           | Netherlands Institute for Art History  |
| SNK           | Netherlands Art Property Foundation  |

W.J.M. Davids  
Chairman

## 1. Introduction

The Advisory Committee on the Assessment of Restitution Applications for Items of Cultural Value and the Second World War (the Restitutions Committee) gives its advice about applications for the restitution of looted art. Today, works of art that were separated from their original owners as a consequence of the Nazi regime may be in the possession of the Dutch State (National Art Collection), a provincial/local authority, a foundation or a private individual. A claim on such a work of art can be submitted to the Restitutions Committee for investigation and a recommendation, as a type of alternative dispute settlement.

The Restitutions Committee was established over ten years ago by the State Secretary for Education, Culture and Science (OCW) in a decree of 16 November 2001.<sup>1</sup> This is the Committee's tenth annual report, and to mark the tenth anniversary it addresses not just what happened in 2011. There is also a brief review of the developments in the work in general and in the procedures used by the Committee. Reference will be made to previous annual reports where necessary. They can be consulted on the Committee's website or requested in printed form from the secretariat.<sup>2</sup>

This introduction is followed in Chapter 2 by a brief description of the Restitutions Committee's history and the names of its members and the secretariat staff. Chapter 3 discusses the Committee's advisory tasks and the procedures it employs. Chapter 4 addresses the year under review with an account of the activities carried out, with the emphasis on the national and international contacts that have been established and maintained. A separate section is devoted to the study of museum acquisitions (*Onderzoek Museale Verwervingen*), which is currently being supervised by the Netherlands Museums Association. The coordinators of this research project kindly provided the Committee with a contribution to the present annual report in the form of an overview of the study's starting points, objectives and progress. Chapter 5 explains a case about which the Committee gave a recommendation in 2011. The purpose is to give an insight – on the basis of selected illustrations and reproductions of records – into the investigation work that Committee conducts. A quantitative overview of the recommendations made from 2002 to 2011 inclusive is presented in Chapter 6. After the conclusion in Chapter 7, this annual report ends with the full text of all the recommendations that the Committee made to the Minister of OCW in 2011.

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<sup>1</sup> 'Decree Establishing the Advisory Committee on the Assessment of Restitution Applications for Items of Cultural Value and the Second World War', 16 November 2001. Hereafter referred to as the Decree Establishing the Restitutions Committee. Appendix 1.

<sup>2</sup> A detailed description of the history and policy framework of the Restitutions Committee is given in the 2002 and 2005 annual reports. All annual reports (from 2002 to 2010 inclusive) can be consulted in digital form on the website: <http://www.restitutiecommissie.nl> (Dutch language version) or <http://www.restitutionsCommittee.org> (English language version). Please contact the secretariat (the address can be found at the end of this report) to request printed copies of the annual report.



1. American soldiers move stolen and hidden art found at the end of the Second World War. Here they are unloading the Pietà from a railway wagon at Berchtesgaden.



# 2. The Restitutions Committee

## 2.1 History in brief

During the Second World War the Nazis seized, stole or purchased art from private individuals and art galleries on a large scale. After the Netherlands was liberated, the allies found many of these items of cultural value, particularly in Germany, after which they were brought back to their country of origin. This recovery was accompanied by the order to national governments to look after the art being returned and to ensure it was returned to the rightful owners or their heirs. In the Netherlands, the Netherlands Art Property Foundation (SNK) was tasked with the recovery and restitution activities. Some of the items of cultural value that were not restituted after the war were auctioned off by the Dutch State during the nineteen-fifties. The remainder was brought together in the Netherlands Art Property Collection (NK collection), as part of the National Art Collection.

Starting at the end of nineteen-nineties, renewed interest arose in the Netherlands and other countries in the return of art treasures that had been stolen during the Second World War. There were calls for a flexible restitutions policy, for example in the *Washington Principles on Nazi Confiscated Art* (1998) and in a resolution on *Looted Jewish Cultural Property* (1999) adopted by the Parliamentary Assembly of the Council of Europe. Recommendations were made to opt for a form of alternative dispute settlement outside the standard judicial process. The actions taken in the Netherlands in response to these principles included establishing the *Advisory Committee on the Assessment of Restitution Applications for Items of Cultural Value and the Second World War* in a decree dated 16 November 2001. The Origins Unknown Committee, also known as the Ekkart Committee, played an important role in its history.<sup>3</sup> Under the supervision of the Ekkart Committee, between 1997 and 2004 the Origins Unknown Agency (BHG) investigated the provenance of all objects in the NK collection. At the same time, the government gave notice of a more liberal restitutions policy based on Ekkart Committee recommendations. Within the scope of this generous policy, since its establishment the Restitutions Committee has been giving the Minister of OCW its recommendations about decisions to be taken in regard to individual applications for the restitution of items of cultural value stolen during the Nazi regime.

<sup>3</sup> The Origins Unknown Committee was chaired by prof. dr. R.E.O. Ekkart.

## 2.2 Restitutions Committee members and the secretariat

The composition of the Restitutions Committee did not change during the year under review. This means that in 2011 the Committee consisted of the following members:

Mr J.M. Davids (chairman)  
Professor I.C. van der Vlies (vice-chair)  
Professor J.T.M. Bank  
Mr P.J.N. van Os  
Mr D.H.M. Peepkorn  
Dr E.J. van Straaten  
Ms H.M. Verrijn Stuart



2. W.J.M. Davids,  
Chair of the Restitution Commission.

In a decree dated 28 September 2010, the State Secretary for OCW reappointed the aforementioned people as members of the Restitutions Committee for a three-year period from 23 December 2010 until 23 December 2013.<sup>4</sup>

The Restitutions Committee members were supported in the performance of their duties by the secretarial staff under the management of Ms E. Campfens (secretary/rapporteur). The other staff in the secretariat were Ms A. Marck (deputy secretary/researcher), Ms T. Brandse (office manager), Ms I. El Achkar (management assistant), Ms A.M. Jolles-van Loo (archivist), Ms A.J. Kool (researcher), Mr F.M. Kunert (researcher), Ms E. Muller (researcher) and Mr O.M. van Vessel (legal assistant). Finally Messrs H.D.O. Blauw and C.P.L. van Woensel had positions in the secretariat on a project basis. The Committee secretariat is located at Lange Voorhout 9 in The Hague and it also has an office in the National Archives of the Netherlands in The Hague at its disposal.



3. Members of the Restitutions Committee and secretarial staff pictured at a meeting.

<sup>4</sup> *Dutch Bulletin of Acts, Orders and Decrees*, 12 October 2010, no. 15769. See Appendix 3 of *Report 2010*.

### 3. The work of the Restitutions Committee

#### 3.1 Introduction

Based on the Decree Establishing the Restitutions Committee of 16 November 2001, the Committee's task is to give the Minister of OCW its advice about:

- a) decisions to be taken by the Minister of OCW 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* (article 2, paragraph 1 of the Decree);
- b) 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 owner, *which is not the State of the Netherlands* (article 2, paragraph 2 of the Decree).<sup>5</sup>

If there is a request for the restitution of an item of cultural value that is in the possession of the Dutch State and thus is part of the National Art Collection (see a), the Committee gives its advice within the framework of the applicable government policy. This restitution policy was formulated on the basis of recommendations by the Ekkart Committee to the government.<sup>6</sup>



4. From left to right: Committee Member Bank, Chairman Davids and Secretary Campfens during a meeting.

<sup>5</sup> Decree Establishing the Advisory Committee, article 2, first and second paragraphs. Appendix 1.

<sup>6</sup> See Appendix 2 to this annual report for an overview of the documents on which restitution policy is based. For a detailed description of national policy see *Report 2002* and *Report 2005*, which can be consulted on the Restitutions Committee's website.

In restitution cases where the claimed works of art are *not* in the possession of the Dutch State but, for example, are held by a provincial or local government agency, a foundation or a private individual (see b), the Committee has yardsticks of reasonableness and fairness to comply with when making its recommendations.<sup>7</sup>

Both of the Committee's advisory tasks and the procedures employed are discussed below.

#### 3.2 Procedure for National Art Collection cases

The Committee's primary task is to advise on applications for the restitution of items of cultural value in the National Art Collection, which is in the possession of the Dutch State. A request for advice is submitted by the Minister of OCW. The majority of these National Art Collection cases concern objects that are part of the NK collection, which currently contains over 3,800 works of art.<sup>8</sup> In broad-brush terms, the procedure relating to a restitution application for an item in the National Art Collection can be broken down into reception, investigation and advisory phases.

##### *Reception phase*

After the request for advice from the Minister of OCW has been received, the application is administratively processed in the secretariat. As part of this, applicants are notified in writing of the receipt of the request for a recommendation. This is followed by an initial inventory in the secretariat. Questions that play a role here concern who is acting on behalf of the applicant, what is his or her relationship to the original owner of the claimed objects and whether it is plausible that the applicant is a rightful claimant. It should be pointed out in this regard that the Restitutions Committee does not establish who the rightful claimants/heirs of the original owner are. It only investigates this question marginally. Any questions that arise from this inventory are submitted to the applicants during the next step of this phase, namely sending a letter to applicants in which the Committee's procedure is explained. Enclosed with this letter explaining the procedure is a questionnaire that applicants must complete. It contains all the basic questions that are of importance to the claim investigation. The Committee often deals with foreign applicants, and this is one of the reasons why in many cases an applicant response time of several weeks has to be taken into account.

##### *Investigation and reporting*

During the investigation phase, the research team first of all makes an inventory of the available documentation, namely the information sent by the Ministry of OCW, the results of the investigation by the Origins Unknown Agency (BHG) and the information provided by the applicants themselves. Based on these data, an initial assessment is made in the secretariat in regard to the questions that are important according to the Decree

<sup>7</sup> Decree Establishing the Advisory Committee, article 2, fourth and fifth paragraphs. Appendix 1.

<sup>8</sup> The NK collection contains some 3,818 objects and consists of paintings, drawings, prints, ceramics, silver, furniture, carpets, tapestries and other special items. The Netherlands Cultural Heritage Agency (RCE) manages the collection. Some objects are in museums and government institutions in the Netherlands and abroad, while others are in the RCE repository.



Establishing the Restitutions Committee, i.e.:

1) is the claimed object an item of cultural value in the National Art Collection, 2) is it plausible that the object is the property of the specified previous owner and 3) was there involuntary loss of possession during the relevant period?

If there is doubt about whether a claim will come through this marginal assessment – for example if there is no indication whatsoever that the claimed work of art ever belonged to the former owner named by the applicants – it may be decided to prepare a draft investigation report (see below), in which the information at that time and the unanswered questions are set down. This gives applicants the opportunity to provide a more detailed explanation of their claim and to provide clarity about the gaps.

As regards claims that come through the marginal assessment, it emerges in all cases in practice that a more detailed file search and an art historical investigation are necessary in order to answer the questions that are relevant to formulating advice. At this stage information about the original ownership situation, the nature and circumstances of the loss of possession, and the handling of any request submitted after the war for restitution is important. The current legal and actual status of the work of art are also investigated. Chapter 5 provides insight into the research that the Committee conducts and the documentation that is encountered on the basis of a case about which the Committee made a recommendation in 2011. The investigation phase can take a considerable time. The reasons include the extent of the investigation, the need in some cases to involve external institutions and specialists, and the response time of applicants that has to be taken into account in the case of supplementary questions.

The information collected during the investigation phase is presented in the draft investigation report. The Committee has a duty of secrecy with regard to documents that come from (partially) non-public files and/or other confidential documents, and therefore in its reporting it refers to them as much as possible in the form of quotations and acknowledgement of sources. Applicants are given the opportunity to respond to the draft report and the Minister of OCW likewise has the chance to bring additional facts to the Committee's attention.

Questions can arise as a result of the responses that make further investigation desirable. In some cases the Committee may deem it necessary to invite applicants for a hearing. Points in the draft report may be amended as a consequence of a hearing. The definitive investigation report is finalized when the recommendation is finalized (see the next phase).

#### *Advice*

After the relevant facts in a case have been collected, the Committee members deliberate upon them during a meeting about the substance of the recommendation. The lawyers and researchers who work in the Committee's secretariat prepare draft recommendations. After the definitive recommendation and the investigation report have been finalized, the recommendation is signed by the chairman and the secretary/rapporteur. The advice and the investigation report are then sent to the Minister of OCW, who will take a decision about the application for restitution. At this stage the Committee notifies applicants of the fact that advice has been given to the Minister. The Minister advises applicants

of his decision and the content of the recommendation within six weeks after receipt of the recommendation. Every recommendation is published on the website after the announcement of the Minister's decision and also in the annual report. The identity of the applicants is not made public. The Ministry of OCW is responsible for carrying out the Minister's decision. If necessary the Minister brings in a civil-law notary.

#### *Length of the procedure*

Based on figures from 2008 to 2011 inclusive, the average time taken to deal with a request for advice is currently 100 weeks. The actual duration of the procedure can vary substantially from case to case. The time taken to handle a case can be longer if the historical investigation is time-consuming. This can come from the extent and the nature of the investigation itself and also the fact that the Committee is regularly dependent on third parties for collecting information, for example archives inside or beyond the Netherlands. In addition procedural reasons, in particular, can contribute significantly to a longer processing time. In some cases there are several claims relating to the same work of art, so a number of response stages are desirable and cases have to be kept open until the investigation of the various claims has been completed. Applicants also regularly request an extension of their response time or times, for example so they can do some research themselves.



5. Circle of S.J. van Ruysdael, *River view with fishing boats* (NK 1914). See advice RC 1.106.



### 3.3 Requests for revised advice

When the Minister has taken his decision about an application for restitution, the process is ended. There is no option for the Minister or the Committee to repeat the handling of a case – there is no option to appeal so to speak. However, in response to a proposal from the Ministry of OCW, in 2010 the option was initiated to submit requests for a revised recommendation with regard to the National Art Collection. By way of explanation there is a fictitious example below.

*Some family members applied to no avail for the return of a painting in the NK collection, which they asserted originated from the former possessions of their grandfather. In its investigation the Restitutions Committee did not find out whether the NK work claimed by the family had actually been owned by the grandfather. It was possible that he had a different work by the same artist in his collection. The Committee's advice was that the claim should be rejected because of this identification problem.*

*A few years later an old notebook was found during a house move. On the cover in the grandfather's handwriting were the words 'Property 1940'. When the war was imminent, the grandfather had apparently noted down what he owned in the notebook and then carefully stowed it away in a safe place. The family now seemed to have a stronger case because of the manuscript, the dating, and a clear description of the painting's details.*

This example, which could be close to reality, shows how documents that are important to an application for restitution are sometimes not found, or are not found until later. If new evidence is unearthed relating to a case that has already been closed, it is difficult for those involved to accept that the new evidence is not permitted to influence the application for restitution. This is why the option was created for the family in the example, and for others in a comparable situation, to have the claim looked at again. There are conditions associated with this, as described below.

If, after the decision about their application for restitution, applicants want to submit a request for a revised recommendation, they direct it to the Minister of OCW, who checks whether there is reason to reconsider his decision. In that context the Minister may decide to ask the Committee for revised advice about the claim on the basis of the applicants' input. In such a case the Committee makes its assessment on the basis of a two-part criterion, namely whether there:

1. are new facts that, had they been known earlier, could have resulted in a different recommendation, and/or
2. were procedural errors that harmed the applicants' fundamental interests.

First and foremost the criterion takes into account the possibility that new facts, which became known later, could have resulted in a different recommendation about the application for restitution had they been known at the time of the earlier recommendation, and therefore should actually lead to a new investigation. The possibility of errors of a procedural nature is also taken into account, in particular with regard to the principle of hearing both sides. The procedure that the Committee adopts in the case of a request for revised advice depends on the case. Applicants are told about it after the Minister has submitted the request for revised advice to the Committee.

By the end of 2011 the Restitutions Committee had received five requests for revised advice and had dealt with one of them.<sup>9</sup> The Committee's recommendation was that the earlier rejection of the application for restitution concerned should stand.



6. Anonymous,  
*Portrait of a man  
with a dog* (NK  
2828). See advice  
RC 1.117.

<sup>9</sup> See recommendation about Weijers II (RC 4.118), included in *Report 2010*.

### 3.4 Procedure for binding opinion cases

The second task described in the Decree Establishing the Restitutions Committee is ruling on disputes between the heirs or the legal successors of the original owners of an item of cultural value on the one hand, and its current owners on the other. The distinguishing feature of these claims compared to cases described in 3.2 is that the current owner is *not* the State of the Netherlands but, for instance, a private individual, a foundation or a provincial or municipal government institution.<sup>10</sup> In accordance with the Decree, the Committee will be guided by the ‘principles of reasonableness and fairness’ in issuing opinions on these cases.<sup>11</sup> The Committee also drew up regulations in 2007 outlining the procedure for such claims based on article 4, paragraph 2 of the Decree.<sup>12</sup> During the year under review, in the meeting of 19 September 2011, the regulations concerned were tightened up in regard to a number of points and are in appendix 3 to this annual report.<sup>13</sup> Pursuant to the regulations, the Committee discharges the aforementioned task of giving an opinion by means of a *‘binding opinion within the meaning of article 7:900 of the Dutch Civil Code (contract of settlement) or by means of promoting a settlement or the establishment of an agreement for mediation between the parties’*.<sup>14</sup>

The procedure that the Committee uses in binding opinion cases has an open character and can be adapted to the particulars of the case. Usually the procedure consists of an investigation phase, during which the relevant facts are investigated, and an opinion forming phase, when the Committee issues an opinion – based on investigation of the facts – that is binding on the parties.

#### *Submitting a case for a binding opinion*

The starting point for submitting a case for a binding opinion is that the current owner and the former owner or his/her legal successors decide on the basis of consultation to call upon the Committee. The parties agree beforehand that they will accept the opinion to be given by the Committee as binding. The request for an opinion is submitted to the Minister of OCW through the Restitutions Committee. This is done by sending a letter to the Restitutions Committee that is signed by the owner of the claimed work of art (or his/her authorized representative) and the representatives of the party claiming the work of art. A request can also be submitted by the parties sending two separate letters.<sup>15</sup> The letter or letters must state which work of art is concerned and in which museum or collection it can currently be found. There must also be an explanation of who the

parties are. This concerns the current owner (for example a foundation or a provincial/local authority) on the one hand and the party claiming the work of art on the grounds of former ownership on the other. There is more information on the Restitutions Committee’s website about submitting a request for a binding opinion and the required associated documentation. After the Committee has received the joint request from the parties with the relevant enclosures, it forwards the request to the Minister of OCW. According to the Decree Establishing the Restitutions Committee, the Minister of OCW must agree with the opinion procedure for the it. This formality will normally be handled behind the scenes.



7. Engelbart Joosten, An Amsterdam silver kettle on stand (BK15640), 1776. See advice RC 1.112.

<sup>10</sup> For more information see the explanatory notes to the Decree Establishing the Advisory Committee. Appendix 1.

<sup>11</sup> Decree Establishing the Restitutions Committee, article 2, fourth and fifth paragraphs. Appendix 1.

<sup>12</sup> Article 4 paragraph 2 of the Decree Establishing the Restitutions Committee states, ‘The Committee may draw up regulations concerning further working methods’. See Appendix 1.

<sup>13</sup> ‘Regulations for opinion procedure under article 2, paragraph 2, and article 4, paragraph 2 of the Decree Establishing the Advisory Committee on the Assessment of Restitution Applications for Items of Cultural Value and the Second World War’. Appendix 3.

<sup>14</sup> ‘Regulations for opinion procedure under article 2, paragraph 2, and article 4, paragraph 2 of the Decree Establishing the Advisory Committee on the Assessment of Restitution Applications for Items of Cultural Value and the Second World War’. Appendix 3.

<sup>15</sup> Sample letters that can be used to submit a request for a binding opinion can be downloaded from the Restitutions Committee’s website.

#### *Investigation phase*

After the formalities have been taken care of, the Committee gives the parties the opportunity to provide a written explanation of their positions. To this end they receive a letter explaining the procedure and a form that summarizes the questions that are important to investigating the facts. Both parties complete the form and return it within a period of six weeks, which may be extended if necessary.

The Committee may decide, based on the information received from the parties, to conduct a further investigation, which is comparable to the investigation in the cases described in 3.2. The parties may also be asked for a more detailed explanation. The information that is received from the parties during the investigation phase and in any additional

investigation is compiled by the Committee, summarized and cited in part in a draft investigation report. This draft report is sent to both parties for comment. After it has received the parties’ responses to the draft report, the Committee assesses whether further investigation, a hearing or a discussion between the parties is necessary or desirable before it forms an opinion.

*Opinion forming phase*

The Committee assesses binding opinion cases on the basis of the yardsticks of reasonableness and fairness. An overview of the considerations that the Committee may include is given in article 3 of the regulations referred to above:

**Article 3**

The Committee gives its opinion on the basis of reasonableness and fairness, in regard to which the Committee may, in the course of its considerations, in any event include:

- a. internationally and nationally accepted principles such as the Washington Principles and the government’s policy guidelines concerning the restitution of looted art in so far as they are correspondingly applicable;
- b. the circumstances in which possession of the work was lost;
- c. the extent to which the applicant has made efforts to recover the work;
- d. the circumstances in which the owner acquired the work and the research that he/she did prior to acquiring it;
- e. the importance of the work to the applicant;
- f. the importance of the work to the owner;
- g. the interest of the public art collection.

*Length of the procedure*

The length of the procedure varies from case to case and depends on the information the parties provide, the nature and scope of the investigation, and the number of cases the commission is dealing with. If a case results in a binding opinion, after the parties have been notified in principle information is published in the annual report and on the Committee’s website, without the personal details of the parties concerned. If the parties make it known that they object to this, the Committee may decide to omit reference to the case.

4. A review of 2011

At the end of 2011 it became clear that the Rijksmuseum in Amsterdam had purchased the painting *Winter Landscape* by Jan van de Velde from the heirs of Curt Glaser, a prominent Jewish German art historian who died in 1943. Until 2010 this painting was part of the National Art Collection and as such had hung in the Rijksmuseum, but in that same year – in line with the advice of the Restitutions Committee – it was restituted to Glaser’s heirs by the Minister of OCW.<sup>16</sup> A press release issued by the heirs and the Rijksmuseum in December 2011 said that, ‘The painting has now been sold back to the Rijksmuseum and both the Glaser heirs and the Rijksmuseum wish to thank each other for the responsible manner in which this case has been handled.’

It is not unusual for a restituted work of art to be purchased by the museum where the item was kept before the restitution. For example, a sculpture that was returned from the NK collection in 2011 was acquired that same year by the Museum Catharijneconvent in Utrecht. This will be discussed in more detail in Chapter 5.

4.1 Activities in 2011

In 2011 the Restitutions Committee met nine times and made thirteen recommendations.<sup>17</sup> The year under review was also marked by ongoing (art trade) claims, which to an extent are typically very complex in terms of both content and procedure. The Committee increasingly has to deal with competing claims for the same works of art. Given that the Committee is assessing such cases simultaneously, it is sometimes unavoidable that requests for advice have to be kept on hold until the investigation in a competing case has been finished. This is one of the reasons why the average time taken to process a request for advice now stands at 100 weeks. This figure relates to the period from 1 January 2008 to 31 December 2011.

*Recommendations*

In 2011 the Committee made thirteen recommendations compared with eleven in 2010. A quick analysis of the applicants in these cases revealed a striking number with an international background. It emerged from this inventory that there were claimants with an address in the Netherlands in only four of the cases about which recommendations were made in 2011. The other nine restitution applications were submitted by one or more interested parties living outside the Netherlands. The majority of the latter group reside in the United States.

A comparison with 2010 shows that then too four of the eleven recommendations made related to claimants with a residence in the Netherlands. The other seven restitution applications came from claimants residing outside the Netherlands. Then as well the majority of them turned out to be living in the United States.

<sup>16</sup> See the recommendation regarding Glaser (RC 1.99), included in *Report 2010*.

<sup>17</sup> Chapter 8 contains the recommendations given in 2011 in full.

It can be deduced from this limited – and obviously not exhaustive – survey that the restitution of items of cultural value is remarkably international in the Dutch procedures too. This phenomenon can be explained to a degree by the flight of Jewish owners of works of art during the war and by post-war emigration. To an extent it can also be evidence of the international dimension of the art market as well as of the art collectors in the pre-war Netherlands.

In addition it is often the case that claimants arrange to be assisted by an adviser, which is not a requirement in the Restitutions Committee's procedure. After all, the Restitutions Committee initiates an investigation itself and has its own team of researchers to conduct it. Over the years this team has acquired considerable expertise, initially relating to domestic archives but now also to a growing degree with regard to foreign ones. In eight cases about which a recommendation was made in 2010, the claimant was assisted by a lawyer (six cases) or an intermediary (two cases) during the preliminary investigation. In ten cases about which advice was given in 2011, the claimant was assisted by a lawyer (eight cases) or an intermediary (two cases) during the preliminary investigation.

#### 4.2 Restitution as an international and ongoing subject

In 2011 restitution and restitution policy remained subjects of great interest both in the Netherlands and internationally. As a result, Committee members and staff attended national and international symposiums and maintained contact with committees and research institutes at home and abroad.

For example Committee member Professor J.T.M. Bank and staff members Ms E. Campfens, Mr F.M. Kunert and Ms A. Marck presented the Committee's recommendations about art trade cases at the international symposium *Kunst sammeln, Kunst handeln*, which was held from 23 to 25 March 2011 in Vienna and organized by the Austrian Commission for Provenance Research of the Federal Ministry for Education, Art and Culture.<sup>18</sup> During this symposium many aspects of provenance research – the investigation of the origins of works of art in connection with their restitution – were discussed and demonstrated. There was also interest in the fortunes of paintings that were considered in Nazi Germany to be *Entartete Kunst* (degenerate art).

In that same month secretary/rapporteur Ms E. Campfens read a paper about the restitution of art looted by the Nazis at the *Art and Cultural Heritage Law: Developments and Challenges in Past and Present* in Maastricht (27-28 March 2011) and vice-chair Professor I.C. van der Vlies gave a lecture at the conference *Human Rights and Cultural Heritage: From the Holocaust to the Haitian Earthquake* in New York (31 March 2011).

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<sup>18</sup> The presentation concerned will be published in 2012 in Floris Kunert and Annemarie Marck, 'The Dutch Art Market 1930-1945 and Dutch Restitution Policy Regarding Art Dealers' in Eva Blimlinger and Monika Mayer eds., *Kunst sammeln, Kunst handeln. Beiträge des Internationalen Symposiums in Wien* (Böhlau Verlag Vienna, Cologne and Weimar; to be published in 2012).

In recent years many archive documents have been digitized. The significance that this can have to the Committee's investigations became clear during the seminar *A New Era of Collaboration and Digitized Resources: World War II Provenance Research*, which was held on 6 and 7 May 2011 in Washington and was organized by American Association of Museums. This seminar, which was attended by researcher Ms E. Muller, put great emphasis on the international sharing of knowledge and experience by provenance investigators.

The exchange with a group of thirty students from the Groningen legal faculty association on 5 October 2011 had a stronger legal character. During a visit from this faculty association, the Committee's chairman gave the future lawyers a comprehensive overview of restitution policy. After that, some members of the secretariat's staff illustrated the framework outlined by the chairman by describing three cases that the Committee had dealt with.

The symposium *Litigation in Cultural Property: Judicial and Alternative Means of International Dispute Resolution*, which took place on 11 November 2011 at the University of Geneva, was primarily concerned with alternative dispute settlement. Against the backdrop of the theme *National and International Mechanisms for Solving International Cultural Property Disputes*, an overview was given of the different methods that are currently used to deal with disputes about items of cultural value, for instance mediation and arbitration. During this symposium secretary/rapporteur Ms E. Campfens and legal assistant Mr O.M. van Vessem explained the binding opinion procedure developed by the Restitutions Committee to the *Centre universitaire du droit de l'art* of the University of Geneva. Ms Campfens's participation in the Geneva symposium dovetailed with her attendance on 17 and 18 October 2011 in Paris of the *Workshop for Mediators in Art and Cultural Heritage* of the International Council of Museums (ICOM) and the World Intellectual Property Organization Arbitration and Mediation Center (WIPO).

In a workshop during the Annual Museum Conference of the Netherlands Museums Association on 7 October 2011 in Leiden, Ms E. Campfens and Ms A. Marck presented the Committee's procedure for binding opinion cases in the context of the study of museum acquisitions (*Onderzoek Museale Verwervingen*), which is discussed in section 4.3. Over a month later, on 18 November 2011, Ms Campfens explained the procedure for binding opinion cases once again, this time to the museums involved in the Netherlands Museums Association's symposium *Herkomst Helder* in the Dordrechts Museum in Dordrecht. Finally, on 21 November 2011 in the International press centre Nieuwspoort in The Hague the chairman and legal assistant Mr O.M. van Vessem gave talks about restitution during a meeting of the *Sociëteit voor Culturele Samenwerking*.

In addition to organized meetings like these, throughout the year under review personal contacts were also established and maintained with the intention of sharing insights and results. On 8 April 2011 in The Hague the Restitutions Committee received representatives of the German *Beratende Kommission im Zusammenhang mit der Rückgabe NS-verfolgungsbedingt entzogener Kulturgüter, insbesondere aus jüdischem Besitz*, known as the Limbach Commission. Both organizations presented a number of cases about which they had given opinions during an interactive session in which there was time for discussion and questions. During this visit the intention was expressed to organize a return visit by the Restitutions Committee to the German commission in 2012.



Knowledge and experience were also shared with the British Spoliation Advisory Panel during a visit by Committee member Professor J.T.M. Bank and secretary/rapporteur Ms E. Campfens to London on 23 June 2011.

During 2011 there were also discussions between the Committee's secretary/rapporteur and the US Federal Government's Special Envoy for Holocaust Issues about the development of restitution policy.

### Study of museum acquisitions since 1933

#### *A contribution of the Netherlands Museums Association*

##### *The study*

At the beginning of 2009 the Netherlands Museums Association announced the study of museum acquisitions since 1933. This project is a follow-up to the study of objects with a problematic provenance that was conducted in 1998 and 1999. This was an investigation into items with provenance histories that indicated involuntary loss of possession between 1940 and the end of the Second World War and that were acquired by Dutch museums in the 1940-1948 period.

As the study progressed, however, it became clear that the period to be investigated had to be extended so that a comprehensive inventory could be made. In the current project the focus is on museum acquisitions between 1933 and 1940 and also after 1948. Museums have been asked to painstakingly investigate the provenances of their acquisitions during these periods. The purpose of the study is to establish to what extent Dutch museum collections still contain objects with a problematic ownership history. A further goal is to create a critical attitude in Dutch museums in regard to their collections with respect to ethically acceptable provenances in general.

The Netherlands Museums Association is supervising the study with financial support from the Ministry of Education, Culture and Science. The international obligation to return art looted during the war, as formulated in 1998 in the *Washington Conference Principles on Nazi-Confiscated Art*, is being fulfilled in this way. Clear agreements, which were also endorsed by the Netherlands, were made at that first conference on plundered art. Since then extremely valuable contributions have been made in the Netherlands towards complying with this obligation, i.e. the study of museum acquisitions from 1940 to 1948 referred to above, the Origins Unknown investigation into the history of the NK collection, and the individual investigations that the different museums have carried out. However, no systematic research had been done into museum acquisitions that were being traded in Germany in the nineteen-thirties prior to being purchased

by Dutch museums, or into the provenance of items obtained since 1948. The current project addresses these gaps.

##### *Committee*

The study, which is scheduled for completion at the end of 2012, is being conducted under the responsibility of an independent Committee chaired by Professor Rudi E.O. Ekkart.

The other members of the Committee are:

- Ms Pauline W. Kruseman, former director of the Amsterdam Museum and former chair of the Dutch National 4 and 5 May Committee
- Mr Taco D.W. Dibbits, Director of Rijksmuseum Collections
- Mr Peter J. Schoon, Director of the Dordrechts Museum
- Dr Gerdien Verschoor, Director of Codart
- Dr René J.Q. Klomp, deputy justice Amsterdam Court of Appeals, legal adviser
- Ms Agnes Vugts, Netherlands Museum Advisors Foundation and Limburg museum advisor
- Mr Willem F.M. Terwisscha van Scheltinga, secretary to the board Association of Dutch Insurers
- Professor Wouter M.A. Kalkman, Chief Legal Officer ING Insurance Europe and Professor of Insurance Law at the University of Amsterdam

The Committee is responsible for structuring, conducting and publishing the study and the results. Museums are subject to the Ethical Code for Museums, which includes due diligence or the duty of due care (paragraph 2.3): 'Due diligence must guarantee that the entire history of the object is established from its discovery or its fabrication.' With reference to this paragraph of the Ethical Code, the Committee is asking the museums to conduct the provenance investigation, with assistance from the museum acquisitions project office of the Netherlands Museums Association. The project office staff are Ms Jona M. Mooren and Ms Helen C.M. Schretlen.

##### *Provenance investigation and demarcation of period*

The present investigation is being carried out by the museums themselves. This is calling for a big effort, particularly at a time when museums are under pressure from cost cutting. Using experience from the earlier museum investigation, the Netherlands Museums Association is providing a broader range of support options. There is a comprehensive guide on the association's website.<sup>19</sup> In 2010 and 2011 the project team organized symposiums during

<sup>19</sup> See <http://www.museumvereniging.nl/Actueleprojecten/Musealeverwervingen.aspx>

which curators talked about their investigation, researchers were able to share their experiences and the practical aspects of the study were the main focus.

In order to keep the study manageable for the museums, it has been decided to split it up into three periods: 1933-1940, 1948-1954, and the years since then up to the most recent acquisitions.

#### *1933-1940*

Persecution of the Jews in Germany started in 1933. In an increasingly hostile environment, many Jewish families felt obliged to sell their art collections, be it to pay for basic necessities or to pay for their escape to other countries. And it was not long before collections were confiscated. The auction world in Berlin played a pivotal role and, in addition to Munich, Cologne and Frankfurt, formed the centre of the German art trade. A number of Dutch art buyers, for example, went to German auctions and art galleries after 1933 and bought items from Jewish art collections, perhaps without realizing it. The same thing started to happen in Austria in 1938. The study is therefore targeted at acquisitions during the 1933-1940 period with a German provenance or from 1938 with an Austrian one.

#### *1948-1954*

Such objects could also have ended up in museums after the war. During this period there were still many items with possibly unclear provenances in circulation in auctions, in the art trade and among private individuals. The organization that played a key role after the liberation of the Netherlands in bringing back works of art that had been taken to Germany during the Second World War by the occupying forces was the SNK (Netherlands Art Property Foundation). One of its other tasks was the restitution of works of art to rightful claimants, among whom were the many Jewish owners who had lost their possessions because of the activities of the Nazi's. Between 1950 and 1952 the SNK and its successor, Bureau Hergo (Bureau for Restoration Payments and the Restoration of Property), sold at auctions some of the remaining objects, which no owner had claimed or could claim. Among those objects there were also items that had been owned Jews. A list of auctions at which the SNK sold works has been published on the Netherlands Museums Association's website. It is also possible that museums bought objects directly or at auctions where art collections seized from collaborators and traitors went under the hammer. A number of museums purchased items from these estates. The sale catalogues represent an important source of information for the study.

#### *1955-present*

The expectation is that there are fewer direct sources for this period and that the study has a more broad-brush character. The museums are being asked to confine themselves to items in their collections acquired during this period that have a provenance history that is easy to establish. This last condition means that normally only objects with individual recognizability, such as paintings, drawings and larger silver items, are considered eligible for further investigation.

It will be difficult to reconstruct a provenance for works of art with few individual characteristics, for example tiles, prints and small artefacts. Until the middle of the nineteen-nineties people were not concerned with the provenance history of works of art that came onto the market. It was therefore perfectly possible that a museum made a purchase with a tainted past. The subject of 'plundered art' came back on to the political agenda in 1998, and as a consequence provenance research became an important aspect of purchasing. If there are reasonable doubts about the provenance of an item in a museum in view of the period concerned (1933-1945), the museum currently launches a thorough investigation in order to find out as much information as possible. Only then is the decision taken about whether or not to purchase it.

#### *Participating museums*

In July 2009 all museums in the Netherlands received an invitation to participate in the study. A number replied that they were outside the scope because their collections consist of items made after 1945. The study did not apply to some museums because of the nature of the collection (for example a botanical collection). Museums with collections created by a private donation or dedicated to one artist such that suspect conditions are excluded are also outside the bounds of the study.

At the beginning of 2012 seventy of the 177 museums taking part in the study had completed their investigations. A number of large institutions, particularly the bigger museums with collections containing thousands of objects, are currently still busy with their researches. Various institutions have sent the Netherlands Museums Association lists of purchases so that the project team can give input about which objects should be considered for further research.

#### *Completion of the study*

After completion of the study at the end of 2012 the results will be published on a website specially set up for the purpose and in print. Is so doing account will be given publicly about the working methods and results of the study.

It is not improbable that requests for advice will be submitted to the Restitutions Committee as a result of the museum study. Even after thorough research, the provenance of some objects will always remain uncertain because after this many years in many cases it is no longer possible to unearth the complete provenance history. In any event, the museums are doing their level best to establish clear and transparent provenances. A beneficial side of this important provenance investigation is that the museums are also acquiring more insight into, and knowledge about, the background of their collections.

## 5. Spotlight on the Gutmann case

In 2011 the Committee made 13 recommendations, including the Gutmann III recommendation (RC 1.114-B). In this case the Committee concluded that the Jewish banker and art collector Fritz Gutmann was the original owner of a fifteenth-century Southern German limewood Pietà (fig. 9-10), which was part of the NK collection (NK 688). It emerged from the Committee's investigation that in 1939 Fritz Gutmann had entrusted this sculpture to an art dealer in Paris because of the ominous international situation. During the war the work of art was seized there by the Germans, after which it ended up in the art collection of Reichsmarschall Hermann Göring. After 1945 the Pietà was brought back to the Netherlands and for decades it was part of the National Art Collection. When Fritz Gutmann's heirs submitted a claim to the sculpture in 2007 it was in the Museum Catharijneconvent in Utrecht, where it had been on loan for years. In its recommendation of 11 April 2011 the Committee took the view that Gutmann involuntarily lost possession of the sculpture as a direct result of the Nazi regime. The recommendation to the Minister was therefore to grant the restitution request of Fritz Gutmann's heirs.



8. Members of the committee on Museum Acquisitions since 1933, with the project team.



9. Anonymous, *Pietà*, Southern Germany, 15th century, limewood, 97 x 69 x 33 cm (NK 688).



10. Back of the *Pietà*.

The Committee had conducted extensive research in the Netherlands and other countries before it was in a position to advise the Minister. This did not make the case unique. As discussed in Chapter 3, it emerges in practice in all cases related to the National Art Collection that file searches and an art historical investigation are necessary in order



to answer the questions that are relevant to producing a recommendation. In order to provide insight into the nature, scope and development of this specific claim investigation, there follows a report – using illustrations and reproductions of records – of the Committee’s research activities in the Gutmann III case (RC 1.114-B) summarized above.



11. The Gutmann family in about 1925. Standing on the left: Fritz Gutmann.

The claimants in the Gutmann III case are the only heirs of Friedrich Bernhard Eugen Gutmann, also known as Fritz Gutmann (fig. 11). Fritz Gutmann was a Jewish banker and art collector who was born in Germany and moved to the Netherlands in 1918. He was one of the seven children of Eugen Gutmann, a co-founder of Dresdner Bank AG, which was established in Dresden in 1872.



12. The interior of Huize Bosbeek around 1928.



13. Façade of Huize Bosbeek.

Fritz Gutmann was granted Dutch nationality in 1924. He lived with his family in Huize Bosbeek, a country house near Heemstede, where he amassed a sizeable art collection (fig. 12-13). In 1939 the increasingly ominous international situation prompted Fritz Gutmann and his wife L(o)uise Erika von Landau (1892-1944) to start selling off as many of their works of art as possible or moving them abroad. Works of art were therefore sent to France even before the outbreak of war. After the German invasion of the Netherlands the couple made plans to escape, but things went wrong. In 1943 they were arrested and sent to Theresienstadt concentration camp. Fritz Gutmann was killed there in 1944. His wife died in Auschwitz the same year. The couple’s two children, Bernhard Eugen Friedrich Wilhelm Gutmann (later Bernard Goodman, 1914-1994) and Lili Vera Gutmann (born 1919), survived the war. After the war they spent years trying to trace and recover the family possessions that had been lost.

For a long time the provenance history of the Pietà was not known. The BHG’s investigation of the works of art in the NK collection between 1998 and 2006 generated no provenance information about this object (fig. 14).

An important new source came to light when Fritz Gutmann’s heirs sent the Committee a photograph of a Pietà from the archives of the French recovery and restitution authorities in Paris (fig. 15). The Committee brought this photograph to the attention of the Museum Catharijneconvent, which subsequently confirmed that the sculpture in the picture concerned was the object NK 688. A name had been noted on the back of the photograph in the Paris archives: ‘Gutman Friederich’ (fig. 16).

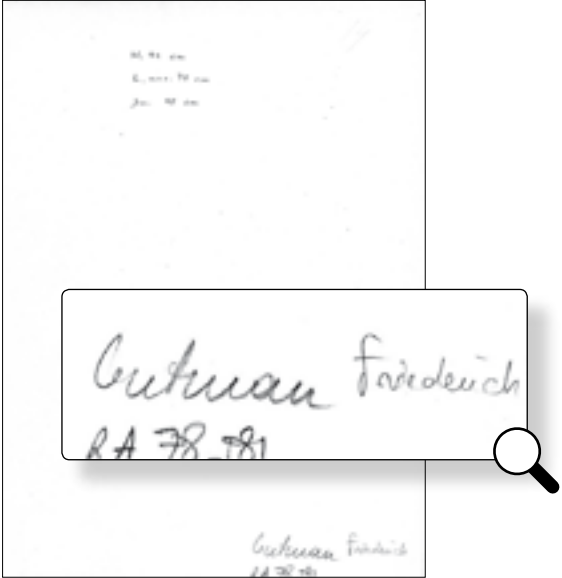


14. Details of the Pietà (NK 688) on the Bureau Herkomst Gezocht (Origins Unknown) website. Source: [www.herkomstgezocht.nl](http://www.herkomstgezocht.nl).

15. Photograph of the Pietà, found in the archives of the Ministère des Affaires étrangères et européennes in Paris.

16. Back of photograph with the annotation ‘Gutman Friederich’.

Source: Archives of the Ministère des Affaires étrangères et européennes, Collection des archives des services de la Récupération artistique, dossier de photographies.

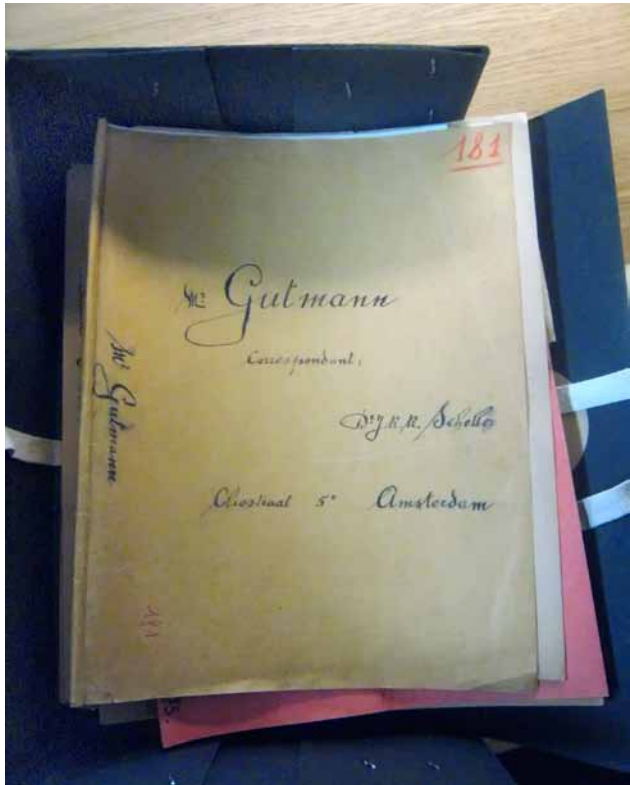




After it had been put on the right track by the photograph of the Pietà, the Committee's actions included conducting more research in the archives of the French recovery and restitution authorities at the French Ministry of Foreign and European Affairs in Paris (fig. 17). It became clear that the photograph had probably been in a file with the title 'Mr. Gutmann / Correspondant: / Dr J.R.R. Scheller [...]' (fig. 18). Scheller was the post-war administrator of Fritz Gutmann's estate. After the war he tried to track down the Gutmann family's missing works of art. It is possible that as part of his quest Scheller sent the photograph of the Pietà to the French authorities, and for this reason the photograph was put into the archives in a file bearing Scheller's name. This information found in the French archives represented an initial indication that the sculpture was one of the works of art that Fritz Gutmann had sent to France before the war.



17. Research in the archives in Paris.



18. Dr. J.R.R. Scheller Dossier, from the archives in Paris.

Source: Fotoarchief RC / Archives of the Ministère des Affaires étrangères et européennes, Collection des archives des services de la Récupération artistique.

18

LIGES I B DES TABLEAUX VOLES

16 Place Vendôme

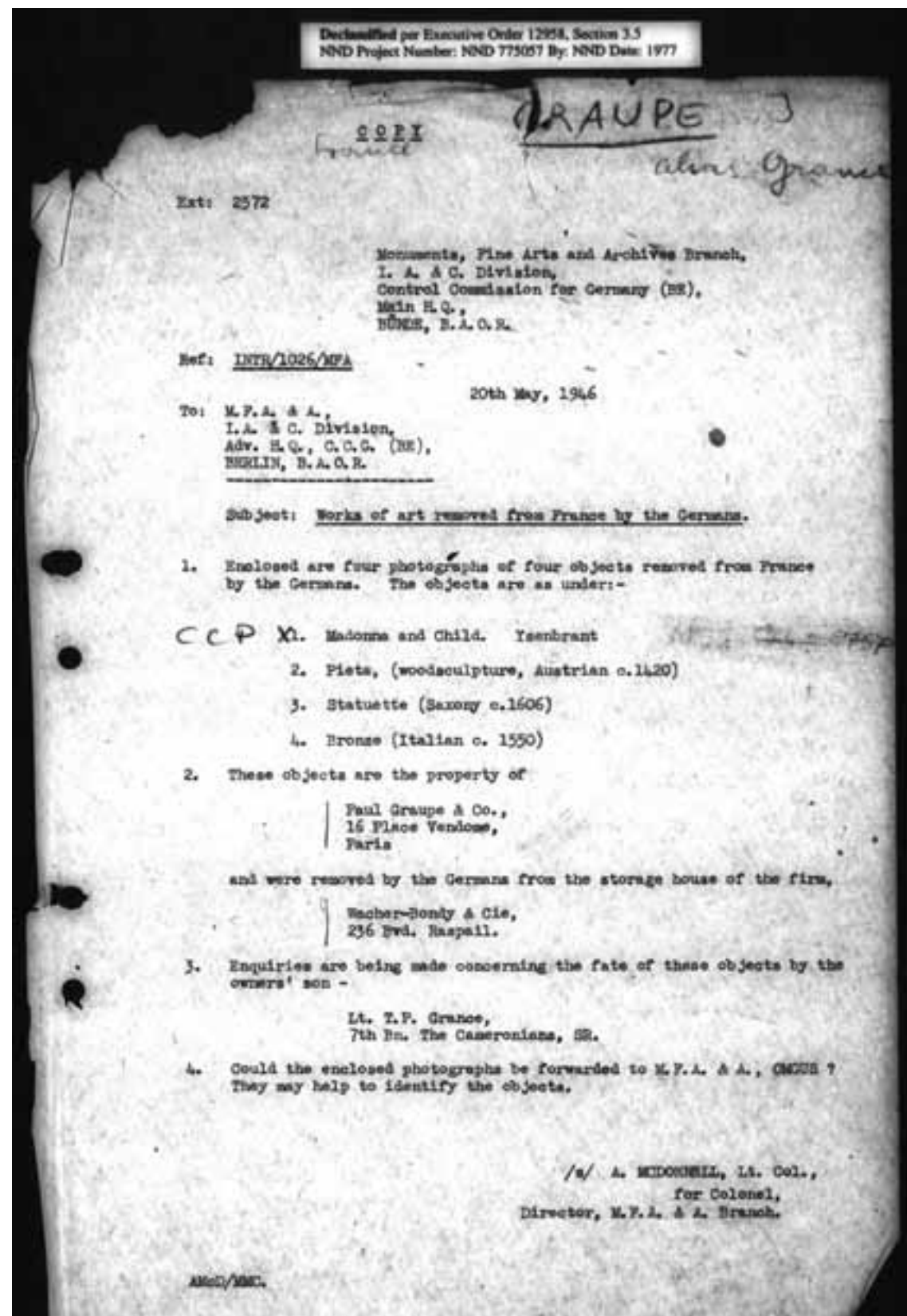
( Il est possible que certains de ces objets se trouvent chez Madame WACZAR-BENNY 236 Boulevard Raspail mais au principe ces objets étaient Place Vendôme)

|    |    |                   |            |   |
|----|----|-------------------|------------|---|
| N° | 1  | K Van der Meer    | photo n° 1 | H 34 Cm L 49 Cm   |
| N° | 2  | K Magimco         | photo n° 2 | H 51,5 L 71,5   |
| N° | 3  | K Gulliksen       | photo n° 3 | arbres 69x85  |
| N° | 4  | Dutch landscape   | " n° 4     | Paysage octogonale 17x20,3  |
| N° | 5  | Aldorfer :        | " n° 5     | Mort de la vierge 83 x 98   |
| N° | 6  | Vue sur Nuremberg | " 6        | 40x32   |
| N° | 7  | Fleydenwurf       | 7          | 122 x 55 Moine  |
| N° | 8  | Dessin            | 8          | 29 x20 Portrait d'homme   |
| N° | 9  | Veronèse          | 9          | Vierge et enfant 87,5 x 69,5  |
| N° | 10 | Sculpture         | 10         | Sainte famille 38x20  |
| N° | 11 | Sculpture         | 11         | Vierge et enfant 17 x 10  |
| N° | 12 | Sculpture         | 12         | Pietà   |
| N° | 13 | bronze            | 13         | Sous 8 x 8, 5   |
| N° | 14 | "                 | 14         | Santore avec urne par Ricci 262 x 14,5                                      |
| N° | 15 | "                 | 15         | Neptune sur tortue et coquill. Léone Léoni - 16, (5                         |
| N° | 16 | "                 | 16         | Statue homme avec barbe Severo de Savenna 1500                              |
| N° | 17 | "                 | 17         | porcelaine ecclésiastique avec chap. Hauteur 36 cm ( chez Monsieur Dreyfus) |
| N° | 18 | Sculpture en bois | 18         | chez Monsieur Dreyfus   |
| N° | 19 | Portrait          | 19         | 102x110 fleur   |
| N° | 20 | Sculpture         | 20         | Deux saintes 131 x 102  |
| N° | 21 | double portrait   | 21         | chez Dreyfus Hommes femmes  |
| N° | 22 | "                 | 22         | Saint Orislope et Etienne 143 x 59  |
| N° | 23 | Yanbreant         | 23         | I   |
| N° | 24 | Ruyssant          | 24         | Paysage   |

8.4.8.8

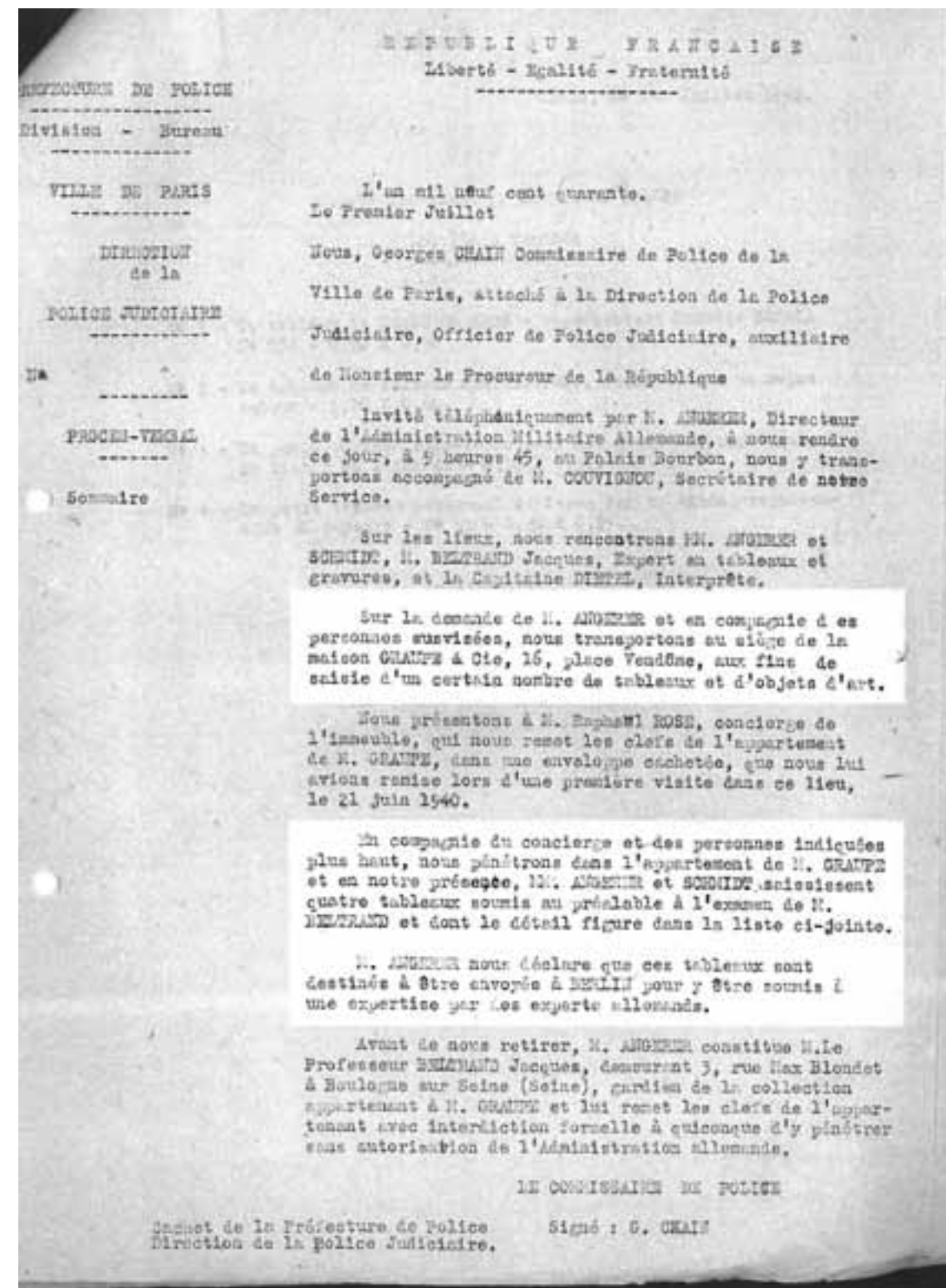
19. 'Liste 1 B des tableaux voles 16 Place Vendôme'. ('List 1 B of the paintings stolen from 16 Place Vendôme')

Source: Archives of the Ministère des Affaires étrangères et européennes, Collection des archives des services de la Récupération artistique, RA/50-46-1474.



20. Letter from the Monuments, Fine Arts and Archives (MFA&A) department to the MFA&A department in Berlin, 20 May 1946.

Source: National Archives, Washington DC, Ardelia Hall Collection: Wiesbaden Administrative Records, General Records, Art Intelligence Miscellaneous.



21. According to the official report, Angerer and Schmidt removed works of art from Place Vendôme, where artdealer Graupe had his premises.

Source: Archives of the Ministère des Affaires étrangères et européennes, Collection des archives des services de la Récupération artistique, RA/50-46-1474.



The Paul Graupe & Co. gallery in Paris had various works of art from the Fritz Gutmann collection on consignment during the war. Paul Graupe was a Jewish art dealer who had fled the Nazi regime in Germany and settled in France in 1936. Together with his business partner Arthur Goldschmidt, he ran the Paul Graupe & Co. gallery at 16 Place Vendôme in Paris until he left for Switzerland in 1939. During the war, occupying forces removed works of art from the gallery premises and a company repository. After the war Paul Graupe's son sent the French recovery and restitution authorities a list entitled 'LISTE I B DES TABLEAUX VOLES 16 Place Vendôme ...' (fig. 19). The list concerned was also found during the Restitutions Committee's investigation in the archives of the French recovery and restitution authorities. Item number 12 on the list is 'Sculpture / [photo n°] 16 / Piéta', which might refer to the sculpture being claimed.

While conducting research in a completely different source – the digital database *Fold3*, which gives access to thousands of US military records via the internet – the Committee found a post-war letter from the Monuments, Fine Art and Archives Restitution Branch (MFA&A) of the allied army that referred to a 'Pieta, (woodsculpture , Austrian c.1420)', possibly the claimed work of art (fig. 20). According to the letter, this sculpture was one of the objects that had been removed from Graupe & Co.'s repository by occupying forces. The letter names the Graupe gallery as the owner of the objects that were removed.

The Germans Josef Angerer and Fritz Schmidt played a key role in the removal of works of art from Paul Graupe & Co. Angerer was one of Hermann Göring's chief art buyers. It is possible that the Pietà came into Göring's hands through the involvement of Angerer and Schmidt (fig. 21).

The evidence supporting the fact that the sculpture was indeed part of Göring's collection includes the photograph above. It comes from the archives of the photographer William Vandivert, who took photographs for the American weekly magazine *Life* from the late nineteen-thirties onwards. The illustration concerned shows how the current NK 688 was found by American soldiers in May 1945 in a railway wagon full of art that Göring had left behind in a tunnel near the Luftwaffe's headquarters in Berchtesgaden in Bavaria (fig. 22).

[The allies stored the Pietà in the Central Collecting Point in Munich, after which the sculpture was sent back to the Netherlands on 3 June 1947 (fig. 23). The Netherlands Art Property Foundation (SNK), which looked after the object, did not link it to the Fritz Gutmann collection (fig. 24).



22. American soldiers unload the Pietà from a railway wagon at Berchtesgaden.

Transport NKI van München naar Eindhoven op 18 Juni 1947.

Schilderijen.

|                      |                                |           |
|----------------------|--------------------------------|-----------|
| 1. N. Molenaar       | Boelandschap                   |           |
| 2. J. Provoost       | Tegel van verkendiging         |           |
| 3. J. Provoost       | H. Andriens in landschap       |           |
| 4. J. A. J. Janssen  | De oude kerk                   | 4.000,--  |
| 5. J. A. J. Janssen  | Wijde in spiegel kijkt         | 1.200,--  |
| 6. J. A. J. Janssen  | Landschap                      | 500,--    |
| 7. J. A. J. Janssen  | Moderna met kind en heilige    | 500,--    |
| 8. J. A. J. Janssen  | Rivierlandschap met twee baten | 1.000,--  |
| 9. J. A. J. Janssen  | Loth en zijn dochters          | 1.500,--  |
| 10. J. A. J. Janssen | Portret van Janssen de Schale  | 700,--    |
| 11. J. A. J. Janssen | Portret van maar buiten kijnde | 2.000,--  |
| 12. J. A. J. Janssen | Man en vrouw                   | 2.000,--  |
| 13. J. A. J. Janssen | Mythologische scenes           | 4.000,--  |
| 14. J. A. J. Janssen | San Marco plein in Venetië     | 1.000,--  |
| 15. J. A. J. Janssen | 6 tafelen uit "Der Deserteur"  | 300,--    |
| 16. J. A. J. Janssen | Portret van een heer           | 600,--    |
| 17. J. A. J. Janssen | Meisjesportret met rozen       | 300,--    |
| 18. J. A. J. Janssen | Berglandschap                  | 60,--     |
| 19. J. A. J. Janssen | Stillven met fruit             | 100,--    |
| 20. J. A. J. Janssen | Kloosterstillven               | 1.000,--  |
| 21. J. A. J. Janssen | Portret van J. Müller          | 8.000,--  |
| 22. J. A. J. Janssen | Witje stillven                 | 100,--    |
| 23. J. A. J. Janssen | Landschap                      | 80,--     |
| 24. J. A. J. Janssen | Weten met vissers              | 100,--    |
| 25. J. A. J. Janssen | Stommeater                     | 40,--     |
| 26. J. A. J. Janssen | Meisjesportret                 | 100,--    |
| 27. J. A. J. Janssen | Kindgehoort                    | 80,--     |
| 28. J. A. J. Janssen | Landschap met wandelend paar   | 80,--     |
| 29. J. A. J. Janssen | Stad aan rivier                | 200,--    |
| 30. J. A. J. Janssen | Zegelacht met baten            | 100,--    |
| 31. J. A. J. Janssen | Landschap bij meer             | 80,--     |
| 32. J. A. J. Janssen | Hardere met vee                | 800,--    |
| 33. J. A. J. Janssen | Landschap                      | 150,--    |
| 34. J. A. J. Janssen | Riviergezicht met baten        | 100,--    |
| 35. J. A. J. Janssen | Landschap bij de kust          | 80,--     |
| 36. J. A. J. Janssen | Transporteren                  | 40.550,-- |

Transport 131.760,--

Maubelen.

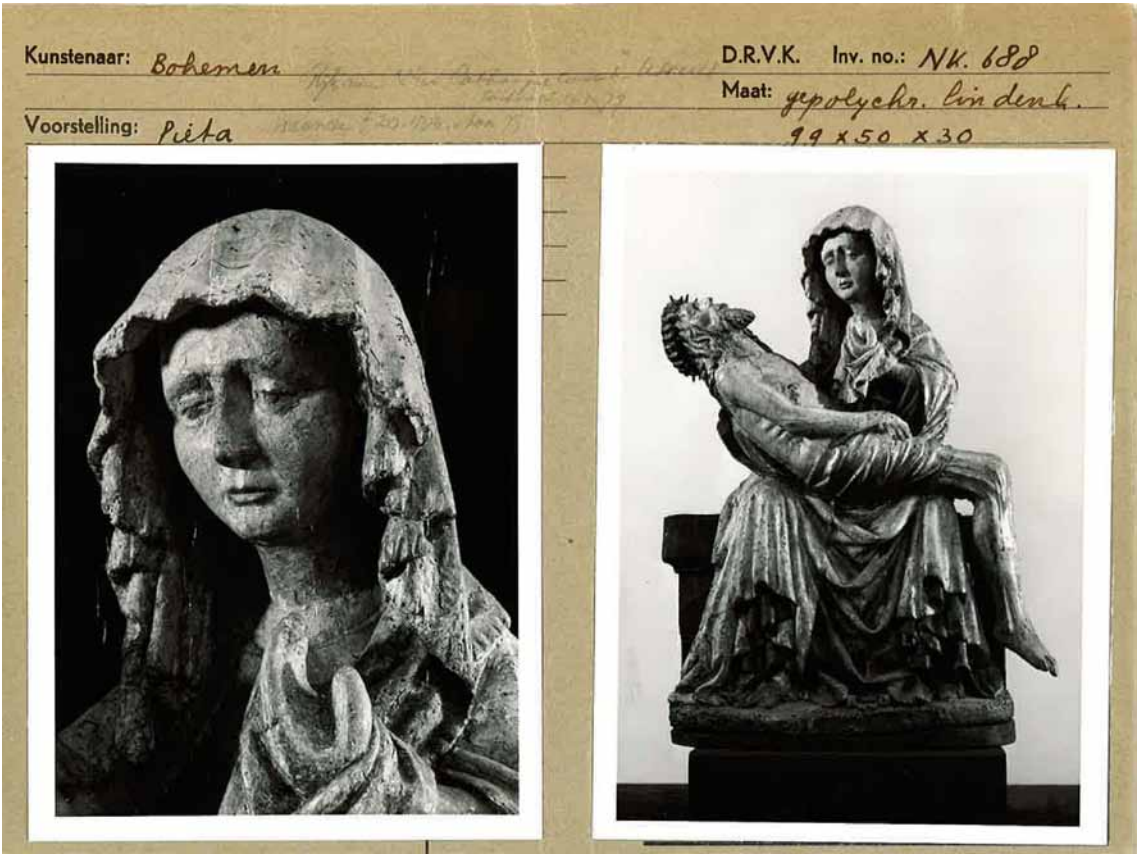
|                  |                 |
|------------------|-----------------|
| 1. Gotisch       | Staal           |
| 2. Baroque       | Tafel           |
| 3. "             | Tafel met blad  |
| 4. Gotisch       | Kast            |
| 5. Baroque       | Tafel met blad  |
| 6. Louis XV      | Kist met intera |
| 7. Duits ca.1425 | Pietà           |

23. Page 1: List of objects returned from Germany to the Netherlands. The Pietà is listed as no. 7 on page 2, under the heading 'furniture'.

Source: Nationaal Archief, Stichting Nederlands Kunstbezit archive.

Recommendation

Based on information including the documentation described above, in its recommendation of 11 April 2011 the Committee deemed it highly likely that the object NK 688 was owned by Fritz Gutmann during the war. In this case the documents from the French recovery and restitution authorities, including the photograph of the Pietà with the reference to Fritz Gutmann on the back, played an important part. The Committee believed that the postwar letter from the MFA&A, in which the Graupe gallery was named as the owner of objects including a Pietà, carried insufficient weight to detract from the conclusion that it is highly probable that the current NK 688 was the property of Fritz Gutmann. This is because the Committee deduced from other archive documentation that after the war Paul Graupe's son also filed claims for objects owned by third parties – for example Fritz Gutmann – that the Graupe gallery had in its keeping. With regard to the nature of the loss of possession, the Committee considered that the current NK 688 was among the objects that the Paris Graupe gallery had in storage during the war which were seized by occupying forces from the gallery's premises or repository. The Committee concluded on the basis of this that Fritz Gutmann's loss of possession of the Pietà was involuntary and due to circumstances directly related to the Nazi regime.



Before the application for the restitution of the Pietà was submitted, the sculpture was part of the NK collection and was held in the repository of the Museum Catharijneconvent in Utrecht. In 2011, after the Minister of OCW decided – on the advice of the Restitutions Committee – to restitute the Pietà to Fritz Gutmann’s heirs, in August 2011 the object was placed in the museum’s Refectory in order to give the public a last chance to view it. The museum also announced its return to the rightful owner. The work of art left the museum on 7 September 2011. It was taken to London to be auctioned by Sotheby’s. Contact with the owners of the Pietà led to the museum’s being given the opportunity to purchase the sculpture prior to the sale. The museum acquired the work with support from the Vereniging Rembrandt and on 29 November 2011 it returned to the museum after an absence of two and a half months. The museum intends to present the sculpture to the public again around Easter 2012, and to devote additional attention to what happened to the Pietà during the war. The object will be given a new place in the museum’s permanent exhibition.

|  |   |                                   |                            |
|--|---|-----------------------------------|----------------------------|
| In bruikleen gegeven aan<br><i>Rijksmus. "Het Catharijneconvent" Utrecht</i><br>op<br>tot<br>Toezichthouder:   | Naam Voorwerp<br><b>PIETA</b><br><i>Boheems</i> |                                   | Inv. Nr.<br><b>NK. 688</b> |
|  | Geplaatst                                       | Tijd<br><b>± 1430</b>             | Inv. Nr. (oud)<br>Cat. nr. |
| Op een bank is gezeten de Hailige Maagd een wit-met-groene doek over het hoofd, haar linker hand onder een slip daarvan als om de ogen mee uit te wischen. Zij draagt een wit met blauwgevoerde mantel die over de knieën in plooien neerhangt. Op haar schoot Christus, de handen gekruist op het onderlichaam, zijn schouders door de rechter hand van Maria gesteund; het hoofd enigszins opgericht. Een vergulde lendendoek. |   | Grondstof <b>gepolychr.hout</b>   |                            |
|  |   | Merken                            |                            |
|  |   | H. 99<br>Br. 50<br>L. 30<br>Diam. | Foto                       |
|  |   | Verzekering<br><i>f 20 000.-</i>  |                            |
| Herkomst<br><i>Sticht. Nid. Kunstbuit</i> <del>oud</del> nr. B/B95.  |   | Dossier                           |                            |

50904 - '48

24. Front and back of the RCE inventory card for NK 688.



## 6. Restitutions Committee recommendations

### 6.1 2002 – 2011 overview

Between January 2002, when the Restitutions Committee took up its duties, and the end of 2011, the Minister of OCW requested advice in over 130 cases. Of these cases, 121 related to items of cultural value from the National Art Collection, while the remaining nine involved binding opinions. The overviews and figures shown in this section only relate to the former claims, i.e. claims submitted to the Committee on the basis of article 2, paragraph 1 of the Decree Establishing the Restitutions Committee. Section 6.3 presents an overview of figures relating to binding opinion cases.

Of the 121 cases relating to the National Art Collection that the Committee received up to the end of 2011, a few were withdrawn before advice could be issued and a few were combined with an application that was filed later, leaving a total of 113 requests for advice. Five of the National Art Collection cases related to claims that the Committee had made recommendations about previously and about which a request for a revised recommendation was submitted. In two cases, the Committee considered itself unauthorized to issue advice.

Between 2002 and 2011, the Restitutions Committee issued 103 recommendations on the basis of article 2, paragraph 1 of the Decree Establishing the Restitutions Committee.<sup>20</sup> The scope of the cases varies from claims for a single work of art to claims for the return of several hundred objects. Of the total of 103 recommendations made, 53 were fully in the applicants' favour, 34 were to reject the claim in full and 16 were to partly grant and partly reject the claim.

| Number of cases relating to the National Art Collection submitted to the RC each year |     |
|---|-----|
| 2002  | 12  |
| 2003  | 4   |
| 2004  | 9   |
| 2005  | 16  |
| 2006  | 15  |
| 2007  | 35  |
| 2008  | 12  |
| 2009  | 10  |
| 2010  | 6   |
| 2011  | 2   |
| Total   | 121 |

| Number of Recommendations issued by the RC each year |     |
|--|-----|
| 2002   | 5   |
| 2003   | 7   |
| 2004   | 2   |
| 2005   | 7   |
| 2006   | 12  |
| 2007   | 16  |
| 2008   | 15  |
| 2009   | 16  |
| 2010   | 10  |
| 2011   | 13  |
| Total  | 103 |

<sup>20</sup> During the handling of a few cases the recommendation was split into two parts, so there were partial recommendations. See, for example, the recommendations Rosenbaum RC 1.82-A and RC 1.82-B in Chapter 8. The recommendations issued by the Committee can be consulted on its website. See appendix 4 for an index by case number of all the recommendations made by the Committee during the 2002-2011 period.

Up to the end of 2011, the Committee issued recommendations in cases claiming some 1161 items of cultural value. The recommendations relating to 430 objects (about 37%) were to grant the claims, whereas the Committee recommended that claims relating to the other 731 objects (approximately 63%) should be rejected. Below is an overview of the number of objects about which the Committee issued recommendations in the period from 2002 to 2011:

| Year  | Recommended grants<br><i>number of objects</i> | Recommended rejections<br><i>number of objects</i> |
|-------|--|--|
| 2002  | 100  | 0  |
| 2003  | 5  | 73   |
| 2004  | 4  | 1  |
| 2005  | 220  | 72   |
| 2006  | 15   | 1  |
| 2007  | 31   | 22   |
| 2008  | 12   | 80   |
| 2009  | 23   | 107  |
| 2010  | 10   | 4  |
| 2011  | 10   | 371  |
| Total | 430  | 731  |

### 6.2 2011 overview

In 2011 the Minister of OCW submitted two new National Art Collection cases to the Restitutions Committee. These two cases related to claims that the Committee had made recommendations about previously and about which a request for a revised recommendation was submitted.

During the year under review the Committee made 13 recommendations about objects from the National Art Collection. Of these recommendations five were to grant in full, six were to reject in full, and two were to grant in part and reject in part.<sup>21</sup> At the beginning of 2012 there were 13 National Art Collection cases still ongoing.

<sup>21</sup> Recommendation to grant: RC 1.108 (Mathiason), RC 1.111 (Mayer), RC 1.114-B (Gutmann III: *partial recommendation*), RC 1.120 (Oppenheimer II) and RC 1.117 (Jonas). Recommendation to reject: RC 1.182-A (Rosenbaum: *partial recommendation*), RC 1.60 (Steenhouwer), RC 1.112 (May II), RC 1.106 (De Haan), RC 1.61-A (Arnhold: *partial recommendation*) and RC 1.115-A (Gutmann IV: *partial recommendation*). Recommendation to grant in part and reject in part: RC 1.116 (Hiegentlich) and RC 1.182-B (Rosenbaum: *partial recommendation*).

6.3 Binding opinions

The previous section included an overview of the recommendations issued by the Committee in 2011 regarding claims concerning the National Art Collection. As explained in Chapter 3, the Restitutions Committee was assigned a second task when it was established. Article 2, paragraph 2 of the Decree Establishing the Restitutions Committee provided for the option of also submitting disputes to the Restitutions Committee in relation to cases of looted art in which parties other than the State of the Netherlands are involved.

By the end of 2011 the Restitutions Committee had dealt with nine requests for an opinion in the context of this task. Four of these binding opinion cases were submitted to the Committee during the 2006-2008 period and the other five in 2011.

The Committee published its first four binding opinions in 2008 and 2010.<sup>22</sup> Opinions about the five binding opinion cases that were still under consideration at the end of 2011 will be issued later.

| Number of binding opinion cases submitted to the RC each year |   |
|---|---|
| 2002  | - |
| 2003  | - |
| 2004  | - |
| 2005  | - |
| 2006  | 2 |
| 2007  | 1 |
| 2008  | 1 |
| 2009  | - |
| 2010  | - |
| 2011  | 5 |
|   |   |
| Total   | 9 |

| Number of binding opinions issued by the RC each year |   |
|---|---|
| 2002  | - |
| 2003  | - |
| 2004  | - |
| 2005  | - |
| 2006  | - |
| 2007  | - |
| 2008  | 3 |
| 2009  | - |
| 2010  | 1 |
| 2011  | - |
|   |   |
| Total   | 4 |

<sup>22</sup> See the *Report 2008* and the *Report 2010*.

7. Conclusion

The Restitutions Committee reached its tenth anniversary in 2011. During this ten-year period the Committee made 103 recommendations on the basis of investigation in the Netherlands and beyond. At the beginning of 2012 there were 18 cases that were still being investigated, and account is being taken of a number of new requests for advice or binding opinions that may arise from the study of museum acquisitions.

During the year under review it once again became clear that interest in the general issue of restitution is ongoing. This applies to both its scope and the procedures for dispute settlement. These trends are being monitored closely by the Restitutions Committee. The national and international sharing of ideas and experiences, as described in section 4.2, relates primarily to the problems of restituting items of cultural value that were stolen during the Nazi regime. In some cases, however, other areas are also touched on, for example the return of human remains to their countries of origin, the restitution of classical antiquities as well as the return of goods and works of art acquired during colonial rule. The theme therefore appears to be becoming broader. It is important during the ever busy practical handling of claims about items of cultural value that were plundered during the Second World War to continue to keep abreast of the debate about restitution in a wider historical context.

## 8. Recommendations issued in 2011

Below is the full text of all the recommendations made by the Restitutions Committee to the Minister of OCW in 2011. The recommendations are given in chronological order. The dates given for recommendations are based on when they were finalized.<sup>23</sup>

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### 1. Recommendation regarding Rosenbaum (case number RC 1.82-A)

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In a letter dated 21 May 2007, the Minister for Education, Culture and Science (hereafter referred to as: ‘the Minister’) requested the Restitutions Committee (hereafter referred to as: ‘the Committee’) to issue a recommendation regarding the decision concerning the application of G.S. of N.Y.C. and J.L. of L.A. (hereafter jointly referred to as: ‘applicants’) dated 28 March 2007 for the restitution of, among other things, the painting *Landscape with classical temple* by the artist Hubert Robert. This work is part of the Netherlands Art Property Collection (NK collection) and is administered by the Dutch government under inventory number NK 1432. It is currently on loan to the Dutch Embassy in Budapest, Hungary.

#### The procedure

The claim to NK 1432 is part of a larger claim to art objects in the NK Collection made by the applicants.<sup>24</sup> Following the request for advice on 21 May 2007, the Committee conducted a fact-finding investigation, the results of which were recorded in a draft investigatory report of 1 October 2009. The draft investigatory report (RC 1.82) was sent to the applicants for comment and also to the State Secretary for Education, Culture and Science (hereafter referred to as: ‘State Secretary’)<sup>25</sup> with a request for additional information. The applicants commented on the content of the draft investigatory report, and the State Secretary informed the Committee that she had no further information to add. The Committee subsequently decided to subsume the investigation into NK 1432 under a separate file (RC 1.82-A) in light of the fact that this object is also part of an application for restitution by Mathiason (RC 1.108). The Committee will issue a recommendation regarding the other objects claimed in RC 1.82 at a later date (RC 1.82-B). The investigatory report on which this partial recommendation RC 1.82-A is based has consequently been separated from the original draft investigatory report on RC 1.82. The applicants were informed of this in a letter dated 13 December 2010, which also contained the RC 1.82-A report. In their response, the applicants informed the Committee that additional investigations had not yielded any new information on the current NK 1432. The Committee adopted the investigatory report on RC 1.82-A on 31 January 2011, and refers to this report for the facts of the case. The applicants were represented in this procedure by M. Stötzel, lawyer, of Marburg, Germany.

#### Considerations:

1. The applicants stated that they are heirs of *‘the late Isaak and Jacob Rosenbaum and descendants, especially of Saemy Rosenberg and Hans and Eric Stiebel’*. It emerges from the investigation that applicant J.L. is a grandson of Saemy Rosenberg and applicant G.S. is Eric Stiebel’s son. Saemy Rosenberg and Eric Stiebel were among the shareholders of art dealership(hereafter referred to as: ‘art dealership Rosenbaum’). This claim is based on the applicants’ initial proposition that the current was part of art dealership Rosenbaum’s trading stock, the possession of which was lost involuntarily during the occupation as a result of the Nazi regime. With reference to the Committee’s investigation of the facts, the applicants later revised their argument (see 5).



25. H. Robert, *Landscape with classical temple* (NK 1432).

2. Pursuant to current national policy in respect of the restitution of works of art, they are only eligible for restitution if there is a convincing case regarding the right of ownership and there are no indications to the contrary.
3. On the basis of its investigation, the Committee concludes that in all probability, art dealership Rosenbaum did not own the currently claimed work of art. It can be concluded from archive documents that after the war, the current NK 1432 was inadvertently linked to the Rosenbaum art dealership. After the war, the Netherlands Art Property Foundation (SNK) noted the name ‘*Rosenbaum*’ on an internal declaration form for the painting, but this annotation was crossed out and replaced with ‘*niet v. Rosenbaum*’ [not from Rosenbaum]. Originally, ‘*Rosenbaum, Amsterdam*’ was noted on the inventory card belonging to the form but this was later corrected and the remark ‘*volgens S. Rosenberg niet van de firma*’ (According to S. Rosenberg not from the company) added. Evidently, the SNK contacted Saemy Rosenberg at the time, who then declared that the current NK 1432 had not belonged to the art dealership Rosenbaum.
4. Furthermore, the Committee has found evidence that at the time of loss of possession during the war, the current NK 1432 was the property of the Jewish family Mathiason, who originally came from Germany. The work was in all likelihood part of the family Mathiason’s relocation property, which had been confiscated in the Netherlands during the war. This information provides proof that contradicts the ownership by art dealership Rosenbaum, within the meaning of the Ekkart Committee’s eighth recommendation of April 2001. The Committee refers to its recommendation regarding Mathiason of 31 January 2011 (RC 1.108) for its assessment of the provenance as being Mathiason.

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<sup>23</sup> See appendix 4 for an index by case number of all the recommendations made by the Committee during the 2002-2011 period.

<sup>24</sup> The request for advice regarding RC 1.82 concerns various other NK works, which will be dealt with in the future recommendation RC 1.82-B.

<sup>25</sup> Since the autumn of 2010, the State Secretary is the designated member of the government for restitution claims.

5. Finally, the Committee takes into consideration that, after reading the draft investigatory report, the applicants themselves indicated that it seems unlikely that the art dealership Rosenbaum owned the current NK 1432. In a letter dated 11 January 2011, the applicants declared: ‘it seems that this – former ownership of I. Rosenbaum N.V. concerning NK 1432 – is not very likely.’

Conclusion

The Restitutions Committee advises the State Secretary for Education, Culture and Science to reject the application for the restitution of the painting *Landscape with classical temple* (NK 1432).

Adopted at the meeting of 31 January 2011 by W.J.M. Davids (chairman), J.Th.M. Bank, P.J.N. van Os, D.H.M. Peeperkorn, E.J. van Straaten, H.M. Verrijn Stuart, I.C. van der Vlies (vice-chairman) and signed by the chair and the secretary.

(W.J.M. Davids, chairman)

(E. Campfens, secretary)

2. Recommendation regarding Mathiason (case number RC 1.108)

In a letter dated 27 January 2009, the Minister for Education, Culture and Science (hereafter referred to as ‘the Minister’) requested the Restitutions Committee to issue a recommendation regarding the decision concerning the application by M.H.-M. of N.Y.C. (hereafter referred to: as ‘the applicant’) dated 1 December 2008 for the restitution of the painting *Landscape with classical temple* by the artist Hubert Robert. This work is part of the Netherlands Art Property Collection (NK collection) and is administered by the Dutch government under inventory number NK 1432. It is currently on loan to the Dutch Embassy in Budapest, Hungary.

The procedure

Following the request for advice, the Committee conducted a fact-finding investigation, the results of which were recorded in a draft investigatory report dated 4 October 2010. The draft investigatory report was sent to the applicant, together with a request for additional information on the applicant’s family and legal inheritance relationship to K. Mathiason and his brother H. Mathiason and his (ex) wife L. Dobrin. The applicant responded in writing to this request. The draft report was also sent to the State Secretary for Education, Culture and Science (hereafter referred to as: ‘State Secretary’)<sup>26</sup> with a request for additional facts, after which the State Secretary informed the Committee that she had no additional facts to bring to the Committee’s attention. The Committee adopted the investigatory report on 31 January 2011, and refers to this report for the facts of the case.

The applicant was represented in this procedure by I. Gielen, lawyer in Berlin, Germany. The current NK 1432 is also part of an application for restitution in the Rosenbaum case (RC 1.82). Based on its investigation in the Mathiason and Rosenbaum cases, the Committee concludes that, after the war, the current NK 1432 was most probably inadvertently linked to the Rosenbaum art dealership. The Committee refers to its investigatory report on Mathiason (RC 1.108) and the partial recommendation on Rosenbaum dated 31 January 2011 (RC 1.82-A).

Considerations

1. The applicant is M.H.-M. of N.Y.C. The applicant states that she is entitled to the inheritance of her uncle Karl Mathiason (1899-1944), a Jewish businessman who lived in Germany in the 1930s. He is said to have lost possession of the currently claimed painting *Landscape with classical temple* by the artist Hubert Robert (NK 1432) as a result of confiscation by the occupying authorities in the Netherlands during the Second World War. The applicant is the only child of the couple Lilly Dobrin and Hermann Mathiason (later: Matson), who was Karl Mathiason’s brother. The couple divorced in 1944. The applicant declares that she is the only person entitled to the estate of her parents, Hermann Mathiason and Lilly Dobrin, and that of her uncle, Karl Mathiason. By way of proof, she sent the Committee copies of four legal inheritance documents.

2. The data relating to the provenance of the current NK 1432 before and during the war is as follows. On 6/7 March 1928, the current NK 1432 was offered for sale by the Rudolph Lepke auction house in Berlin. It has not been ascertained where and in whose possession the current NK 1432 was in the period from the auction until around 1943. The Committee has found indications that, in 1943, the current NK 1432 was in storage in the air-raid shelter of the Kröller-Müller Museum, among other places, from where it was transported to Germany by the Dienststelle Mühlmann of The Hague, a German organisation that purchased works of art for the Nazi regime. The sources show that, on 14 February 1945, E. Plietzsch of the Dienststelle Mühlmann collected the painting ‘*HUBERT ROBERT. / “Italiaans landschap”. / Olieverf, doek, afm. 150 x 100 cm.*’ [HUBERT ROBERT./ ‘Italian representation’ / Oil, canvas, dim. 150 x 100 cm’] from the said air-raid shelter, after which this painting, which was probably the current NK 1432, was sent to the Reichsbank in Würzburg, Germany, around 15 February 1945. The current NK 1432 was found there after the war and subsequently returned to the Netherlands.

3. According to the applicant, the currently claimed painting was owned by Karl Mathiason when war broke out. The applicant assumes that the current NK 1432 was the same object as the painting said to be in her family’s possession.

4. The following can be gathered from the applicant’s explanation and the other investigation data. In 1939, Karl Mathiason fled to the United States because of the anti-Jewish measures taken by the Nazi regime. His brother Hermann Mathiason and his wife Lilly Dobrin followed him in 1941, because it took longer for them to obtain their visas. In the meantime, their respective relocation properties had been exported from Germany with the intention of having them shipped via the Netherlands to their final destination. In a post-war notarial declaration, Dobrin stated that she and her husband had decided ‘*unser Umzugsgut zusammen mit dem Umzugsgut des Herrn Karl Mathiason zur Absendung zu bringen, da wir befurchteten, dass es in Berlin von den Hitlerbehoerden beschlagnahmt wuerde*’ [to dispatch our relocation property together with the relocation property of Mr Karl Mathiason, as we feared that it would be seized by the Hitler administration in Berlin].

5. Both Karl Mathiason’s and the Mathiason-Dobrin’s relocation property were then supposedly shipped under Karl Mathiason’s name from Germany to the Netherlands, from where the Holland Amerika Lijn (HAL) would transport them to the United States. Karl Mathiason’s household effects were probably actually sent on to their final destination, because Dobrin declared after the war that they had reached New York. According to Dobrin in her post-war statement, her and her husband’s property was kept in storage at the HAL under Karl Mathiason’s name, because they wanted to wait and see which country would grant them their visas first, England or the United States.

6. Around 1941, this relocation property stored at the HAL was confiscated by the occupying forces as Jewish property. It can be inferred from sources that the German clearing house for stolen works of art *Sammelverwaltung feindlicher Hausgeräte* (SFH) sold goods from this relocation property in 1942 and/or 1943. Although the confiscated property was addressed to ‘*Herrn K. Mathiasson, 790 Riverside Drive, Apt. 8 N, New York, USA*’ [Mr K. Mathiasson, 790 Riverside Drive, Apt. 8 N, New York, USA], Dobrin’s statements as referred to in considerations 4-5 indicate that it possibly also contained property of the Mathiason-Dobrin couple.

7. It is not known whether the confiscated painting belonged to Karl Mathiason or the Mathiason-Dobrin’s. When registering the confiscated relocation property, the German occupying forces probably took the fact that it was addressed to Karl Mathiason as their starting point. An SFH list dated 17 September 1942 and entitled ‘*SAMMELVERWALTUNG FEINDLICHER HAUSGERAETE / DOSSIER 391 / EIGENTUEMER: K. MATHIASSON*’ [*Sammelverwaltung feindlicher Hausgeräte / dossier 391 / owner: K. Mathiasson*] (hereafter referred to as ‘SFH list’) refers to ‘*aus einem feindlichen Inventar aussortierter Kunstgegenstaende*’[artworks taken from an enemy inventory], including the object ‘*6117 1 Gemaelde, H. Robert, “Italienische Darstellung” f. 450.-*’ [6117 1 painting, H. Robert, ‘Italian Representation’ NLG 450’]. The files from de Abteilung Feindvermögen from 1942 and 1944 seem to indicate that the SFH sold the painting in question to the Dienststelle Mühlmann in October/November 1942. In a letter dated 30 November 1942, the Dienststelle Mühlmann informed another German body that it had purchased the painting ‘*Italienische Darstellung*’ by H. Robert.

8. It cannot be conclusively determined from the documentation consulted that the painting referred to, ‘*Italienische Darstellung*’ by H. Robert, corresponds with the current NK 1432. ‘Italianate’ depictions are common in the oeuvre of artist H. Robert, and the applicant has been unable to provide a photograph of the painting or any other information that would facilitate identification. An indication that it definitely is the same work of art is the fact that the Dienststelle Mühlmann is mentioned as provenance in sources on both the current NK 1432 and the ‘*K. Mathiasson*’ painting. This is clear from the combined investigatory information under considerations 2 and 7: it is a known fact that the Dienststelle Mühlmann bought the painting ‘*Italienische Darstellung*’ by H. Robert in 1942, while it is also known that a painting by H. Robert that can be assumed to be the current NK 1432 was collected by the Dienststelle Mühlmann from storage in the Rijksmuseum Kröller-Müller in 1945.

26 Since the autumn of 2010, the State Secretary is the designated member of the government for restitution claims.



9. Furthermore, while the Committee has found several declarations in post-war internal declaration forms of the Netherlands Art Property Foundation (SNK) that (could) relate to Italianate depictions by the artist H. Robert, the form on the current NK 1432 is the only one to mention Dienststelle Mühlmann as one of the provenance names. This is a further indication that the painting that the SFH in 1942 considered to be property of ‘K. *Mathiasson*’ and that was sold to the Dienststelle Mühlmann is indeed the current NK 1432. Taking all information on the identification into account, the Committee deems it highly probable that the current NK 1432 corresponds with the painting by the artist H. Robert that was confiscated in the Netherlands around 1941.
10. Based on the regulations on private art property, restitution is possible if the original owner of the claimed object lost According to the Ekkart Committee’s eighth recommendation of 2001, the title to art objects has to be proved with a high degree of probability, and there can be no indications to the contrary.
11. Regarding the ownership rights, the Committee considers that the investigation did not conclusively ascertain whether the confiscated painting was owned by Karl Mathiason or Hermann Mathiason and his wife. The SFH list gives ‘K. *Mathiasson*’ as the owner and the Committee assumes that this was because the confiscated goods had been addressed to him. However, after the war Dobrin declared (as referred to in consideration 5) that the confiscated property contained effects that belonged to her and her husband and that Karl Mathiason had already received his property. In her explanation, the applicant assumes that the claimed work of art was owned by Karl Mathiason. At first glance, this assumption does not tally with Dobrin’s statements. It is also worth noting that the inventory list of her and her husband’s relocation property compiled by Dobrin in the war and ratified before a civil-law notary after the war apparently did not mention the painting claimed by the applicant. The descriptions used on the inventory list can, however, no longer be verified, and Dobrin later stated that her list possibly did not include all effects.
12. Given this state of affairs, the Committee deems it highly probable that at the time of loss of possession the current NK 1432 was owned by Karl Mathiason or Hermann Mathiason and Lilly Dobrin. In this case, no further decision is required, as it was ascertained in consideration 1 that the applicant is the sole heir to the estate of her parents Hermann Mathiason and Lilly Dobrin, as well as that of her uncle, Karl Mathiason. The Committee believes the finding that ownership rested with Karl Mathiason or Hermann Mathiason and Lilly Dobrin to be sufficient to issue a positive recommendation on the application for restitution of the current NK 1432.
13. As to the nature of the loss of possession, the Committee considers that this was a case of confiscation by order of the occupying forces around 1941 and, therefore, involuntary loss of possession due to circumstances directly related to the Nazi regime.
14. In 1964, the *Wiedergutmachungskammer* (Chamber of Reparation) of the *Landgericht* Berlin (District Court) granted the Mathiason family damages for the confiscated relocation property. The Committee is of the opinion that these damages do not stand in the way of the applicant’s admissibility in the claim to the work of art from the Dutch national collection, as it did not involve a waiver of rights and the State of the Netherlands was not a party to it.
15. The Committee thus deems all grounds for restitution to have been met. Regarding a possible payment obligation in the event of restitution, the Committee considers that the payment of damages referred to in 14 is a matter between the Mathiason heirs and the German state. In this context, the Committee is of the opinion that restitution of NK 1432 without repayment does not constitute unjust enrichment.

Conclusion

The Restitutions Committee advises the State Secretary for Education, Culture and Science to return the painting *Landscape with classical temple* by the artist H. Robert (NK 1432) to applicant M.H.-M. in her capacity as sole heir to the estate of her parents Hermann Mathiason and Lilly Dobrin as well as that of her uncle Karl Mathiason.

Adopted at the meeting of 31 January 2011 by W.J.M. Davids (chairman), J.Th.M. Bank, P.J.N. van Os, D.H.M. Peeperkorn, E.J. van Straaten, H.M. Verrijn Stuart, I.C. van der Vlies (vice-chairman) and signed by the chair and the secretary.

(W.J.M. Davids, chairman)

(E. Campfens, secretary)

3. Recommendation regarding Mayer  
(case number RC 1.111)

In a letter dated 16 February 2009, the Minister for Education, Culture and Science (hereafter referred to as: ‘the Minister’) asked the Restitutions Committee (hereafter referred to as: ‘the Committee’) to issue a recommendation regarding the decision to be taken on the application dated 26 September 2008 by E.L.H. of G., U.S.A. (hereafter referred to as: ‘the applicant’) for the restitution of the painting *St Christopher* by the Meester van Frankfurt (15th century). This work is currently part of the Netherlands Art Property Collection (NK collection), which is administered by the Dutch government under inventory number NK 2556, and is currently housed in the Mauritshuis in The Hague.

The procedure

Following the application for restitution, the Committee instigated a fact-finding investigation, the results of which were included in a draft investigatory report dated 6 December 2010. The draft report was sent to the applicant, who responded to its content in a letter dated 27 January 2011. This response was incorporated into the draft report. In addition, the Committee sent the draft investigatory report to the State Secretary for Education, Culture and Science (hereafter referred to as: ‘the State Secretary’)<sup>27</sup> with a request for additional factual information. The State Secretary responded that he did not have any additional factual material that he wanted the Committee to consider. The investigatory report was subsequently adopted on 7 March 2011. For the facts of the case, the Committee refers to this report. During the procedure the applicant was represented by lawyer I. Gielen of Berlin, Germany.

Considerations

1. The applicant is E.L.H., née M., of G., U.S.A. Through her late husband C.M., born on 20 May 1915, the applicant is related to Otto Mayer (1875-1964). Otto Mayer was a Jewish antiquarian who lived and worked in Berlin, Germany in the 1930s. The applicant is seeking restitution of the 15th century painting *St Christopher* by the Meester van Frankfurt (NK 2556), of which Otto Mayer is said to have lost possession as a result of confiscation in 1933. It is in this context that the applicant states that she is the sole heir of Otto Mayer. As proof of this, she has sent copies of the following legal inheritance documents:
- i. a certificate of inheritance xxx;
  - ii. a certificate of inheritance xxx;
  - iii. a will xxx.
2. Otto Mayer is said to have acquired the current NK 2556 from an Austrian ‘*Privatgalerie*’ [private collection] in 1919. As part of anti-Jewish measures, the Gestapo confiscated a number of paintings and other items from Otto Mayer’s apartment in Berlin in October 1933. Eye-witnesses Clara Mayer and Valeska Kluge-Lindner both made post-war statements concerning the confiscated oil painting depicting ‘*den heiligen Christophorus*’ [St. Christopher], which, according to Kluge-Lindner, was ‘*mit Christuskind auf der Schulter, in einer Landschaft*’ [St Christopher with the Christ child on his shoulders, in a landscape]. This is in all probability the current NK 2556 *St Christopher* by the Meester van Frankfurt (NK 2556). After the war, the Mayer family also reported to the German authorities that the confiscated painting was depicted in a 1924 study by Friedrich Winkler. The Committee’s investigation has shown that the depiction to which the family referred in the study is the current NK 2556.
3. Otto Mayer escaped Germany in late 1935. It is unclear where the current NK 2556 was in the years after the confiscation, i.e. from 1933 to 1942. The current NK 2556 was probably sold to a German museum by Kunsthandel Paul Cassirer & Co. in Amsterdam (hereafter also referred to as: ‘art dealership Cassirer’). This art dealership probably acted as an intermediary in this sale. It is unknown when and from whom the art dealership Cassirer acquired the current NK 2556. At the end of the war, the artwork was recuperated from Germany to the Netherlands, probably because the Amsterdam art dealership Cassirer was the last known provenance name. As far as is known, no one applied to the Dutch authorities at that time for restitution of the current NK 2556.
4. Based on the rules concerning private art property, restitution can be made if the original owner of the claimed object lost possession involuntarily as a result of circumstances that were directly related to the Nazi regime. According to the Ekkart Committee’s eighth recommendation from 2001, title has to be proved to a high degree of probability and there should be no indications to the contrary.

<sup>27</sup> In the current cabinet, the State Secretary is the indicated administrator for restitution claims.

5.

As regards the title, the Committee has considered that the investigation shows that the confiscated painting was the private property of Otto Mayer. The witness statements from Clara Mayer and Valeska Kluge-Lindner provide strong clues to support the assumption that the current NK 2556 was in Mayer’s possession at the time of the confiscation. A statement in a 1929 publication by Max Jakob Friedländer confirms that the current NK 2556 was owned by Mayer. In addition, ‘*verz. Otto Mayer, Berlijn*’ [Otto Mayer collection, Berlin] is written as one of the provenance names on a post-war declaration form from the Netherlands Art Property Foundation. Furthermore, in 1960, the German state accepted that, at the time of the confiscation, Mayer was in possession of the painting ‘*frühniederländisches Ölgemälde: Heiliger Christophorus in Landschaft*’ [early Netherlandish oil painting: St Christopher in landscape], which, according to the investigation, corresponds to the current NK 2556. Given the state of affairs, the Committee deems it highly likely that Otto Mayer owned the current NK 2556 at the time of the loss of possession. The Committee found nothing to contradict this assumption.

6.

As regards the nature of the loss of possession, the Committee has considered the following. The Committee finds the Gestapo’s confiscation of the current NK 2556 in Germany in October 1933 an involuntary loss of possession as a result of consequences directly related to the Nazi regime. The Committee bases this finding on the one hand on the first-hand witness statements of Otto Mayer, Clara Mayer and Valeska Kluge-Lindner, all of whom were present in Otto Mayer’s apartment at the time of the confiscation. On the other hand, the Committee considers the investigation’s discovery of the German *Wiedergutmachungsamt*’s (restitution office) decision in 1960 as recognition of the confiscation from the German side, seeing as Otto Mayer was awarded damages for the loss of possession of, among other things, the current NK 2556.

7.

The Committee does not consider the fact that Otto Mayer did not seek restitution of the current NK 2556 after the war as an obstacle to restitution, given that there is no question of a post-war settlement of an application for restoration of rights. There is no evidence that Otto Mayer knew that the art work had been returned to the Netherlands.

8.

As such, the Committee deems that all conditions for restitution have been met. As regards any obligation to pay for the restitution, the Committee finds that the financial compensation stated in 6 is a matter between Mayer’s heirs and the German state. It is noted here that, according to the applicant, the German state has already indicated that it will file a request for repayment should the current NK 2556 be restituted to Mayer’s heirs.
- 
26. Master of Frankfurt, *St. Christopher* (NK 2556).
- Conclusion
- The Restitutions Committee advises the State Secretary for Education, Culture and Science to return the painting *St Christopher* by the Meester van Frankfurt (NK 2556) to the rightful owners of Otto Mayer’s estate.
- Adopted at the meeting of 7 March 2011 by W.J.M. Davids (Chair), J.Th.M. Bank, P.J.N. van Os, D.H.M. Peepkorn, E.J. van Straaten, H.M. Verrijn Stuart, I.C. van der Vlies (Vice-chair) and signed by the chair and the secretary.
- (W.J.M. Davids, Chair)
- (E. Campfens, Secretary)
4. Recommendation regarding a sculpture in Fritz Gutmann’s collection (NK 688)

(case number RC 1.114-B)
- In a letter dated 18 April 2007, the Minister for Education, Culture and Science (hereafter referred to as: ‘the Minister’) requested the Restitutions Committee (hereafter referred to as: ‘the Committee’) to issue a recommendation regarding the application by S.G., N.G. and L.V.C.-G. (hereafter referred to as: ‘the applicants’) for restitution of objects that may have been in the possession of F.B.E. Gutmann (1886-1944). This application for restitution concerns, among other things, a sculpture which is part of the Netherlands Art Property Collection (hereafter referred to as: ‘NK collection’) and is administered by the Dutch government under inventory number NK 688. The sculpture, which is currently on loan to Museum Catharijneconvent in Utrecht, is described as: NK 688, Unknown, *Pietà*, Southern Germany, 15th century, limewood, 97.0 x 69.0 x 33.0 cm. This recommendation contains the Committee’s judgement with regard to the claim of F.B.E. Gutmann’s heirs to NK 688.
- The procedure
- In a letter dated 15 June 2009, the Minister requested the Restitutions Committee to issue a recommendation regarding the application by N.P., F.F., M.M., C.E.G. and N.M.G. as heirs of Herbert M. Gutmann, the brother of F.B.E. Gutmann, for the restitution of NK 688, among other things. This second claim to NK 688 informed the Committee’s decision to reclassify the various Gutmann files (RC 1.74, RC 1.94, RC 1.113, RC 1.114 and RC 1.115). For the procedural particulars of this case, the Committee refers to its recommendations of 19 June 2010 (RC 1.1113) and 6 December 2010 (RC 1.114-A), and to RC 1.115 which the Committee is still dealing with. Because the heirs of H.M. Gutmann withdrew this contradictory claim to NK 688 in a letter dated 31 March 2011, it can be left aside in this recommendation. The request for advice of 18 April 2007 concerning the claim of the heirs of Fritz Gutmann to which this recommendation relates also concerns several other works of art. For the recommendation concerning works other than NK 688, the Committee refers to its recommendation of 19 June 2010 (RC 1.113) and 6 December 2010 (RC 1.114-A). The Committee’s investigatory report concerning NK 688 (RC 1.114-B) was adopted on 11 April 2011. The Committee refers to this investigatory report for the facts underlying the current recommendation.
- Considerations:
1.

The applicants are the heirs of Friedrich Bernhard Eugen Gutmann (hereafter referred to as: ‘Fritz Gutmann’), as evidenced by a certificate of inheritance drawn up on 18 March 2005 by Amsterdam-based public notary M.R. Meijer. The applicants stated that the current sculpture was the property of Fritz Gutmann and that he involuntarily lost possession of it as a result of circumstances directly related to the Nazi Regime.

2.

Fritz Gutmann, the applicants’ father and grandfather, was born on 15 November 1886 as a son of banker Eugen Gutmann. He married Baroness Louise von Landau, with whom he had two children, B. Gutmann (later: B. Goodman) (1914-1994) and L. Gutmann (born 1919). In 1918, Fritz Gutmann moved to the Netherlands, where he was granted Dutch nationality in 1924. Fritz Gutmann lived with his family in ‘Bosbeek’ country house near Heemstede, where he amassed a sizeable art collection.

3.

From 1939, the increasingly ominous international situation forced the Gutmann-Von Landau couple to sell or transfer abroad as many of the works of art as possible. They sent several objects to Paris in mid-April 1939. After the German invasion of the Netherlands in 1940, the couple made plans to flee the country. During the occupation, Fritz Gutmann sold a large number of works to German art dealers Böhler and Haberstock in three transactions. The Gutmann-Von Landau’s plan to escape abroad failed and in 1943 they were arrested and sent to Theresienstadt concentration camp, where Fritz Gutmann was killed in 1944. His wife, Louise von Landau, was killed in Auschwitz in the same year. The couple’s two children survived the war.

4.

The works that the Gutmann couple transferred to Paris in April 1939 were stored at art dealership Paul Graupe & Co. (hereafter referred to as: ‘art dealership Graupe’), established at Place Vendôme 16 in Paris. Paul Graupe was a Jewish art dealer who had fled the Nazi regime in Germany in 1936 to settle in Paris. He ran the art dealership with his business partner Arthur Goldschmidt. After the war, Goldschmidt stated in a letter dated 20 November 1945 that he had already had several of Fritz Gutmann’s art objects in his safekeeping before war broke out.
- 48
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5. At the beginning of the war, all goods found at the premises of art dealership Graupe at Place Vendôme 16 were seized. The Germans Josef Angerer, one of Göring’s chief art buyers, and Fritz Schmidt played a key role in removing the goods from the premises. In addition, the looting organisation Einsatzstab Reichsleiter Rosenberg (ERR) seized objects that art dealership Graupe had stored at the premises at Boulevard Raspail 236 in Paris. These premises were owned by Mrs Wacker-Bondy (hereafter referred to as: ‘Wacker-Bondy premises’). Among the goods were the objects that art dealership Graupe held in safekeeping for Fritz Gutmann. Various other works from Fritz Gutmann’s collection stored in the Wacker-Bondy premises were purchased in 1941 by art dealer Karl Haberstock. The investigation did not find evidence that the currently claimed Pietà (NK 688) was among the objects purchased by Haberstock.
6. A letter dated 20 May 1946 from the allied army’s department of the Monuments, Fine Arts and Archives Branch (hereafter referred to as: ‘MFA&A’) in Bünde (Germany) refers to objects that were allegedly removed by the occupying forces from the Wacker-Bondy premises at Boulevard Raspail 236 during the war. Among these was an object described as *‘Pietà, (woodsculpture, Austrian c. 1420)’*. Art dealership Graupe was named as owner of the objects.
- After the war, Paul Graupe’s son sent the French restitution authorities various lists of lost art objects. One such list was entitled *‘LISTE I B DES TABLEAUX VOLES 16 Place Vendôme’* (hereafter referred to as: list I B). The following is stated under the title: *‘Il est possible que certains de ces objets se trouvaient chez Madame WACKER-BONDY 236 Boulevard Raspail (...)’* [It is possible that some of these objects were at the home of Madame WACKER-BONDY 236 Boulevard Raspail]. The object *‘Sculpture / [photo n°] 16 / Pièta’* was listed as number 12.
- Regarding the objects in the aforementioned list I B that were claimed on behalf of art dealership Graupe, Rose Valland, head of the Service de Protection des Oeuvres d’Art [Commission for the Protection of Works of Art], wrote in a letter dated 5 March 1965 that it was impossible to determine which of the items belonged to Graupe and which were in safekeeping at the dealership on behalf of third parties.

**Assessment of the claim**

7. Pursuant to current restitution policy, it is important to establish for the current claim whether Fritz Gutmann’s title to the current NK 688 can be assumed with a high degree of probability.
8. The current NK 688 was found by American soldiers in Hermann Göring’s art collection in May 1945 and sent back from Munich to the Netherlands on 3 June 1947. In mid-August 1947, the SNK completed an internal documentation form about the sculpture. The form states that the Pietà was originally owned by *‘Hoogendijk, Amsterdam’*. This refers to the art dealership D.A. Hoogendijk & Co. of Amsterdam. However, the Committee’s investigation has shown that this mention would seem to be the result of a mistake. Thirty-four photos were found under the name Gutmann in the archive of the Ministère des Affaires étrangères et européennes in Paris. One of these shows a Pietà. When requested, the Museum Catharijneconvent stated that the Pietà is the current NK 688. One of the annotations on the rear of the photo reads *‘Gutman Friederich’*. It can be concluded from the alphanumeric code, which is also on the back of the photo, that together with the other thirty-three photos, this photo was probably originally kept in another file whose paper cover bears the heading: *‘Mr. Gutmann / Correspondant: / Dr J.R.R. Scheller / Cliostraat 5” Amsterdam’*. Scheller was the post-war administrator of Fritz Gutmann’s estate and of the Firma F. Gutmann in liquidation. After the war, he corresponded with the SNK and various other bodies at home and abroad about the Gutmann family’s missing works of art. In connection with this, he may have sent the French authorities the said photo of the current NK 688, and that the sculpture may have been among the works Fritz Gutmann sent to France.
9. The applicants claim that the current NK 688 was part of the Fritz Gutmann collection. According to them, the Pietà was stolen from Fritz Gutmann in France during the Second World War. They have stated that the Pietà *‘was part of Fritz Gutmann’s collection that was looted from the Paul Graupe Gallery, 16 Place Vendome, Paris or their storage at 20 Ave. Rapp and the Wacker-Bondy warehouse 236 Boulevard Raspail (by the E.R.R. or others)’*. To substantiate their claims, the applicants submitted various documents, including a handwritten and a typed version of list I B mentioned under consideration 6 above, featuring under number 12 a sculpture *‘Pietà’*. The applicants also sent copies of the photo mentioned in consideration 8 with the annotation *‘Gutman Friederich’* on the back.
10. The Ekkart Committee’s eighth recommendation (2001) states as a condition for restitution that the title to the claimed objects is proved with a high degree of probability, and that there are no indications to the contrary.
11. The Committee considers the following facts and circumstances of importance with regard to the question of whether the current NK 688 was the property of Fritz Gutmann:
- The reference to Fritz Gutmann (‘Gutmann, Friedrich’) on the rear of a photo of a sculpture that the experts at the Museum Catharijneconvent have identified as the current NK 688, which photo was found in the archives of the French recovery and restitution authorities.

- There is also an alphanumeric code on the back of this photo that refers to Dr Scheller, the post-war administrator of Fritz Gutmann’s estate. After the war, Scheller corresponded with the French restitution authorities about the Gutmann family’s missing works of art.
  - In mid-April 1939, Fritz Gutmann had works of art stored at art dealership Graupe in Paris for safekeeping.
  - On List I B, under number 12, a sculpture of a Pietà is mentioned among other objects seized from art dealership Graupe during the war.
  - Arthur Goldschmidt’s letter of 20 November 1945 states that art dealership Graupe had goods on consignment from Fritz Gutmann.
  - No indications were found during the investigation that Fritz Gutmann had ever sold any works of art to art dealership Graupe.
12. On the basis of the above, the Committee deems it highly likely that NK 688 was owned by Fritz Gutmann during the war. As mentioned above, the Ekkart Committee’s eighth recommendation requires that there are no indications that contradict this conclusion. The Committee investigated whether the letter from the MFA&A department in Bünde of 20 May 1946, in which art dealership Graupe is named as owner of the objects mentioned in the letter, including a Pietà, could be such an indication. However, the Committee concludes from archive documentation that after the war, Paul Graupe’s son filed claims for *all* works of art that had been seized from art dealership Graupe. This also concerned objects belonging to third parties, such as Fritz Gutmann, that the art dealership had in safekeeping. On this subject, Paul Graupe’s son was of the opinion that it would be only reasonable to return them to their owners. This is probably the reason why the provenance ‘Graupe’ was linked to the Pietà in the letter from the MFA&A. The Committee therefore believes that the letter from the MFA&A carries insufficient weight to detract from the conclusion that it is highly probable that the current NK 688 was the property of Fritz Gutmann.

13. Pursuant to current restitution policy, the Committee can only recommend restitution if the original owner involuntarily lost possession of the currently claimed object due to circumstances directly related to the Nazi regime.
- With regard to the nature of the loss of possession, the Committee considers the following. The complex of facts has made it sufficiently clear that the current NK 688 was among the objects that the Paris art dealership Graupe had in storage during the war and that were seized from the premises at Place Vendôme 16 or the Wacker-Bondy premises at Boulevard Raspail 236. The Committee concludes on the basis of this, that Fritz Gutmann’s loss of possession of the Pietà was involuntary and due to circumstances directly related to the Nazi regime.
14. After the war, Fritz Gutmann’s heirs made every effort to recover the works of art their father had lost. In connection with this, the Council for the Restoration of Rights ruled on 1 July 1952 that ownership of the goods that Fritz Gutmann had sold to Böhler and Haberstock during the occupation of the Netherlands and that were in the custody of the State of the Netherlands be restored to the heirs. This ruling did not concern the current NK 688, however, and is therefore not taken into consideration. The Committee also finds that in all other respects it has not been established that this case has been conclusively settled. There is no evidence that the applicants applied for restitution of the Pietà after the war. The applicants’ request for restitution is, therefore, admissible.

15. In the 1960s, the heirs of Fritz Gutmann endeavoured to obtain compensation from the West German government for several of their father’s works of art that were lost during the war. Investigations have shown that the heirs received a sum of DM 61,625 at the time as compensation for the loss of three paintings. In reply to a request for information, the German authorities told the Committee that this compensation had nothing to do with the currently claimed NK 688. The Committee believes that the said compensation can be disregarded.

**Conclusion**

The Restitutions Committee advises the State Secretary for Education, Culture and Science to return the sculpture NK 688 to the heirs of Friedrich Bernhard Eugen Gutmann.

Adopted at the meeting of 11 April 2011 by W.J.M. Davids (chair), J.Th.M. Bank, P.J.N. van Os, D.H.M. Peeperkorn, E.J. van Straaten, H.M. Verrijn Stuart, I.C. van der Vlies (vice-chair), and signed by the chair and the secretary.

(W.J.M. Davids, chair) (E. Campfens, secretary)



5. Recommendation regarding Steenhouwer

(case number RC 1.60)

In a letter dated 14 July 2005, the State Secretary for Education, Culture and Science (OCW) requested the Restitutions Committee to issue a recommendation regarding a decision to be taken on the application filed by A.M.J. of A. (hereafter referred to as: ‘applicant Mogrobi’). This application concerns among other things the nineteenth-century bronze statue *Steenhouwer* (Stonemason) by C.E. Meunier, which, according to applicant Mogrobi, may have been part of the trading stock of Kunsthandel M. Mogrobi, his grandfather’s art dealership. Furthermore, in a letter dated 30 October 2008, the Minister for OCW requested advice concerning the application of W.G. (hereafter referred to as: ‘applicant Morpurgo II’) for the restitution of the same bronze statue, which, according to applicant Morpurgo II, used to belong to his grandfather, Louis Morpurgo, one of the partners of art dealership Joseph M. Morpurgo. Since its return to the Netherlands after World War II, the object claimed by the two applicants has been part of the Netherlands Art Property Collection (hereafter referred to as: ‘NK collection’) under inventory number NK 414. The object is currently housed in the depot of the Netherlands Institute for Cultural Heritage.

The procedure

Following the request for a recommendation, the Committee instigated a fact-finding investigation, the results of which were included in a draft report dated 7 March 2011. The draft report was sent to the respective applicants for comment, who replied on 20 March 2011 (applicant Mogrobi) and on 21 March 2011 (applicant Morpurgo II). The draft report was also sent to the State Secretary for OCW (hereafter referred to as: ‘the state secretary’) with a request for more factual information. The state secretary informed the Committee that he had no additional factual material that he wanted to bring to the Committee’s attention. The investigatory report was adopted on 13 April 2011. For the facts of the case, the Committee refers to this report. The aforementioned two claims comprise several NK objects. The Committee already issued a recommendation on the application for the restitution of objects from the trading stock of art dealership M. Mogrobi (RC 1.37) on 12 February 2007, excepting NK 414, for which a separate file was made, the current RC 1.60. The recommendation about NK 414 in the Morpurgo II claim (RC 1.107) is also included in file RC 1.60. Both claims to NK 414 will be assessed below. A recommendation concerning the other objects in the Morpurgo II claim (RC 1.107) will follow at a later date.

Considerations

1. Applicant Morpurgo II has stated that the bronze statue he is claiming, which depicts a stonemason (NK 414) by the Belgian artist Constantin Emile Meunier, once belonged to Louis Morpurgo, one of the partners of the Amsterdam-based art dealership Joseph M. Morpurgo. He is said to have lost possession of the object during the war as a consequence of the Nazi regime. Applicant Morpurgo II has indicated that he did not know whether the claimed statue was Louis Morpurgo’s private property or whether it was part of the trading stock of art dealership Joseph M. Morpurgo. Given the conclusion below, however, this can be disregarded. Initially, applicant Mogrobi stated that the claimed bronze statue once belonged to art dealership M. Mogrobi but in response to the draft investigatory report, he changed his statement, as explained below. In connection with the legal succession, the Committee has taken note of the documents submitted by applicants Morpurgo II and Mogrobi.
2. Archival research into the current NK 414 has shown that the sculpture at issue was bought by Galerie F. Valentin of Stuttgart during the war at one of the following three Amsterdam art dealerships: M. Mogrobi, J.M. Morpurgo or F. Buffa & Zn. Based on source research, it has not been possible to establish from which of these art dealerships the sculpture came. The main indications would seem to point to art dealership F. Buffa & Zn (hereafter referred to as: ‘Buffa’) as the currently claimed sculpture was in fact made during the last quarter of the nineteenth century, and Buffa specialised in art of this period. Moreover, it was found that Buffa did in any case possess two Meunier sculptures, one of which was known as a ‘*steenenklopper*’ (stone-cutter), which was still in Buffa’s trading stock in 1938. It is no longer possible to find out if this reference relates to the currently claimed sculpture, but the Committee considers it not unlikely.
3. The source referred to in the investigatory report *Kunst, kennis en kwaliteit. De Vereeniging van Handelaren in Oude Kunst in Nederland 1911-heden* [Art, Knowledge and Quality. The Association of Dealers in Old Masters in the Netherlands, 1911- present] indicates that art dealership M. Mogrobi dealt in ‘*antiques*’, as did art dealership J.M. Morpurgo, whose specialities included porcelain, silver and pottery, according to the source. Neither art dealership specialised in late nineteenth-century art as was the case with art dealership Buffa. In response to the draft investigatory report, applicant Mogrobi has confirmed that the claimed sculpture NK 414 is ‘*atypical*’ for the trading stock of art dealership M. Mogrobi.

4. The assessment of the claim concentrates on the question of whether ownership rights to the artwork NK 414 of either art dealership Joseph M. Morpurgo or Louis Morpurgo in a private capacity, or art dealership M. Mogrobi have been proven with a high degree of probability. The Ekkart Committee’s eighth recommendation of 2001 states that the right to ownership must be proved with a high degree of probability and that there should be no indications that contradict this assumption.
5. The Committee concludes that this criterion has not been met. It has not been made plausible that the currently claimed sculpture NK 414 belonged to art dealership Joseph M. Morpurgo or to Louis Morpurgo in a private capacity or to art dealership M. Mogrobi during the war. On the contrary, the investigation found strong evidence that art dealership Buffa owned the object in question. The Committee therefore concludes that the applications of both applicant Morpurgo II and applicant Mogrobi for the restitution of NK 414 should be rejected.

Conclusion

The Restitutions Committee advises the State Secretary for Education, Culture and Science to reject both the application of A.M.J. and the application of W.G. for the restitution of the nineteenth-century bronze statue by C.E. Meunier (NK 414), known by the name of *Steenhouwer* [Stonemason].

Adopted on 13 April 2011 by W.J.M. Davids (chair), J.Th.M. Bank, P.J.N. van Os, D.H.M. Peeperkorn, E.J. van Straaten, H.M. Verrijn Stuart, I.C. van der Vlies (vice-chairman) and signed by the chair and the secretary.

(W.J.M. Davids, chair)

(E. Campfens, secretary)



27. C.E. Meunier, *Stonemason*, bronze (NK 414).

6. Recommendation regarding Oppenheimer II

(case number RC 1.120)

In a letter dated 22 September 2010, the State Secretary for Education, Culture and Science (hereafter referred to as: the State Secretary) requested the Restitutions Committee (hereafter referred to as: the Committee) to issue a recommendation regarding a decision to be taken on the application filed on 23 April 2010 by the heirs of Rosa and Jakob Oppenheimer (hereafter referred to as: the applicants) for restitution of the bronze sculpture *Hercules* by sculptor Hubert Gerhard (former attribution). The applicants claim that the statue originates from one of the Margraf group companies in Berlin, of which the Jewish art dealers Rosa and Jakob Oppenheimer were said to have been the sole shareholders. Following a donation, the claimed object has been part of the Dutch National Art Collection (inventory number RBK 15247) since 1938 and is currently in the Rijksmuseum in Amsterdam (hereafter referred to as: RMA).

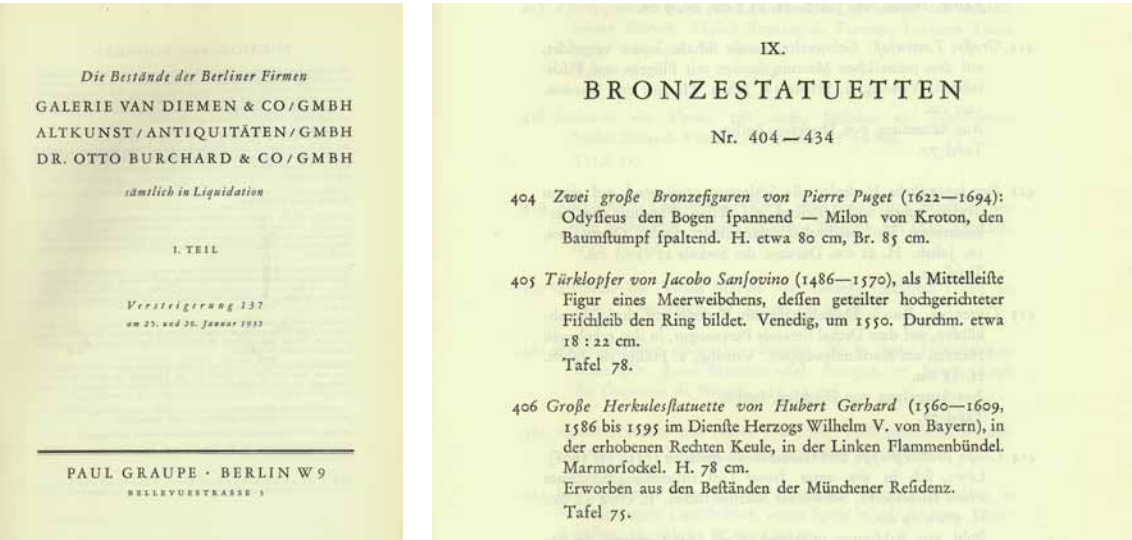
The procedure

The applicants’ authorised representative wrote the following about the reason for applying for restitution: *‘I was informed that Sotheby’s London conducted a research on Bronze statues and that they located the abovementioned bronze statue of Hercules by Hubert GERHARD called “Grosse Herkules Statuette” in the Rijksmuseum (...)’.* Following the request for a recommendation by the State Secretary, the Committee instigated a fact-finding investigation, using the data and investigation results from the Oppenheimer case (RC 1.67), following which, on 4 February 2008, the Committee issued a recommendation to return two paintings. The results of the investigation were included in a draft report dated 11 April 2011. This draft report was sent to the applicants for comment in a letter dated 19 April 2011, and to the State Secretary and the RMA with a request for more factual information in letters of the same date. The applicants responded to the draft report in a letter dated 26 April 2011. The State Secretary and the RMA informed the Committee on 30 May 2011 and 1 June 2011, respectively, that they did not have any additional information for the Committee. However, the RMA noted that the claimed statue had not been attributed to Hubert Gerhard since the early 1970s. This information was added to the report, which was subsequently adopted on 7 June 2011. For the facts of the case, the Committee refers to this report. During the procedure with the Committee, the applicants were represented by E. Sterzing, lawyer in Paris.

Considerations:

1. The applicants request restitution of the bronze statue *Hercules* by (formerly attributed to) Hubert Gerhard, which is part of the Dutch National Art Collection under inventory number RBK 15247. The applicants have claimed that they are the heirs of Rosa and Jakob Oppenheimer, who are said to have been the sole shareholders of the German Margraf group. In this regard, the Committee has taken cognisance of legal inheritance documents sent by the applicants, based on which the Committee sees no reason to doubt the applicants’ status.
2. The relevant facts are included in the investigatory report dated 7 June 2011. The following is a summary. In 1912, Albert Loeske founded Margraf & Co. GmbH in Berlin, a company trading in jewellery and gold. In the years that followed, he expanded the Margraf Group with various subsidiary companies including the art dealerships Van Diemen & Co. GmbH, Dr. Benedict & Co. GmbH, Dr. Burchard & Co. GmbH, as well as the antiques business Altkunst & Co. GmbH. These companies were managed on behalf of Loeske by Jakob Oppenheimer, who was an art dealer, and his wife Rosa Oppenheimer-Silberstein. By the time of Loeske’s death in 1929, the said dealerships had grown into reputable businesses. Loeske left his shares in the companies to the Oppenheimers. However, settlement of Loeske’s estate was delayed because of a lengthy legal battle that was not decided until just before the Nazis assumed power in 1933.
3. Early on in the Nazi regime in 1933, the Nazi authorities started targeting the Margraf group, which they considered an exponent of the ‘international Jewish jewellery and art trade’. On 1 April 1933, the Nazi authorities tried to intern Jakob and Rosa Oppenheimer, but the couple avoided this fate by fleeing to France. Due to these developments, the shares in the Margraf group were never made out in their names. Following Loeske’s death, the shares had been pledged to Tiergarten tax firm as security for payment of inheritance tax on Loeske’s estate. After this tax debt had been paid in 1937, the Nazi authorities were only prepared to release the shares on condition that they were transferred to a Jewish woman, Rosa Beer, who, forced by the authorities, acquiesced. She was heir to Loeske’s other assets and still lived in Germany. This measure enabled the Nazis to keep control of these assets. Jakob Oppenheimer died in France in 1941. Rosa Oppenheimer-Silberstein was deported by the Nazis and perished in Auschwitz in 1943. Their three children survived the war.

4. According to a decision taken by the *Landgericht Berlin* [Berlin District Court] on 2 December 1933, Jakob Oppenheimer was forbidden to perform any legal duties for the various companies of the Margraf concern. Bolko Freiherr von Richthofen, a good acquaintance of Hermann Göring, was appointed administrator of the group. As of 1938, Von Richthofen acted as liquidator for these companies. With a view to the winding-up of the Margraf concern, the subsidiaries’ stocks were capitalised at eight or more sales under execution. According to the applicants, these were forced sales, known at the time as *Judenauktionen*. According to an auction catalogue entitled *‘Die Bestände der Berliner Firmen / Galerie Van Diemen & Co / GMBH / Altkunst / Antiquitäten / GMBH / Dr. Otto Burchard & Co / GMBH / sämtlich in Liquidation’* [The inventory of the Berlin companies Galerie Van Diemen & Co/ GmbH / Altkunst/Antiquitäten/ GmbH / Dr. Otto Burchard & Co/ GmbH, all in liquidation ], the currently claimed statue was part of the trading stock of the above-mentioned companies that was auctioned off at Paul Graupe auction house in Berlin on 25 and 26 January 1935. The work of art is listed in the catalogue under lot number 406 with a photograph and the following description: *‘Grosse Herkulesstatuette von Hubert Gerhard (1560-1609, 1568 bis 1595 im Dienste Herzogs Wilhelm V. von Bayern), in der erhobenen Rechten Keule, in der Linken Flammenbündel. Marmorsockel. H. 78 cm. Erworben aus den Beständen der Münchener Residenz. Tafel 75’* Large Hercules statue by Hubert Gerhard (1560-1606, in the service of William V, Duke of Bavaria, from 1568 until 1595), in the raised right hand a club, in the left thunderbolts. Marble base. H 78 cm. Acquired from the property of the Munich Residenz. Table 75.] Whether the statue was sold at the auction is unknown.



28. The bronze statue of Hercules was sold under lot no. 406 at a so-called ‘Judenauktion’ held on 25-26 January 1935 at the Paul Graupe auction house in Berlin.



5. After the war, in a letter dated 25 July 1956, Willi Schulz, a tax consultant from Berlin, filed a claim for damages with the German authorities, also on behalf of Jakob and Rosa Oppenheimer's children. In addition, documentation from the German *Entschädigungsamt* [Compensation Office] has shown that a claim for damages to the amount of RM 500,000 was filed on behalf of Firma Galerie Van Diemen & Co. GmbH (in liquidation) on 25 July 1956 because of financial losses due to selling of paintings at knock-down prices. According to this documentation, a settlement was reached on 13 June 1957, in which damages worth DM 75,000 (the maximum amount) were awarded to art dealership Van Diemen & Co because of financial losses.
6. Information received from the RMA shows that the claimed statue has been part of the national collection since 1938. It is noted on the RMA inventory card on this work of art that the statue was a gift 'van een museumvriend, die onbekend wenscht te blijven (de heer xx; Internat. Antiquiteitenhandel)' [from a friend of the museum, who wishes to remain anonymous (Mr xx; Internat. Antiquiteitenhandel)]. The RMA has informed the Committee that there is no acquisition file for the work of art. No further details about the gift are known.
7. During the Committee's investigation, no evidence was found of post-war correspondence between the Dutch authorities and the Oppenheimer heirs and/or (a subsidiary of) the Margraf group concerning the currently claimed statue. There is no indication that the parties concerned were aware at the time of the fact that the claimed statue had been part of the Dutch national art collection since 1938.



29. Hubert Gerhard (former attribution), *Hercules*, bronze (BK 15247).

**Assessment of the claim**

8. Pursuant to current national policy in respect of the restitution of works of art, restitution can only be recommended if the title to the item can be proven with a high degree of probability and loss of possession of the claimed item was involuntary as a result of circumstances directly related to the Nazi regime.
9. The investigation of the title to the currently claimed statue has shown that this work of art was part of the trading stock of one of the companies Galerie Van Diemen & Co GmbH, Altkunst Antiquitäten GmbH and Dr. Otto Burchard & Co GmbH, all in liquidation, whose trading stocks were all auctioned off at Paul Graupe auction house in Berlin on 25 and 26 January 1935. The Committee then tried to establish whether this work of art was part of the old trading stock (acquired by the owner) or the new trading stock (acquired by Von Richthofen). No acquisition date for this statue was found during the investigation. However, the Committee thinks it is highly probable that the art dealerships in question no longer acquired any art between the Oppenheims' escape and the said auction, which means that this work is to be considered part of the old trading stock.
10. The Committee then investigated whether there are indications to prove to a high degree of probability that loss of possession in this case was involuntary, as referred to in the Recommendations for Art Dealerships 4 and 6 by the Ekkart Committee. The required high degree of probability can be assumed if the applicants have proof of theft, confiscation or forced sale. According to the Committee, the applicants provided sufficient proof that this work of art was auctioned off at an auction enforced by the Nazi authorities pursuant to anti-Jewish measures and the Committee is therefore of the opinion that loss of possession was involuntary and came about as a result of circumstances directly related to the Nazi regime.
11. The Committee then investigated the question of whether the Oppenheimer couple received the proceeds from the sales under execution. The investigation did not reveal any evidence that they did. Given the nature and purpose of this auction and considering all the circumstances mentioned above, particularly the Oppenheims' escape in 1933, the Committee deems it highly unlikely that the couple ever received any proceeds. The Committee therefore believes that the sales proceeds need not be considered.
12. As regards the compensation for losses paid by the German authorities in 1957, the Committee considers the following. In so far as it were possible to ascertain which part of the damages paid relates to the currently claimed statue, any payment of this amount is a matter between the Oppenheimer heirs and the German state.

**Conclusion**

The Restitutions Committee advises the State Secretary for Education, Culture and Science to return the bronze statue *Hercules* by (formerly attributed to) Hubert Gerhard from the Dutch National Art Collection (inventory number RBK 15247) to the heirs of Rosa and Jakob Oppenheimer.

Adopted on 7 June 2011 by W.J.M. Davids (chair), J.Th.M. Bank, P.J.N. van Os, D.H.M. Peeperkorn, E.J. van Straaten, and signed by the chair and the secretary.

(W.J.M. Davids, chair)

(E. Campfens, secretary)



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7.     **Recommendation regarding May II**

(case number RC 1.112)

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In a letter dated 13 February 2009, the Minister for Education, Culture and Science (hereafter referred to as: the Minister) requested the Restitutions Committee (hereafter referred to as: the Committee) to issue a recommendation regarding the application dated 25 August 2008 by G.J.S.-V. (hereafter referred to as: the applicant) for restitution of the objects formerly owned by Robert May, as stated on a list supplied by the applicant. These objects are part of the Dutch national art collection and are housed in the Rijksmuseum in Amsterdam (hereafter referred to as: the RMA).

**The procedure**

On 14 March 2007, the applicant submitted an application for restitution for what she described as ‘*de collectie May*’ [*the May collection*]. At that time, the Minister advised the applicant that he could only submit the claim for a recommendation in relation to the painting NK 2558, as the remaining objects were insufficiently specified. On 27 April 2007, the Minister asked the Committee for a recommendation concerning the claim to NK 2558 and on 10 November 2008 the Committee issued a recommendation to reject this claim.

As recommended by the Minister, the applicant then asked the RMA for assistance in investigating whether the objects from ‘*the May collection*’ were at that museum. This investigation resulted in a list of approximately 335 objects (hereafter referred to as: the May collection). In a letter dated 13 February 2009, the Minister requested the Committee to issue a recommendation concerning those works housed at the RMA.

Following this application for restitution, the Committee instigated a fact-finding investigation, the results of which were included in a draft investigatory report dated 7 March 2011. The draft investigatory report and a request for additional information were sent to the applicant on 17 March 2011, to which she responded, after an agreed deferral, in a letter dated 18 May 2011. The draft investigatory report was sent in letters to the RMA and the State Secretary for Education, Culture and Science (hereafter referred to as: the State Secretary) requesting more factual information, dated 17 March 2011.<sup>28</sup> The RMA responded to this in a letter dated 13 May 2011 and answered the further questions posed by the Committee in the above-mentioned letter. On 16 May 2011, the State Secretary advised that he did not have any additional information he wanted the Committee to consider. The investigatory report was then adopted on 19 September 2011. For the facts of the case, the Committee refers to the investigatory report.

The Dutch State bought the currently claimed works in 1944, making them part of the Dutch national art collection. Although the objects are not part of the Netherlands Art Property Collection, which is made up primarily of works of art that were returned to the Netherlands after the liberation, the Committee will issue its recommendation under article 2, paragraph 1 in conjunction with paragraph 4 of the Decree establishing the Restitutions Committee, which stipulates that, with regard to items of cultural value that are in the custody of the Dutch State, the Committee has to issue a recommendation with due regard for the more relaxed restitutions policy.

**Considerations**

1. The applicant is requesting restitution of objects belonging to the May collection, which collection was the property of Robert May, who was born in Amsterdam on 13 October 1873 and died there on 21 August 1962 (hereafter referred to as: May). The applicant claims to be the sole heir of C.W.S. (died in 1991), who, in turn, was heir of J.P. (died in 1986), who, in turn, was appointed sole heir by May in his last will and testament. In connection with this, the Committee has taken cognisance of several legal inheritance documents.

May and Liro-Spiegelstraat

2. The relevant facts are described in the investigatory report dated 19 September 2011. The following summary of events will suffice for the present purpose. May was of Jewish extraction and a partner in the banking firm of Lippmann, Rosenthal & Co located at Nieuwe Spiegelstraat in Amsterdam. In this recommendation, the bank will be referred to as Liro-Spiegelstraat, to differentiate it from the German looting organisation, Lippmann, Rosenthal and Co. at Sarphatistraat in Amsterdam, which will be referred to as Liro-Sarphatistraat or as the looting bank. In July 1940, Liro-Spiegelstraat was placed under the administration of a *Verwalter*, the German banker A. Flesche. May presumably survived the war in part because of Flesche’s protection. After the liberation, the *Verwaltung* ended and the pre-war legal relations between May en Liro-Spiegelstraat resumed.

3. Various archive documents show that in 1940, May had run up a substantial debt with his bank Liro-Spiegelstraat, the greater part of which was unsecured. In connection with that, in November 1940, Flesche stipulated that a right of pledge be enforced on all May’s movable property, which included an art collection comprised of such things as a porcelain and silver collection.

4. From May 1942, Regulation 58/1942 prescribed that all Jews were to hand in valuable possessions at the Liro-Sarphatistraat looting bank. The Department of Education, Science and Cultural Protection (hereafter referred to as: DOWK), a predecessor of today’s Ministry of Culture, Education and Science, tried to save important Jewish collections in which the Germans had no interest for the Netherlands by buying them from the looting bank. Such collections were not to be handed over to Liro-Sarphatistraat, but were kept in safekeeping at Dutch museums, acting as the looting bank’s keepers, while awaiting a sale.

Loss of possession/confiscation

5. Regulation 58/1942 obliged May to hand over his valuables as well. This confiscation resulted in May losing the authority to dispose of his collection. Pursuant to the regulation mentioned in the previous consideration, May received an order from DOWK in late June 1942 to place his works of art ‘*in bewaring te geven*’ [*in safekeeping*] at the RMA, which would be managing these objects for the looting bank. The objects were delivered to the RMA on 20 July 1942. The Liro-Spiegelstraat bank, which at that point in time still had a right of pledge on the objects in question, protested against its pledge being surrendered to the RMA.

6. In late 1942, the DOWK informed the RMA that the art objects that May handed over pursuant to Regulation 58/1942 were to be sold by the Liro-Sarphatistraat looting bank. The RMA was given the opportunity to purchase art works in which the Germans were not interested, including the May collection, at the price at which they had been valued. The RMA let it be known that it wished to purchase the entire May collection.

7. On 15 April 1943, the secretary general of the DOWK authorised the RMA to buy the May collection. At that time, however, the RMA was still uncertain about the status of the right of pledge. To get a decisive answer to this question, the secretary general of DOWK sought advice from state advocate G.W. van der Does Esq. LLM. In a letter dated 9 July 1943, he advised that under Regulation 58/1942, the Liro-Sarphatistraat looting bank was solely authorised to dispose of the May collection and did not have to consider the right of pledge. The state advocate also stated that to purchase the May collection, the RMA only had to approach the Liro-Sarphatistraat looting bank.

8. On 16 February 1944, Flesche contracted valuer Paul Brandt to value the goods from the May collection with a view to selling them. Brandt valued the objects from the May collection housed at the RMA at NLG 329,460. Brandt also valued May’s objects housed in the Stedelijk Museum Amsterdam and the Museum for Asian Art in Amsterdam, bringing the total value to NLG 412,875.

The sale of the collection

9. Then negotiations began with the Liro-Sarphatistraat looting bank on the sale of the May collection. DOWK represented the Dutch State in the negotiations, presumably represented by J.K. van der Haagen LLM, and the RMA was represented by Mr D.C. Röell Esq. The DOWK and RMA representatives actually first approached May before approaching the board of the looting bank. On July 1944, the representatives in question met with the Liro-Spiegelstraat partners, May and Rahusen, and their lawyer. A memo dated 10 July 1944 states that in that meeting May and Rahusen agreed that if the State were to buy the May collection, they would accept the valuation of NLG 412,875, so that if this sum were also actually transferred to their account, they would not bring any action against the State.

10. A second memo dated 10 July 1944 was found in the archive of the Ministry of Education, Culture and Science, which was drawn up as a supplement to the memo mentioned above in the previous consideration. The memo was marked as ‘*GEHEIM*’ [*SECRET*] and reads as follows:

*De firmanten van Lippmann Rosenthal & Co (Spiegelstraat) en hun advocaat hebben verklaard zich bij gentleman’s agreement te verbinden hun verklaring in de eerste alinea van aide mémoire Nr. 3190/1944 K.W. genoemd ook na den oorlog gestand te zullen doen. Mijnerzijds heb ik voor den Staat mij verbonden den heer May, zoo deze dit wenscht, te zijner tijd in de gelegenheid te stellen voor een waardige aankleding van zijn woning een aantal voorwerpen, die niet uitgesproken het karakter van museumobjecten hebben, terug te koopen tegen den prijs waarvoor de Staat ze heeft aangekocht.*

*[The partners in Lippmann Rosenthal & Co (Spiegelstraat) and their lawyer have declared in a gentleman’s agreement that they will keep to their agreement made in the first paragraph of aide-memoire no. 3190/1944 K.W. after the war as well. On behalf of the State, I have agreed with Mr May that, should he so desire, he will be given the opportunity to purchase back, in his own time, a number of objects, which are not explicitly museum objects, to properly decorate his residence, at the price the State paid for them.]*

This part of the agreement was probably kept secret during the occupation and later defined as ‘clandestine’ by the Ministry of Education, Culture and Science in a memo dated 19 November 1945, because it

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<sup>28</sup> The State Secretary for Education, Culture and Science took over the restitution file from the Minister on 24 February 2010.

speculated on a German defeat. Anticipating that the Dutch constitutional state would be reinstated would also explain why May’s agreement was sought before the sale.

11. The DOWK and the RMA representatives then approached the board of the Liro-Sarphatistraat looting bank, which sold the May collection to the Dutch State at the valuation price of NLG 412,875. Under pressure from Flesche, the *Verwalter* of Liro-Spiegelstraat, transferred the purchase price to this company (May’s bank) to cover May’s debit balance, and not, as usual, to the looting bank.

After the war

12. After the war, the Ministry of Education, Culture and Science considered the issue of how to deal with the Jewish art collections that were confiscated during the occupation and purchased from the looting bank by the Dutch State. An undated memo from the Principal Private Secretary to the Minister for Education, Culture and Science includes the following on this matter:

*De Raad voor het Rechtsherstel, die in deze materie is ingewerkt, kan m.i. het beste uitmaken, of een bepaalde verkoop nietig verklaard of gewijzigd moet worden. (...) Met de afdeling F.C. ben ik van oordeel, dat het zeer de vraag is, of ook de gentleman’s agreement met den heer May niet door den Raad vernietigd kan worden, aangezien deze onder pressie der bijzondere omstandigheden tot stand is gekomen. Ik moge U dus adviseeren den Raad voor het Rechtsherstel te berichten, dat Uwerzijds gaarne alle medewerking zal worden verleend tot een herstel van de rechten der eigenaren, doch de beslissing, wanneer en hoe het herstel dient te geschieden aan den Raad over te laten.*

*[In my opinion, the Council for the Restoration of Rights, which has familiarised itself with this matter, can best decide whether a particular sale should be declared null and void or changed. (...) Along with the F.C. department, I believe that it is by no means unlikely that the gentleman’s agreement with Mr May can also be declared null and void by the Council, seeing as this was concluded under extraordinary circumstances. I would, therefore, like you to advise the Council for the Restoration of Rights that you will willingly cooperate in restoring the owners’ rights, while leaving the decision on when and how this restoration should occur to the Council.]*

The following comment is hand-written in the margin of the memo in question:

*May verklaarde het graag gestand te doen. M. [May declared that he would willingly keep his word. M.]*

The investigation has shown that after the war the rights to two of the seven Jewish collections bought from the looting bank by the Dutch State were restored.

May and restoration of rights

13. The archive of the Council for the Restoration of Rights was consulted for evidence of May having taken the initiative after the war to contest the sale of his collection to the State. Such evidence was not found.

It can be ascertained from a letter by the general director of the RMA to the Minister for Education, Culture and Science dated 8 April 1946 that, after the liberation, May was given back several objects from the RMA, as agreed during the war (see consideration 10). The museum apparently believed it important that May provide written confirmation of the sale during the war, as a copy of a statement dated 9 April 1946 made by May to director of the RMA D.C. Röell was found in the RMA’s archive, which reads as follows:

*Ingevolge Uw wensch deel ik U bij dezen mede, dat ik volkomen accoord ga met den verkoop tijdens de bezetting van mijn collecties aan den Staat der Nederlanden, alsmede met de voorwaarden, waaronder dit is geschied. [As requested by you, I hereby inform you that I completely agree with the sale of my collections to the Dutch State during the war, as well as with the conditions under which this took place.]*

14. Responding to the draft report, the applicant proposed in her letter dated 1 April 2010 that May was pressurised by Röell to make the above statement after the war. In the letter in question, the applicants writes:

*Opvallend bij het briefje zijn de datum, een dag na het versturen van het hiervoorvermelde verzoek van het Rijksmuseum tot machtiging, het schrijfpapier (van het Rijksmuseum) waarop het is geschreven, en de aanvang van de tekst. “op Uw wensch”. Gelet op de data is het logisch te veronderstellen dat er een samenhang is met het verzoek van het Rijksmuseum van 8 april 1946 tot machtiging en de teneur van die brief, en de brief van May van 9 april 1946. Het gaat in dat verband niet te ver om te veronderstellen dat May door de toenmalige Directeur van het Rijksmuseum, de heer Roëll op diens kantoor is uitgenodigd, en hem aldaar wellicht met aandrang is verzocht zich ter plekke op briefpapier van het Rijksmuseum uit te laten in de zin van de inhoud van de brief van 9 april 1946. Het is sterk de vraag of deze brief naar de huidige inzichten als bindend kan worden opgevat.*

*[Worth noting in regard of this note are the date (one day after the Rijksmuseum sent the aforementioned authorisation request), the letterhead (from the Rijksmuseum) on which it is written, and how the text opens*

*with “op Uw wensch” [As requested by you]. Given the dates, it is logical to assume that there is a connection between the Rijksmuseum’s authorisation request of 8 April 1946 and the purport of that letter, and May’s letter dated 9 April 1946. In this case, it is fair to assume that May was invited by the then-director of the Rijksmuseum, Mr Roëll, to his office where he was probably urged to make the statement on Rijksmuseum letterhead there and then as per the content of the letter dated 9 April 1946. It is highly questionable whether this letter can be considered binding in light of the current views.]*

15. The applicant had already presented the above point of view in a letter dated 14 March 2007. In response to this, the then-general director of the RMA Prof. Dr. R. de Leeuw sent a letter, dated 26 May 2008, to the Minister for Education, Culture and Science. In this letter, De Leeuw pointed out that the RMA and Mr May had enjoyed a good relationship since the 1930s, resulting in loans and gifts, and that this relationship remained unchanged after the war. He also stated that the case was settled very amicably in 1946. De Leeuw also pointed out that Röell and May had a special friendship. To substantiate the suggestion that the special friendship between May and Röell continued after the war, the director of collections at the RMA sent a letter dated 13 May 2011 enclosing a list of the members of the committee which was established for David Röell’s farewell as general director. This list of October 1959 includes the name Robert May.

Assessing the claim

16. The current claim concerns objects that were purchased by the Dutch State during the war. May was not able to submit an application for restitution to the Netherlands Art Property Foundation, which was different for the objects that were recovered from Germany. As far as is known, May did not try to contest the sale of his collection to the Dutch State with the Council for the Restoration of Rights after the war. On the contrary, on 9 April 1946, May stated to museum director Röell that he completely agreed with the sale during the war. The Committee concludes that the investigation details suggest a close friendship between May and Röell, which lasted long after the war. The fact that in 1959 May (at the end of his life and 14 years after the liberation) had a seat on the committee for Röell’s farewell as director of the RMA makes it very unlikely that May’s statement to Röell was made under duress. There is also no evidence that May, in later years, tried to retrieve his collection. The Committee believes that it can be ascertained from the above facts that May agreed with the sale. This can also be explained by the fact that the purchase price, which equalled the valuation price, was deducted from May’s debit balance at Liro-Spiegelstraat (which balance accrued to him after the war), and the fact that May’s collection ended up at the RMA, with which he maintained close ties until he died.
17. The committee believes that May’s written statement dated 9 April 1946 to the director of the RMA should be seen as one that was made freely to uphold the sale of his collection to the Dutch State during the war. Therefore, this sale should now be regarded as legitimate.

**Conclusion**

The Restitutions Committee advises the State Secretary for Education, Culture and Science to reject G.J.S.-V.’s application for restitution of the objects belonging to the May collection

Adopted at the meeting of 19 September 2011 by W.J.M. Davids (chair), J.Th.M. Bank, J.C.M. Leijten, P.J.N. van Os, D.H.M. Peeperkorn, E.J. van Straaten and I.C. van der Vlies (vice-chair), and signed by the chair and the secretary.

(W.J.M. Davids, chairman)



30. Vase in ‘Famille Verte’, Chinese porcelain, Kangxi period, c. 1662 (AK-RBK-15880).

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8.      **Recommendation regarding De Haan**  
(case number RC 1.106)

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In letters dated 29 October 2008, 13 November 2009, 27 January 2010 and 24 November 2010, the Minister for Education, Culture and Science requested the Restitutions Committee (hereafter referred to as: the Committee) to issue a recommendation regarding the applications dated 12 December 2007, 8 September 2009 and 21 September 2010 by I.I. S.-T. (hereafter referred to as: the applicant) for the restitution of various works of art in the Netherlands Art Property Collection (hereafter referred to as: NK collection) and administered by the State of the Netherlands. These are objects sold by or through Jewish art dealer Simon de Haan during the occupation of the Netherlands and returned to the Netherlands from Germany after the Second World War.

The recommendation concerns the following fourteen works:

NK 1537 – B.G. Cuyp, *Card players*  
NK 1557 – H.M. Sorgh, *Hearing, personified by a singing couple*  
NK 1559 – H.M. Sorgh, *Taste, personified by a singing couple*<sup>29</sup>  
NK 1597 – Ph. Wouwerman, *Landscape with two men on horseback*  
NK 1667 – Follower of L. Cranach, *Madonna and child*  
NK 1704 – Ph. Wouwerman, *Italian river landscape with a hunting party*  
NK 1760 – W. Verschuur I, *A horsefair*  
NK 1914 – Circle of S.J. van Ruysdael, *River view with fishing boats*  
NK 2245 – S.J. van Ruysdael, *Winter landscape with skaters by a town*  
NK 2264 – A. Bloemaert, *The triumph of Neptune*  
NK 2824 – Master of 1518, *The Adoration of the Magi*  
NK 2835 – J.G.C. Coclers, *Still life with flowers in a vase*  
NK 2866 – Atelier van A. van Utrecht, *Still life with dead game*  
NK 2882 – In the style of A. van der Neer, *Village along a river*

**The procedure**

The reason for applying for restitution was a visit that the applicant paid to the exhibition *Geroofd, maar van wie?* (‘Stolen, but from whom?’) in 2007. After contact between the applicant and the Origins Unknown Agency (Bureau Herkomst Gezocht, hereafter referred to as: BHG), the applicant submitted a request for the restitution of nineteen artworks from the NK collection on 12 December 2007. In letters dated 8 September 2009 and 21 September 2010, the applicant submitted two further applications for a total of four works in the NK collection. In letters dated 29 October 2008, 13 November 2009, 27 January 2010 and 24 November 2010, the Minister and the State Secretary for Education, Culture and Science presented the applications for restitution to the Committee for advice. The Committee combined these applications into the current case file RC 1.106. Following this application for restitution, the Committee instigated a fact-finding investigation, the results of which were included in a draft investigatory report dated 19 January 2011. This draft report was sent to the applicant and the State Secretary in letters dated 7 February 2011.

On 7 March 2011, the applicant and her legal advisor, R.W. Polak, had a meeting with a delegation of the Committee. The applicant then responded to the draft report on 4 April 2011 and also stated that she would withdraw her claim to nine artworks.

In response to the draft report on 8 March 2011, the State Secretary advised that he did not have any additional information he wanted the Committee to consider. Following the applicant’s response and her withdrawal of the claim to nine artworks, a revised version of the draft report was prepared, in which the results of the Committee’s supplementary investigation were also incorporated. The revised version of the draft report was sent to the applicant for her information on 11 July 2011, to which she responded in a letter dated 26 August 2011. Her reaction has been appended to the final investigatory report. The investigatory report was subsequently adopted on 19 September 2011. For the facts of the case, the Committee refers to the investigatory report. The claimed work NK 2824 is also part of an application for restitution regarding Katz (RC 1.90-B), which is currently pending. Referring to considerations 7 to 13, the Committee sees no reason to defer its recommendation in the current case until RC 1.90-B is being dealt with.

**Considerations**

1. As evidenced by a certificate of inheritance issued on 1 September 2010 in the presence of M.R. Meijer, civil-law notary in Amsterdam, the applicant is the sole heir of her uncle, Simon de Haan. According to the applicant, the fourteen objects she is claiming were sold involuntarily by Jewish art dealer Simon de Haan during the Second World War as a result of circumstances directly related to the Nazi regime.

2. The relevant facts are included in the investigatory report of 19 September 2011. The following is a summary. Simon de Haan (hereafter referred to as: De Haan) was born on 6 June 1901 in Amsterdam as son of Salomon de Haan and Abigaël Buitenkant. A family card in the Municipal Archive of The Hague says about De Haan that he called himself ‘*Henri Simon De Haan*’. De Haan married Elsbeth Dorothea Hilda Haufschild on 5 April 1933. As evidenced by the certificate of inheritance mentioned under 1, this marriage (probably) ended by divorce. Investigations show that from 1929 on, De Haan lived alternately in The Hague and Amsterdam.

3. De Haan was active in the art trade. The archive of the trade register of the Chamber of Commerce of The Hague shows that De Haan, together with Hendrik Maas Szn, was director of N.V. Internationale Kunsthandel (hereafter referred to as: Galerie Internationale) in The Hague from 1929. This dealership had a branch in Amsterdam. After a few years, De Haan stopped working for the business. This is evidenced by Maas’s notification of the Amsterdam trade register dated 17 September 1934, reporting De Haan’s resignation and the closing down of the Amsterdam branch of Galerie Internationale.

4. During its investigations, the Committee found information showing that De Haan then started work as an art buyer for third parties, and as agent and expert in the purchase of art, working as agent for art collector H.F.J. Weijers, for instance. In 1945, Weijers told the Netherlands Art Property Foundation (hereafter referred to as: SNK) the following about his art collection: ‘*zoo goed als alle stukken van myn verzameling, door H.S. de Haan, als myn bemiddelaar destyds, van duitsche joden zyn gekocht*’ [almost all objects in my collection were purchased from German Jews by my then agent, H.S. de Haan.]. It also emerges from documentation found that before the war, De Haan also worked as buyer for the Amsterdam art dealership J. Goudstikker N.V., which was headed by Jacques Goudstikker, who was also Jewish. De Haan continued to work as art buyer/agent after the German invasion of the Netherlands, even after the business had been taken over by the German Alois Miedl, who traded with Hermann Göring and others under the name ‘Voorheen J. Goudstikker N.V.’ The foregoing comes to light in statements and other documentation that the Committee found during its investigations and that is cited in the investigatory report. One transaction in which De Haan acted as agent for Alois Miedl was in the sale of a large number of paintings by Nathan and Benjamin Katz of Dieren to art dealership Voorheen J. Goudstikker N.V. (hereafter referred to as: Goudstikker-Miedl) in the summer of 1940. After the war, Miedl said the following about this transaction: ‘*De aankoop van Goudstikker vond plaats in Juli 1940. Na deze aankoop kreeg ik via een zekere Fleischman contact met Elte, accountant van de firma Katz te Dieren, (...). Met Elte samen ben ik naar de firma Katz gegaan. Het is mogelijk dat toen ook reeds meeging een zekere de Haan, van Joodse afkomst, die in elk geval later wel als tussenpersoon voor mij is opgetreden*’ [The Goudstikker purchase took place in July 1940. Following this purchase, a certain Fleischman brought me into contact with Elte, accountant of the firm of Katz in Dieren, (...). I went to the firm of Katz together with Elte. It is possible that we were accompanied by a De Haan, of Jewish descent, who in any event acted as intermediary for me later.]. Victor Modrzejewski, an art dealer of German origin, also mentioned the transaction and De Haan’s part in it in a statement he made after the war: ‘*Hans de Haan, een joodse kunstkenner, die reeds voor den oorlog inkoper bij de N.V. Goudstikker was, was mijn vriend. Het is mij bekend dat deze De Haan voor de later als eigenaar optredende A. Miedl verschillende schilderijen inkocht o.a. bij de gebroeders Katz te Dieren*’ [Hans de Haan, a Jewish art connoisseur, who had already been a buyer at N.V. Goudstikker before the war, was my friend. I know that this De Haan bought various paintings for A. Miedl, who later acted as owner, from the Katz brothers in Dieren and others.].

5. De Haan was arrested in the first months of the war for insulting the German Wehrmacht and sentenced to two years, which he sat out in a prison in Germany. On this subject, the applicant notes that the arrest very probably took place in August 1940 (see 12 below). After his imprisonment had formally come to an end on 10 January 1943, De Haan was taken to Westerbork and from there deported to Auschwitz where he was killed on 19 February 1943.

6. The applicant asserts that even though De Haan worked in the art trade, several of the claimed works, which she does not specify, were privately owned. She states the following about this: ‘*Wat de eigendomssituatie betreft ga ik af op de database van Bureau Herkomst Gezocht. Daarin zag ik een bevestiging van wat mijn moeder (de zuster van Simon de Haan) wist, namelijk dat hij een kwalitatief goede eigen verzameling schilderijen bezat*’. ‘*Het is zeer goed mogelijk dat De Haan schilderijen die hij in zijn (privé-)bezit had moest verkopen, zeker als hij daar als Jood door een vertegenwoordiger van het Nazi-regime als Miedl toe gedwongen werd*’. [As to the title situation, I am basing my information on the Origins Unknown Agency where I found confirmation of what my mother (Simon de Haan’s sister) knew, namely that De Haan himself owned a collection of paintings of high quality. It is very likely that De Haan had to sell paintings from his (private) collection, especially if, as a Jew, he was forced to do so by a representative of the Nazi regime such as Miedl.] The applicant also refers to an online database of artworks that, during the war, ended up at the *Sonderauftrag Linz*, the German organisation which was tasked with acquiring art for the planned *Führermuseum*. The following text (or one that differs somewhat) was found in this Linz database next to a number of the currently claimed works: ‘*Vorbesitzer: De Haan / Amsterdam 1940 (Privatbesitz Niederlande, von dort an Goudstikker/Miedl)*’. [Previous owner: De Haan / Amsterdam 1940 (Private property The Netherlands, from there to Goudstikker/Miedl)].

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<sup>29</sup> Text correction: an *eating* couple



The Committee investigated this evidence further. Historian Dr H.C. Löhr, on whose research the information in the database is in part based, referred among other things to his book *Das braune Haus der Kunst. Hitler und der Sonderauftrag Linz* [The Brown House of Art, Hitler and the Special Project Linz] for information about how the entries in the database came about. He says in his book that information about the ‘Vorbesitzer’ [previous owner] was difficult to document as paintings frequently changed hands within a short space of time. This was particularly the case with works that had come into the possession of the *Sonderauftrag Linz* through the art trade in occupied countries. Löhr writes about the difference between private persons and art dealers: ‘Personen, die durch die historische Überlieferung nicht als Händler identifiziert werden konnten, wurden im Rahmen dieser Untersuchung mit Privat-verkäufern gleich gesetzt’. [Persons who, on the basis of historical records, could not be identified as dealers, were classified as private sellers in the context of this investigation.] The Committee concludes from this that if the investigation in Germany lacked information about a seller’s status, he was in principle classified in the database as a private person. On the basis of this, the Committee believes that without further indications, the above references in the Linz database do not suffice to assume that the artworks at issue here were from De Haan’s private collection.

7. Given that De Haan was already active in the art trade before the war and that he continued his activities as such after the German invasion (see considerations 3 and 4), the Committee holds that De Haan should be regarded as an art dealer and that the current claim should therefore be assessed on the basis of the guidelines for the art trade (Ekkart Committee’s recommendations of 2003 regarding the art trade). The Committee finds that when formulating recommendations regarding the art trade, the Ekkart Committee had regard for the possibility of private ownership on the part of art dealers. The explanations to these art dealer recommendations state that: *‘Wanneer duidelijk is dat kunstwerken niet behoorden tot de handelsvoorraad van een joodse kunsthandelaar maar al voor de oorlog deel uitmaakten van zijn particuliere verzameling c.q. aankleding van zijn eigen huis, vallen verzoeken om restitutie binnen het bestaande beleid voor teruggave van particulier kunstbezit’*. [If it is clear that artworks were not part of the trading stock of a Jewish dealer but were part of his private collection or the decoration of his home before the war, applications for restitution fall within existing policy for the restitution of private art.] To this end, *‘duidelijke indicaties dat het particulier eigendom was in plaats van hard bewijs, voldoende worden geacht’* [‘clear indications rather than hard proof that the object was privately owned must be regarded as being sufficient.]. The Committee believes that in this case, there is no question of clear indications of private ownership as set out in considerations 8 to 10, and therefore assesses the claim in accordance with the criteria of art dealership policy.
8. The investigations show that the fourteen claimed artworks ended up with Goudstikker-Miedl through De Haan in the months of July and August 1940. The entries *‘De Haan’* (twelve NK works), *‘de Haan / Katz’* (NK 2824) or *‘Miedl/Haan/Katz’* (NK 2264) are included for the claimed works in the column *‘inkoop’* [purchases] in purchase and sales records (hereafter referred to as: stock book) for the 1940-1941 period that were found in Goudstikker-Miedl’s accounts, without any further information regarding the role that De Haan played in the acquisition of these paintings by Goudstikker-Miedl. The Committee believes that without additional information, these administrative entries concerning De Haan do not constitute clear indications that he owned these artworks privately. For this, the Committee refers first and foremost to the fact that De Haan was active in the Dutch art trade as *inkoper/tussenpersoon* [buyer/agent] and that he worked as such for others, including Goudstikker-Miedl, as set out in 3 and 4. This fact is substantiated by documents from the Goudstikker-Miedl archive described in the investigatory report, from which it emerges that a commission of 10 per cent was paid for the purchase, from or through De Haan, of various paintings, which may well have included six of the currently claimed works. The Committee also refers to information it has found about the claimed works NK 1667 and NK 2264, which came from the H.F.J. Weijers collection. Although De Haan is mentioned in connection with these works in Goudstikker-Miedl’s stock book, clear indications were found during the investigation of these works that De Haan did not buy these paintings for himself but *on the instructions* of Miedl. After the war, Weijers wrote about this to the SNK: *‘Nog kan ik U meedelen, dat H.S. de Haan, kunsthandelaar, Amsterdam, van my heeft gekocht en my later vertelde, dat hy dat gedaan had in opdracht van: Aloys MIEDL, destyds Amsterdam, die, naar de Haan my zeide, het eerst te noemen schildery voor Hitler en het tweede voor Göring zou hebben gekocht,: Lucas Cranach, der Aeltere, “Madonna met Kind op Landschapachtergrond”* [NK 1667, RC] / *Abraham Bloemaert, “Triomf van Neptunis”* [NK 2264, RC]. [I am also informing you that H.S. de Haan, art dealer, Amsterdam purchased from me, and told me later that he was acting on the instructions of: Aloys MIEDL, formerly Amsterdam, who, as de Haan told me, allegedly bought the first painting for Hitler and the second for Göring, : Lucas Cranach, the Elder, “Madonna and Child with a Landscape background” [NK 1667, RC] / Abraham Bloemaert, “The triumph of Neptune” [NK 2264, RC].’
9. Pursuant to current national policy in respect of the restitution of artworks, restitution can be recommended if the title to the item can be proven with a high degree of probability and possession of the claimed item was lost involuntarily as a result of circumstances directly related to the Nazi regime.
10. As regards the question of title, the Committee considers, in light of the investigation results, that it is possible but not highly probable that De Haan owned the fourteen claimed paintings. During the investigation, a picture emerges of De Haan as agent and/or buyer of artworks, and that the transactions at issue came about in the course of his work as buyer for Goudstikker-Miedl. Research conducted in various archives by the applicant and by the Committee has yielded no source material from which a different



31. Follower of Lucas Cranach, *Madonna and child* (NK 1667).

conclusion could be drawn. Nor are there indications that prove with a high degree of probability that the claimed artworks came from De Haan’s own trading stock or private art collection.

11. As regards the question whether the transactions were involuntary, the Committee considers, perhaps superfluously, the following. During its investigations, the Committee found no indications supporting the applicant’s argument that *‘De Haan als Jood zich tegenover de Nazi-vertegenwoordiger Miedl in een dwangpositie bevond’* [As a Jew, De Haan was in a predicament vis-à-vis Nazi representative Miedl]. Although the Committee appreciates the fact that in July and August 1940, De Haan was required to work under difficult war conditions, and recognises that after the war, Miedl and several of his associates had gained a dubious reputation, the Committee found no evidence that either a direct threat or coercion had been brought to bear on De Haan when he made these transactions. In the Committee’s opinion, the fact that the purchasing party (Miedl) did business with representatives of the Nazi regime does not, in this case, suffice to conclude that the transaction was involuntary. Nor are there indications that the prices and/or commissions involved in these transactions were not in line with market-level values. The sales to Goudstikker-Miedl took place in July and August 1940, at about the same time that De Haan was involved in the purchase of hundreds of artworks from art dealership D. Katz in Dieren, on Miedl’s instructions. The source material to which the Committee had access in the present case suggests that the currently claimed works were part of normal business transactions, in line with the principle of the art dealership policy formulated by the Ekkart Committee *‘dat de kunsthandel verkoop van handelsvoorraad als doelstelling heeft, zodat een belangrijk deel van de verrichte transacties, ook bij de joodse kunsthandelaars, in principe gewone verkoop was’* [that the art trade’s objective is to sell its trading stock so that the majority of the transactions, even at the Jewish art dealers, in principle, constituted ordinary sales]. During its archival research, the Committee found no indications to the contrary.
12. The applicant also states the following about the transactions: *‘Dat de verkoop van zijn [De Haan, RC] schilderijen, eind juli, begin augustus 1940, niet vrijwillig was, is, gegeven de huidige kennis van die periode, evident. Dit wordt eens te meer duidelijk uit het feit dat hij daarna in het openbaar zijn mening over “die rotmoffen” niet onder stoelen of banken stak, wat hem enkele maanden na de gedwongen verkoop van zijn schilderijen op een arrestatie en een veroordeling tot twee jaar gevangenisstraf kwam te staan’*. [That the sale of his (De Haan’s, RC) paintings, in late July, early August 1940, was not voluntary is evident, given what it is now known about that period. This is all the more clear from the fact that after that he made no attempt to keep his opinions about “those bloody krauts” to himself, for which he was arrested and sentenced to two years’ in prison a few months after the enforced sale of his paintings.]

As to De Haan’s arrest, the applicant stated that during her investigations, she had found convincing evidence that De Haan had been betrayed by D., an art dealer who also worked for Miedl. The Committee consulted a file on D. in the post-war Central Archive Special Jurisdiction (CABR). The indications referred to by the applicant were found in the file, in the form of an accusation directed at D. In light of the ambiguity of the assertions found in the CABR file and the fact that a post-war statement about this case is lacking, the Committee regards this as insufficient proof that D. betrayed De Haan. In this context, the Committee considers that even if De Haan’s arrest was the result of D.’s treachery, this cannot be linked directly to the business transactions at issue here. After all, it is unlikely that the transactions took place after the arrest.

13. Given the above, the Committee is of the opinion that there is insufficient proof that the claimed artworks were the (private) property of De Haan, despite the fact that the BHG entered the name De Haan in the provenance reconstructions of the claimed objects. The Committee also believes that insufficient indications have been found that the transactions at issue came about as a result of coercion and hence were involuntary. The Committee therefore advises that the claim be rejected.

Conclusion

The Restitutions Committee advises the State Secretary for Education, Culture and Science to reject I.I. S.-T’s application for restitution.

Adopted at the meeting of 13 October 2011 by W.J.M. Davids (chair), J.Th.M. Bank, P.J.N. van Os, D.H.M. Peepkorn, E.J. van Straaten, I.C. van der Vlies (vice-chair), and signed by the chair and the secretary.

(W.J.M. Davids, chair) (E. Campfens, secretary)

9. Recommendation regarding Hiegentlich  
(case number RC 1.116)

In a letter dated 4 August 2009, the Minister for Education, Culture and Science (hereafter referred to as: the Minister) requested the Restitutions Committee (hereafter referred to as: the Committee) to issue a recommendation regarding the application of H.W. (hereafter referred to as: applicant) dated 6 July 2009 for the return of ceramic objects which were returned to the Netherlands after the Second World War and are now part of the National Art Collection. The applicant is the granddaughter of Aron Salomon Hiegentlich (hereafter referred to as: Hiegentlich), to whom the objects were said to have belonged during the Second World War. This recommendation concerns:

- two miniature slippers, glazed pottery with polychrome decor (NK 302 A-B),
- a glazed pottery dish with blue and white decor with flowers (NK 915),
- a China dish with blue and white decor of flowering branches, brown on the outside (NK 936 B), and
- a Delft dish with blue and white decor with peacock on a bank in Wan Li style (NK 941).

The procedure

The reason for applying for restitution was correspondence between the Origins Unknown Agency (hereafter referred to as: BHG) and the applicant, dating from 2007, from which it emerged that the BHG was looking for heirs of antique dealer Hiegentlich in connection with some eight ceramic objects that had been returned to the Netherlands after the war. In response to this, the applicant submitted a request for restitution for all eight objects, viz. NK 302 A-B, NK 303 A-B, NK 935 A-B, NK 915 and NK 941, and the Minister presented this application to the Committee for advice. However, in a letter dated 15 February 2010, the Minister informed the Committee that some of the claimed objects (NK 303 A-B and NK 935 A) were no longer part of the National Art Collection and hence could not be returned. The Minister withdrew his request for advice for those objects. Following this application for restitution, the Committee instigated a fact-finding investigation, the results of which were included in a draft investigatory report dated 7 March 2011. In letters dated 11 March 2011, the Committee sent this report to the applicant for comments and to the Minister with a request for additional information. The Minister responded to this on 4 April 2011 and the applicant on 18 April 2011, both stating that they had no additional information they wanted the Committee to consider. The investigatory report was then adopted on 19 September 2011. For the facts of the case, the Committee refers to the investigatory report. The applicant lives in the S.C. in A. and is represented by R.v.P., the applicant’s administrator.

Considerations:

1. The applicant requests the restitution of the ceramic objects NK 302 A-B, NK 915, NK 936 B and NK 941 in her capacity as heir of her grandfather Hiegentlich. In this context, the Committee has taken cognisance of several inheritance law documents, on the basis of which documents the Committee sees no reason to doubt the applicant’s status as Hiegentlich’s heir. The applicant argues that the claimed objects were from her grandfather Hiegentlich’s art dealership and that they found their way to German art dealer M. Lempertz in Cologne under dubious circumstances.
2. The relevant facts are described in the investigatory report. The following summary of events will suffice for the present purpose. Hiegentlich was born on 22 May 1868 in Assen and was of Jewish origin. He married Hannie de Löwe (1864-1934) in 1893, from which marriage a son, Salomon Jacob, and a daughter, Esther, were born. From 1893, Hiegentlich had an antiques business on Spiegelgracht 7 in Amsterdam (up to 1925 on Spiegelgracht 9), a relatively small one-man business in which his son also worked. Hiegentlich and his family lived above the antiques business. His daughter Esther married Leo Wolff, a German, in 1929 and moved to Germany. She and her family fled to the Netherlands at the end of the 1930s, where they lived with Hiegentlich (temporarily). The marriage of Hiegentlich’s son Salomon Jacob to Judith Katoen in 1941 remained childless. They went into hiding and survived the war. Hiegentlich himself was picked up at his house in Amsterdam at the end of 1942. Then, on 22 January 1943, he was deported from the ‘Apeldoornse Bosch’ psychiatric unit to Auschwitz, where he perished on 25 January 1943. His daughter Esther, her husband and both their sons perished in November 1943 and March 1944 in or near Auschwitz. The only member of the Wolff-Hiegentlich family to survive the war is the applicant, who was in hiding in Friesland.



32. The Hiegentlich gallery at 7 Spiegelgracht in Amsterdam, c. 1932.

3. Because the records of the antiques business disappeared after the war and Hiegentlich himself did not survive the war, there is no good overview of what took place during the war. Moreover, Hiegentlich’s trading stock contained objects of applied art that are difficult to identify. However, on the basis of the investigation results, the following line can be reconstructed. After the German invasion, Hiegentlich could not count on any protection from anti-Jewish measures, as was the case with some other Jewish art dealers. It is not clear whether he was in a position to do any active trading after the start of the occupation. No indications were found during the investigation suggesting that he acquired any objects after May 1940. After the occupying forces issued the so-called *Decree ordering the removal of Jews from all business* on 12 March 1941, there followed a period that led to the disbanding of Hiegentlich’s antiques business on 17 October 1941. Hiegentlich reported the closure of his business to the Trade Register on 3 September 1942, probably just before he was deported. This date of closure of the art dealership on 17 October 1941 is confirmed in a letter dated 28 March 1950 by his son Salomon Jacob, in which he states that ‘*onze zaak den 17 Oct. 1941 door de Duitschers geliquideerd is*’ [Our business was liquidated by the Germans on 17 October 1941].



After the closure on 17 October 1941, the art dealership may have been sealed by the Nazis for a length of time, as was also the case with two premises further down Spiegelgracht, which housed Mozes Mogrobi's art dealership, also a one-man business (see RC 1.37). Then, on 12 November 1942, the Nazi authorities called in German looting organisation Omnia Treuhand GmbH as Treuhänder (administrator) in connection with the liquidation of Hiegentlich's business. It would seem that part of Hiegentlich's trading stock was at that point still on the premises. Omnia confiscated and sold objects from the trading stock. Evidence for this are valuations of Hiegentlich's trading stock which were made around 21 November 1942 and 26 January 1943 on Omnia's instructions, and the payment of a sum of NLG 28,697.52 by auction house Dorotheum in Vienna into the account opened by Omnia in connection with the liquidation of Hiegentlich. The latter suggests that Omnia organised a large-scale sale of objects from Hiegentlich's antiques business either at or to Dorotheum.

4. Eventually, Hiegentlich's apartment above the antiques business was ransacked ('gepulst') by the occupying forces on 22 March 1943. The Committee considers it likely that any objects that may have been on the premises below the apartment would at that point also have been stolen.
5. In so far as the Committee knows, the members of the Hiegentlich family who survived the war did not report the loss of any art objects in the period after the war. In response to requests from the post-war restitution authorities for information about objects that may have been part of Hiegentlich's trading stock, Hiegentlich's son could only report that '*met geen mogelijkheid kon herinneren*' [there is no way I can remember] which objects had been sold during the war. Nor is there any evidence that rights to the currently claimed objects were relinquished. It has not been established, therefore, that this case has been conclusively settled in the past and the Committee considers the applicant's application for restitution admissible.
6. The Committee considers that as an antiques dealer, Hiegentlich would also have been engaged in trading art, which means that as part of current national policy, this application for restitution has to be assessed in accordance with the Recommendations for Art Dealerships by the Ekkart Committee (2003). To do so, it is first of all necessary that it be proved to a high degree of probability that the claimed objects were part of Hiegentlich's trading stock. Following that, it has to be investigated whether there are indications that would make it highly probable that loss of possession was involuntary as referred to in the Ekkart Committee's Recommendations for Art Dealerships. In the absence of declaration forms with the post-war restoration of rights authorities indicating involuntary loss of possession, as is the case with Hiegentlich, the required high degree of probability of involuntary loss can also be assumed if this was a case of theft, confiscation or coercion. The fourth Recommendation implies that when assessing this, threatening general circumstances with regard to Jewish art dealers must be taken into account. The sixth Recommendation defines involuntary sale as, among other things, the sale from stocks placed under their management by *Verwalter* or other administrators not employed by the owner. According to the Ekkart Committee's explanation of these recommendations, if hard evidence is lacking, a measure of flexibility should be exercised and any indications that suggest that loss of possession was probably involuntary should be interpreted generously.

Identification of the objects as being Hiegentlich's property

7. With regard to ownership of the claimed objects, the Committee's investigation has found that the claimed objects were probably acquired in the Netherlands by the firm of 'Math. Lempertz/Buchhandlung und Antiquariat' of Cologne in the period between 1941 and 1944. This company was active on the Dutch art market during the war and was also one of the main customers of Jewish art surrendered to looting organisation Lippmann, Rosenthal & Co. A list was found in the SNK archive entitled '*LISTE A DER NOCH VORHANDENEN, IN HOLLAND ERWORBENEN KUNSTGEGENSTÄNDE IM BESITZE DER FIRMA MATH. LEMPERTZ, KÖLN, SCHILDERGASSE 107/9*' [list of still available art objects acquired in Holland under the ownership of Math. Lempertz, Cologne, Schildergasse 107/9] (hereafter referred to as: the Lempertz list). The list was attached to a statement dated 'Köln, den 30.6.46' [Cologne, 30 June 1946] compiled by the owner of Lempertz, Josef Hanstein. In the statement, Hanstein reports that Lempertz had acquired the objects on the list in the period between 1941 and 1944 '*in Holland bei folgenden Firmen, teils auf Versteigerungen*' [in Holland from the following firms, partly at auctions]. This is followed by the numbers 1 to 12, followed by twelve names including '*2. Hiegentlich, Amsterdam, Nieuwe Spiegelstraat*'. Hanstein went on to state that in connection with the loss of his business records during the war, he was not able to say with certainty from whom he had acquired every single object. If he could remember from which dealer he had bought an object on the list, he had indicated this '*durch Beifügung einer der obigen Zahlen 1 bis 12*' [by adding one of the above numbers 1 to 12]. That there were commercial ties with Lempertz is confirmed in a letter to the SNK dated 9 April 1950 from Hiegentlich's son, in which he wrote that he could remember that his father had sold '*eenige kleine dingen*' [some small things] to Lempertz in Cologne. Whether this transaction involved the currently claimed objects is not known: '*Ik herinner mij nog wel dat mijn vader aan Lempertz enige kleine dingen verkocht heeft. Dat is dan gebeurd voor den 16 October 1941. [...] De zaak is geliquideerd en de boeken zijn weg. Gaarne zou ik u alle mogelijke inlichtingen willen geven. Maar ik kan mij met geen mogelijkheid herinneren wat het geweest is*'. [I do remember that my father sold some small things to Lempertz. That happened before 16 October 1941. (...). The business was wound up and the records no longer exist. I would be happy to give you all possible information. But there is no way I can remember what the items were.]

8. It appears from the investigation report that the claimed objects can all be identified on the Lempertz list.
- a. *NK 302 A-B – Two miniature slippers, glazed pottery with polychrome decor Delft (2), first half 18th century, earthenware.*

In connection with these objects, the SNK documentation refers to the index number 3089, a number that probably refers to the number under which these objects were included in the Lempertz list. Under '*Erkennungsmerkmal 3089*' [identifying mark 3089] the list states: '*2 polychrome Delfter Schuhe*' [two polychrome Delft slippers]. As the figure 2 has been placed before the description of the objects, according to the Lempertz list they were probably acquired from Hiegentlich.



33. Miniature slippers, glazed pottery with polychrome decor, Delft, first half of the 18th century (NK 302 A-B).

- b. *NK 915 - A glazed pottery dish with blue and white decor with flowers, China, 18th century*

Various index numbers were found in the SNK documentation concerning the dish NK 915 that were also found on the Lempertz list, viz. 3308 and 3328/3329. Under Erkennungsmerkmal 3308 on the Lempertz list is a '*Delfter Teller, blau-weiss*' [Delft dish, blue and white] without a code, and under Erkennungsmerkmal 3328/3329 a '*blaue China-Teller*' [blue China dish], next to which the code 2 is noted. The question is which of the index numbers (3308 or 3328/3329) could relate to NK 915. The SNK inventory card states that the identifying mark 'L 3329' is written on the back of NK 915. Apart from this identifying mark on the back of NK 915, the material from which NK 915 was made (porcelain) would suggest that NK 915 is not a dish made in Delft (3308 on the Lempertz list) but a Chinese dish (3328/3329 on the Lempertz list).<sup>30</sup>

The conclusion is that the description of NK 915 as '*Delfts bord, blauw wit/3308*' [Delft dish, blue and white/3308] on an internal SNK declaration form is probably the result of an error and it is likely that NK 915 can be identified as being the object 3329 on the Lempertz list that was acquired from Hiegentlich.

- c. *NK 936 B - China dish with blue and white decor of flowering branches, brown on the outside, China, 18th century*

As regards the dish NK 936 B, the SNK documentation gives the number L 3327, which probably refers to the Lempertz list. Under 3327, that list mentions '*blaue China-Teller*' [blue Chinese dish], with the code '2', which suggests Hiegentlich as the provenance.

- d. *NK 941 – Delft dish with blue and white decor with peacock on a bank in Wan Li style, Delft, 18th century*

For this object too, documents consulted by the Committee give two index numbers that probably refer to numbers on the Lempertz list: 3336 and 1319. It is stated under number 3336 on the Lempertz list: '*China-Schüssel, blau-weiss*' [China dish, blue and white] with code '2', therefore probably from Hiegentlich. According to the SNK inventory card, 'L 1319' is written in ink on the back of the dish. On the Lempertz

<sup>30</sup> An object is called 'Delft' if it was made of relatively soft fired and glazed earthenware. The provenance is Northern Netherlands. An object is generally called 'Chinese' if, like NK 915, it is made of (hard) porcelain, a material that was exclusively made in China up until the late 18th century.



list, under 1319, we also find the annotation ‘*Delfter Pfauenschwanz-Schüssel*’ [Delft peacock tail dish]. No provenance code is given with this number, which suggests that Lempertz was not able to give the provenance of number 1319. There are arguments that would favour identifying NK 941 as being number 1319 rather than number 3336 on the Lempertz list. First of all because of the identifying mark L 1319 written in ink on the back of NK 941. Secondly, because NK 941 is a Delft earthenware dish, which concurs with the description on the Lempertz list of number 1319 (*Delfter Pfauenschwanz-Schüssel*), but not with the description of number 3336 (*China-Schüssel*). Thirdly, because number 1319 is described as a ‘*Pfauenschwanz-Schüssel*’, which matches the representation of a peacock on NK 941. As regards the provenance of number 1319 on the Lempertz list, and in light of the fact that a provenance code is missing, nothing else can be said than that Lempertz probably bought this object from one of the twelve agencies Hanstein mentions in his statement, including the looting organisation Lippmann, Rosenthal & Co.

To sum up, the Committee considers it highly likely that four of the five objects this recommendation is concerned with (NK 302 A-B, NK 915 and NK 936 B) were the property of Hiegentlich during the war and were part of his trading stock. The Committee considers Hiegentlich as the provenance of the object NK 941 possible but not probable to a high degree. As regards NK 941, the Committee’s recommendation will be to reject the application for restitution of this object.

Assessment of the involuntary nature of the loss of possession

9. The Committee has not been able to ascertain how and when Hiegentlich lost possession of the claimed objects NK 302 A-B, NK 915 and NK 936 B. In light of Hanstein’s statement (see point 7 above) in connection with the Lempertz list, it has to be assumed that possession of the objects passed to Lempertz at some point between 1941 and 1944, either directly or through a third party. This means that the Committee will have to take the following possibilities into account:
- a. it concerned a sale that took place in a period of ten months between January 1941 and 17 October 1941, in which sale Hiegentlich may have been personally involved;
  - b. it concerned a purchase by Lempertz within a period of three years (7 October 1941 to 1944) after the closure of Hiegentlich’s company.

In so far as the sales of the claimed objects took place after 17 October 1941 (possibility b), the Committee believes that involuntary loss of possession automatically has to be assumed. The events described under consideration 2 do, after all, point to a loss of possession that, in all probability, was a result of confiscation of the objects by the German looting organisation Omnia, or of looting of the remaining objects when the apartment above Hiegentlich’s antiques business was plundered (‘pulsen’) in 1943 (see point 2 above). As regards the assessment of Hiegentlich’s loss of possession in the period prior to that (possibility a), the Committee considers as follows. First of all, Hiegentlich’s business was a relatively small one-man business belonging to a Jewish owner, who, compared to some colleagues, did not enjoy special protection from anti-Jewish measures. As for the period from 12 March 1941, the Committee draws attention to the importance of the ‘Decree ordering the removal of Jews from all business’. The proclamation of this measure would at the very least have seriously compromised the freedom of Jewish dealers such as Hiegentlich to deal in art. In addition, it is plausible that at this point, Hiegentlich would have felt additional pressure from German buyer Lempertz, given the latter’s dubious reputation in the war years (see for this ‘Investigation report on the auction house M. Lempertz-Cologne’ of 12 May 1947). There is a possibility that the objects were sold to Lempertz with Hiegentlich’s consent in the two months between January and March 1941. In view of the shortness of this period and the fact that, in the Committee’s opinion, the lack of sufficient information for the period since the beginning of the occupation is not entirely due to the applicant, this possibility does not outweigh facts and circumstances that have been established with more certainty and over a far longer period.

10. Summing all this up and taking account of the policy framework within which the Committee is obliged to operate (see point 6 above), the Committee comes to the conclusion that it is probable to a high degree that Hiegentlich lost possession of the works referred to under 8 a, b and c involuntarily.

**Conclusion**

The Restitutions Committee advises the Minister for Education, Culture and Science to return the ceramic objects *Two miniature slippers, glazed pottery with polychrome decor* (NK 302 A-B), *Glazed pottery dish with blue and white decor with flowers* (NK 915) and *China dish with blue and white decor of flowering branches, brown on the outside* (NK 936 B) to the heirs of Aron Salomon Hiegentlich, and to reject the application for the restitution of the ceramic object *Dish with blue and white decor with peacock on a bank in Wan Li* Style (NK 941).

Adopted at the meeting of 14 November 2011 by W.J.M. Davids (chair), J.Th.M. Bank, P.J.N. van Os, D.H.M. Peeperkorn, E.J. van Straaten, H.M. Verrijn Stuart, I.C. van der Vlies (vice-chair), and signed by the chair and the secretary.

(W.J.M. Davids, chair)

(E. Campfens, secretary)

**10. Recommendation regarding Arnhold (A)**

(case number RC 1.61-A)

In letters dated 28 February 2007 and 9 June 2009, the Minister for Education, Culture and Science (hereafter referred to as: the Minister) requested the Restitutions Committee (hereafter referred to as: the Committee) to issue a recommendation regarding two applications for restitution made by ‘*die Erbgemeinschaft nach Adolf Arnhold*’ [the community of heirs of Adolf Arnhold] regarding four works of art in the Netherlands Art Property collection (hereafter referred to as: NK collection). This partial recommendation involves three paintings, to wit P. de Neyn, *Farmhouse near a waterway* (NK 1747), A. van Ostade, *A scholar* (NK 1532) and D. Teniers II, *Resting herdsman with cattle near a tavern* (NK 1750). NK 1532 is currently in the depot of the Netherlands Cultural Heritage Agency (RCE); the current location of NK 1747 is unknown; NK 1750 is on long-term loan to the Limburg Museum in Venlo.

**The procedure**

In letters dated 4 December 2006 and 7 December 2007 the ‘*Erbgemeinschaft nach Adolf Arnhold*’ (hereafter referred to as: the applicants) requested the return of four paintings that were said to have been the property of Adolf Arnhold. After the war, the works in question became part of the so-called NK collection administered by the Dutch state. The applicants were represented in this procedure by Dr S. Rudolph, lawyer in Dresden, Germany.

The current partial advice (RC 1.61.A) concerns three paintings: P. de Neyn, *Farmhouse near a waterway* (NK 1747), A. van Ostade, *A scholar* (NK 1532) and D. Teniers II, *Resting herdsman with cattle near a tavern* (NK 1750). An unusual situation has arisen in that in 2009, NK 1747 was stolen from the Stadsmuseum in IJsselstein, where it had been on loan from the Dutch state. In light of the following, it is not necessary to discuss this loss at any length.

Following the above requests for advice, the Committee instigated a fact-finding investigation. The preliminary results of this fact-finding investigation in the context of the original claim (NK 1747, NK 2924) were recorded in a draft report dated 7 January 2008. The Committee sent this draft report to the Minister and to the applicants, to which the Minister replied in an email dated 7 February 2008 and the applicants in a letter dated 20 March 2008. The preliminary results of the investigation of the supplementary claim (NK 1532, NK 1750) were combined with the previous investigation results and reactions in a draft report dated 6 December 2010. The report was sent to the applicants for comment. They responded to the contents of the report in a letter dated 29 April 2011. At their request, the Committee then gave the applicants the opportunity to conduct additional investigations into the provenance of the claimed works of art. In a letter dated 1 July 2011, the applicants were also informed about a number of additional investigation details established by the Committee. On 14 October 2011, the applicants reported to the Committee that no new information had emerged from the provenance investigation they had instigated.

Three of the four claimed paintings, including NK 2924, are also part of an application for restitution concerning art dealership Firma D. Katz of Dieren (RC 1.90-B). Partly in connection with this and because of the ongoing investigation, the Committee has decided to defer its recommendation regarding NK 2924 and to include the claim to this work in file number RC 1.61-B. The facts underpinning the present recommendation, which concerns the three other works, are described in the separate investigatory report RC 1.61-A, which was adopted on 21 November 2011. The applicants’ response of 29 April 2011 is appended to this report.

**Considerations:**

1. Applicants request the restitution of A. van Ostade, *A scholar* (NK 1532), P. de Neyn, *Farmhouse near a waterway* (NK 1747) and D. Teniers II, *Resting herdsman with cattle near a tavern* (NK 1750). The applicants claim that the works were or may have been the property of Jewish-German banker Adolf Arnhold, who was a partner of the Gebr. Arnhold bank. Adolf Arnhold allegedly lost possession of the paintings as a consequence of anti-Jewish measures taken by the Nazi regime. According to the applicants, they form the ‘*Erbgemeinschaft nach Adolf Arnhold*’, specified in more detail during the procedure as ‘*the Firm xxx i.Abw.*’, i.e. the firm xxx in liquidation. Given the following, the Committee regards a detailed analysis of the legal relationship between the various legal entities/individuals) as being of no importance.
2. According to the applicants, the Arnhold family took steps to trace Adolf Arnhold’s former art property after the war. However, the applicants also stated that after the war, nothing was reported missing to

the Netherlands Art Property Foundation (SNK). The Committee considers that to the extent to which there were contacts with the Dutch restitution authorities in the past, they certainly did not lead to a final decision regarding the currently claimed paintings. Hence this is not a case that was settled in the past, which means that the applicants' request is therefore admissible.

- Adolf Arnhold (1884-1950) (hereafter also referred to as: Arnhold) descended from a prominent Jewish-German bankers' family and was a partner in the Gebr. Arnhold bank in Dresden and Berlin, Germany (hereafter referred to as: the Gebr. Arnhold bank). Both the bank and the Jewish partners were persecuted during the Nazi regime. According to the applicants, the paintings with the current inventory numbers NK 1532, NK 1747 and NK 1750 came into Adolf Arnhold's possession in 1937. In 1937, Adolf Arnhold and his wife fled because of the Nazi regime, and settled abroad where they eventually found a safe haven. Adolf Arnhold died in Heidelberg in 1950.
- Arnhold's acquisition of ownership of the currently claimed works can be traced back to contractual agreements in 1931 (and later) between the Gebr. Arnhold bank and another 'Jewish' bank in Germany, S. Bleichröder of Berlin (hereafter referred to as: the S. Bleichröder bank) and their partners Arnhold (of the Gebr. Arnhold bank) and Dr Paul Hermann von Schwabach (of the S. Bleichröder bank) (hereafter referred to as: Von Schwabach). As part of these agreements, the total scope and content of which are not known, in 1937, Adolf Arnhold acquired ownership of the works that had previously been the property of Von Schwabach. As a quid pro quo, part of a debt was settled that Von Schwabach owed the Gebr. Arnhold bank, to which transaction the bank agreed. Given the conclusion set out below, a detailed discussion of the loss of possession by the originally Jewish Von Schwabach is not necessary.
- Included in the transfer of ownership to Adolf Arnhold were works that Von Schwabach had placed with the Rijksmuseum in Amsterdam (hereafter referred to as: RMA), the Netherlands, in 1935. A list of these works dated 20 July 1934 is available. Arnhold also submitted a statement of his assets (which Jews were obliged to do) to the Nazi authorities on 29 July 1938. Various works are mentioned in an appendix to this statement, which includes the majority of the works found on the 1934 list. This appendix was also found during the investigation into the Arnhold case. In September 1938, the Von Schwabach couple separately informed the RMA about the transfer of ownership to the new owner, Adolf Arnhold. Von Schwabach died in November 1938. On 15 December 1938, an (authorised) representative of Arnhold asked for the works and fetched them the following day, taking them to an unknown destination. A confirmation of receipt dated 16 December 1938 and signed by Arnhold's representative includes a list of the paintings found, which is almost identical to the list of 20 July 1934.
- The reconstruction of the facts as given above implies that Adolf Arnhold acquired the title to the artworks from the (former) Von Schwabach collection, which were in the RMA, in 1937. The Committee then wanted to know whether the currently claimed artworks could be identified as having been part of this group. As a consequence of the Ekkart Committee's eighth recommendation of April 2001 concerning private art property, a condition for restitution is first and foremost that the title to the claimed objects is proven with a high degree of probability, and that there are no indications to the contrary.
- On the basis of the investigation, the Committee concludes that two of the artworks (NK 1532, NK 1747) do not correspond to works that Von Schwabach had placed with the RMA and of which Adolf Arnhold acquired ownership, and that NK 1750 cannot be identified as such with a high degree of probability.
- The Committee elucidates the identification problems encountered for each work of art below.

**NK 1532**

The claimed work NK 1532 is very probably another painting than the A. van Ostade work that was in Arnhold's possession to which the applicants refer and that is entered as number 13 on the 1938 list referred to in consideration 5, 'Schildery van A. van Ostade' [Painting by A. van Ostade]. *Portret, van de heupen gezien* [Portrait, seen from the hips]. Neither the name Arnhold nor the name Von Schwabach occurs in relation to NK 1532 in the provenance details from the Origins Unknown Agency, the project agency that investigated the provenance of the NK collection up until 2004. The applicants suggest that the above mention of the portrait with the number 13 refers to the current NK 1532. However, the descriptions on the lists referred to in consideration 5 are very sketchy. For instance, no dimensions or other distinctive features are given. No further indications of Arnhold's ownership were found during the investigation. During an inspection of the reverse of the current NK 1532, no numbers or identifying marks were found that could link the work with that listed under number 13. The Committee also found no indications for a Von Schwabach or Arnhold provenance of NK 1532 in the SNK documentation.

What is more, indications were found that contradict the fact that NK 1532 is the work to which the applicants are referring. During its investigation, the Committee found indications that suggest that in 1939, 'Dr Kurt Arnhold and A. Arnhold' (in all probability Adolf Arnhold) donated a small portrait of a scholar by Adriaen van Ostade from the Von Schwabach collection to the RMA. This donated portrait is in all probability the current SK-A-3281, a different painting than NK 1532. Although a scholar is depicted both in SK-A-3281 and in NK 1532, there are significant differences in the background used and the way in which the person is portrayed. The painting with the number 13 from the property of Arnhold is described

as 'Portrait, seen from the hips'. The scholar in SK-A-3281 is indeed depicted from the hips, whereas the scholar in NK 1532 is portrayed from the waist. Because of the provenance and the description, the Committee considers it probable that the work SK-A-3281 belonged to Kurt and Adolf Arnhold and was donated by them in 1939. In light of the above, the Committee is of the opinion that the current NK 1532 cannot be identified as the former property of Arnhold.

**NK 1747**

The name Arnhold does not occur in the provenance details of the Origins Unknown Agency for NK 1747. The applicants identify the painting as a work by artist Jan van Goyen that appeared on the list of paintings that Von Schwabach had placed with the RMA. Although the 1934 list referred to by the applicants (mentioned above in consideration 5) was investigated, the information given there is too sketchy and too indistinctive to enable identification. Further investigations by the Committee, particularly into numbers or identifying marks on the reverse of the work, did not make it possible to link NK 1747 to an entry on the 1934 list or the other lists mentioned in consideration 5.



34. Pieter de Neyn (formerly attributed to J.S. van Ruysdael), *Farmhouse near a waterway* (NK 1747).



35. Back of the panel  
*Farmhouse near a waterway* (NK 1747).

In addition, there are indications showing that NK 1747, which was attributed to S. or J.S. van Ruysdael at the time, is a different work from the two paintings by Van Goyen on the list. On 30 October 2007, the applicants submitted copies of Internal Declaration Forms drafted by the SNK concerning two paintings by Jan van Goyen. On these forms, next to ‘*provenance*’ of the two works, is the note: ‘*Schwabach; loan Rijksmuseum*’ It can be concluded from the enclosed photos that this refers to two *other paintings* than the current NK 1747. The Committee considers it probable that the two entries on the list refer to these two works, which, as far as is known, are not or no longer in the NK collection. In light of the above, the Committee is of the opinion that the current NK 1747 cannot be identified as the former property of Arnhold.

NK 1750

As regards this painting, again no evidence of Arnhold as provenance was found. The names Arnhold or Von Schwabach do not occur in the Origins Unknown Agency’s provenance details for NK 1750. However, the applicants did state that they identify NK 1750 as (possibly) being number 11 on a list of paintings that Adolf Arnhold acquired from Von Schwabach’s collection. Although the description of the work on the list of 16 December 1938 mentioned in consideration 5 (a painting by David Teniers II, *Sheep and cattle*) could apply to NK 1750, without more details this description is not distinctive enough to identify the work with any degree of certainty as being the painting from Arnhold’s collection. All the more so because the depiction shown is one that occurs frequently in the work of David Teniers II. The Committee carried out further investigations, particularly into numbers or identifying marks on the reverse of the work, but found no further evidence to suggest a Von Schwabach or Arnhold provenance. As things stand, the Committee considers it possible but not highly probable that the current NK 1750 was the property of Arnhold.

Because of these identification problems, the Committee was unable to assess the nature of the loss of possession and will recommend in its conclusion that the application with regard to NK 1532, NK 1747 and NK 1750 be rejected.

9. NK 1747 and NK 1750 are also the subject of a claim in connection with the application for restitution concerning art dealership Firma D. Katz (RC 1.90-B). Given the above, the two applications do not have to be balanced against one another.

Conclusie

De Restitutiecommissie adviseert de Staatssecretaris van Onderwijs, Cultuur en Wetenschap om het verzoek om teruggave ten aanzien van de schilderijen P. de Neyn, *Boerderij aan het water* (NK 1747), A. van Ostade, *Een Geleerde* (NK 1532) en D. Teniers II, *Rustende veehoeder met vee bij een taveerne* (NK 1750), af te wijzen.

Aldus vastgesteld in de vergadering van 21 november 2011 door W.J.M. Davids (voorzitter), J.Th.M. Bank, P.J.N. van Os, D.H.M. Peeperkorn, E.J. van Straaten, H.M. Verriijn Stuart, I.C. van der Vlies (vice-voorzitter) en ondertekend door de voorzitter en de secretaris.

(W.J.M. Davids, voorzitter)

(E. Campfens, secretaris)

11. Recommendation regarding I. Rosenbaum NV  
(*case number RC 1.82-B*)

In a letter dated 21 May 2007, the Minister for Education, Culture and Science (hereafter referred to as: ‘the Minister’) requested the Restitutions Committee (hereafter referred to as: the Committee) to issue a recommendation regarding the decision concerning the application of G.S. of N.Y.C. and J.L. of L.A. (hereafter jointly referred to as ‘the applicants’) for the restitution of a number of objects which are part of the Netherlands Art Property Collection (NK collection) administered by the Dutch government. This recommendation concerns thirteen objects:

- *a pitcher, brown glazed stoneware*, Germany (NK 180)
- *two octagonal porcelain dishes, glazed, polychromed decor, birds by a bridge* China (NK 181 A-B)
- *a small white jug with tin mount and cover*, Delft (NK 455)
- *two vases and covers with polychromed decor of floral motifs and a parrot on the cover*, Delft (NK 456 A-B)
- *two walnut armchairs in Chippendale style*, England (NK 659A-B)
- workshop of J. Palma il Vecchio, *The Holy Family with John the Baptist and St. Catherine* (NK 1436)
- N. Neufchatel (formerly attributed to Sotte Cleve), *Portrait of a man* (NK 1457)
- I. van Ostade, *Barn interior with three playing children* (NK 1474)
- D. Teniers II, *Kitchen scene with game* (NK 1845)
- J. van Loo (formerly attributed to A. Cuyp), *Three men in a wine cellar* (NK 2173)
- Königliche Sächsische Porzellan-Manufaktur (Royal Saxon Porcelain Manufactory), *Two sweet-boxes flanked by glazed pottery negress in polychromed decor* (NK 2903 A-B)
- Meester van de Cappella Medici Polyptiek, *St. Nicolaas of Bari* (NK 2915)
- N. Maes, *Portrait of a man* (NK 3269)

The procedure

In a letter dated 28 March 2007, the applicants requested restitution of the above-mentioned objects from the Netherlands Art Property Collection, which were said to be the property of the public limited liability company I. Rosenbaum NV in Amsterdam (hereafter referred to as: ‘Rosenbaum’ or ‘art dealership Rosenbaum’). In a letter dated 30 March 2007, the applicants advised that the application for restitution was, in part, being made on behalf of S. Ltd., an art dealership in New York, as ‘*successor company*’ to art dealership Rosenbaum, which was liquidated in 1947. They clarified their application in further letters to the Committee dated 14 November 2008, 30 March 2009 and 20 September 2010.

The original application for restitution concerned more works. In his letter dated 21 May 2007, the Minister excluded three paintings that were part of the request for advice sent to the Committee because they were previously returned as part of the Goudstikker case (RC 1.15) and were, therefore, no longer part of the National Art Property Collection. In a letter dated 10 December 2009, the applicants withdrew their application concerning those paintings (NK 3260, NK 3270 and NK 3271) and painting NK 3122.

In a letter dated 14 November 2008, the applicants supplemented their application with a claim to a *commode in Regency style* (NK 256). The Committee included the application concerning that object in a separate file (Rosenberg, RC 1.105), on which a recommendation was issued on 3 May 2010. The Committee did the same with the application for restitution for the painting *Landscape with classical temple* by Hubert Robert (NK 1432), which was removed from the current application because of a competing claim to this work (Mathiason, RC 1.108). As regards the application for restitution concerning Rosenbaum for NK 1432, the Committee issued a recommendation (Rosenbaum, RC 1.82-A) on 31 January 2011.

The Committee conducted a fact-finding investigation with regard to the application for restitution covering the thirteen above-mentioned objects, the results of which were laid down in a draft investigatory report that the Committee sent to the applicants for comment on 10 May 2010 (a first version) and on 14 June 2011 (a second version), and to the State Secretary for Education, Culture and Science (hereafter referred to as: the State Secretary) with a request for additional information. The State Secretary advised that he had no further information to provide to the Committee. In a letter dated 20 September 2010, the applicants commented on the first version of the draft report, in which they addressed such issues as the position of S. Ltd. as the ‘*successor company*’ to Rosenbaum, and they had no comments to make on the second version.

During the procedure, the Committee consulted the chartered accountant L.J.W.M van der Elst, a former partner at Ernst & Young, as an expert. His findings were summarised in a report issued on 18 October 2011, which was sent to the applicants together with a memo from the Committee dated 26 September 2011, which enumerated the additional investigation results. The applicants used the opportunity they were given to comment on these documents. As such, the investigatory report was then adopted on 19 December 2011. The applicants are being represented in this current procedure by Markus H. Stötzel, lawyer, of Marburg (Germany).



Considerations

1. The pertinent facts are outlined in the investigatory report. The following is a summary. The Rosenberg (Saemy and his brothers Raphael and Siegfried) and the Stiebel (Eric and Hans) cousins, all Jewish, worked in the art dealership set up by their grandfather Jacob Rosenbaum in Frankfurt between 1860 and 1870. Shortly after Hitler’s rise to power, they left Germany. Saemy Rosenberg (hereafter referred to as: Rosenberg) was apparently already in Amsterdam in April 1933, where he and his brothers became directors of NV Internationale Antiquiteitenhandel Amsterdam. Saemy and Raphael Rosenberg later acquired shares in this company, as did their cousins Eric and Hans Stiebel, and in 1938 the name of the company was changed to I. Rosenbaum NV. In the Second World War or shortly thereafter, Rosenberg became the sole shareholder of art dealership Rosenbaum.

Partly because of the Nazi threat, Rosenberg and his brothers left Amsterdam between 1937-1939 and set up shop in England and the United States. In May 1940, E.C.M. Peters, who was already working at Rosenbaum’s before the occupation, was appointed acting director by supervisory director and co-founder of the company, lawyer P. J. Jürgens pursuant to the then article 8 of the company’s articles of association on the basis of the absence of the director(s), who were residing outside of the Netherlands. She was later (January 1941) appointed director. In November 1940/April 1941, the company’s registered office was moved from Amsterdam to Willemstad, Curaçao on Rosenberg’s initiative. On 24 November 1942, Rosenberg declared that the company’s ‘*operating office*’ was in New York. Rosenberg ran an art dealership with one or more family members originally under the name Rosenberg & Stiebel Inc., which was later changed to S. Ltd. During the war years, there probably was very little if any contact between Rosenberg in New York (who, during the war, considered himself as the sole company director) and Peters and Jürgens, who remained in the Netherlands. A post-war letter dated 10 August 1945 from Peters to Rosenberg reported that art dealership Rosenbaum in Amsterdam could initially continue more or less doing business as usual after the German invasion. All that changed in 1941. In 1941/1942, *Dienststelle Mühlmann* (one of the German looting organisations that acquired art for the Third Reich) categorised 19 Rosenbaum objects as ‘*reichswichtige Kunstschatze*’ [works that were of importance to the German Reich] and confiscated them. Following the *Order concerning the Exclusion of Jews from Economic Affairs* of 12 March 1941, Jewish art dealerships moreover came under increasing pressure. Until early 1942, Peters ran the art dealership alone. In February 1942, the occupying forces appointed Reichsdeutsche (person under the jurisdiction of the German Reich) Herbert Wieth as Rosenbaum’s *Verwalter* [administrator]. After the war, Peters and Jürgens were said to have stated that they had worked well with Wieth. In 1944, Wieth was replaced as *Verwalter* by the Dutchman Wietze Jager, whose task as ‘*Liquidations-Treuhänder*’ was to liquidate the art dealership, and who had the entire stock auctioned off in February 1945 far below its actual value, according to a statement made by those concerned. After the war, Peters tried to recoup the damages suffered by Rosenbaum from Jager.

Peters continued to act as director after the war. As sole shareholder, Rosenberg decided to dissolve Rosenbaum in 1947, naming himself, M. Meyer and the aforementioned P.J. Jürgens as liquidators. The liquidation was complete by 1 January 1948.

2. The applicants have stated that they are the heirs of ‘*the late Isaak and Jacob Rosenbaum and descendants, especially of Saemy Rosenberg and Hans and Eric Stiebel*’. The investigation has shown that applicant J.L. is a grandson of Saemy Rosenberg and applicant G.S. is Eric Stiebel’s son. In any case, Rosenberg and Eric Stiebel were Rosenbaum shareholders until 1940. The applicants have also stated that Rosenberg became the sole shareholder during the war years or shortly thereafter, and that L. is Saemy Rosenberg’s sole heir. In this context, the Committee has taken cognisance of various documents, on the basis of which it has no reason to doubt the status of Rosenberg and L.
3. Seeing as art dealership Rosenbaum has not existed since 1947, the Committee finds that Rosenberg, the sole shareholder when Rosenbaum was liquidated and recipient of the dealership’s ‘remaining assets’ at that time, according to a letter from the liquidators Meyer and Jürgens to Rosenberg dated 8 January 1948, is entitled to seek restitution of the objects this recommendation relates to, and that following his death, his heirs are entitled to such.
4. The Committee finds that S. Ltd, which is also an applicant in this claim, has not succeeded in proving that it be seen as Rosenbaum’s ‘*successor company*’, or that Rosenbaum supposedly acquired ownership of one or more of the thirteen objects in question before possession thereof was lost during the war years. The Committee, therefore, finds that the application for restitution from S. Ltd. is inadmissible. As heir of Eric and Hans Stiebel, G.S. also does not qualify as a candidate to seek restitution of the objects that belonged to Rosenbaum. When Rosenbaum was being liquidated, Eric and Hans Stiebel were no longer shareholders, and, as such, their heir G.S. cannot be regarded as a stakeholder in the restitution.
5. As regards one of the objects discussed in this recommendation, the painting *The Holy Family with John the Baptist and St. Catherine* from the workshop of J. Palma il Vecchio (NK 1436), Rosenberg sought restitution on behalf of Rosenbaum in the post-war years. Consideration 22 addresses that application and the implications thereof in more detail. As regards the remaining twelve objects, the Committee found no

evidence of Rosenbaum or Rosenberg having sought restitution in the post-war years or of having given up the right to restitution, so that nothing has been conclusively settled with regard to these objects. The Committee deems J.L.’s application for restitution for these twelve objects admissible. The Committee’s findings regarding the admissibility concerning NK 1436 are addressed in consideration 22.

6. The current application for restitution should be assessed in accordance with the Ekkart Committee’s Recommendations regarding the art trade (2003). To admit the application, it is first and foremost essential that there is a significant likelihood that the claimed objects were Rosenbaum’s property when the involuntary loss of possession occurred. An investigation then has to be carried out into whether the involuntary loss of possession occurred as a result of circumstances that were directly related to the Nazi regime. The Recommendations for the art trade also state that, should there be no post-war declaration docket, as is the case with Rosenbaum, anything indicating that it was highly likely that an enforced sale, theft or confiscation occurred should be regarded as grounds for restitution. When assessing these indications, threatening general circumstances with regard to Jewish art dealers must be allowed for. The sixth Recommendation also defines involuntary sale as the sale from stocks placed under their management by Verwalter or other administrators not employed by the owner.

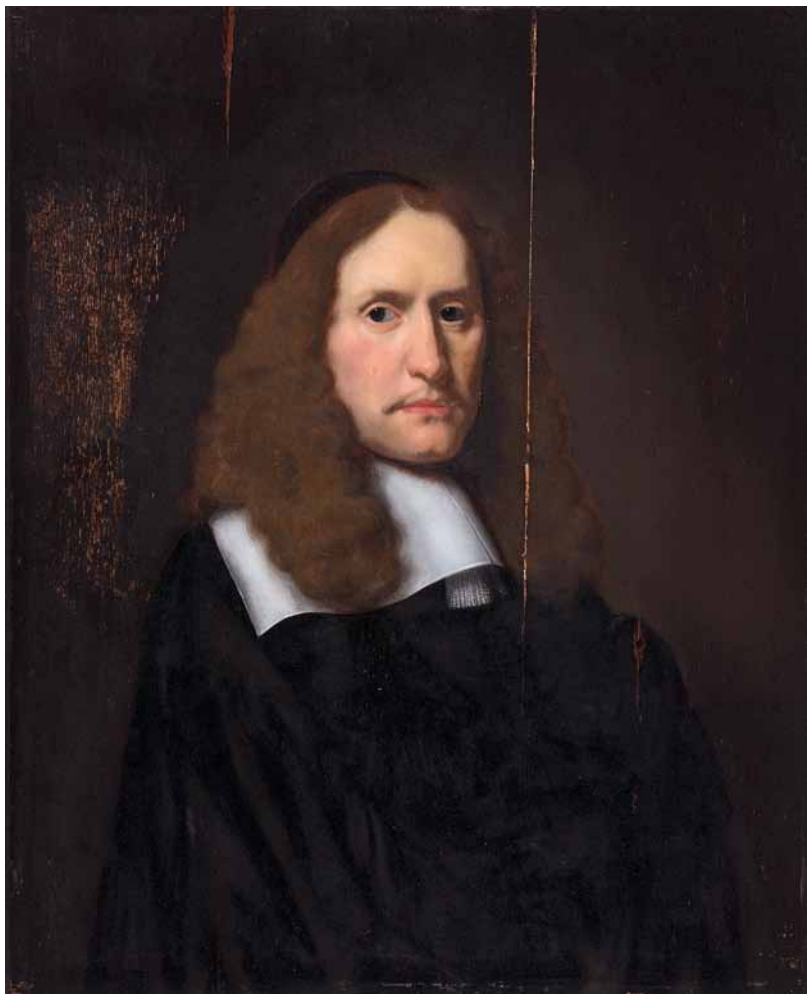
With a view to assessing against these criteria, the Committee has distinguished the following five categories of objects:

- a. ‘co-owned works’ with and actually owned by art dealership Goudstikker (NK 2915 and NK 3269) and
- b. works owned by Rosenbaum, under consignment at art dealership Goudstikker (NK 1457, NK 1474, NK 2173);
- c. works from Rosenbaum’s trading stock possibly or definitely purchased and sold by a Verwalter (NK 180, NK 181 a-b, NK 455, NK 456 a-b, NK 659 a-b, NK 2903 a-b);
- d. Rosenbaum’s ownership uncertain (NK 1845);
- e. owned by Rosenbaum and confiscated by Mühlmann (NK 1436).

Category a: Co-owned works with and actually owned by art dealership Goudstikker (NK 2915 and NK 3269)

7. Before the Second World War, Rosenbaum maintained very close commercial ties with art dealership Jacques Goudstikker N.V. (hereafter referred to as: Goudstikker), also located in Amsterdam. There was a ‘current account’ relationship between the two art dealerships. Goudstikker maintained good relationships with more art dealerships in the Netherlands, demonstrated by the fact that paintings were traded jointly, with Goudstikker often playing a leading role (see also the recommendation regarding Goudstikker, RC 1.15, consideration 14). In a statement dated 24 November 1942, Rosenberg explains the ties between Rosenbaum and Goudstikker: ‘*They bought and sold pictures and works of art in joint account. Furthermore, the two firms did business on a consignment basis.*’ 32 paintings were named in three appendices to the statement, which were supposedly part of the commercial link between the two art dealerships when the Second World War broke out, i.e. eight paintings held by Goudstikker in which the parties held a ‘*a half share*’ (Exhibit A in the statement), three paintings held by Rosenbaum in which the parties also held ‘*a half share*’ (Exhibit B), and 21 paintings art dealership Rosenbaum held on consignment at Goudstikker’s (Exhibit C). From various reports issued to Goudstikker in the war years, the Committee also found that there was extensive sales traffic in which both of the art dealerships were involved. Such reports include one (draft) report drawn up by the accountant J. Elte in 1942 concerning the establishment on 14 September 1940 of the company Kunsthandel voorheen J. Goudstikker NV (hereafter referred to as: Goudstikker-Miedl), the company in which the German Alois Miedl continued art dealership Goudstikker after Jacques Goudstikker fled to England in May 1940 and his death in an accident during this escape.
8. In the art world, private individuals or art dealerships often placed and still place art works up for sale on consignment at another art dealership. Rosenbaum and Goudstikker evidently conducted a lot of transactions based on this (‘*consignment basis*’), but also did business in what Rosenberg called a ‘*joint account*’. These concern works that are referred to in Goudstikker’s bookkeeping as ‘co-owned works’. In its letter to the Deutsche Revisions- und Treuhand A.G. dated 23 August 1940, Rosenbaum outlines the nature of the co-owned works: ‘*Im Antiquaetenhandel ist es ueblich, dass der Metist, der die Gegenstaende in seinem Besitz hat, ueber die Gegenstaende als sein Eigentum verfuegen kann, sodass der andere Metist nicht einen dinglichen Anspruch hat, sondern nur einen Anspruch auf Abrechnung des halben Verkaufspreises. Wir glauben daher, dass wir nach den bestehenden Verordnungen, den Verkauf ohne Genehmigung durchfuehren und den Meta-Anteil dem Metisten gutschreiben duerften .(....).*’ Based on this, the Committee understands a ‘co-owned work’ in this case to mean an artwork that is bought by one the parties for the joint account of two (or more) parties (‘*metisten*’), where the party that actually held the work was regarded as the legal owner, while economic ownership belonged to the parties jointly. As owner, the owning metist could independently dispose of the work, but was obliged to share the returns with the other metist(s) according to a ratio agreed by the metists. As such, the Committee has found that for the current claim, the art dealer that actually held the works should be regarded as the owner as defined by restitution policy.

9. It can be concluded from the documentation found that the current NK 2915 was purchased at a Frederik Muller auction in 1938 by art dealerships Goudstikker and Rosenbaum for a half share each, and was at Goudstikker's premises in Amsterdam when the Germans invaded. A letter to Jacques Goudstikker probably signed by Siegfried Rosenberg was found in the NBI archive, from which it emerges that Rosenbaum purchased the current NK 3269 in or around 4 April 1940 for the joint account. Documentation shows that the painting was actually held at Goudstikker's in July 1940. As regards both paintings, it would seem that Goudstikker took over Rosenbaum's half share as part of a sales transaction, proposed by A.A. ten Broek on behalf of Goudstikker in a letter to Rosenbaum dated 19 July 1940 (for further details on the sales transaction, see consideration 13).
10. The Committee, therefore, deems it plausible that these paintings concern Goudstikker and Rosenbaum's co-owned works within the above meaning, with Goudstikker being tasked as the selling party and being the place where the works were actually held. In the Committee's view, it is therefore likely that these works did not belong to Rosenbaum's trading stock and cannot be considered as Rosenbaum's property. Given that the paintings were held by Goudstikker at the time of the sales transaction (mentioned in the letter of 19 July 1940), it is more likely that these works belonged to Goudstikker's trading stock (legal property). For this reason alone, the Committee has to advise that application for restitution of NK 2915 and NK 3269 be rejected.



36. Nicolaes Maes, *Portrait of a man* (NK 3269).

Category b: Art dealership Rosenbaum's works on consignment at Goudstikker's (NK 1457, NK 1474 and NK 2173)

11. As regards the three other paintings (NK 1457, NK 1474 and NK 2173), the Committee finds that, in light of Goudstikker's letter to Rosenbaum dated 19 July 1940 (further details of which are given under consideration 13), it is very likely that these were owned by Rosenbaum, and that they were on consignment at Goudstikker's in July 1940. It should also be noted that it is also likely that the current NK 1457 (one of the portraits formerly attributed to Sotte Cleve) is a work that was co-owned by Rosenbaum and H. Stiebel. For this, the Committee refers to the description in Rosenbaum's letter dated 23 August 1940 to the Deutsche Revisions- und Treuhand A.G. of two Sotte Cleve portraits as co-owned works with H. Stiebel (see also consideration 8 above). Given the nature of co-owned works as outlined above, this means that in July 1940 the painting should be regarded as Rosenbaum's (legal) property. Rosenbaum placed this work on consignment at Goudstikker's then as well.
12. As the likely ownership of these works has been established, the Committee now addresses the question as to whether Rosenbaum lost these three paintings involuntarily as a result of circumstances that were directly related to the Nazi regime.
13. Of importance in this case is a sales transaction between Rosenbaum and Goudstikker that took place in July-September 1940, and which can be summarised as follows: In a letter dated 19 July 1940, A. A. ten Broek, an employee at Jacques Goudstikker's art dealership, wrote to Rosenbaum that Goudstikker would appreciate resolving all co-ownership between the two companies. In this letter, Ten Broek spoke as acting director of art dealership J. Goudstikker NV, and he proposed such things as:
- Goudstikker taking over Rosenbaum's 'half share' of the eight works it co-held, including NK 2915 and NK 3269;
  - Goudstikker taking over eight artworks, including NK 1457, NK 1474 and NK 2173, that were Rosenbaum's property and on consignment at Goudstikker's;
  - Rosenbaum taking over Goudstikker's 'half share' in the three co-owned works it held. These works were already outside the Netherlands in July 1940 and are not part of the current application for restitution.

It would seem that the aim was to reach a final settlement of all current commercial ties between the two art dealerships, as the following excerpt testifies: *'Na afwikkeling van deze transactie zyn tussen onze beide firma's geen kwestie's meer hangende, behalve ons evtl. provisie-aandeel aan het schildery van Rubens 'H. Gregorius & Domitilla'* [After this transaction has been settled, there are no more unresolved matters between both our companies except perhaps our share in the commission for the Rubens painting 'St. Gregory & Domitilla'.]

Given that the paintings referred to under c) were outside the Netherlands, Goudstikker made the proposal under the proviso that the Foreign Currency Institute would give permission for the sales transaction Ten Broek concluded his letter with: *'Zoodra wy Uw bevestiging in ons bezit hebben, dat U met e.e.a. accoord gaat zullen wij de bedoelde toestemming aanvragen.'* [We will apply for this permission as soon as we have your confirmation that you agree with this.]

The proposal appears to have been approved by Rosenbaum. On 27 September 1940, Peters wrote to Ten Broek: *'Wy bevestigen hiermede de ontvangst van Uw schryven dd. 27 dezer en was het ons aangenaam te vernemen, dat de toestemming van het Deviezeninstituut tot het afwickelen der voorgestelde transactie inmiddels door U werd ontvangen. Gaarne vernemen wy van U, wanneer U de diverse goederen by ons wilt laten afhalen.'* [We hereby confirm the receipt of your letter of the 27th of this month and were pleased to hear that you have meanwhile received permission from the Foreign Currency Institute to settle the proposed transaction. Would you please let us know when you would like the various goods collected from us?] Various accountants' reports relating to the establishment of art dealership Goudstikker-Miedl on 14 September 1940, including the report issued by the accountant Elte, also indicate that the sales transaction concerning the five previously mentioned paintings proposed by Ten Broek was also actually conducted. As a result, it would seem that, in the summer of 1940, Goudstikker became the (legal and economic) owner, in so far as he was not already, of the paintings now known as NK 2915 and NK 3269 (category a, as discussed above), as well as the paintings NK 1457, NK 1474 and NK 2173 (category b).

14. As regards the question of whether Rosenbaum's loss of possession should be regarded as involuntary as defined by current restitution policy (see also consideration 6), the following: The Committee firstly asked itself the question of whether the fact that Ten Broek's proposal could not be reviewed by Rosenbaum's director (Rosenberg), who was outside the Netherlands, but could be reviewed by Peters and (presumably also) supervisory director Jürgens is reason to regard the loss of possession as a result of their decision as enforced. What could be of importance here is whether Peters should be seen as a 'niet door de eigenaar aangestelde beheerder' [a manager not appointed by the owner] (see also consideration 6). Given the following, the Committee answers this question negatively. Peters was already working at Rosenbaum's before the Second World War. On 5 December 1939, she received power of attorney from director Siegfried Rosenberg to sign certain documents. In May 1940, in the absence of the board which was outside the Netherlands, Jürgens, Rosenbaum's co-founder and supervisory director, legally appointed her as (acting) director and she remained Rosenbaum's director after the war, seemingly with Rosenberg's agreement. Reinforcing the Committee's opinion is the fact that, in November



1940, Rosenberg made an amendment to Rosenbaum’s articles of association via the Dutch legal authorities in London, which included having the company’s registered office moved from Curaçao and limiting the authorities of the directors on Dutch soil. This amendment to the articles of association, of which Peters and Jürgens probably knew nothing until after the war, dates from after the supposed Rosenbaum/Goudstikker sales transaction of July-September 1940. Furthermore, it would seem that it was prompted more by the desire to create a formal barrier against the partnership falling into the clutches of the German occupying forces than to make the work of the (loyal) director Peters and supervisory director Jürgens with art dealership Rosenbaum impossible. The Committee also found no evidence that Rosenbaum and/or its sole shareholder Rosenberg challenged any of the sales transactions or other activities carried out by Peters after the war.

15. The Committee then asked itself the question of whether Peters was forced into any sales transaction, like the one between Rosenbaum and Goudstikker in July-September 1940. Peters’ formal authority to pursue the sales transaction aside, there could still have been involuntary loss of possession as defined by current restitution policy. According to the recommendations, there has to be a high degree of probability of an enforced sale (see also consideration 6). The Committee found no evidence of this. There are no known statements by Peters from which it can be concluded that she felt put under pressure by Ten Broek. In this context, it can also be pointed out that Peters could probably count on the support of supervisory director (lawyer) Jürgens. Given the liquidation of the art dealership Goudstikker and the probably related desire to settle the Goudstikker/Rosenbaum relationship, the Committee has also found that the sales transaction concerning the art works which were already on consignment at Goudstikker’s before the war, cannot be considered as involuntary as defined by this policy. The report dated 18 October 2011, drafted by expert Van der Elst, in which an overview of the figures is given as well as what they presumably related to in the sales transaction, concludes that the sales transaction is very similar to a sales transaction where no money changes hands. From this, the Committee understands that both parties, more or less, acted in the same way.



37. Nicolas Neufchatel (former attribution Sotte Cleve),  
*Portrait of a man* (NK 1457).

16. The Committee finds that the loss of possession of the three art works mentioned, NK 1457, NK 1474 and NK 2173, to Goudstikker in the summer 1940 cannot be considered as involuntary as defined by the restitution policy. What is also of importance here is that full ownership of the three co-owned paintings, of which Rosenbaum took over Goudstikker’s ‘half share’ and which were already abroad, evidently wholly benefited Rosenbaum. As regards NK 1457, NK 1474 and NK 2173, the Committee also recommends rejecting the application for restitution.

Category c: Works from Rosenbaum’s trading stock possibly or definitely purchased and sold by a Verwalter (NK 180, NK 181 A-B, NK 455, NK 456 A-B, 659 A-B, NK 2903 A-B)

17. Rosenbaum had no purchase details for all of the objects in this category, and it would seem that, in all likelihood, they were sold to the Hetjens Museum in Düsseldorf or to C.E. Pongs in Düsseldorf in 1942 or 1943 when art dealership Rosenbaum was under the administration of a *Verwalter*. As regards NK 2903, information was found during the investigation from which it can be concluded that this object was acquired by the *Verwalter* during the occupation. It remains unclear, however, when the remaining objects ended up in the trading stock of art dealership Rosenbaum, which suggests that they were acquired under the administration of the *Verwalter*. The Committee, therefore, finds that it is not very likely that these objects were part of Rosenbaum’s old trading stock, and will therefore have to recommend that the application concerning these objects be rejected.

Category d: Rosenbaum provenance uncertain (NK 1845)

18. There are indications that the painting *Kitchen scene with game* by D. Teniers II (NK 1845) was owned by Rosenbaum in 1935. However, the investigation details suggest that this painting was probably sold in 1940 by art dealership Delaunoy in Amsterdam to Mühlmann on behalf of Hermann Göring. The investigation has not clarified when NK 1845 ceased to be in Rosenbaum’s possession. Given that it is now not very likely that this painting was still owned by Rosenbaum at the start of the occupation, the Committee also recommends that as, far as this painting is concerned, the application for restitution be rejected.

Category e: owned by Rosenbaum and confiscated by Mühlmann (NK 1436)

19. The final category to be discussed in this recommendation concerns ‘*The Holy Family with John the Baptist and St. Catherine*’, workshop of J. Palma il Vecchio (NK 1436), which was probably confiscated from Rosenbaum’s trading stock in 1942 (see also consideration 1). The Committee’s investigation can be summarised as follows:  
In 1941, Dienststelle Mühlmann had one of its staff look into Rosenbaum’s trading stock for important art works for the German Reich. Nineteen works were deemed ‘*reichswichtige Kunstschatze*’ [works of importance for the German Reich], on the basis of which Rosenbaum had to reserve these works for Mühlmann. They were then collected from Rosenbaum’s in March 1942. Mühlmann paid Rosenbaum a sum of NLG 65,400 for these works. According to a report Peters sent to Rosenberg dated 10 August 1945, the nineteen works included a painting which she described as ‘*Maria mit Kind und Heiligen von Palma Vecchio*’. There are indications that this art work was a co-owned work. In the previously mentioned letter to the DRT dated 23 August 1940, Rosenbaum mentioned a work by Palma Vecchio, stating ‘*die Metisten sich nicht in feindlichen Ausland befinden*’. It is not known who these metists were.
20. As regards the question of whether the current NK 1436 can be identified as Rosenbaum’s Palma Vecchio work lost due to confiscation, the Committee conducted a further investigation. After the war, various works with a Mühlmann provenance were recovered by the Allies. One of these art works concerned a painting which, at that time, was attributed to Palma il Vecchio. An inventory card was found in the archive of The Netherlands Art Property Foundation with a photograph that corresponds to the current NK 1436. Following the recovery of NK 1436, The Netherlands Art Property Foundation clearly had some trouble establishing the correct provenance of the painting. An Internal Declaration Form and inventory card of The Netherlands Art Property Foundation state the following for this object: ‘*Confiscated by Omnia Treuhand from Jewish Owner. Sold to Dienststelle Mühlmann, The Hague.*’ There are also a number of different provenance names crossed out on the form and card and, at an unknown point in time, the name ‘*Rosenbaum*’ and the names ‘*Rosenbaum*’ and ‘*Rosenberg*’ were handwritten on the form and the card respectively (presumably by a member of The Netherlands Art Property Foundation staff). The inventory card and The Netherlands Art Property Foundation Internal Declaration Form give dimensions (69 x 87.5 cm) which are a little different to those for NK 1436 (69 x 97 cm according to the Origins Unknown Agency). Furthermore, the painting is described on a list of works recovered from Würzburg as a work on canvas, whereas the current NK 1436 is an oil painting on panel. Nevertheless, the Committee finds that these differences in description on the ‘*Witte Kaart*’ [White Card] and on the Netherlands Art Property Foundation Internal Declaration Form do not stand in the way of identifying the current NK 1436 as the work originating from Rosenbaum’s, seeing as this was probably a mistake. The following is also pertinent. In March 1947, Rosenberg sought restitution of four recovered art works which were supposedly confiscated by Mühlmann. These included ‘*1 schildery van Palma Vecchio*’ [one painting by Palma Vecchio], which the Committee assumes refers to NK 1436. On the initiative of the Netherlands Property Administration Institute, the Netherlands Art Property Foundation proposed



to Rosenbaum that it buy back the painting for the amount which Mühlmann paid Rosenbaum for the painting, i.e. NLG 25,000. Although earlier correspondence from the Netherlands Art Property Foundation seems to agree with the identification of the painting as formerly belonging to Rosenbaum, *mr. J. Jolles* asked M. Meyer in 1949, on behalf of the Netherlands Art Property Foundation, for information concerning the identification of a work by Palma il Vecchio, seeing as there were indications that‘(...) *dit schilderij het vroeger het bezit is geweest van de Heer S. Rosenberg.*’ [this painting was previously owned by Mr S. Rosenberg.] In a letter to the Netherlands Art Property Foundation dated 7 October 1949, Meyer, the former liquidator of art dealership Rosenbaum, advised: ‘*dat een schilderij van P. Vecchio voorstellende de H. Familie, inderdaad in het bezit van onze firma (...) is geweest*’ [that a painting by P. Vecchio depicting the Holy Family was indeed owned by our company (...)]. In the letter, he continues: ‘*Ik wil echter niet nalaten U ervan in kennis te stellen dat de Heer Rosenberg er geen prijs op stelt dit schilderij terug te kopen.*’ [I have to inform you, however, that Mr Rosenberg is not interested in repurchasing this painting.] It cannot be conclusively determined from the content of this exchange of letters whether this refers to the current NK 1436. Based on a form of the Netherlands Art Property Foundation dated 25 May 1950, signed by Peters following a visit to an exhibition of recovered art, the Committee has concluded that this was probably the case. On the form Peters stated that she had recognised the paintings as being formerly owned (by Rosenbaum), including one work which according to an annotation on the form had the inventory number ‘*G 69*’. The annotation ‘*G 69*’ is also on the above-mentioned Netherlands Art Property Foundation inventory card for NK 1436. Peters also stated the following on the form: ‘*wenst de Hr. Rosenberg niet terug te kopen*’. [Mr Rosenberg does not want to repurchase.]

21. Based on the above-mentioned 20 considerations, the Committee deems it highly likely that NK 1436 was part of Rosenbaum’s trading stock and that Rosenbaum involuntarily lost possession of this, as a result of being confiscated by Mühlmann. Given that art dealership Rosenbaum was inventoried by Mühlmann in 1941, before a Verwalter was in place, the Committee concludes that the work is from Rosenbaum’s old trading stock. The Committee considers the fact that a work by Palma il Vecchio was mentioned in a letter to the DRT dated 23 August 1940 as additional evidence. Despite the fact that this letter also contains references to a co-owned work, the Committee does not see any reason to doubt the ownership status, given what was outlined in consideration 8 and the observation that the painting was confiscated by Mühlmann after the inventory of works found at art dealership Rosenbaum.
22. The Committee then also asked itself the question of whether Rosenbaum explicitly waived his rights to NK 1436 in the post-war period. According to the applicable restitution policy, this could have meant that there was a conclusively settled case, which would obstruct the current application for restitution. The Committee answers this question negatively. The fact that Rosenberg did not want to buy this painting, the value of which was estimated after the war at NLG 3,500, for Rosenbaum for NLG 25,000, does not imply that, as stakeholders, Rosenbaum and/or Rosenberg *waived (any) rights to restitution* of the painting, let alone that they did so explicitly. Therefore, the Committee also deems L.’s application for restitution concerning this painting admissible.



38. Workshop of Jacopo Palma il Vecchio, *The Holy Family with John the Baptist and St. Catherine* (NK 1436).

23. In light of the foregoing, the Committee finds that the conditions for restitution of NK 1436 have been met. The Committee sees no reason to recommend repayment of the consideration of NLG 25,000 received by Rosenbaum at that time. That repayment pursuant to the fourth recommendation of the Ekkart Committee Recommendations of April 2001, also applicable to art dealerships, is only required if the amount paid was actually freely available to the seller or their heirs, who in this case are given the benefit of the doubt. Given the fact that the consideration had already been received when Rosenbaum was under the administration of a Verwalter, it is unlikely that this consideration was made freely available to Rosenbaum. Furthermore, in a letter to the Netherlands Art Property Foundation dated 11 March 1947, Rosenberg also wrote that the consideration received by Mühlmann should be seen as lost as a result of manipulations on the part of the German-appointed *Verwalters*. Therefore, the Committee deems it likely that the sum of NLG 25,000 was not made freely available to Rosenbaum as defined by restitution policy, and, as such, sees no reason to recommend payment of a consideration as part of the restitution of this painting.

### Conclusion

The Restitution Committee advises the State Secretary for Education, Culture and Science to:

- a. declare the application for restitution of applicants G.S. and S. Ltd. in N.Y., US inadmissible;
- b. to reject J.L.’s application for restitution of the objects with NK numbers 180, 181 A-B, 455, 456 A-B, 659 A-B, 1457, 1474, 1845, 2173, 2903 A-B, 2915 and 3269;
- c. to return the painting , ‘*The Holy Family with John the Baptist and St. Catherine*’, from the workshop of J. Palma il Vecchio (NK 1436) to the heirs of Saemy Rosenberg.

Adopted at the meeting of 19 December 2011 by W.J.M. Davids (chair), J.Th.M. Bank, P.J.N. van Os, E.J. van Straaten, H.M. Verrijn Stuart, I.C. van der Vlies (vice-chair), and signed by the chair and the secretary.

(W.J.M. Davids, chair)

(E. Campfens, secretary)

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## 12. Recommendation regarding Herbert Gutmann IV-A <sup>31</sup>

(case number RC 1.115-A)

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In a letter dated 15 June 2009, the Minister for Education, Culture and Science (hereafter referred to as: the Minister) requested the Restitutions Committee (hereafter referred to as: the Committee) to issue a recommendation concerning the application for restitution dated 24 February 2009 submitted by N.P., F.FG., M.MF., C.E.G. and N.M.G. (hereafter referred to as: the applicants). The application for restitution relates to various objects in the Netherlands Art Property collection administered by the State (hereafter referred to as: the NK collection). The current recommendation concerns the following four sculptures:

- NK 2758, Anonymous, *Hercules and the Erymantic wild boar*, bronze on a white and red marble pedestal, Italy, 19<sup>th</sup> century, bronze.
- NK 2965, Anonymous (previously attributed to P. Tacca), *Faun*, France, 19<sup>th</sup> century, bronze.
- NK 2966, Anonymous (previously attributed to P. Tacca), *Faun*, France, 19<sup>th</sup> century, bronze.
- NK 2967, Anonymous, *Bust of a Jesuit*, Italy, c. 1625, bronze.

### The procedure

The Committee initially registered the Minister’s recommendation request of 15 June 2009 under case number RC 1.115. In a letter dated 9 November 2009, the Minister then requested the Committee to add an application for the restitution of an earthenware dish (NK 615) to the file. The applicants had also claimed this object in their letter of 24 February 2009, but it was not submitted to the Minister for advice at the time. The Committee subsequently incorporated the claim to NK 615 in the file with the number RC 1.115.Following the Minister’s

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<sup>31</sup> The Committee has previously issued recommendations concerning the Gutmann family. For instance, on 6 December 2010, it issued a recommendation concerning a garniture (NK 3223a-e) that was claimed by Herbert Gutmann’s heirs and the heirs of Fritz Gutmann (RC 1.114-A). In addition, the Committee also issued the following recommendations regarding the claims of Fritz Gutmann’s heirs: RC 1.2, RC 1.113, RC 1.114-B.

request for advice, the Committee instigated a fact-finding investigation. The results of the investigation were included in a draft report dated 20 June 2011. In a letter dated 19 July 2011, the Committee sent the draft investigatory report to the applicants for comment. In a letter dated 11 July 2011, the Committee also asked the heirs of Fritz Gutmann, another branch of the Gutmann family, for further information about the nature of the loss of possession of the currently claimed art objects and NK 615. In reply, the Fritz Gutmann heirs advised in a letter dated 28 July 2011 that they had no further factual information to add. Further to this, however, on 11 August 2011, they also submitted a claim to NK 615. In a letter dated 6 September 2011, the Minister then submitted this second claim to NK 615 to the Committee. In response to the foregoing, the Committee decided to split the RC 1.115 file into two. The art objects that are only being claimed by Herbert Gutmann's heirs have been incorporated into file number RC 1.115-A, concerning which the Committee's partial recommendation is found below. In connection with the competing claims by two branches of the Gutmann family, the partial recommendation RC 1.115-A regarding NK 615 will be issued at a later date. After several delays, the applicants responded to the draft investigatory report in a letter dated 31 October 2011. In this letter, the applicants withdrew their initial claim to NK 2947. The draft investigatory report was amended on the basis of the applicants' response. The investigatory report was then adopted on 19 December 2011. The Committee refers to this investigatory report for the facts underlying the current recommendation. The applicants were represented in this procedure by lawyer O. Ossmann of Winterthur (Switzerland).



39. Anonymous, *Hercules and the Erymanthian Boar*, bronze on a white and red marble pedestal (NK 2758).

Considerations

1. The applicants claim to be heirs of Herbert Max Magnus Gutmann (hereafter referred to as: Herbert Gutmann). In this connection, the Committee has taken cognisance of several legal inheritance documents, on the basis of which it saw no reason to doubt the applicants' status as persons entitled to Herbert Max Gutmann's property.  
The applicants claim that the currently claimed objects belonged to the undivided estate of Eugen Gutmann, who died in 1925, and that his son Herbert Gutmann was entitled to one-sixth of this inheritance. The applicants furthermore state that Fritz Gutmann lost the currently claimed objects involuntarily during the Nazi regime. Fritz Gutmann was also a son of Eugen Gutmann, who administered the art collection that was part of the inheritance referred to, on behalf of the six heirs.
2. The relevant facts are included in the investigatory report dated 19 December 2011. The following is a summary. Herbert Gutmann's father, the Jewish banker Eugen Gutmann (1840-1925), was co-founder of the Dresdner Bank AG established in Dresden in 1872. He was married to Sophie Magnus (1852-1915), with whom he had seven children, namely Lili, Antonie (Toinon), Walter, Herbert, Kurt, Max and Fritz Gutmann. When the head office of the Dresdner Bank moved to Berlin in 1884, the family followed. Eugen Gutmann built up an art collection that was famed in the art circles of the day. After Eugen Gutmann's death in 1925, this collection was held in joint ownership by his six children, each being entitled to one sixth (the eldest son Walter had already died in 1917).  
The N.V. Trust & Administratie Maatschappij (Trustenad) had been set up in Amsterdam on 4 July 1921 to look after the financial interests of Eugen Gutmann's children.
3. Herbert Gutmann was born on 15 October 1879 as the fourth of Eugen Gutmann's children. He became deputy director of the Dresdner Bank branch in London in 1903. Herbert Gutmann had three children with his wife Daisy Stephanie Thekla Anna Bertha Luise von Frankenberg und Ludwigsdorf(f). The family lived alternately in Berlin and Potsdam, where Herbert Gutmann amassed his own art collection. From 1933, the Dresdner Bank, which was under government supervision, fell under control of the National Socialists. Herbert Gutmann was forced to resign from various of the bank's advisory bodies. In the early 1930s, he was also faced with financial difficulties. In April 1934, he put his art collection up for auction. He left Germany in October 1936 to settle in London. Herbert Gutmann died on 22 December 1942.
4. After his death, Eugen Gutmann's collection was administered by his brother Fritz. Fritz Gutmann had settled in the Netherlands in 1918 and had been granted Dutch nationality in 1924. He lived with his family in 'Huize Bosbeek', a country house near Heemstede, where he, too, amassed a large art collection. He kept the objects from the collection of his father, Eugen Gutmann, in a separate safe in Huize Bosbeek. It appears that in the period after Eugen Gutmann's death various changes took place in the composition of Eugen Gutmann's collection. For instance, various works of art from the collection were sold during that period. In addition, the investigation revealed that various works were at some time or other placed in consignment with art dealership K.W. Bachstitz in The Hague.
5. It is known of the currently claimed sculptures that they were recovered from Germany in 1946. This took place by reason of the fact that these objects had been acquired by the occupying forces from the Mannheimer collection, of which these sculptures had in any case been part since 25 June 1934 (see consideration 8).
6. The Ekkart Committee's eighth recommendation (2001) states as a condition for restitution that the title to the claimed objects is proved with a high degree of probability, and that there are no indications to the contrary. When assessing the current claim, it should first be established whether Herbert Gutmann's right of ownership to the currently claimed objects is proven with a high degree of probability. To do this, it is important that this right of ownership can be dated to a point in time relevant to the present application for restitution.
7. Source research has shown that the currently claimed sculptures were, in any case, part of the collection of Herbert's father, Eugen Gutmann, in 1912. All four objects – NK 2758, NK 2965, NK 2966 and NK 2967 – are listed in the catalogue *Die Kunstsammlung Eugen Gutmann* [The Eugen Gutmann Art Collection] from 1912, compiled by Otto von Falke.
8. The following emerged during the investigation with regard to the date and the circumstances of Eugen Gutmann's loss of possession, or of that of the successors to his estate. The currently claimed sculptures were included in a catalogue of the Mannheimer collection, dated November 1935 - March 1936, which provides the following information about the provenance: '*Aus der Sammlung Eugen Gutmann*' [From the Eugen Gutmann Collection].  
Fritz Mannheimer was a Jewish banker and art collector and a managing partner of the Mendelssohn & Co bank in Amsterdam. Over the years, Mannheimer built up an art collection in his villa in Amsterdam. On 25 June 1934, Mannheimer transferred his collection as collateral for a debt to Artistic, a company under English law, of which the Mendelssohn & Co. bank of Amsterdam was the sole shareholder. The collection remained in Mannheimer's house after the transfer.  
It is of importance with regard to the current claim that Mannheimer evidently acquired the currently claimed sculptures before 25 June 1934. This is evidenced by the fact that each of these sculptures has what



is known as an ‘Artistic number’. The objects that Mannheimer had transferred to Artistic in 1934 were given these inventory numbers. Together with the rest of the Mannheimer collection, the current sculptures were purchased by the German authorities during the occupation, after which they were taken to Germany.

9. As for the question whether the currently claimed paintings were still co-owned by Herbert Gutmann during the Nazi regime, the Committee considers the following. Given that the sculptures were listed in the catalogue of the Mannheimer collection, with the so-called ‘Artistic numbers’ next to the claimed works (see consideration 8), the conclusion must be that Eugen Gutmann’s heirs lost possession of these objects in any case before 25 June 1934. Is has not become clear when this took place exactly. It may be that Eugen Gutmann himself, or his heirs, sold the works in the (long) period between 1912 and 1933 - that is, before the start of the Nazi regime. In connection with this, the Committee notes that Eugen Gutmann himself sold part of his collection during the 1920s, and another part was sold by his heirs after his death in 1925. Specific reference is made to the sale of a triptych that is also part of the Netherlands Art Property Collection (inventory number NK 2947). Eugen Gutmann, or his heirs, probably sold this altar, which was originally part of this claim, to Fritz Mannheimer at some point between 1912 and 1927. This object was in any event in Eugen Gutmann’s collection in 1912 and in Fritz Mannheimer’s collection in 1927. The latter is evidenced by an article from that year that makes reference to the altar and also shows a picture of it, under which is the entry ‘*Amsterdam, Dr Mannheimer*’. The Committee does not consider it impossible that the currently claimed works, mentioned in the Mannheimer catalogue together with the current NK 2947, were sold to Fritz Mannheimer in the (long) period between 1912 and 1927, possibly as part of the same transaction as NK 2947.
10. Given that the investigation has shown that various objects from the Eugen Gutmann collection were sold to Fritz Mannheimer in the twenty-one years between 1912 and 1933, including the current NK 2947 (see consideration 9), the Committee believes that there is an undeniable chance that the currently claimed works were also transferred to Mannheimer before the start of the Nazi regime. The Committee is therefore of the opinion that it is not highly probable that the currently claimed objects still belonged to the Eugen Gutmann collection during the Nazi regime, making involuntary loss of possession pursuant to current restitution policy likewise not very probable.

### Conclusion

The Restitutions Committee advises the Minister for Education, Culture and Science to reject the applicants’ claim to NK 2758, NK 2965, NK 2966 and NK 2967.

Adopted at the meeting of 19 December 2011 by W.J.M. by W.J.M. Davids (chair), J.Th.M. Bank, P.J.N. van Os, E.J. van Straaten, H.M. Verrijn Stuart, I.C. van der Vlies (vice-chair), and signed by the chair and the secretary.

(W.J.M. Davids, chair)

(E. Campfens, secretary)

Please note this is an unauthorized translation of the original Dutch text of the recommendation “*Advies inzake Jonas*”

### 13. Recommendation regarding Jonas

(case number RC 1.117)

In a letter dated 17 November 2009, the Minister for Education, Culture and Science (hereafter referred to as: the Minister) requested the Restitutions Committee (hereafter referred to as: the Committee) for advice concerning an application for restitution submitted by H.S. of P., France (hereafter referred to as: the applicant) on 14 September 2009 concerning two paintings that may have belonged to Edouard Jonas. These are *Portrait of a man with a dog*, anonymous, and *Landscape with cattle in a shallow river* by Theobald Michau, which are currently part of the Netherlands Art Property Collection in the custody of the Dutch State, under inventory numbers NK 2828 and NK 2837 (hereafter referred to as: NK collection). The paintings are currently on loan - NK 2828 to the Bonnefanten museum in Maastricht and NK 2837 to the province of Limburg<sup>32</sup>.

### The procedure

Following the Minister’s request for advice, the Committee instigated a fact-finding investigation. The results of the investigation were included in a draft report dated 16 May 2011. In a letter dated 8 August 2011, the Committee sent this draft investigatory report to the applicant for comment, to which she responded in a letter dated 14 September 2011. The draft investigatory report was also sent to the Minister with the request to provide additional information on 8 August 2011. The Minister informed the Committee on 15 September 2011 that she did not have any additional information that she wished to bring to the Committee’s attention. The investigatory report was then adopted on 19 December 2011. The Committee refers to this report for the facts of the case. During the procedure with the Committee, the applicant was represented by I. Gielen, lawyer in Berlin, Germany.

### Considerations:

- The applicant stated that she is the heir of Edouard Léon Jonas and that in this case she is also acting ‘*on behalf of the community of heirs of Edouard Jonas*’. In this context, the Committee has taken cognisance of several inheritance law documents, on the basis of which the Committee sees no reason to doubt the applicant’s status as potential entitled party in this application. According to the applicant, Edouard Léon Jonas lost possession of the claimed paintings in September 1940 when they were confiscated.
- Edouard Léon Jonas (hereafter referred to as: Jonas) was born in Paris on 9 May 1883 and descended from a family of Jewish antique dealers. Before the war he ran an art dealership at Place Vendôme 3 in Paris. As far as the Committee was able to ascertain, this was a one-man business. According to the applicant, Jonas also had a sizeable private art collection. From 1936, Jonas was a member of the French parliament for the *socialist and republic union* as *deputy for the Alpes Maritimes*. Jonas was married for the fourth and final time to Assunta Genova Maria Bertozzi. All three previous marriages had ended in divorce. Jonas survived the war and died on 3 December 1961 in Paris. After the German invasion of France on 13 May 1940, Jonas attempted to bring his paintings and antique furniture to safety. On 1 and 10 June 1940, he sent these objects to Bordeaux in two train carriages where they were stored by the firm of R. Médeville & Fils. Pursuant to an act of 23 July 1940 and a regulation of 6 September 1940 proclaimed by the French Vichy regime, Jonas’ French nationality was revoked, after which his possessions were confiscated.
- Between 21 and 25 September 1940, the works of art that Jonas had stored in Bordeaux were confiscated by the German Joseph Angerer, one of Hermann Göring’s chief art buyers, assisted by L.L., a French police officer. As appears from the report of the confiscation of Jonas’ possessions, L. remarked to Angerer that Jonas’s seized goods should accrue to the Vichy regime. Nonetheless, Angerer reportedly stood by his demand that the objects be taken to Paris to be sent to Göring. By order of Göring, the works were indeed transferred to Paris and then on to Germany.
- In a statement dated 22 June 1960, Jonas declared that the goods confiscated in 1940 were his personal property. A report on Jonas dating from 1956 states the following about the events in 1940: ‘*Monsieur Jonas avait cru sage d’envoyer chez Medeville un confrere de Bordeaux une grande partie de ses marchandises*’ [Mr Jonas thought it prudent to send a large consignment of merchandise to Medeville]. It is clear from this that this was trading stock.
- In Paris, Fritz Schmidt, one of Angerer’s assistants, and others inspected and inventoried the objects. The report drawn up on this occasion has been found. The report describes the works of art confiscated from Jonas’s collection only very briefly but two entries could refer to the currently claimed works. These are: ‘*1 portrait d’homme sur bois*’ [1 portrait of a man on wood], *which might relate to NK 2828* and ‘*1 paysage hollandais*’ [1 Dutch landscape], which might be NK 2837.
- In a letter dated 11 August 1941, *Oberkriegsverwaltungsrat* Dr Voigt wrote to *Directeur des Domaines de la Seine* in Paris that a sum of FRF 233,200 (DM 11,660) would be transferred to a bank account in Paris. This sum was said to be the estimated countervalue for Jonas’s goods that had been confiscated in Bordeaux on behalf of Göring. It is noted in documentation found by the Committee that this total was based on ‘giveaway prices’ and had been set by an accomplice of the Germans. In a declaration that Jonas’s widow sent to the German authorities in 1962 during compensation proceedings in Germany (see consideration 7), she reported that this sum had eventually been paid out to Jonas via the *Direction des Domaines*.
- After the war, Jonas and his wife attempted to recover the goods that had been confiscated in Bordeaux in 1940. To that end, they called in the help of Rose Valland, head of the French *Service de Protection des Oeuvres d’Art* [service for the protection of art] at the time. This resulted in the restitution of several - in any case five - paintings recovered in Germany. However, a great many of the confiscated objects were not found. Correspondence about the missing paintings with the German authorities contains references to works whose description is highly consistent with the currently claimed paintings. For example in a

32 Text correction: NK 2837 is housed in the depot of the Netherlands Institute for Cultural Heritage



letter dated 2 February 1961, the painting ‘*Allemande 1571 Maître de Westphalie “Homme avec son chien”*’ [German school 1571 Master of Westphalia ‘Man with his dog’] is mentioned, whereas in her letter of 1 March 1961, Rose Valland refers to the painting: ‘*Paysage hollandais - XVIII<sup>e</sup> s’ (...)* attribué successivement à Theobald Michou et à l’Ecole de Tournai (1676-1765)’ [Dutch landscape - 18th century (...)] successively attributed to Theobald Michou and to the Tournai School (1676-1765)].

8. On 13 March 1963, Jonas’s widow reached a settlement with the German state to the amount of DM 500,000. This settlement was an arrangement concerning compensation claims that Jonas could, at that point, assert against the German state (*‘Abgeltung aller rückerstattungsrechtlichen Schadenersatzansprüche für sämtliche - den Geschädigten: Edouard Jéan Jonas in Frankreich - entzogenen Gegenstände’*). [As payment for all claims for damages that are subject to restitution for all objects taken from the claimant Edouard Jéan Jonas in France].
9. On the basis of current restitution policy, it is of importance in assessing the current claim that Jonas’s title to the currently claimed paintings (NK 2828 and NK 2837) is proved with a high degree of probability and that possession of them was lost involuntarily due to circumstances directly related to the Nazi regime.
10. Where the question of title is concerned, reference is first made to the entry on the list of confiscated works of art drawn up in Paris, on which the two works may feature (see consideration 5 for this). However, the description on this list is not enough to rely on when it comes to identifying the currently claimed paintings. Moreover, the provenance reconstruction by the Bureau Herkomst Gezocht [Origins Unknown Agency], hereafter referred to as: BHG) gives the name ‘*Jonas, Paris*’, and the date October 1940, for both the current NK 2828 and NK 2837. This BHG reconstruction is also based on a list of paintings from Hermann Göring’s art collection in the Federal Archive in Koblenz, which was drawn up by the Allies after the war. Both currently claimed works are recorded on this list, with a reference to ‘*Angerer, Jonas*’ and ‘*Bordeaux*’.

NK 2828

11. With regard to the identification of the current NK 2828 as former property of Jonas, the following facts are of importance. Under number 637 on the list from the *Federal Archive in Koblenz* mentioned in consideration 10 concerning Hermann Göring’s art collection is a painting by a ‘*Westfälischer Meister*’ [Westphalian master]. The description of this painting on the list is highly consistent with the current NK 2828. The description includes the notes ‘*Angerer Jonas Bordeaux*’ and ‘*Okt. 1940*’ [October 1940]. The list refers to an exchange of paintings between Göring and Amsterdam art dealer Alois Miedl on 9 February 1944. This exchange is a transaction between Hermann Göring and Alois Miedl or to the art dealership ran at that time by Miedl, ‘*Kunsthandel voorheen J. Goudstikker NV*’ in Amsterdam (hereafter referred to as: Goudstikker-Miedl). In this transaction on 9 February 1944, some 140 paintings from Göring’s art collection were exchanged for the painting *Christus en de overspelige vrouw*’ [Christ and the Adulteress], which was believed to be a Vermeer at the time but turned out to have been painted by Han van Meegeren, a forger. That this painting left Göring’s collection as a consequence of an exchange with Miedl is confirmed by another list in the *Federal Archive in Koblenz* entitled ‘*Tausch Göring - Goudstikker 9.2.1944*’. This list also mentions a work by a ‘*Westphalian master*’, referring to the number 637 which was also on the list cited above.

NK 2837

12. This work is also mentioned on the above list concerning Göring’s collection. Under number 645 the list mentions a painting by ‘*Theobald Michau*’, the description of which is consistent with the depiction in NK 2837. The description of this work also contains references to ‘*Angerer Jonas Bordeaux*’ and ‘*Oct. 1940*’. The list concerning ‘*Exchange Göring*’ (see consideration 11) includes a painting by ‘*Michau, Theobald*’ with the designation ‘*RM 645*’ mentioned on the Göring list.
13. After Jonas’s paintings had been confiscated in Bordeaux in 1940, they were taken to Germany, where they were incorporated into Hermann Göring’s collection. As part of the exchange between Göring and Miedl on 9 February 1944, described in consideration 11, the paintings then found their way to Goudstikker-Miedl in the Netherlands. Goudstikker-Miedl probably never sold NK 2828. On 1 April 1944, Goudstikker-Miedl sold NK 2837 to the German Dr Erhard Göpel, who bought artworks for the *Führermuseum* which was to be set up in Linz. This work was returned to the Netherlands after the war. The Stichting Nederlands Kunstbezit [Netherlands Art Property Foundation] (hereafter referred to as: SNK) was then given custody of the two works. During the investigation, no indications were found from which the Committee could conclude that the SNK knew at the time that the works were part of Jonas’s estate.
14. On the basis of facts set out in the above considerations, the Committee considers it proven to a high degree of probability that the two claimed works (NK 2828 and NK 2837) were from Jonas’s estate. In addition, with reference to considerations 3 and 4, the Committee deems that Jonas involuntarily lost possession of the works as a result of consequences directly related to the Nazi regime.
15. In respect of the importance of the settlement described in consideration 8, the Committee finds that this does not stand in the way of the applicant’s admissibility with regard to the current claim. The settlement with the German State did not entail a waiver of her rights to the lost works of art, and furthermore, the



40. Theobald Michau, *Landscape with cattle in a shallow river* (NK 2837).

State of the Netherlands was not a party to this agreement. Given that there are no indications that the Jonas family has ever submitted an application for restitution with the Dutch authorities in connection with the currently claimed works, the Committee deems that this is not a case that has been settled in the past within the meaning of currently applicable restitutions policy.

16. With reference to the compensation received from the French and the German states for all loss and damage suffered in connection with the confiscation of the works of art, the Committee finds the following. If it could be ascertained at all which part of the amounts received relate to the currently claimed works, any possible repayment of this sum of money would be a matter between Jonas’s heirs and the French and German states respectively. The Committee therefore believes that the Dutch state should not attach a payment condition to the restitution of NK 2828 and NK 2837.
17. Finally, with regard to the question of whether the current paintings were Jonas’s private property or part of his art dealership’s trading stock (see consideration 5), the Committee concludes the following. In an excerpt from the French trade register of 1959, Jonas is regarded as ‘*Propriétaire exploitant*’ on the basis of which the Committee assumes that Jonas’s dealership was a one-man business. The consequence of this with regard to the question as to who should now be regarded as the entitled parties in the event of restitution is that these are the parties entitled to Jonas’s inheritance, regardless of whether the works were part of the trading stock or Jonas’s private property. The fact that after the war, the German authorities regarded Jonas, and later his widow, as the rightful owners of the works confiscated in Bordeaux was for the Committee a further indication that this was a one-man business.

**Conclusion**

The Restitutions Committee advises the Minister for Education, Culture and Science to return the painting *Portrait of a man with a dog*, anonymous (NK 2828), and the painting *Landscape with cattle in a shallow river* by Theobald Michau (NK 2837) to the rightful heirs to the estate of Edouard Léon Jonas.

Adopted at the meeting of 19 December 2011 by W.J.M. Davids (chair), J.Th.M. Bank, P.J.N. van Os, E.J. van Straaten, H.M. Verrijn Stuart, I.C. van der Vlies (vice-chair), and signed by the chair and the secretary.

(W.J.M. Davids, chair)

(E. Campfens, secretary)

Appendices

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**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

**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)

Policy framework of the Restitutions Committee

The Decree establishing the Restitutions Committee stipulates that to the extent that the applications for restitution concern objects in the National Art Collection, the Committee shall conduct its advisory task with due regard for relevant national policy. Below is an overview of the documents from which the policy framework emanates. Some of this documentation can be found in the appendices to previous annual reports of the Committee.

| Date             | Description   |
|------------------|---|
| April 1998       | Recommendations of the Origins Unknown Supervisory Committee  |
| 20 May 1998      | State Secretary’s response to the recommendations of the Origins Unknown Supervisory Committee                                  |
| 21 March 2000    | Letter to the Dutch Lower House concerning the government’s overall position on WWII Assets                                     |
| 14 July 2000     | Letter to the Dutch Lower House concerning the government’s position on restitution and recuperation of items of cultural value |
| 26 April 2001    | Recommendations by the Ekkart Committee regarding the restitution of works of art   |
| 29 June 2001     | Government response to the Ekkart Committee’s recommendations   |
| 16 November 2001 | Additional government response to the Ekkart Committee’s recommendations  |
| 28 January 2003  | Ekkart Committee’s recommendations regarding the restitution of works of art belonging to art dealers                           |
| 5 December 2003  | Government response to the Ekkart Committee’s recommendations regarding the art trade   |
| 14 December 2004 | Ekkart Committee’s final recommendations  |
| 8 March 2005     | Government response to the Ekkart Committee’s final recommendations   |



## Regulations on binding opinion procedure under Article 2, paragraph 2 and Article 4, paragraph 2 of the Decree establishing the Advisory Committee on the Assessment of Restitution Applications for Items of Cultural Value and the Second World War

### Definition

#### Article 1

The terms used in these regulations are defined as follows:

- a. the Committee: the Advisory Committee on the Assessment of Restitution Applications for Items of Cultural Value and the Second World War pursuant to the Decree establishing the advisory committee on the assessment of restitution applications (hereafter: the Decree);
- b. the Minister: the Minister for Education, Culture and Science;
- c. the Ministry: the Ministry of Education, Culture and Science;
- d. the work: the item(s) of cultural value, as referred to in Article 2, paragraph 2 of the Decree, that is/are the subject matter of the dispute.
- e. the applicant: the person applying for restitution of items of cultural value;
- f. the owner: the current owner, other than the State of the Netherlands;
- g. the parties: the applicant and the owner.

### Task

#### Article 2

1. At the request of the Minister, the Committee has the task of rendering an opinion to the parties about disputes concerning the return of the work.
2. The Committee does this by issuing a binding opinion within the meaning of Section 7:900 of the Netherlands Civil Code (settlement agreement) or by promoting a settlement or the formation of a mediation agreement between the parties.

#### Article 3

The Committee issues an opinion in accordance with the requirements of reasonableness and fairness, and may, in any event, take the following into consideration:

- a. internationally and nationally accepted principles such as the Washington Principles and the government's line of policy concerning the restitution of stolen works of art in so far as they apply by analogy;
- b. the circumstances in which possession of the work was lost;
- c. the extent to which the applicant has endeavoured to trace the work;
- d. the circumstances in which the owner acquired the work and the inquiries the owner made prior to acquiring the work;
- e. the significance of the work for the applicant;
- f. the significance of the work for the owner;
- g. the significance for the public art collection.

### Admissibility

#### Article 4

The Committee can deny a party's application if:

- a. it concerns a dispute regarding which one of the parties has already instituted proceedings before a court,
- b. this is a dispute on the substance of which the court has already given a decision, or
- c. the applicant has previously explicitly relinquished his or her rights to the work at issue.

### The hearing of disputes

#### Article 5

1. Both parties request the Minister to submit their dispute to the Committee in accordance with Article 2, paragraph 3 of the Decree.
2. After the Minister has presented the dispute to the Committee, it will hear the dispute after the parties have stated in writing that they accept these regulations, that they accept the opinion at issue as binding and that they will comply with the outcome of any mediation.
3. If the parties, after a request thereto, have not met the stipulation referred to in paragraph 2 within four weeks, the dispute will not be heard.
4. The Committee may extend the terms.

#### Article 6

1. The Committee sends both parties these regulations and notifies them in writing that it has received the request for an opinion from the Minister.
2. The Committee gives the parties the opportunity to provide an explanation concerning their viewpoint within six weeks and to provide the Committee with further information.
3. In their explanation, each of the parties can express the wish:
  - a. that the dispute be settled through mediation;
  - b. that the Committee conducts further investigations, if required, of specified items, and
  - c. that oral proceedings take place.
4. After receipt the explanation provided by the owner, the Committee may, at any point during the handling, decide:
  - a. that oral proceedings will take place;
  - b. that the Committee will obtain information and/or conduct further investigations itself;
  - c. that the parties will be given the opportunity to respond subject to a term of six weeks and/or
  - d. that the applicant and/or the owner will provide further documents or information subject to a term to be set by the Committee.
5. The Committee may extend the terms.

#### Article 7

1. Should the Committee decide that oral proceedings are to take place, it sets the place, day and time and informs the parties accordingly.
2. The Committee may allow the parties to bring witnesses or experts and have them heard. The names and addresses of such persons are to be given to the Committee at the latest ten days before the hearing.
3. Parties may send documents to the Committee until ten days before the oral proceedings.

#### Article 8

1. Should the Committee decide that it will carry out further investigations itself, it will record its findings in a draft investigatory report.
2. The Committee sends the draft investigatory report to the parties who may respond to it in writing with a term of six weeks.
3. At the request of the parties, the Committee will arrange for an (unauthorised) English translation of the draft investigatory report.
4. The Committee then adopts the investigatory report, on the basis of which it issues its opinion.
5. Should further investigations be limited to the hearing of witnesses or experts or having an investigation conducted by one or more experts it designates, it will then suffice for the Committee to send the investigation report to the parties to which they may respond within a term of two weeks.
6. The Committee may extend the terms.

#### Article 9

Each party immediately sends the other party copies of all documents submitted to the Committee during this procedure.



#### Article 10

If the parties reach a settlement, the Committee will lay down the contents thereof in the form of a binding opinion.

### Opinion

#### Article 11

The Committee may recommend that:

- a. the work be returned to the applicant;
- b. the work be returned by way of a set consideration from the applicant to the owner ;
- c. the work be returned to the applicant subject to further provisions;
- d. settlement of a set consideration by the owner to the applicant, while the work remains in the owner's possession;
- e. the work be exhibited, stating its provenance and the part played by the (heirs of the) original owner;
- f. the application for restitution be denied, subject to further provisions, where applicable.

#### Article 12

1. The chairman or vice-chairman and the secretary of the Committee sign the opinion and send it to the parties, with a copy to the Minister.
2. The chairman of the Committee may correct information or obvious calculation or writing errors in the opinion, either of his or her own accord or in response to a written request from one of the parties submitted no later than two weeks after the opinion was sent.
3. The parties are informed in writing of any changes or corrections.

#### Article 13

Any costs incurred by the parties themselves with regard to handling of the dispute and the preparation of the opinion are payable by the parties, unless the Committee decides otherwise.

### Mediation

#### Article 14

1. Should both parties let it be known that they wish the dispute to be resolved by means of mediation, the Committee will take preparatory steps to reach an agreement to that effect. This agreement will include the appointment of the mediator and the stipulation that the mediator inform the Committee of the result of the mediation.
2. Should the mediation not lead to a resolution of the dispute, the Committee will resume its handling thereof.

### Confidentiality, objection and exemption

#### Article 15

Without prejudice to the provisions referred to in articles 12 and 17, the Committee is obligated to maintain confidentiality with regard to all information relating to the parties of which it has become cognisant during the handling of the dispute.

#### Article 16

1. One or both parties may object to a member of the Committee on the basis of facts or circumstances that might make the forming of an impartial opinion difficult. Objections may be lodged within one week after receiving the confirmation of receipt of the application for an opinion.
2. The other members of the Committee decide if the grounds for objection are valid.
3. A member of the Committee may claim exemption in respect of a case on the basis of facts or circumstances as referred to in paragraph 1. The member is obliged to do so if the other members of the Committee are of the opinion that the said fact and circumstances do indeed exist in his case.
4. The parties are informed of the decision as referred to in the second paragraph.

### Publication

#### Article 17

The Committee may publicise its opinion, if necessary by anonymising personal details, unless one of the parties has compelling reasons why that should not be done.

### Liability

#### Article 18

The chairman, vice-chairman, the members, the secretary and other Committee staff are not liable for any actions or omissions with regard to a dispute the parties have submitted to the Committee.

### Reversal

#### Article 19

The Committee's binding opinion may only be reversed if it has been submitted to the ordinary court for review within two months after the opinion was sent to the parties. The opinion becomes irreversible if the decision is not submitted to the ordinary court within the said term.

### Unforeseen

#### Article 20

The Committee decides all cases not provided for in these regulations in accordance with the requirements of reasonableness and fairness.

### Transitional and final provisions

#### Article 21

1. These regulations will be published on the Committee's website.
2. The regulations will take effect as soon as they have been published.
3. The regulations as sent to the parties will apply to any matters being processed at the time the regulations take effect.

#### Article 22

These regulations were adopted at the meeting of the Committee held on 3 December 2007 and amended at the meetings of 12 January 2009 and 19 September 2011.

Index recommendations Restitutions Committee by case number (2002 to 2011)

| RC case no. | Recommendation regarding:   | Date recommendation | RC case no. | Recommendation regarding:                               | Date recommendation |
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| 1.2         | The Gutmann collection  | 25 March 2002       | 1.52        | An eighteenth-century commode in the style of Louis XVI | 12 February 2007    |
| 1.3         | <i>Venus in Vulcan's Smithy</i> after F. Boucher  | 22 April 2002       | 1.53        | Van Brabant   | 4 February 2008     |
| 1.4         | <i>Portrait of a man with a greyhound</i> by Thomas de Keyser and <i>The sleeping innkeeper</i> after Nicolaas Maes   | 7 April 2003        | 1.54        | <i>Unloading the hay wagon</i> by Isaac van Ostade      | 1 October 2007      |
| 1.5         | <i>Portrait of a woman with a little dog</i> and <i>View of Binnen-Amstel and the Blauwbrug</i>                       | 23 September 2002   | 1.55        | <i>Reclining Nude</i> by J.C.B. Sluijters               | 11 June 2007        |
| 1.6         | The Koenigs collection  | 3 November 2003     | 1.56        | A bamboo quiver and an oak three-door milk cupboard     | 12 March 2007       |
| 1.7         | <i>Portrait of Don Luis de Requessens y Zuñiga</i>  | 28 October 2002     | 1.57        | Van Messel  | 4 February 2008     |
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| 1.9         | <i>Still life with fish on trestle table</i> by Van Beyeren   | 18 September 2003   | 1.59        | Letowski  | 6 August 2007       |
| 1.10        | Art dealership J. Stodel  | 18 April 2005       | 1.60        | A bronze statue Stonemason by C.E. Meunier              | 13 April 2011       |
| 1.11        | <i>The Rhine near Coblenz</i> by Gerard Battem  | 18 September 2003   | 1.61-A      | Arnhold   | 21 November 2011    |
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| 1.17        | <i>Fisherman on horseback</i> by Jozef Israëls  | 22 March 2004       | 1.67        | Oppenheimer   | 4 February 2008     |
| 1.18        | Four nineteenth-century landscapes  | 18 May 2004         | 1.68        | Weijers   | 1 December 2008     |
| 1.19        | Art dealership Vecht  | 30 March 2005       | 1.69        | A tin Maccabee lamp                                     | 3 December 2007     |
| 1.20        | Three paintings by Troost and Van der Mijn owned abroad   | 7 February 2005     | 1.70        | Larsen  | 1 July 2009         |
| 1.22        | <i>Family portrait</i> by J.M. Quinckhard   | 6 March 2006        | 1.71        | Behrens   | 3 July 2008         |
| 1.24        | <i>Venus and Adonis with Amor</i> by J.A. Uytewael  | 7 September 2005    | 1.72        | Dotsch  | 3 July 2008         |
| 1.25        | <i>Landscape with river and windmills</i> by J.M. Graadt van Roggen   | 27 June 2005        | 1.73        | Von Podwinetz   | 2 June 2008         |
| 1.26        | <i>Charles, Prince de Rohan Soubise</i> by J.F. Voet and four 18th-century Louis XV armchairs                         | 3 July 2006         | 1.75        | Semmel  | 1 July 2009         |
| 1.27        | A saucer and the painting <i>Woman and child at a cradle</i> by J.S.H. Kever  | 12 March 2007       | 1.76        | May   | 10 November 2008    |
| 1.28        | <i>Poultry</i> by M. d'Hondecoeter and <i>Saint Peter repentant</i> by G. Reni  | 24 April 2006       | 1.77        | Proehl  | 9 February 2009     |
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| 1.39        | Von Marx-May  | 25 June 2007        | 1.88        | Bachstitz (II)  | 12 January 2009     |
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| 3.93        | <i>The Marriage of Tobias and Sarah</i> by Jan Steen (Von Saher/The Hague Municipal Council) | 6 October 2008              |
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