

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



Report 2010

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Allegory of Earth and Water by Jan Brueghel I (NK 2303)

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Disclaimer

This English version is a translation of the original Dutch report 'Verslag 2010', 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
RKD	Netherlands Institute for Art History
SNK	Netherlands Art Property Foundation

Foreword

In accordance with Article 7 of the Decree establishing the Restitutions Committee, every year the Committee issues a report to the Minister for Education, Culture and Science (OCW) relating to the tasks it has carried out. The committee performs this task, but does more. It publicises this report and uploads it onto its website.

An immense amount of art was plundered during the Nazi regime and the just restitution of this art wherever and whenever possible is essential for the governments and other stakeholders that do not want to continue to be blamed for profiting from the injustice committed by the Nazi regime. This awareness came late, too late in fact, after the collapse of the regime, and led to the set-up of the Restitutions Committee, which has been carrying out its tasks since early 2002. Any account for the way in which these tasks are carried out pursuant to accepted national and an international standards should be transparent.

There is one other reason why this report is wider in scope than is strictly required. Knowledge and expertise acquired through the Committee members and employees' hard work with the restitution policy for ten years have enabled the Committee to place that policy in a broader context. This report deals in more detail with the subjects related to this from both a national and an international perspective.

I trust that, reading between the lines of this report, the reader can see the precise, honest and enthusiastic way in which all Committee members and employees do their jobs.

W.J.M. Davids
Chairman



1. German-occupied Amsterdam: the houses on Kattenburgerstraat are being evacuated by order of the occupying forces.

1. Introduction

The Advisory Committee on the Assessment of Restitution Applications for Items of Cultural Value and the Second World War (the Restitutions Committee) advises the State Secretary for Education, Culture and Science (OCW) about claims to items of cultural value which were lost involuntarily by their owners due to circumstances directly related to the Nazi regime.¹ The Restitutions Committee comprises lawyers, a historian and an art historian and is independent of the Ministry of OCW.

This ninth annual report concerns the Restitutions Committee's activities in 2010 and it should be considered as a continuation of previously published reports, the content of which is not necessarily repeated or summarised here. More information on the Committee's history, policy framework, various reference terms and its procedures can be found in these earlier annual reports, printed copies of which can be requested from the Committee's secretariat. These previous publications can also be consulted on the Committee's website.²

What follows first and foremost in Chapter 2 are a brief description of the Committee's history and its tasks, as well as an introduction of its members and secretariat. Chapter 3 then outlines the activities carried out and the relevant developments in the field of restitution both in the Netherlands and abroad during the year under review. Chapter 4 is an overview in figures of the recommendations issued in the period from 2002 up to and including 2010. Chapter 5 is a brief conclusion and Chapter 6 presents the complete text of all the recommendations issued by the Committee in 2010 to the Minister and the State Secretary for OCW.³

1 '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: Decree establishing the Restitutions Committee). Appendix 1.

2 For a detailed description of the history and policy framework of the Restitutions Committee, see the annual reports from 2002 and 2005. The 2008 annual report describes the Committee's working method. All annual reports (from 2002 to 2009) can be consulted online via the website: <http://www.restitutiecommissie.nl> (Dutch language version) or <http://www.restitutionscommittee.org> (English language version). To request hard copies of the annual report, please contact the secretariat (address information can be found at the end of this report)

3 On 24 February 2010, the State Secretary for OCW took over the restitutions file from the Minister.

2. The Restitution's Committee

2.1 History in brief

During the Second World War, the Nazis plundered, confiscated or purchased immense amounts of art from the Occupied Territories. After liberation, many of these items of cultural value were brought back to their country of origin by the Allies and placed under the administration of national governments, which were tasked with ensuring that these were returned to their rightful owners or their heirs. In the Netherlands, the Netherlands Art Property Foundation (SNK) played a key part in the restitution of art objects. Some of the items of cultural value that were not restituted after the war were auctioned off in the 1950s. The remainder was brought together in the Netherlands Art Property Collection (NK collection), as part of the Dutch National Art Collection.

Since the end of the 1990s, restituting looted art property has become very topical again both at home and abroad. In 1998, the *Washington Principles on Nazi Confiscated Art* were established at an international conference and the following year, the Parliamentary Assembly of the Council of Europe adopted a similar resolution on *Looted Jewish Cultural Property*. These declarations call for a lenient restitutions policy for property looted during the war, and recommend opting for a form of alternative dispute settlement outside the standard judicial process. Now, ten years after these principles were laid down, they do not appear to be obsolete, as interest in 'looted art' continues unabated.

The Origins Unknown Committee, also known as the Ekkart Committee, plays an important role in the Restitution Committee's history.⁴ From 1997 to 2004, under the supervision of this committee, the Origins Unknown Agency (BHG) investigated the provenance of all objects in the NK collection. At the same time, the government called for a more liberal restitutions policy based on the recommendations of the Ekkart Committee, which, in general, called for a more generous restitutions policy. In 2001, the government decided to establish an independent advisory committee that would investigate and assess individual applications for restitution of looted items of cultural value. According to the government, this suited a more policy-related approach to the restitutions issues than a strictly judicial one.⁵ Thus, pursuant to a decision on 16 November 2001 by the Secretary of State for OCW, *the Advisory Committee on the Assessment of Restitution Applications for Items of Cultural Value and the Second World War* was established.

⁴ The Origins Unknown Committee was chaired by prof. dr. R.E.O. Ekkart.

⁵ See letter from the Secretary of State for OCW to the Chairperson of the Lower House (Tweede Kamer) dated 29 June 2001 (Tweede Kamer, 2000-2001, 25 839, no. 26).



2. Meissen shell-shaped dish, with polychromed decor of flowers, Königliche Sächsische Porzellan-Manufaktur (NK 3147 b). See Gutmann recommendation, RC 1.113.

2.2 Tasks

Based on the Decree establishing the Restitutions Committee of 16 November 2001, the Committee's task is to advise the State Secretary for the OCW on:

- a) decisions to be taken by the Minister for 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).⁶

The Committee's first task is to advise on applications for the restitution of items of cultural value in the Dutch National Art Collection which are in the possession of the State of the Netherlands. The majority of these 'National Art collection cases' relate to works of art that are part of the NK collection, which currently comprises 3,800 works

⁶ Decree establishing the Advisory Committee, Article 2, first and second paragraphs. Appendix 1.

of art.⁷ The Restitutions Committee assesses claims to items of cultural value from the National Art Collection on the basis of the frameworks of restitution policy adopted by the government pursuant to the recommendations of the Ekkart Committee.⁸

The second task described in the Decree establishing the Restitutions Committee (see b) is the 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 relating to the National Art Collection is that the current owner is *not* the State of the Netherlands but a private individual, a foundation or a provincial or municipal government institution.⁹ In accordance with the Decree, the Committee will be guided by the ‘principles of reasonableness and fairness’ in issuing advice on these cases.¹⁰ The Restitutions Committee also established regulations in 2007 outlining the procedure for such claims based on Article 2, paragraph 2 of the Decree.¹¹ The regulations stipulate that the Committee performs its advisory tasks in these cases by issuing a ‘*binding recommendation within the meaning of Chapter 7:900 of the Netherlands Civil Code or by promoting a settlement between the parties*’.¹²



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

⁷ The NK collection contains some 3,817 objects and consists of paintings, drawings, prints, ceramics, silver, furniture, carpets and other special items, and is administered by the Netherlands Institute for Cultural Heritage (ICN). Some objects are in museums and government institutions in the Netherlands and abroad, others are in the ICN depot.

⁸ See Appendix 2 to this annual report for an overview of 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.

⁹ For more information, see the explanatory notes to the Decree establishing the Advisory Committee. Appendix 1.

¹⁰ Decree establishing the Advisory Committee, Article 2, fourth and fifth paragraphs. Appendix 1.

¹¹ Article 4, paragraph 2 of the Decree establishing the Advisory Committee reads: ‘the committee can determine a regulation concerning further working methods’. See Appendix 1.

¹² ‘Regulations of binding recommendation 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’. For the full text of these Regulations, see: *Report 2008*, Appendix 5.

2.3 Restitutions Committee members and secretariat

The Restitutions Committee comprises the following members:

- W.J.M. Davids (chairman)
- I.C. van der Vlies (vice-chair)
- J.Th.M. Bank
- P.J.N. van Os
- D.H.M. Peepkorn
- E.J. van Straaten
- H.M. Verriijn Stuart

In a decision dated 28 September 2010, the State Secretary for OCW reappointed the above-mentioned people as members of the Restitutions Committee for a three-year period from 23 December 2010 until 23 December 2013.¹³

During the year under review, former chairman R. Herrmann acted as the Committee's advisor at the latter's request.



4. Mr W.J.M. Davids, Chairman of the Restitutions Committee.

In the performance of their duties, the Restitutions Committee members were supported by the secretarial staff under the management of Ms E. Campfens (secretary/rapporteur). In addition, the secretariat comprised the following staff: 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 Vessem (legal assistant). And finally, Mr C.P.L. van Woensel works in the secretariat on a project basis. The Committee secretariat is located at Lange Voorhout 9 in The Hague and also has an office in the National Archive in The Hague at its disposal.

¹³ *Staatscourant*, 12 October 2010, no. 15769. See Appendix 3 of the Dutch version of this report.

3. A review of 2010

3.1 Activities 2010

In 2010, the Restitutions Committee handled 34 cases and issued 11 recommendations.¹⁴ The Committee met nine times in regular meetings and organised three hearings. The year under review was also marked by ongoing (art dealership) claims, which, in part, are typically very complex in terms of both content and procedure. The Committee increasingly has to deal with competing claims for the same art objects. 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 is finished. This is part of the reason why, during the Committee's third term of appointment from 23 December 2007 to 22 December 2010, the average time for handling a request for advice is 82 weeks.

Restitution and restitution policy were very topical in 2010 as well, both in the Netherlands and internationally, as a result of which the Committee had to maintain contact with committees and research institutes at home and abroad. On 8 and 9 July 2010, Secretary/Rapporteur Campfens attended the *Museums & Restitution* conference, organised by the Centre for Museology and The Manchester Museum at the University of Manchester. The conference addressed the restitution of items of cultural value in general and discussed the role of museums and new ways for them to deal with restitution in particular. That this is a current issue in the Netherlands as well became clear during such events as the *Herkomst Helder* [Clear Provenance] symposium organised by the Netherlands Museums Association on 6 September 2010 in the Centraal Museum in Utrecht. The Restitutions Committee was represented at this symposium by Chairman Davids, who also gave a presentation, and Committee members Bank and Van Straaten, and various secretariat employees. The symposium was organised following the *Onderzoek Museale Verwervingen* [Museum Acquisition Study], which was supervised by the Netherlands Museums Association and which will be addressed briefly in sub-section 3.3.

3.2 Restitution as an international and ongoing subject

Just as 2011 had begun – but before the people's uprising – it was announced that a high official from the Egyptian government, the Secretary General for the Supreme Council of Antiquities, officially requested the return of an effigy of Nefertiti from the director of the *Neues Museum* in Berlin. In November 2010, it had already been announced that the Metropolitan Museum of Art in New York would be returning 19 smaller items of cultural value to the same official. These are originally from the tomb of Tutankhamun that was opened in 1922. These facts speak for themselves. They can be interpreted as new evidence of a development in the concept of the restitution of items of cultural value, which no longer has to concern primarily or even exclusively the looting of art during the Second World War.

¹⁴ Chapter 6 contains the recommendations in full issued in 2010.



5. Researcher Ms A.J. Kool at work at the *Ministère des affaires étrangères et européennes* (Ministry of Foreign and European Affairs) in Paris.

The restitution of items of cultural value that belonged to citizens hunted and murdered by Nazis, especially the Jews pursued and Roma or Sinti descendants, is part of international policy and has been laid down and recognised in rules and legal memoranda such as the *Washington Principles* about Nazi-looted art (1998) and confirmed more than ten years later in the *Terezín declaration* in the Czech Republic (2009). Meanwhile, a definite sense of justice has developed with regard to three other historical situations or events. First and foremost, this concerns the items of cultural value from Antiquity, i.e. sculptures and objects from Ancient Egypt, Mesopotamia and Persian or Classical Greece and the Roman Empire. Every now and again, the successor states make restitution demands for items that, in ancient history, belonged to their cultural heritage. The protracted discussion about the so-called *Elgin Marbles*, ornamental sculptures from the Parthenon in Athens, that were transferred to the British Museum and are still exhibited there, is the most notable example.

The earlier cultural policy of a number of European colonial powers in their former colonies in America, Africa and Asia is another restitution issue being discussed. During

the colonial era, items of cultural value were transferred to European capitals as treasures or the spoils of war, and exhibited in colonial or cultural anthropological institutes or museums. Every now and again, the suggestion is made that these transfers should be raised for discussion, bringing into question the earlier casualness and the current legitimacy of such exhibitions. It is in this context that Peru instigated proceedings in 2010 for the return of certain Inca treasures that are being housed at Yale University in the U.S.; so this time not in Europe.

A third historical fact that is pertinent to an increasing global awareness of the restitution of items of cultural value is the 1917 October Revolution in Russia, which brought the Bolsheviks to power. After nearly a century, the politics of expropriation and appropriation of works of art belonging to the nobility and citizens has become the subject of legal proceedings. A descendant of a Russian family of immigrants started a legal case in Paris in December 2010 against the above-mentioned Metropolitan Museum of Art in New York for a claim to a painting by Cézanne, which was supposedly appropriated from his great-grandfather Ivan Mozorov in 1918. The state took his collection from him and turned his house into a museum.



6. An American soldier looking at a stolen painting by Rubens, one of the many art treasures discovered in caves near Siegen in Germany, 3 April 1945. The Nazis used these caves to hide stolen works of art.

The international resonance surrounding the restitution of items of cultural value is rekindling interest in related rulings. In 2010, the Restitutions Committee advised the State Secretary for OCW on the basis of a liberalised restitutions policy to return the painting *Winter Landscape* by Jan van de Velde to the heirs of the Jewish art historian and director of the Staatliche Kunstbibliothek (State Art Library) in Berlin, Curt Glaser.¹⁵ The State Secretary adopted this recommendation. In 2009, the British *Spoliation Advisory Panel* had already issued a recommendation regarding a claim to drawings from the same collection.

Knowing this, it seems obvious that over the next few years the issue of the general restitution of items of cultural value will increase in volume and become more relevant than those who were initially focussing mainly on looted art from World War Two thought. This could mean that interest in restitution in a broader sense will remain on the political agenda.

3.3 Restitution in the Netherlands

From the state of affairs regarding restitution cases in the year under review it can be concluded that, especially in relation to claims concerning art dealerships, the Restitutions Committee needs increasingly more investigation time in order to reach conclusions. This not only concerns gaps found during archival investigation, but also ‘conflicting claims’ to the same art objects, which also lead to delays. It is important to note that the Netherlands had a number of sizeable and prominent art dealerships between the wars. This means that when handling the applications for restitution submitted by the legal successors of those prominent art dealerships, the magnitude and complexity of the application requires protracted research and multilateral dialogue with the applicants.

So-called museum investigation is a new factor at play with regard to restitution in the Netherlands. In 2010, as a follow-up to an earlier investigation in 1998-1999, those museums that are members of the Netherlands Museums Association started a wide-scale investigation into their own collections for items with a possibly dubious provenance. This could mean that in the near future, the Restitutions Committee will be involved in assessing the consequences of the museum investigation. Meanwhile, in December 2010, it was announced that the Museum Boijmans Van Beuningen in Rotterdam will publish on its website an overview of the provenance of its 154,000 art works.¹⁶

In 2010, at the suggestion of the Ministry of OCW, the Restitutions Committee allowed applications to be resubmitted for a revised recommendation. These will initially be assessed, with respect to the question of how much new information is available, which, had it been available at the time of the previous recommendation, would have led to a different recommendation and which therefore merits a new investigation. In 2010, the

¹⁵ See recommendation regarding Glaser (RC 1.99), included in Chapter 6.

¹⁶ See: <http://www.boijmans.nl/nl/10/persberichten/pressitem/204>.

Restitutions Committee handled such a request for the first time¹⁷, the outcome of which was a recommendation to the State Secretary to uphold the earlier rejection.

Another noteworthy new fact were the proceedings that the applicants in the Koenigs case instigated with the National Ombudsman. The National Ombudsman gave a ruling in 2010, the outcome of which is that the State Secretary for OCW has submitted a request for advice regarding the new information submitted by Ms C.F. Koenigs concerning the application for restitution rejected in 2004. Another outcome is that the Ministry of OCW is investigating in what way a claim by Ms Koenigs to the painting *Burning Town* by Herri met de Bles, currently in the Museum of Fine Arts in Boston, can be presented to the Restitutions Committee.

The Restitutions Committee has concluded that in 2010 it was able to issue its recommendations at a reasonable and acceptable rate. It is not currently possible to provide a thorough prognosis of any requests for advice stemming from the museum investigation.

¹⁷ See recommendation regarding Weijers II (RC 4.118), included in Chapter 6.

4. An overview of recommendations in figures

4.1 State of affairs 2002 - 2010

In the period since the Restitutions Committee took up its duties in January 2002 until the end of 2010, the Minister for OCW has requested its advice in 123 cases, 119 of which related to items of cultural value from the National Art Collection, while the remaining 4 involved binding recommendations. 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. Sub-section 4.3 presents an overview of figures relating to binding recommendation cases.

Of the 119 cases relating to the National Art Collection that the Committee received until the end of 2010, 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 111 requests for advice. Three of these cases relating to the National Art Collection concern claims which the Committee already rejected and for which applicants requested a review. Between 2002-2010, the Restitutions Committee issued 90 recommendations on the basis of Article 2, paragraph 1 of the Decree.¹⁸

The scope of the cases varies from claims to a single work of art to claims for the return of several hundreds of works. Of the total of 90 recommendations issued, 48 cases were fully in the applicants' favour, 28 were rejected in full and 14 were partly granted and partly rejected. In 2 cases, the Committee considered itself unauthorised to issue advice.

Number of cases relating to the National Art Collection submitted to the RC each year		Number of Recommendations issued by the RC each year	
2002	12	2002	5
2003	4	2003	7
2004	9	2004	2
2005	16	2005	7
2006	15	2006	12
2007	35	2007	16
2008	12	2008	15
2009	10	2009	16
2010	6	2010	10
Total	119	Total	90

¹⁸ For an index by case number of all recommendations published by the Committee in the 2002-2010 period, see Appendix 3. All recommendations issued by the Committee can be consulted via the Restitutions Committee website.

Until the end of 2009, the Committee issued recommendations in cases claiming some 780 items of cultural value. They granted the applications in the case of 420 objects (approx. 54%) and advised rejection for the remaining 360 objects (approx. 46%). Below is an overview of the number of objects regarding which the Committee issued recommendations in the period from 2002 to 2010:

Year	Recommended grants <i>number of objects</i>	Recommended rejections <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
Total	420	360

4.2 State of affairs in 2010

In 2010, the Restitutions Committee had a total of 33 cases regarding the National Art Collection under consideration, 6 of which were presented by the State Secretary for OCW in 2010, including 3 where the applicants were requesting a revised recommendation following an earlier rejected claim.¹⁹

During the year under review, the Committee issued 10 recommendations concerning objects from the National Art Collection, 5 of which were granted in full, 4 of which were rejected,²⁰ and 1 of which was granted in part and rejected in part.²¹ This therefore means that at the beginning of 2011, there were 24 National Art Collection cases still ongoing.

¹⁹ See the recommendation regarding Weijers II (RC 4.118), included in Chapter 6.

²⁰ The objects in the Weijers II (RC 4.118) case, a revised recommendation in response to a previously rejected claim, were not taken into account when counting those objects for which the Committee issued a negative recommendation for restitution in 2010, as these objects had already been included in 2008 in relation to the previous recommendation on Weijers (RC 1.68). See recommendation on Weijers II (RC 4.118), included in Chapter 6.

²¹ Granted: RC 1.96 (Stern), RC 1.99 (Glaser), RC 1.104 (Wolf/Van den Bergh), RC 1.109 (Joseph Stodel) and RC 1.114-A (Gutmann III: *partial recommendation*). Rejected: RC 1.100 (Zadick), RC 1.102 (Van Aldenburg Bentinck), RC 1.105 (Rosenberg) and RC 4.118 (Weijers II). Granted in part/rejected in part: RC 1.113 (Gutmann II).

4.3 Binding recommendations

The previous section included an overview of the recommendations issued by the Committee in 2010 regarding claims concerning the National Art Collection. As explained in Chapter 2, the Restitutions Committee was assigned a second task on its establishment. In Article 2, paragraph 2 of the Decree establishing the Restitutions Committee, the option of also presenting disputes to the Restitutions Committee was created in relation to cases of looted art in which parties other than the State of the Netherlands are involved.

By the end of 2010, the Restitutions Committee had dealt with four requests for advice in the context of this task. Two of these so-called binding recommendation cases were presented to the Committee in 2006, and the other two in 2007 and 2008.

The Committee published its first three binding recommendations in 2008²², and in 2010 it issued one binding recommendation which is included in Chapter 6.²³

Number of binding recommendation cases submitted to the RC each year		Number of binding recommendations issued by the RC each year	
2002	-	2002	-
2003	-	2003	-
2004	-	2004	-
2005	-	2005	-
2006	2	2006	-
2007	1	2007	-
2008	1	2008	3
2009	-	2009	-
2010	-	2010	1
Total	4	Total	4

²² See *Report 2008*.

²³ See the binding recommendation regarding the dispute: the painting *Road to Calvary* (RC 3.95), included in Chapter 6.

5. Conclusion

When the Restitutions Committee was set up in late 2001, it was expected – as laid down in the Decree establishing the Restitutions Committee – that it would handle 30 to 50 cases in relation to the National Art Collection.²⁴ On the basis of this, it was estimated that the Committee would exist for between three to five years.²⁵

However, the Committee has now been appointed for a fourth term of office and account should be taken of the possibility of new claims ensuing from the investigation being carried out under the auspices of the Netherlands Museum Association. Furthermore, at the start of 2011, the Committee has 24 ongoing cases, some of which are complex (art dealership) cases that sometimes require addressing special procedural questions. This is sometimes the case when, for example, different applicants submit ‘competing’ claims to the same art objects.

In its tenth year of existence, the Committee seeks to continue investigating and assessing to the best of its ability the 24 cases it is currently handling as well any future cases.



7. Researcher Ms A.M. Jolles-van Loo at work at the National Archive in The Hague.

²⁴ Decree establishing the Restitutions Committee. Appendix 1.

²⁵ Ibid.

6. Recommendations issued in 2010

This section contains the complete text of the recommendations issued by the Restitutions Committee to the Minister and the State Secretary for OCW in 2010.²⁶ The recommendations are presented in chronological order, with the date on which the recommendation was adopted being taken as the starting point.²⁷

1. Recommendation regarding a Persian medallion carpet with inventory number NK 1042 (Wolf / Van den Bergh)

(case number RC 1.104)

In a letter dated 29 October 2008, 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 submitted by Mrs H.J.L.-W. and Mrs P.J.v.B.d.J.-W. (hereafter referred to as: 'applicants I') for the restitution of a Persian medallion carpet (NK 1042). Applicants I are the daughters of Daniel Wolf (application I).

On the same date, the Minister also asked the Committee to issue a recommendation regarding the application submitted by Mr R.J.S. and Mrs E.M.A. (hereafter referred to as: 'applicants II') for the restitution of the same Persian medallion carpet (NK 1042). Applicants II are the great-grandchildren of Samuel van den Bergh (application II).

Both applications for restitution are dealt with in this recommendation. After the war, the carpet was returned from Germany to the Netherlands, where it became part of the Dutch National Art Collection under inventory number NK 1042. The carpet is currently housed in the depot of the Rijksmuseum in Amsterdam.

The procedure

The applications for restitution were submitted following the findings of research by the Origins Unknown Agency (hereafter referred to as: 'the BHG'), which concluded that, during the Second World War, NK 1042 was confiscated from either Samuel van den Bergh or Daniel Wolf.

Applicants I submitted their application for the restitution of NK 1042 to the Minister on 14 November 2007 as part of an application for the restitution of three works of art from the Dutch National Art Collection. The Committee issued its recommendation regarding the other two works involved in this claim, namely NK 2227 and NK 3071 (see recommendation regarding Wolf, RC 1.101), on 9 November 2009. Applicants II submitted their application for the restitution of NK 1042 to the Minister on 7 December 2007. The Minister submitted both applications to the Committee on 29 October 2008, and active handling of the case started in September 2009.

Given the connection between the claims from applicants I and II regarding NK 1042, the Committee decided to combine them in file number RC 1.104.

The Committee instigated a fact-finding investigation, the results of which were included in a draft investigatory report of 14 September 2009. The draft report was sent to applicants I and II for comments on 30 September 2009, to which applicants I responded in a letter dated

29 October 2009 and applicants II in a letter dated 25 October 2009. Both parties agreed with the findings of the Committee, with the exception of several factual additions. On 1 October 2009, the Committee also sent the draft report to the Minister with a request for more factual information, who informed the Committee on 15 October that he had no additional information to provide. The investigatory report was then adopted on 29 March 2010.

On 26 January 2010, in the course of the procedure, the chairman of the Committee viewed the carpet in the depot of the Rijksmuseum in Lelystad under the supervision of the acting curator of textiles for the Rijksmuseum, Ms M. Albers. During this visit, aspects such as the condition of the carpet were recorded and photographs taken, copies of which were sent to the applicants. On 1 February 2010, a meeting took place between the representative of applicants I, applicants II and the chairman of the Committee, the aim of which

²⁶ On 24 February 2010, the State Secretary for OCW took over the restitutions file from the Minister.

²⁷ For an index by case number of all recommendations issued by the Committee in the 2002-2010 period, see Appendix 3.

was to agree on a solution regarding the carpet. Following this meeting, the applicants and the Committee agreed to combine the applications and focus on finding a museum or other potential location for the carpet in the best interests of the common good. Contact was sought with the Rijksmuseum in Amsterdam about a possible joint donation to the museum by the applicants.

For the facts in this case, the Committee refers to its investigatory report.

Considerations:

Background to application I

1. Applicants are requesting the restitution of the carpet (NK 1042) in their capacity as heirs of their father Daniël Wolf (hereafter referred to as: 'Wolf'). The Committee has taken cognisance of several legal inheritance documents, on the basis of which it has deemed that for the purposes of the current procedure, the applicants have provided sufficient proof that they are Wolf's (sole) heirs. The applicants are represented by Mr P.L. of W., Wolf's grandson.
2. Wolf was born in Arnhem on 3 January 1898 of Jewish descent. He married Renée Louise Gokkes in 1919 and the couple had two daughters (the current applicants). Wolf was a successful businessman, with a passion for antiques and art, who owned a sizeable collection of paintings. From 1937, the family resided on the Groot Haesebroek country estate in Wassenaar. The applicants have stated that, at the time of the German invasion, Wolf was in France, after which he managed to flee to England. During the war, he left for the United States, dying in New York in 1943. Shortly after the German invasion, Groot Haesebroek was seized for a high-ranking Nazi, General Friedrich Christiansen. It then became Christiansen's home as well as a residence for Göring during his visits to the Netherlands. Wolf's household effects, including the Persian carpet, were shipped to Germany in 1944 together with those of his Wassenaar neighbour, Samuel van den Bergh.

Background to application II

3. Applicants II are requesting the restitution of NK 1042 in their capacity as heirs of their great-grandfather, Samuel van den Bergh (hereafter referred to as: 'Van den Bergh'), and also on behalf of the other heirs. The Committee has taken cognisance of several legal inheritance documents, on the basis of which it has deemed that for the purposes of the current procedure, applicants II have provided sufficient proof that they are representing Van den Bergh's heirs.
4. Van den Bergh was born in Oss on 6 April 1864 of Jewish descent. In 1887, he married Betsy Willing with whom he had three children, Elisabeth Gabriella, George and Sidney James. Applicants II are the grandson of George and the granddaughter of Elisabeth Gabriella, respectively. Van den Bergh founded Unilever and resided in his country house De Wiltzangk in Wassenaar, which was furnished with valuable works (of art). During the German invasion, he was in France, where he died in 1941. Shortly after the German invasion, De Wiltzangk was seized and, like Groot Haesebroek, used for high-ranking Nazis. And like those of Groot Haesebroek, Van den Bergh's household effects were shipped to Germany in 1944. The confiscated items included several Persian carpets.



8. Country estate Groot Haesebroek in Wassenaar, the Wolf family residence since 1937.



9. Country estate De Wiltzangk in Wassenaar, the Van den Bergh family residence. Photo c. 1935.



10. Persian medallion carpet (NK 1042).

Wolf/Van den Bergh's household effects

5. At a certain moment during or shortly after the war, the household effects of the Wolf and Van den Bergh residences were combined. It has also been determined that both Wolf's and Van den Bergh's effects included more than one carpet described as 'Persian'. However, the inventories drawn up during and after the war are not specific enough to irrefutably establish the ownership of NK 1042. As a consequence, the Committee conducted extensive research into the recovery of NK 1042 from Germany by post-war authorities in order to see whether it was possible to identify the carpet as either Wolf's or Van den Bergh's. This proved to be impossible.
6. The facts can be summarised as follows. Towards the end of the war, the area in which Wolf's and Van den Bergh's household effects were kept was heavily plundered, first by German citizens and then by Russian, British and Canadian troops. A report on the search for these effects after the war states that the Allied Forces encountered items, including five carpets, in several different locations. These five carpets, belonging to Wolf/Van den Bergh, were returned to the Netherlands in March 1947. Despite a lack of clarity in the administration of the post-war restoration of rights authorities and the anomalous measurements in the various administrative descriptions of the carpet NK 1042, the Committee subscribes to the conclusion of the Origins Unknown Agency that NK 1042 was one of the five recovered carpets belonging to Wolf/Van den Bergh.
7. In the post-war period, both the Wolf family and the Van den Bergh family endeavoured to recover their property, often doing so together. Contact was maintained with the Dutch restoration of rights authorities regarding the effects recovered from Germany. As a result, delegates from both families visited what were known as claim exhibitions organised by the Netherlands Art Property Foundation, at which they recognised several of the carpets recovered from Germany, which were then returned to them. As far as the Committee has been able to ascertain, no request for restitution was submitted for NK 1042. It is unclear whether the families were able to view the carpet at the time or whether they had otherwise become aware of the carpet's return to the Netherlands.
8. On the basis of the fact-finding investigation, the Committee has determined that during the war both owners lost possession of various Persian carpets that match the description of NK 1042 involuntarily as a result of confiscation. Based on the facts, however, it also concluded that, during or shortly after the war, these carpets were combined into a single mixed estate and that, as a result, it is now impossible to establish whether NK 1042 was owned by Wolf or Van den Bergh. Given the fact that the Committee deems it highly likely that NK 1042 was part of the combined Wolf/Van der Bergh estate, it nevertheless considers the conditions for restitution to have been met.
9. The Committee is of the opinion that the carpet should be returned to its rightful owners, whom, in this unusual case, it considers to be both the Wolf family (applicants I) and the Van den Bergh family (applicants II) on a fifty-fifty basis. According to the Committee, this outcome is prompted by the joint action of both parties during this procedure, in which they agreed to jointly seek a suitable destination for the carpet or the proceeds from any sale.

Conclusion

The Restitutions Committee advises the State Secretary for Education, Culture and Science to transfer the carpet NK 1042 into the joint ownership of Applicants I and II, subject to the agreement that the applicants will jointly seek a destination for the carpet or any proceeds from its sale in the interests of the common good.

Adopted at the meeting of 29 March 2010 by W.J.M. Davids (chair), J.Th.M. Bank, J.C.M. Leijten, P.J.N. van Os, D.H.M. Peepkorn, 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)

2. Recommendation regarding Stern

(case number RC 1.96)

In a letter dated 17 October 2008, 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 30 May 2007 by the *'Estate of Dr. Max Stern'* (hereafter referred to as: 'the applicant') for the restitution of the painting *Allegory of Earth and Water* by Jan Brueghel I. The claimed painting was returned to the Netherlands after the Second World War and is now part of the Netherlands Art Property Collection (NK collection) under inventory number NK 2303. The work is currently on loan to the Noordbrabants Museum in Den Bosch.

The procedure

On 30 May 2007, the *'Estate of Dr. Max Stern'*, represented by the Holocaust Claims Processing Office (HCPO) in New York, submitted an application for restitution to the Minister for Education, Culture and Science. The *'Estate of Dr. Max Stern'* is administered by the *'executors of Dr. Stern's Estate'*, namely S.F., M.V. and R.V. Following the above-mentioned request for advice, the Committee conducted a fact-finding investigation, the results of which were recorded in a draft investigatory report of 9 November 2009. On 19 November 2009, the draft investigatory report was sent to the applicant for a response, along with several questions from the Committee. On the same day, the draft investigatory report was also sent to the Minister with a request for more factual information. The Minister informed the Committee by email on 4 January 2010 that he had no additional information to provide. The applicant provided a substantive response in a letter dated 6 January 2010 and responded in more detail in a letter dated 1 March 2010 and in an email dated 4 March 2010. The investigatory report was adopted on 3 May 2010. For the facts of the case, the Committee refers to this report.

Considerations:

1. The applicant is requesting the restitution of the painting *Allegory of Earth and Water* by Jan Brueghel I (NK 2303), claiming to be *'Dr. Stern's legal successor in interest'*. The 'Dr. Stern' in question is German-born Max Stern (1904-1987). The Committee has taken cognisance of documentation pertaining to his estate, including his will of 13 December 1985 and a codicil of 7 August 1986, which shows that the estate of Max Stern is administered by a foundation aimed at providing support to three university institutions in Canada and Israel. The Committee also has a document that shows that the HCPO is authorised to represent the *'executors of Dr. Stern's Estate'* in the application for restitution. On the basis of these documents, the Committee sees no reason to doubt the status of the applicant as the rightful claimant with regard to the estate of Max Stern.



11. *Allegory of Earth and Water* by Jan Brueghel I (NK 2303).

2. The relevant facts are described in the investigatory report of 3 May 2010. The following is a summary. According to the applicant, the Jewish art dealer Max Stern (hereafter referred to as: 'Stern') was the owner of Galerie Julius Stern in Düsseldorf (hereafter referred to as: '(the art dealership of) Stern'). In 1935, during the Nazi regime, he was prohibited from practising his profession and instructed to discontinue his company. He subsequently fled Germany in December 1937. The applicant claims that Stern sold the current NK 2303 as a direct consequence of Nazi persecution in Germany in the period between September 1936 and November 1937. Correspondence with the Committee, however, also shows that the applicant has considered the fact that, alternatively, the work may have played a role in Stern's mother's flight from Germany in September 1938 and that it may have been sold in that period. After fleeing Germany, Stern established another art dealership, first in England and then, in 1940, in Canada. Stern married Iris Ester Westerberg in 1946, and as far as is known, the couple had no children. Stern's wife died in 1978 and Stern in 1987.



12. Gallery Stern in Düsseldorf, before 1937.

3. As far as is known, Stern did not submit an application for the restitution of lost art possessions with the Dutch authorities for the restoration of rights after the war. In the research conducted by the Committee, nothing was found to indicate that Stern was aware that the currently claimed painting had been returned to the Netherlands after the war. On the basis of this information, the Committee assumes that there has not been a previous application for restitution of the current NK 2303 from the former property of (the art dealership of) Stern. The Committee therefore deems the application admissible.
4. Who owned the current NK 2303 before the Nazis took power in 1933 is unknown. This is also true for the person from whom Stern acquired the painting. Research data, however, does indicate that, in any case, the currently claimed work was in Stern's possession in or around September 1936. This can be inferred from a photo card of the current NK 2303 in the Netherlands Institute for Art History (RKD) with the annotation '*Gal. Stern, Dusseldorf (1936)*'. The RKD archives also contain a letter, dated 3 September 1936, sent by '*Galerie Stern*' in Düsseldorf to Dr. H. Schneider, the director of what was then known as the Netherlands Institute for Art History and Iconographical Documentation. The letter mentions several new acquisitions including a '*Bild von Jan Brueghel d. Ae. und Hendrik v. Balen, Wasser und Erde*' [Painting by Jan Brueghel the Elder and Hendrik van Balen, Water and Earth]. The letter also states that '*Herr Geheimrat Friedländer*' [privy councillor Friedländer] – an art historian who often assessed art for art dealers – had '*soeben begutachtet*' [recently appraised] the painting. The applicant also sent a copy of a photograph of the currently claimed painting from Stern's archive in the National Gallery of Canada. The rear of the photo includes the annotation: '*Holz. H. 60,5, B. 89 cm. / Gutachten Geheimrat Friedländer*' [Wood. H. 60.5, W. 89 cm / appraised by privy councillor Friedländer]. These dimensions are almost identical to those of the current NK 2303 (61.0 x 89.0 cm). In addition, the applicant also sent a '*customer card*', which came from archival material concerning Stern in the National Gallery in Canada, which, according to the applicant, suggests that Stern offered a painting by Jan Brueghel and/or H.O. Balen for sale to a potential customer on 4 September 1936. The card bears the inscription '*Nicolaus, Dr. Heinr., Günzach [...]*' and includes the lines '*4/9.36. angeb. Kreuzigung (Meister v. Frankf.), Jan Brueghel, H.O. Balen. / 16/9.36 geantw. kauft vorläufig nichts mehr*' [4/9.36 off. crucifixion (master of Frankf.), Jan Brueghel, H.O. Balen. answered on 16/9.36. will not be buying anything for the time being]. From the fact that a purchase price was not mentioned after the work by Jan Brueghel and/or H.O. Balen, which was customary for Stern to do when he sold a painting, the applicant has concluded that Nicolaus did not buy '*the Brueghel/Balen painting*'. On the basis of photos that it also sent to the applicant, the Committee has conducted research into, among other things, stamps and numbers on the rear of the current NK 2303. This has failed to uncover any details relevant to this case regarding the provenance of this painting before or during the war. Based on this information, the Committee deems it highly likely that the current NK 2303 was owned by Stern in 1936.
5. Anti-Jewish measures in Germany led to Stern being prohibited from practising his profession in August 1935. Due to the deteriorating situation facing the Jews, Stern's sister Hedwig left Germany in 1936 to open a new art dealership in England. There is evidence that, when she emigrated, she took an unknown number of Old Masters with her. The applicant declares that, on the basis of archival research, there is nothing to indicate that the current NK 2303 was exported or taken to England by either Stern or his sister. Stern was believed to have taken several of his paintings to London and Amsterdam. In March 1937,

he sold the two buildings in Düsseldorf that housed the art dealership and the Stern family home, and in September 1937, he received definitive notice from the German authorities that his businesses had to be wound up by 15 December 1937. Stern had what was left of his trading stock of more than 200 paintings auctioned at Math. Lempertz auction house in Cologne in November 1937. According to the applicant, this was ‘a so-called “Jewish auction”, in which his paintings [were, RC] sold for a fraction of their fair market value’. The RKD contains an annotated catalogue of the auction by the Lempertz company in November 1937. The current NK 2303 is not mentioned in this catalogue. According to the applicant, those works of art that remained unsold at the auction were returned to Stern’s art dealership and put up for sale until the dealership was wound up. However, a copy of this final sales catalogue of Stern in Germany, which was sent by the applicant, does not include NK 2303. On 23 December 1937, Stern left for England, leaving behind paintings at Lempertz auction house and at Josef Roggendorf, a storage and shipping company in Cologne. Most of these paintings were reportedly later confiscated and, according to the applicant, ‘sold by the Gestapo at Hufschmied, a second-rate auctioneer of household goods’. According to the applicant, Stern was not permitted to take any works of art with him when he emigrated and what was left of his trading stock and private collection remained in Germany. What happened to these works of art is unclear. The applicant has stated that some paintings were sold in 1938 in order to obtain an exit visa for Stern’s mother, Selma, who had remained behind in Germany. The documents provided by the applicant support this theory, but do not offer a comprehensive overview of the paintings sold and the current NK 2303 is not mentioned. The location of the currently claimed painting remained a mystery until in or around 1943. The Committee uncovered details that indicate that the work of art in question was in the possession of ‘Mensing & Zn., Amsterdam’ and that it was sold in 1943 or 1944 to the Kunsthalle Hamburg by the art dealer J. Dik jr. This indicates that Stern or his family lost possession of the current NK 2303 sometime between 1936 and 1943 or 1944.

6. Based on the results of the investigation, the Committee then assessed whether there were any indications to suggest with a high degree of probability that possession of the painting was lost involuntarily as referred to in the Ekkart Committee’s fourth and sixth recommendations of 2003 regarding the trading of art. If, as in Stern’s case, the post-war Dutch authorities (the SNK) do not have any declaration forms on which involuntary loss of possession is indicated, the probability that the loss of possession was involuntary can also be assumed if the applicant can demonstrate that there is question of theft, confiscation or coercion. The fourth recommendation states that in making this judgment, threatening general circumstances with regard to Jewish art dealers must be taken into account. According to the consideration that led to this recommendation, if hard evidence is lacking, a measure of flexibility should be exercised and indications that suggest that loss of possession was probably involuntary should be employed generously.
7. The Committee considers the following. The way in which Stern lost possession of the claimed painting is difficult to determine with any certainty; this also goes for the day on which or the period in which this loss occurred, other than that mentioned in the conclusion to the fifth consideration above. For this reason, the Committee will also subject the proposed and other realistic possibilities concerning this loss to an investigation, making a distinction between the relevant periods in which Stern could have lost possession of the painting, namely:
 - A. from 4 September 1936 (the day on which Stern, according to the customer card, definitely had possession of the painting) until 23 December 1937 (the day on which Stern left Germany) and
 - B. after 23 December 1937 until 1943 or 1944, when the painting was acquired by the Kunsthalle Hamburg, the period in which Stern resided first in England and then in Canada.
8. With regard to the period mentioned under A, in which Stern resided in Germany, the Committee has taken the following circumstances into account.

Based on the Reichskulturkammergesetz of 1 November 1933, Stern was given four weeks to wind up his activities as an art dealer as of 29 August 1935. His sister Hedwig, who also worked in the dealership, moved to England in 1936 to open a new art dealership there. In March 1937, Stern sold the two buildings in Düsseldorf that housed the art dealership and the Stern family home. After an attempt to have his business taken over by a third party, which bought him some time before executing the order of 29 August 1935, he received definitive notice that his art dealership had to be wound up on 13 September 1937. This date was later set at 15 December 1937 at the latest. In November 1937, Stern had his remaining trading stock of more than 200 paintings auctioned – in the ‘Jewish auction’ mentioned above under consideration 5 – which only fetched a fraction of the market value of the paintings. What remained of the trading stock was put up for sale in Stern’s art dealership until it was wound up. On 23 December 1937, Stern fled to England. To that end, he was forced – in addition to the costs of setting up such an establishment overseas under the given circumstances – to pay the statutory ‘Reichsfluchtsteuer’, a substantial escape tax imposed by the Third Reich.

9. Although Stern was ordered to cease his professional activities in August 1935, it must be assumed that, given the fact that the execution of this order was postponed, the claimed work of art was part of his trading stock during the period in which he resided in Germany. This follows from the following interrelated circumstances:
- the listing of the work on a *customer card* (cons. 4),
 - the existence of the art dealership until December 1937 as indicated in the 1937 address book for the city of Düsseldorf,
 - the letter from Stern to Dr. Schneider of 3 September 1936 on 'Galerie Stern' letterhead (cons. 4), and
 - the presence of a photo of the painting in the collection of photos of the paintings in 'Galerie Stern' (cons. 4).
- While this does not explain why the painting was not put up for sale at the '*Jewish auction*', it does not outweigh the other indications either.
10. The Committee is of the opinion that the circumstances in which Stern found himself in late 1936 and throughout 1937, as summarised in consideration 8 above, were so menacing and dangerous that had he succeeded in selling the claimed painting during this period, it should be considered to have been under duress. In addition, the Committee also attributes importance to the circumstances that forbade Stern to take his possessions with him from Nazi Germany and that any such sale would have been intended to raise funds for his flight.
11. The following circumstances are key with regard to the period mentioned under consideration 7.B above in which Stern resided first in England and then in Canada.
- Stern no longer had a trading and residential address in Germany. The possessions he left behind upon fleeing to England were confiscated by the German authorities and sold by the Gestapo at an auction unsuitable for the items confiscated. On 26 January 1938, the German authorities gave the order to block Stern's assets in Germany, in particular to freeze his bank account. On 12 July 1938, he was stripped of his German citizenship, which also signified the confiscation of his entire estate.
- In summary: Stern was forbidden to trade in Germany, had no place of business, no business capital or other assets and no practical options to contact buyers or sellers.
- It must also be assumed that Stern could not take the claimed painting to England. During the occupation, the current NK 2303 was housed at art dealerships Mensing or Dik in the Nazi-occupied Netherlands (cons. 5) and later showed up in the Kunsthalle in Hamburg. It is difficult to imagine why and how the painting should have ended up in Nazi territory from England.
12. The Committee is of the opinion that the facts and circumstances established under consideration 11 above lead to the conclusion that Stern lost possession of the painting involuntarily, even if this occurred between December 1937 and 1943/1944. As a result, only two possibilities need, in fairness, to be taken into consideration. The first is that the claimed painting was sold to help Stern's mother flee to England, as put forward by the applicant, and the second is that Stern lost possession of the claimed painting without his consent. The Committee will assess both possibilities below.
13. As the applicant has stated, Stern's mother, Mrs Selma Stern, who was also Jewish, was able to leave Germany on an exit visa in 1938 and joined her son and daughter in England. A '*Vermögensaufstellung*' [financial statement] drawn up and signed by Selma Stern on 30 June 1938, evidently with a view to her departure, indicates that she had RM 14,023 but was still short RM 25,000. With regard to this situation, she stated: '*Den Fehlbetrag an RM 25.000.--werde ik aus dem Verkauf von Bildern, Plastiken etc. beschaffen*' [I will secure the remaining amount of RM 25,000 from the sale of paintings, sculptures, etc.].
- Another key factor is a letter Stern sent to his former lawyer Dr. Liebermann on 19 June 1953, in which he wrote:
- 'You may recall that my Mother was left in Germany [...]²⁸. I urged in 1938, shortly before Munich, you to let her come to England. You may remember also that we asked Dr. Peters I think it was, in Cologne, to assist you as the Nazis at that time claimed my whole bank account as taxes. You may remember that Dr. Peters told them that it was more or less blackmail but they answered him: 'We know that but if you do not pay, Mrs. Stern will not get a passport Now.'*
- By order of 12 September 1938, Dr. Liebermann was granted permission to transfer RM 10,200 to Stern, which Stern was only able to access with the authorisation of the appropriate foreign exchange office. In the Committee's opinion, this shows that if the painting was sold to fund Selma Stern's flight to England, it was done so under duress.
14. The other possibility that remains is that Stern lost possession of the claimed painting without his consent during the period in which he resided in England or Canada. By definition, this means that the loss was involuntary.

²⁸ This is barely legible on the copy provided to the Committee. It probably says: 'in 1937'.

15. The Committee is, therefore, of the opinion that the loss of possession was involuntary as a result of circumstances directly related to the Nazi regime, and concludes that the application for restitution should be granted.
16. In addition, the Committee is also of the opinion that in the event of any sale, the probable sales proceeds must have been used to allow Stern and his family to flee abroad, or that costs must have been incurred in connection with this flight at the very least, due in part to the fact that Stern had to pay excessive taxes for his flight and that, after fleeing, his bank balances were frozen and/or confiscated. The Committee therefore deems it unlikely that (the art dealership of) Stern had free disposal of the sales proceeds, if in fact any sale occurred. The Committee will therefore recommend that the restitution of the current NK 2303 must not be subject to a payment obligation.

Conclusion

The Restitutions Committee advises the Minister for Education, Culture and Science to grant the application for the restitution of *Allegory of Earth and Water* by Jan Brueghel I (NK 2303) to the rightful heirs to the 'Estate of Dr. Max Stern'.

Adopted at the meeting of 3 May 2010 by W.J.M. Davids (chairman), J.Th.M. Bank, 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)



13. Ceremony marking the restitution of the painting *Allegory of Earth and Water* by Jan Brueghel I on 17 November 2010.

3. Recommendation regarding Zadick

(case number RC 1.100)

In a letter dated 17 October 2008, 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 an application from the Foundation L.d.H.D. (hereafter also referred to as: 'applicant I') and an application from the Foundation S.J.M.W. (hereafter also referred to as: 'applicant II') for the restitution of the painting *Ships off the coast* by G. van Emmerik. The claimed work of art is currently part of the National Art Collection under inventory number NK 3536 and on loan to the Dutch embassy in Prague.

The procedure

Both applications for restitution were submitted following contact with the Origins Unknown Agency (hereafter referred to as: 'BHG'). The BHG informed both applicants in mid-2007 that NK 3536 may have been the property of Hartog Zadick. Applicant I filed the application in a letter dated 6 September 2007 and applicant II in a letter dated 19 February 2008.

Following the Minister's request for a recommendation, the Committee instigated a fact-finding investigation, the results of which were included in a draft investigatory report dated 11 January 2010. Copies of this draft report were sent to the applicants for comment in letters dated 11 February 2010, to which applicant I responded in a letter dated 22 February 2010 and applicant II in a letter dated 9 March 2010. Both applicants agreed to the representation of the facts in the draft report. In addition, the Committee sent the draft investigatory report to the Minister with a request for additional factual information on 11 January 2010, to which the Minister responded on 24 February 2010 that he did not have any additional factual material. The investigatory report was subsequently adopted on 3 May 2010. For the facts of the case, the Committee refers to this report.

Considerations:

1. Applicants I and II (hereafter jointly referred to as: 'the applicants') request the restitution of the painting *Ships off the coast* by G. van Emmerik, which is thought to have belonged to Hartog Zadick and to have been confiscated by the occupying forces during the war. Both applicants claim to be co-heirs of Betje van Gelder and, hence, of Hartog Zadick. According to a certificate of inheritance issued on 30 April 1948 by J. van Hasselt, civil-law notary in Amsterdam at the time, Betje van Gelder was Hartog Zadick's wife and sole heir. With regard to the applicants' capacity as heirs of Betje van Gelder, the Committee has taken cognisance of a copy of Betje van Gelder's will, sent in by applicant I, executed on 4 September 1972 in the presence of P.C.J. Beynen, civil-law notary in Baarn at the time. The aforementioned legal inheritance documents have given the Committee no reason to question the applicants' status as heirs of Hartog Zadick.
2. Hartog Zadick (hereafter referred to as: 'Zadick') was born to Lion Zadick and Rebekka Cohen, both of Jewish extraction, in Arnhem on 26 August 1878. Zadick married Elise van Wien, which marriage was dissolved in 1936 on the latter's death. The spouses had a daughter, Rebecca, who died shortly after birth. In December 1940, Zadick married Betje Van Gelder (1900-1974) without community of property. The Zadicks lived on Richard Wagnerstraat 12 in Amsterdam. Zadick was a merchant trading in textiles. After the German invasion in May 1940, the Zadicks suffered from anti-Jewish measures taken by the occupying forces. For example, they were forced to surrender a few dozen paintings to the looting organisation Lippmann, Rosenthal & Co. (hereafter referred to as: 'Liro'), among which was Zadick's seascape by the painter Van Emmerik. The couple was also forced to move to a house on Afrikanerplein in Amsterdam, in a Nazi-designated 'Jewish district'. According to post-war statements by Betje van Gelder, the household effects at both addresses were seized, and the property that the couple had stored at a shipping agent was confiscated in mid-1942. The Zadicks were deported to the Bergen-Belsen concentration camp via Westerbork. Zadick died in Tröbitz (Germany) on 30 May 1945. Betje van Gelder survived the war and returned to the Netherlands after liberation. She died on 20 May 1974. As far as is known, neither Betje van Gelder nor any other relative of Zadick's ever reported the loss of any works of art during the war, so that there is no question of a case that has been settled in the past.



14. Sign bearing the text "Juden Viertel/Joodsche wijk" (Jewish Quarter) in Amsterdam, c. 1941-1945.

3. Based on the facts summarised under 2, the Committee assumes first of all that Zadick's loss of the paintings that were confiscated as described under 2 was involuntary and the result of circumstances directly related to the Nazi regime.
4. The question that the Committee has yet to answer is whether the currently claimed NK 3536 is the Van Emmerik painting that Zadick surrendered to Liro. Bearing this question in mind, the Committee conducted a detailed investigation, which produced, in summary, the following results.
5. The archive of the Netherlands Institute for Cultural Heritage (hereafter referred to as: 'ICN') was found to contain correspondence between the Stedelijk Museum in Amsterdam and the Dienst voor 's Rijks Verspreide Kunstvoorwerpen (hereafter referred to as: DRVK), the ICN's predecessor, which shows that the currently claimed painting, together with two other works of art, was handed to the museum by the



15. Stedelijk Museum in Amsterdam.

criminal investigation department shortly after the war. The museum informed the DRVK at the time that the provenance of these works was uncertain and no longer possible to ascertain, adding that they were probably Jewish property that had been in the enemy's possession. The museum believed that the administration of the works should be entrusted to the national government in both cases. On 13 March 1975, these three works were transferred to the DRVK and later registered as NK numbers; that is, as works of art with a war-related provenance placed in the custody of the national government. The museum stated later that if the legal owner of the works were to claim them, they would have to be returned to the owner. One of the three works thus handed in to the Stedelijk Museum in Amsterdam was an etching by J.M. Graadt van Roggen (NK 3537), which, on the recommendation of the Restitutions Committee (RC 1.25), has already been returned. With regard to this etching, the Committee deemed it likely that it was Jewish property that was confiscated by Liro and resold during the war to the German firm of Reinheldt, one of the principal buyers of Jewish-owned works of art surrendered to Liro.

6. The Committee's research of the property recovery authorities' archives in connection with the currently claimed work yielded information about three paintings by G. van Emmerik of which Dutch owners lost possession during the war. Of these, only Zadick's painting, which was surrendered to Liro and listed as missing by the post-war authorities on the basis of Liro's records, displayed similarities with the present NK 3536, whereas the other two paintings cannot be reconciled with NK 3536.
7. Research into the provenance of the NK work conducted by the BHG led to the conclusion that there was no known information from which the provenance of this painting could be inferred. However, from comments in the BHG file regarding NK 3536, it appears that the BHG did not rule out the possibility that it was the painting surrendered by Zadick and that, as such, it is on what is known as the Liro list, an inventory of property that Jews were ordered to surrender to the looting organisation Liro by the occupying forces. According to the list, the work of art referred to by the BHG had been handed in by: *'H. Zadick / Rich. Wagnerstr. 12 / Amsterdam / later verhuisd naar [later relocated to] / Afrikanerplein 40 / Amsterdam'* and is described as: *[Voorstelling] Zeegezicht m/schip / [Schilder] P. v. Emmerik (1850) / [Tax. Waarde:] 275.- / [Verkoopprijs:] 450.-- / [Verkocht aan:] Reinhe(l)dt / VB / 999 / 31.3.43 [(Depicted) Seascape w/ship (Painter) P.v. Emmerik (1850) / (Valued at:) NLG 275 / (Sold for: NLG 450 / (sold to:) Reinhe(l)dt / VB / 999 / 31.3.43].*
8. The Committee has ascertained the extent to which the information on the Liro list matches NK 3536. The painting is currently registered under the following description:
'Kunstenaar: Emmerik, G. van [...] / Signatuur: x / Titel: Schepen bij een kust [...] / Datering van: 1869 / Datering tot: 1869 / Datumtabel: gedateerd / Materiaal/techniek: olieverf op doek / Hoogte/length: 57.0 cm / Breedte: 74.0 cm' [Artist: Emmerik, G. van (...) / Signature: x / Title: Ships off the coast (...) / Dated from: 1869 / Dated until: 1869 / Date table: dated / Material/technique: oil on canvas / Height/length: 57.0 cm / Width: 74.0 cm].
9. The descriptions as referred to in considerations 7 and 8 of the painting on the Liro list and NK 3536, respectively, display both similarities and differences. Given that the Liro list is known to contain many inaccuracies and errors, the Committee subjected the differences in signature, description and date to closer scrutiny, which will be discussed below in considerations 10 to 12 inclusive.

10. The claimed work was made by nineteenth-century painter Govert van Emmerik (1808-1882), while the Liro list states that the work lost by Zadick was made by 'P. v. Emmerik'. Research conducted at the Netherlands Institute for Art History (hereafter referred to as: 'RKD') has revealed that there is no nineteenth-century (marine) painter known by the name of P. van Emmerik. The initial 'P' entry therefore seems to be a mistake, which, if the work on the Liro list and NK 3536 are the same work, could be explained by the poor legibility of the signature.
11. The ICN describes NK 3536 as: '*Schepen bij een kust*' [*Ships off the coast*], whereas the Liro list describes Zadick's painting as: '*Zeegezicht m/schip*' [*Seascape w/ship*]. The painting NK 3536 features more than one ship, as well as a coast.
12. On the Liro list, the painting surrendered by Zadick at the time is dated '1850', whereas the ICN has dated NK 3536 to '1869'. A question mark added to this latter date in the ICN's inventory book and inventory card indicates uncertainty about it. According to visual material requested by the Committee, NK 3536 features a signature below which is stated the year in which the work was produced. Both the signature and year are poorly legible, as a result of which the sources consulted by the Committee give different dates in relation to NK 3536. For example, in documentation from the Stedelijk Museum in Amsterdam the painting is dated 1849, while a label from the DRVK on the back of NK 3536 mentions the year 1879.
13. In addition, the Committee conducted further research into G. van Emmerik's oeuvre and found that Van Emmerik specialised in seascapes. Photographic documentation at the RKD was found to contain (approximately) 138 seascapes by G. van Emmerik, seven of which were 'definitely or possibly believed to date from 1850'. More detailed research into the auction details of works by G. van Emmerik revealed that approximately 100 of his seascapes were auctioned over the last 19 years, several of them featuring one ship.
14. According to current restitution policy, restitution is only possible if the title to art objects has been proved with a high degree of probability and there are no indications to the contrary. In other words, the Committee has to answer the question of whether it is highly likely that the currently claimed painting in the National Art Collection (NK 3536) is the Van Emmerik seascape that was stolen from Zadick.
15. The Committee deems this not be the case. The Committee concludes that a few indications that suggest otherwise are insufficient to support the conclusion that this is highly probable. The Committee bases its opinion on:
 - i) the differences between the scene of NK 3536 in which a number of ships are depicted and the description of Zadick's painting on the Liro list, which suggests that only one ship can be seen ('*Seascape w/ship*');
 - ii) the date of NK 3536 (1869), which, although uncertain, ends with the number '9' in all sources, whereas the date mentioned for Zadick's painting on the Liro list is 1850;
 - iii) the fact that G. van Emmerik's oeuvre comprises many works that fit the description of the work lost by Zadick, including a number with the correct date.



16. *Ships off the coast* by G. Van Emmerik (NK 3536).

Conclusion

The Restitutions Committee advises the State Secretary for Education, Culture and Science to reject the claim.

Adopted at the meeting of 3 May 2010 by W.J.M. Davids (chair), J.Th.M. Bank, 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 Rosenberg

(case number RC 1.105)

In a letter dated 29 October 2008, 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 submitted by J.L., of California, United States of America (hereafter referred to as: 'the applicant'), on 17 December 2007 for the restitution of a commode in regency style. The claimed piece of furniture was returned to the Netherlands after the Second World War and is currently part of the National Art Collection under inventory number NK 256. The commode is currently on loan to the Dutch embassy in Brussels.

The procedure

The reason for the application for restitution is a letter from the Origins Unknown Agency (hereafter referred to as: 'the BHG') to the applicant dated 11 May 2007, in which the BHG informed the applicant of the possibility that NK 256 had once belonged to the applicant's grandfather.

Following the Minister's request for a recommendation, the Committee instigated a fact-finding investigation, the results of which were included in a draft investigatory report dated 7 December 2009. The draft investigatory report was sent to the applicant for comment in a letter dated 18 December 2009 and to the Minister with a request for more factual information on 24 December 2009. After repeated deferral, the applicant provided no substantive comment on the draft investigatory report. The State Secretary for Education, Culture and Science (hereafter referred to as 'the State Secretary') informed the Committee on 15 March 2010 that she did not have any additional factual material that she would like to bring to the Committee's attention.²⁹ The investigatory report was subsequently adopted on 3 May 2010. For the facts of the case, the Committee refers to this report. The applicant was represented in this procedure by M. Stötzel, a lawyer in Marburg (Germany).

Considerations:

1. The applicant requests restitution of a commode in regency style (NK 256), which is believed to have belonged to the applicant's grandfather, Saemy Rosenberg, and to have been confiscated by the occupying forces during the war. The applicant has declared that he is the grandson and sole heir of Saemy Rosenberg. In this context, the Committee has taken cognisance of a number of legal inheritance documents sent by the applicant, which have given the Committee no reason to question the applicant's status.
2. Saemy Rosenberg (hereafter referred to as: 'Rosenberg') was born in Berlin on 27 July 1892. Together with his brothers Raphael and Siegfried Rosenberg and his cousins Eric and Hans Stiebel, he was employed by his uncle Isaak Rosenbaum in the latter's art dealership in Frankfurt am Main. With his brothers and cousins, Rosenberg would later continue this art dealership. Rosenberg moved to Amsterdam in April 1933, where he joined the board of management of '*N.V. Internationale Antiquiteitenhandel*'. From 1938, the company was wholly owned by the four cousins from the Rosenberg and Stiebel families, who renamed it '*I. Rosenbaum N.V.*' (hereafter referred to as: 'Kunsthandel Rosenbaum'). When the Second World War broke out in September 1939, Rosenberg was in England, where he would stay and not return to the Netherlands. This means that when the Germans invaded the Netherlands in May 1940, Rosenberg was abroad, as were many of his family members who had already fled before 1940. In November 1940, Saemy left England for the United States, travelling via Mexico and Cuba.
3. In its provenance investigation, the BHG concludes that the currently claimed commode (NK 256) '*tijdens de oorlog door Dienststelle Mühlmann in beslag is genomen*' [was confiscated by Dienststelle Mühlmann during the war], naming 'Rosenberg' as its possible owner. Rosenberg's alleged ownership of NK 256 becomes apparent after studying the sources informing this conclusion, based on a post-war statement by Mühlmann in relation to the commode's recuperation. After the war, the allied recuperation authorities transferred the commode from Austria to Munich, in relation to which Mühlmann stated at the time that the commode in question came from: 'Rosenberg', 'Holland'. In October 1948, the commode was returned to the Netherlands.
4. After the liberation, Rosenberg contacted the Netherlands Art Property Foundation (hereafter referred to as: 'the SNK') in an attempt to recover the items lost during the war, both from his private estate and from Kunsthandel Rosenbaum's trading stock. Rosenberg finally managed to secure the restitution of three commodes through the mediation of the SNK, two from his private estate and one that Mühlmann had

²⁹ On 24 February 2010, the State Secretary for OCW took over the restitution file from the Minister.

confiscated from Kunsthandel Rosenbaum in 1942. In correspondence with the SNK, the last-mentioned commode was described as: '*Louis XV-commode*'(..), for which the Dienststelle Mühlmann paid NLG 6,500. Rosenberg viewed this commode himself at the time and identified it as former property of Kunsthandel Rosenbaum.

5. With regard to the identification of the currently claimed commode (NK 256) as an item that had been the property of Rosenberg, the Committee finds that the post-war statement by Mühlmann referred to in consideration 3 is the only evidence suggesting that NK 256 was part of Rosenberg's possessions. The Committee's investigation did not reveal any other sources on the basis of which NK 256 could be identified as former property of Rosenberg.
6. The following is known with regard to Rosenberg's personal effects during the occupation. In 1949, Ms E.C.M. Peters, who was de facto director of Kunsthandel Rosenbaum during the war, wrote to the SNK that Rosenberg's entire estate, which was stored at the Firma de Gruyter firm, had to be handed over to the German looting organisation *Sammelverwaltung feindlicher Hausgeräte* in early 1941. On the instructions of this *Sammelverwaltung*, Rosenberg's estate was then auctioned at the Marle & Bignell auction house in The Hague on 18 June 1941 and the following days. At this auction, Kunsthandel Rosenbaum, under the direction of Peters, bought a number of items from Rosenberg's private estate in an attempt to secure them. With regard to the commode confiscated from Kunsthandel Rosenbaum, referred to in consideration 4, it is known that in the course of 1941, the Dienststelle Mühlmann conducted an investigation into the property of this art dealership, after which, in March 1942, the Dienststelle confiscated a number of items, including, as evidenced by the investigation, a commode described as '*Kommode van Cressent, Hfl. 6.500,-*' [commode by Cressent, NLG 6,500]. The Committee's investigation produced no evidence that the Dienststelle Mühlmann had any commodes from either Rosenberg or Rosenbaum in its possession other than the '*Louis XV-commode*' referred to in consideration 4 above.
7. From the above factual account, the Committee concludes that during the war, Mühlmann had only one Rosenbaum commode in its possession and that Rosenberg, identifying this commode as former property of Kunsthandel Rosenbaum, bought it back after the war. The Committee looked more closely into the question of how Mühlmann's statement regarding NK 256 tallies with the above and found that the commode repurchased by Rosenberg at the time, a photo of which from the Bundesarchiv Koblenz is in the Committee's investigation file, bears a great resemblance to NK 256 in terms of style. The investigation also revealed that the commode repurchased by Rosenberg was damaged and that the marble plate was missing, which, remarkably, was also the case with NK 256 (at the time of its recuperation). In archival research into the commode repurchased by Rosenberg, the Committee found the entry '*Fischhorn*', which suggests that, like NK 256, this piece of furniture ended up at the Austrian castle *Schloss Fischhorn* after it had been confiscated by the Dienststelle Mühlmann.
8. According to the Ekkart Committee's eighth recommendation of April 2001 concerning private art property, the title to art objects has to be proved with a high degree of probability, and there can be no indications to the contrary in order for a claim to be awarded.
It appears from the above that the sole indication that NK 256 had been Rosenberg's property was found in Mühlmann's post-war statement as referred to in consideration 3 that the currently claimed commode was part of the '*Rosenberg*' estate. As no first name or initials were mentioned, it is unclear exactly which Rosenberg is meant. It appears from a source in the archive of the Council for the Restoration of Rights that there were at least 29 different Rosenbergs registered as '*gedeposseerde*' [dispossessed]. At the same time, it was established that the Dienststelle confiscated a commode from Kunsthandel Rosenbaum in 1942 that bears a resemblance to NK 256. With regard to this commode, however, it has been established that Rosenberg viewed it after the war and identified it as former property of Kunsthandel Rosenbaum, and was subsequently able to regain possession of it through the mediation of SNK. Based on this information, the Committee deems it likely that the commode repurchased by Rosenberg and the currently claimed commode (NK 256) were so similar that the two commodes were mistaken for one another during the recuperation from *Schloss Fischhorn* and that Mühlmann's statement related to the commode repurchased by Rosenberg instead of NK 256. Accordingly, the Committee finds that there is insufficient proof that the commode (NK 256) was the property of Rosenberg, either privately or in his capacity as art dealer.

Conclusion

The Restitutions Committee advises the State Secretary for Education, Culture and Science to reject the application for the restitution of the commode in regency style (NK 256).

Adopted at the meeting of 3 May 2010 by W.J.M. Davids (chair), J.Th.M. Bank, P.J.N. van Os, D.H.M. Peeperkorn, 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)

5. Binding advice concerning the dispute over the painting *Road to Calvary*

Case number: RC 3.95

Date of binding advice: 3 May 2010

BINDING ADVICE

in the dispute between:

**The heirs of Oppenheimer and the company
Van Diemen & Co. in the process of being wound up**

represented by

Ms E. Sterzing, *Avocat à la cour*

in Paris

hereafter referred to as: 'the Oppenheimer family',

and:

Ms J.F.K.

represented by Mr J.W.A. Vesterink

in Amsterdam

hereafter referred to as: 'Ms K.',

given by the Advisory Committee on the Assessment of Restitution Applications for Items of Cultural Value and the Second World War in The Hague (the Restitutions Committee), hereafter referred to as 'the Committee', with the application of Article 2, paragraph 2 of the Decree Establishing the Restitutions Committee.

1. Introduction

The reason for the dispute is a possible division of the proceedings from the sale of the painting *Road to Calvary*, *Brunswijker Monogrammist*, also known as the *Bearing the Cross*, *Hans van Wechelen*, hereafter referred to as: (the painting) *Road to Calvary* or the work of art. During the Nazi regime in Germany, the Oppenheimer family lost possession of this painting as a result of an order by Nazi authorities to have their art property auctioned. The painting is currently owned by Ms K., who would like to sell it. The parties are divided on how the proceeds from the sale of the painting should be shared between Ms K. and the Oppenheimer family.

2. Procedure

2.1 The parties have submitted a joint request to the Minister for Education, Culture and Science (hereafter referred to as: 'the Minister') to have the dispute settled by the Committee. The Minister submitted a written request to the Committee on 2 October 2008, asking the Committee to advise the parties on the dispute in accordance with the procedure laid down in Article 2, paragraphs 2 and 3 of the Decree Establishing the Restitutions Committee of 16 November 2001 (hereafter referred to as: 'the Decree'). In accordance with Article 2, paragraph 5 of the Decree, the Committee issued advice in this procedure according to the standards of reasonableness and fairness.

2.2 In letters dated 8 March 2009 and 13 March 2009 respectively, Ms K. and the Oppenheimer family declared that they deferred to the regulations established by the Committee concerning the binding advice procedure and that they would consider the Committee's recommendation to be binding. The Committee has verified the identities of the parties and has received powers of attorney from the representatives which attest to their authority to act on behalf of the parties in this procedure.

2.3 The representative of the Oppenheimer family, Ms Sterzing, is not only acting as the lawyer for the Oppenheimer heirs, but also as the liquidator of the company Van Diemen & Co., charged with winding up the art dealership. The Committee has also received documentation which shows that a German court has appointed Ms Sterzing as *Nachtragsliquidatorin*. On 19 April 2010, Ms Sterzing explained to the Committee in person that her role of *Nachtragsliquidatorin* of Van Diemen & Co is 'only for the purpose of claiming works of art that were the property of the company [art dealership Van Diemen & Co., addition by Committee]' and that in the event of successful claims, it would be her 'obligation to distribute money among the heirs'.

2.4 The Committee informed the parties about the procedure in a letter dated 2 February 2009. After being invited to do so, both parties explained their positions in two written rounds, by providing documentation and by responding to one another: the Oppenheimer family doing so in letters dated 18 May and 12 October 2009 and Ms K. in letters dated 5 July and 5 December 2009. On 28 January 2010, the Committee wrote a letter to Ms K. requesting information concerning the value of the painting. Ms K. responded in writing on 15 and 27 February 2010. The enclosed valuation report, drawn up by Mr Broekhof of Amsterdam Auctioneers Glerum on 25 February 2010, valued the painting at €80,000. The dispute was heard at the hearing in The Hague on 19 April 2010 in the presence of both parties.

2.5 During the hearing, the Committee ascertained that the parties still disagreed on the desired resolution of the dispute. For this reason, the Committee concluded the hearing with the announcement that it would formulate a solution to end the dispute. After the hearing, a document discussed at the hearing was exchanged in letters dated 20 April 2010, after which the Committee informed the parties in writing on 22 April 2010 that the procedure is closed and confirmed that it would now proceed to issue a binding recommendation.

3. Basic principle of the binding advice

On the basis of the letters sent by the parties to the Minister, enclosed with the request for advice to the Committee dated 2 October 2008, the letters from the parties to the Committee during the procedure and the discussion of the dispute during the hearing with the parties, the Committee assumes the following facts with regard to this case:

- i) During the Nazi regime, the grandparents of the Oppenheimer heirs, Rosa and Jakob Oppenheimer, involuntarily lost possession of the painting *Road to Calvary* as a result of what was known as a 'Judenauktion' [Jewish auction] that took place at Paul Graupe auction house in Berlin on 25/26 January 1935.
- ii) Rosa and Jakob Oppenheimer were the owners of the Berlin-based Margraf group, which included the art dealership Van Diemen & Co., also known as Galerie Van Diemen & Co. At the time of the auction mentioned under (i), *Road to Calvary* belonged to the trading stock of this art dealership. The current applicants on the side of the Oppenheimer family are all grandchildren of Jakob and Rosa Oppenheimer.
- iii) After the proclamation of what are known as the *Washington Principles* in 1998, the Oppenheimer family registered the painting *Road to Calvary* in the late 1990s in the public registers of looted art, the *Art Loss Register* and *Lost Art Register*.
- iv) The Oppenheimer family discovered the location of the painting in 2006 after a report by Sotheby's auction house in Amsterdam (hereafter referred to as: 'the auction house'), where *Road to Calvary* had been taken by Ms K. to be valued.
- v) Ms K. is the current owner of the painting *Road to Calvary*. She took possession of the painting under universal title (as a result of inheritance) from her father, who died in 1999. Ms K.'s father had acquired the painting under singular title (sale), probably at a jumble sale or fair in the province of Noord-Holland in the period between 1985 and 1995, for the approximate sum of one hundred guilders (approx. €45). He also acquired a painting by Paulus Bril there during this period, which Ms K. also inherited.
- vi) During the 2006 valuation mentioned under item (iv), it came to light that the two paintings mentioned under item (v) were stolen from their former owner, the Stichting P. & N. de Boer in Amsterdam (hereafter referred to as: 'the foundation') in or around 1984. The foundation was informed of this and had the paintings seized in 2006. Later that same year, the foundation had the seizure reversed and has since made no claim to either *Road to Calvary* or the other painting. The police also had the paintings seized during an investigation into Ms K.'s ownership. The case was dismissed, however, and the seizure reversed. *Road to Calvary* is currently housed in Ms K.'s residence.
- vii) The foundation acquired the painting *Road to Calvary* in the Netherlands in 1964. The identity of the painting's owner(s) prior to this, going as far back as the auction in 1935, is unknown. After her father, Ms K. is (at least) the fourth owner of the painting *Road to Calvary* since the auction in 1935.
- viii) The conclusions from the recommendations of the Committee of 4 February 2008 (NK 1771 and NK 2244, RC 1.67 *Oppenheimer*), in particular with regard to the suffering of the Oppenheimer family as a result of Nazi rule and the involuntary loss of their art collection in connection with the above-mentioned auction, have not been called into question by either party, nor has the subsequent decision to grant restitution.
- ix) The Committee has also ascertained under item (viii) of the advice that research failed to uncover any evidence that the Oppenheimers received any of the proceeds from the *Judenauktion* held in 1935. The Committee adds that given the nature and aim of the auction as well as all the other circumstances, it is highly unlikely that the Oppenheimers, having fled the country, ever received any of the proceeds.

4. The essence of the dispute and a brief account of the different standpoints

- 4.1. Ms K. would like to sell the painting *Road to Calvary* and the parties are disputing about the proportion of the proceedings that Ms K. should give to the Oppenheimer family. The parties would like the Committee to issue a binding recommendation with regard to this. In a letter dated 8 January 2007, the Oppenheimer family sought 'eine faire und gerechte Lösung und (...) eine Teilung des Kaufpreises (...) [a fair and just resolution and (...) a share of the purchase price (...)]. In a letter dated 6 March 2008, Ms K. expressed the wish 'to allow [the Restitutions Committee] to determine a possible distribution of the sales proceeds between the owner and the Oppenheimer heirs'.
- 4.2. Referring to the *Washington Principles*, the Oppenheimer family have based their claim to the painting *Road to Calvary* primarily on the involuntary loss of possession in connection with the *Judenauktion* held in Germany in 1935 mentioned under 3 above. The Oppenheimer family therefore believe they still have a right to claim (ownership of) the painting. The Oppenheimer family derive an additional argument from the uncertainties that surround the purchase of the painting at a jumble sale or fair by Ms K.'s father, in connection with the unsolved theft of the painting from its former owner (not the Oppenheimer family) in 1984. According to the Oppenheimer family, Ms K.'s father and Ms K. herself cannot be considered to be in good faith. The claim by the Oppenheimer family is specifically aimed at receiving a proportion of the proceeds from the sale of the painting by Ms K.. The family is not interested in acquiring or purchasing the painting. The Oppenheimer family lastly stated during the hearing that they would be satisfied with 40% of the proceeds.

- 4.3 Ms K. has stated that her father was unaware of the title, the painter, the value and the provenance of the painting *Road to Calvary*, and that she was not aware of this herself until the work was valued in 2006 (item 3 above). Ms K. also stated that there is no question about her father acting in good faith when he purchased the painting. Furthermore, she has acknowledged the severity of the circumstances in which the Oppenheimer family lost possession of the painting in 1935. Ms K. has also added that the relationship with the events of 1935 has since become diluted and that the previous history of the painting cannot be attributed to her given the period of time that has elapsed. During the hearing, however, Ms K. declared that she was willing to give the Oppenheimer family 20% of the proceeds from the sale, the reason for this being her compassion for what the Oppenheimers suffered during the Nazi regime.

5. Considerations of the Committee

- 5.1 In accordance with the regulations mentioned under 2.2 above, the Committee may, in any event, take the following into consideration:
- a. 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 when acquiring it;
 - 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.
- The Committee hereby states that the line of policy mentioned under a is based on the *Washington Principles*.
- 5.2 The dispute between the parties focuses on the extent to which Ms K. should share the proceeds from the sale of the painting *Road to Calvary* – currently owned by Ms K. but deemed to be looted art due to the *Judenauktion* mentioned under 3 above – with the Oppenheimer family.
- 5.3 Given that Ms K., through her representative at the hearing, agreed to acknowledge the Oppenheimer family's entitlement to the painting, the Committee sees it as its limited task to determine the measure of this entitlement. The Committee hereby takes into account that Article 2, paragraph 1 of the regulations mentioned under 2.2 above do speak of 'disputes concerning the restitution of items of cultural value', but that an agreement concerning the division of the sales proceeds could constitute a logical alternative in a situation such as this one, in which the heirs of the former owner have no interest in acquiring possession of the work and the current owner is planning to sell it. The Committee will now outline the steps that led to its binding recommendation.
- 5.4 Ms K. inherited the painting from her father, who probably bought it at a jumble sale or fair in the province of Noord-Holland sometime between 1985-1995. Further details concerning the time and place are unknown. The Committee sees no reason to doubt the good faith of either Ms K. or her father. With regard to the ownership of the painting *Road to Calvary*, Dutch civil law stipulates that Ms K.'s right of ownership is inviolable.
- 5.5 According to Ms K., her father probably paid around 100 guilders (approx. €45) for the painting. She bases this on conversations she had with her father, in which he stated that he normally did not want to spend more than 100 guilders on purchases at jumble sales and fairs. Ms K. thinks it unlikely that her father would have paid more for *Road to Calvary* given her father's limited, if not lack of, capital. The Committee assumes that an amount to the tune of €45 was paid.
- 5.6 Given this low purchase price, the Committee is of the opinion that (with hindsight) the purchase price by no means reflects the true value of the painting, which is currently assessed at many times the purchase price. It is noted here that Ms K. stated that her father was unaware of what he had purchased and had no special knowledge of the art of painting. Given the low purchase price combined with the place of purchase (a jumble sale) and the fact that to a layman the painting lacks any striking characteristics, the Committee is of the opinion that it could not be reasonably expected or demanded of Ms K.'s father, or later of Ms K. herself, to have instigated research into the provenance of the painting.
- 5.7 The Committee deems it inexpedient in this dispute to assess the entitlement of the Oppenheimer family at a particular sum of money based on the valuation of the painting at a certain moment. It deems it more appropriate to express that entitlement in a proportion or percentage of the future sale proceeds, linking the entitlement to the actual proceeds from the sale of the painting. In this way, the Oppenheimer family will acquire an economic interest in the painting, which will remain the legal property of Ms K. until it is sold to a third party.
- 5.8 In establishing the percentage of the proceeds that Ms K. will have to give to the Oppenheimer family, the Committee takes into consideration that as a Jewish family, the Oppenheimer family must have had to endure considerable personal and professional suffering as a result of the Nazi regime. At a professional level, this led to the liquidation of Jakob and Rosa Oppenheimer's companies, including the renowned art dealership Van Diemen & Co. The couple involuntarily lost possession of property that

belonged to these companies, including the painting *Road to Calvary* at a *Judenauktion* held in Germany in 1935. The proceeds from this auction did not accrue to the Oppenheims. The Oppenheimer family members represented in this procedure, who are direct, second generation descendants of Jakob and Rosa Oppenheimer, are not especially attached to the painting. The Oppenheimer family do not wish to acquire possession of the painting, but rather to receive a proportion of the sale proceeds as recognition of the original rights of Jakob and Rosa Oppenheimer.

- 5.9 That said, the Committee also takes into consideration that Ms K.'s father bought the painting in good faith many years ago, namely in the period between 1985 and 1995. He was unaware of the nature or value of the painting when he bought it at a jumble sale or fair for an amount that was far too low to reflect the value the painting appeared to have some 10 years after his death. As stated in section 5.6, it cannot be reasonably expected or demanded of either Ms K.'s father or Ms K. herself to have instigated research into the provenance of the painting. Furthermore, the Committee concludes that Ms K. is also not especially attached to the painting and wishes to sell it. She is willing to give a proportion of the proceeds to the Oppenheimer family, the motive for which is based on a sense of moral obligation.
- 5.10 In weighing up the positions of each party in considerations 5.8 and 5.9, the Committee has come to the conclusion that according to the standards of reasonableness and fairness, Ms K.'s share should be twice that of the Oppenheimer family, meaning that in the event of a sale, Ms K. must relinquish a one-third share of the net proceeds to the Oppenheimer family. This conclusion reflects that Ms K.'s right of ownership is beyond all doubt and, all in all, carries the most weight for the Committee, but that the ownership of *Road to Calvary* as a looted work of art has brought forth a moral obligation towards the Oppenheimer family, which will now be met in the above-mentioned manner, thanks to the cooperation of Ms K. in working towards a solution.

6. BINDING ADVICE

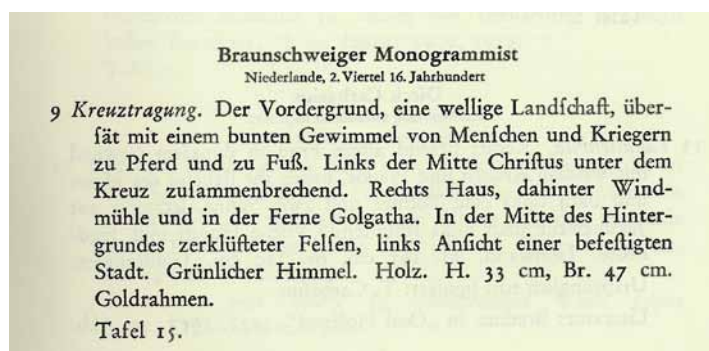
The Committee issues the following binding advice:

- a. In the event that the painting *Road to Calvary*, *Brunswijker Monogrammist* (also known as the *Bearing the Cross*, *Hans van Wechelen*) is sold, Ms K. will, upon submission of verifiatory documents, relinquish a one-third share of the net proceeds to Ms Sterzing in her capacity as *Nachtragsliquidatorin* for Van Diemen & Co, or her legal successor in this position;
- b. the Oppenheimer family will do all they can to effect the sale of the painting in question by Ms K., including deletion of the entry from the *Lost Art Register*, *Art Loss Register* or any other such register.

This binding advice was given on 3 May 2010 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)



17. The painting *Road to Calvary* by the Brunswick Monogrammist, also known as the *Bearing the Cross*, was sold at a so-called 'Judenauktion' (Jewish Auction) at the Paul Graupe auction house in Berlin on 25-26 January 1935.

6. Recommendation regarding Stodel

(case number RC 1.109)

In a letter dated 16 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 of 9 January 2009 by M.W.-M., also on behalf of H.B.M. en L.M. (hereafter referred to as: 'the applicants'), for the restitution of the painting *View in a Dutch Town* by A. Eversen. The claimed painting was returned to the Netherlands after the Second World War and is now part of the Netherlands Art Property Collection (NK collection) under inventory number NK 1762. The claimed work is currently housed in the depot of the Netherlands Institute for Cultural Heritage.

The procedure

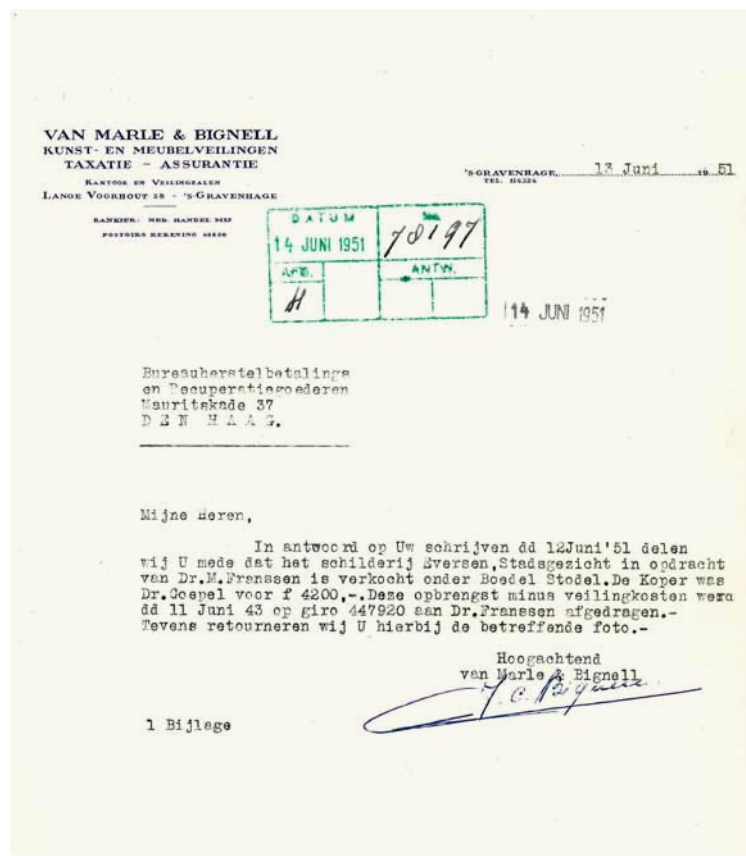
Following the request for advice by the Minister, the Committee conducted a fact-finding investigation, the results of which were recorded in a draft investigatory report of 3 May 2010. On 4 May 2010, the draft investigatory report was sent to the applicants for comment. On the same day, it was also sent to the State Secretary for Education, Culture and Science (hereafter referred to as: 'the State Secretary') with a request for more factual information.³⁰ The applicants responded to the draft report in a letter dated 14 May 2010. The State Secretary informed the Committee on 28 May 2010 that she had no additional information to provide. The investigatory report was adopted with a number of amendments on 7 June 2010. For the facts of the case, the Committee refers to this report. The applicants were represented in the procedure in question by E.v.T.

Considerations:

1. The applicants have requested restitution of the painting *View in a Dutch Town* by A. Eversen (NK 1762), which was said to have been the property of Joseph Stodel (hereafter referred to as: 'Stodel'). The applicants stated that M.W.-M. is Stodel's granddaughter and that H.B.M. and L.M. are his grandson and daughter-in-law, respectively. The applicants submitted a certificate of inheritance issued on 7 December 1948 by G.T. Reeser Cuperus, at the time a public notary based in Amsterdam, which concerns both Stodel's estate and that of his wife Mietje Stodel-Krijn, and from which it can be concluded that the testator's since deceased daughter, M.M.-S., was the rightful claimant to both estates. M.M.-S. was the mother of M.W.-M. and L.M.M. Deceased in 2008, the latter was M.W.-M's brother, H.B.M.'s father and L.M.'s husband. This information gives the Committee no reason to doubt the status of the applicants as Stodel's rightful heirs.
2. Stodel was born in Dordrecht, the Netherlands, on 25 June 1875, the son of Benedictus Stodel and Marianne Slap, who were both Jewish. On 4 April 1901, Stodel married Mietje Krijn, who gave birth to a daughter, Marianne Stodel, on 19 October that same year. On 1 July 1930, Stodel established a one-man business, J. Stodel, at Weesperplein in Amsterdam, cutting and dealing in diamonds. The Stodel-Krijns lived at Sarphatistraat 119 in Amsterdam.
3. Stodel died on 28 September 1941 in Amsterdam. The occupying authorities ordered that the goods belonging to his estate be placed under the stewardship of 'Verwalter' M.H.H. Franssen, a Dutch lawyer who, on 13 October 1941, was appointed by Seyss-Inquart to administer the estates that fell under the provisions of Regulation 26/1940 (Enemy Property, also non-Jewish). Franssen was probably involved in the liquidation of Stodel's estate because one of Stodel's heirs, his daughter Marianne, lived in the United States during the occupation. Stodel's wife was arrested at the behest of the occupying authorities in 1942 and transferred to Westerbork. She was then deported to Auschwitz where she died on or around 14 January 1943.
4. Documents found in the archive of Van Marle & Bignell auction house in The Hague, in the Netherlands Institute for Art History, refer to Stodel's estate. During the occupation, this auction house valued and sold (Jewish-owned) works of art confiscated by the occupying forces. The archive includes a valuation list from 7 September 1942 of Stodel's household effects, which mentions a work of art described as: '*1 [antiek schilderij] A. Eversen / 500.-*' [1 (antique painting) A. Eversen / 500]. In addition, the archive of the Netherlands Art Property Foundation (hereafter referred to as: 'the SNK') contains a declaration form from Van Marle & Bignell concerning the currently claimed painting on which the auction house noted that the work was '*oorspronkelijk in bezit*' [originally in possession of] by '*Stodel Amsterdam*' and that it related to a '*gedwongen verkoop*' [forced sale].
5. Documentation from the Netherlands Property Administration Institute shows that, in the period between March and July 1943, 'Verwalter' Franssen had Van Marle & Bignell auction off objects from Stodel's estate totalling NLG 97,779.46. The currently claimed painting is listed in the auction catalogue of May 1943 under number 56 and illustrated on plate XII. In a letter to the bureau for restoration payments and the

³⁰ On 24 February 2010, the State Secretary for OCW took over the restitution file from the Minister.

restoration of property (hereafter referred to as: 'Bureau Hergo'), the successor of the SNK, dated 13 June 1951, the auction house declares that the auctioned painting '[in opdracht van] Dr. M. Franssen is verkocht onder Boedel Stodel' [was sold on the instructions of Dr M. Franssen as part of the Stodel estate]. This letter also mentions that the work was bought at auction by Erhard Göpel, who was one of Hitler's art buyers. According to the letter, Göpel paid NLG 4,200 for the painting, which amount was transferred to Franssen's bank account (minus auction costs) on 11 June 1943.



18. Letter from auction house Van Marle & Bignell to Bureau Hergo concerning the painting *View in a Dutch Town* by A. Eversen (NK 1762), NA inv. no. SNK 170.

6. After the war, Stodel's daughter, M.M.-S., registered the losses incurred by the sale of her father's estate with the *Schade-Enquête-Commissie* [Damage Inquest Committee]. As a result, the Central Property Investigation Department of the Ministry of Finance (hereafter referred to as: 'the CVO') instigated an investigation. However, no further details were found in the documents consulted about how this CVO investigation developed. During its investigation, the Committee found nothing to indicate that the Stodel family received compensation for the loss of the work in question.
7. The Committee has investigated whether this case was settled in the past. As far as could be ascertained, the surviving relatives of the Stodel-Krijns did not submit a declaration to the SNK after the war concerning the loss of the Eversen painting, nor has any evidence been found to suggest that the painting was ever the subject of post-war negotiations or a court ruling concerning restitution. The applicants' request for restitution is, therefore, admissible.
8. On the basis of current restitution policy, the conditions for restitution have been met if the original owner involuntarily lost possession of the claimed object due to circumstances directly related to the Nazi regime. In accordance with the Ekkart Committee's eighth recommendation from 2001, the title to art objects has to be proved with a high degree of probability. For individuals who belong to a persecuted group, the sale of an object in the Netherlands between 10 May 1940 and 5 May 1945 is also considered to be involuntary unless expressly proven otherwise.

9. The Committee has considered the following with regard to the identification of the currently claimed work NK 1762 as the former property of Stodel. Although it is unknown when and how Stodel acquired this painting, it has been shown that he owned this painting at the outset of the war. The Committee refers in this regard to the valuation list in consideration 4 concerning Stodel's household effects on which the painting is listed, and to the declaration form from Van Marle & Bignell also mentioned in consideration 4. In addition, the Committee refers to the letter from Van Marle & Bignell dated 13 June 1951, as referred to in consideration 5, in which the auction house informs Bureau Hergo that the auctioned work of art '[in opdracht van Dr. M. Franssen is verkocht onder Boedel Stodel]' [was sold on the instructions of Dr Franssen as part of the Stodel estate].
10. With regard to the nature of the loss of possession, the Committee has considered the following. As described in considerations 3, 4 and 5, during the war, the painting in question was sold at the behest of the occupying authorities by an appointed *Verwalter* and contrary to the wishes of the owner. The Committee deems such loss of possession involuntary due to circumstances directly related to the Nazi regime.
11. The Committee has concluded that the conditions for restitution have been met. It does not, therefore, see any reason to advise that the sum transferred into Franssen's bank account at the time be repaid. In accordance with the Ekkart Committee's fourth recommendation of 26 April 2001, repayment of the purchase price can only be considered if the seller obtained free disposal of the proceeds, while in accordance with the fifth recommendation, the rightful claimants must be afforded the benefit of the doubt if there is any uncertainty on this issue. The Committee considers that the purchase price was transferred into the bank account of the Nazi-appointed *Verwalter* and was not, therefore, made freely available to Stodel's heirs.

Conclusion

The Restitutions Committee advises the State Secretary for Education, Culture and Science to return the painting *View in a Dutch Town* by A. Eversen (NK 1762) to Joseph Stodel's heirs.

Adopted at the meeting of 7 June 2010 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)



19. *View in a Dutch Town* by A. Eversen (NK 1762).

7. Recommendation regarding Gutmann

(case number RC 1.113)

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 for the restitution of ten works of art from the Netherlands Art Property Collection in the custody of the Dutch government (hereafter referred to as: 'the NK collection'). The application concerns objects that are said to have been the property of Fritz Gutmann (1886-1944) and that were returned to the Netherlands from Germany after the Second World War. This recommendation is limited to six of the ten objects, namely:

- NK 605: Unknown, *Italian maiolica Albarello with polychromed decor of four figures and a dragon and inscription: 'Sy - De - Bisancu - A -'*
- NK 1960: J. de Wit, *Venus, Bacchus and Ceres with Sleeping Amor;*
- NK 3147 a-b: Königliche Sächsische Porzellan-Manufaktur, *Meissen plate with wavy-edged rim and a shell-shaped dish, with polychromed decor of flowers;*
- NK 3214: Unknown, *Woollen Ghiordes rug with Mihrab motif;*
- NK 3216: Unknown, *Prayer mat with Mihrab motif;*
- NK 3217: Unknown, *Rug with black velvet fond and stylised flowers and birds in white cotton and silver thread.*

These works are currently housed in the depot of the Netherlands Institute for Cultural Heritage or on loan to a museum in the Netherlands.

The procedure

On 28 February 2007, L.V.C.-G., S.G. and N.G. (hereafter referred to as: 'the applicants') sent the Minister an application for the restitution of ten works of art that were said to belong to the collection of Fritz Gutmann, their father and grandfather, respectively. This recommendation concerns six of the objects mentioned above. Of the remaining works (NK 596, NK 688, NK 3215 and NK 3223 a-e), two are no longer part of the request for advice. These are NK 596, the claim for which was withdrawn by the applicants in their letter of 27 November 2009, and NK 3215, for which the Minister withdrew his request for advice in a letter dated 25 January 2010, given that the object is a 'total loss' and thus no longer eligible for restitution. With regard to the two remaining objects (NK 688 and NK 3223 a-e), the recommendation will be issued at a later date given that these works are also part of a conflicting application for restitution by the heirs of Herbert Gutmann, which was also submitted to the Committee for a recommendation. The applications regarding NK 688 and NK 3223 a-e have been incorporated into file number RC 1.114 and will be part of a future recommendation.

Following the request for advice, the Committee drew up a draft investigatory report on 14 September 2009, which was sent by letter to the applicants on 22 October 2009 for their response, and by letter to the Minister on the same date with a request for additional information. The applicants responded in writing on 27 November 2009, 23 February 2010 and 7 April 2010, as a result of which the draft report was amended. The Minister responded to the draft investigatory report in writing on 25 January 2010 stating that he was withdrawing his request for advice concerning NK 3215 (see above), and this recommendation, therefore, has no bearing on NK 3215. The investigatory report was adopted on 7 June 2010. For the facts of the case, the Committee refers to this report.

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. According to the applicants, Fritz Gutmann sold the objects in question involuntarily during the occupation as a result of circumstances directly related to the Nazi regime.
2. The facts of the case are summarised as follows. Fritz Gutmann was born in Berlin on 15 November 1886, the son of banker Eugen Gutmann and his wife Sophie Mangus, both of Jewish descent. Fritz Gutmann had six siblings: Walter, Lili, Toïnon, Herbert, Kurt and Max. The Trust & Administratie Maatschappij (hereafter referred to as: 'Trustenad') was established in Amsterdam in 1921 to look after the financial interests of the Gutmanns' children. He had two children with his second wife, Baroness Louise von Landau, namely B.G. (1914-1994) and applicant L.G. (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. Even before the outbreak of war, the Gutmann-Von Landaus had endeavoured to safeguard works of art abroad (Paris) due to the increasingly ominous international situation. After the occupation of the Netherlands in 1940, the couple made plans to flee the country, as a result of which they attempted to sell as many of their remaining works of art as possible. Thus, Fritz Gutmann sold a large number of works in

various transactions to the German art dealers Böhler and Haberstock. In one of these transactions, on 11 February 1942, Fritz Gutmann sold 200 works to Böhler and Haberstock for NLG 150,000, including, in all likelihood, five of the currently claimed works (NK 605, NK 3147 a-b, NK 3214, NK 3216 and NK 3217). The Committee has a copy of the relevant sales agreement, which shows that the purchase price was paid to Trustenad in connection with a debt that Fritz Gutmann owed it. The applicants have claimed that this construction was used to prevent the purchase price being confiscated by the looting bodies of the occupying forces.

4. 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 died in 1944. His wife, Louise von Landau, was killed in Auschwitz.
5. B.G. and L.G., the couple's two adult children (hereafter also referred to as: 'the heirs'), survived the war abroad, and spent years thereafter trying to recover the family possessions that were lost. Various works of art, which were known to have been confiscated by the Nazis in France and which had never been sold, were returned to the heirs by the Netherlands Art Property Foundation (hereafter also referred to as: 'the SNK') in the years immediately after liberation.
6. The restitution of the works that had been sold to Böhler and Haberstock, found after the war and returned to the Netherlands was more problematic. The SNK decided that these objects had been sold voluntarily and did not grant the application for restitution submitted by the heirs. Rather than accepting this judgement, the heirs submitted an application for the restoration of rights to the Jurisdiction Department of the Council for the Restoration of Rights (hereafter referred to as: 'the Council'). The Council dismissed the SNK's argument and ruled in its judgment of 1 July 1952 that the sales transactions with Böhler and Haberstock qualified for the restoration for rights on the grounds of the restoration of rights regulation laid down in Royal Decree E 100. The Council decided that the sales were influenced by unique war-related circumstances, given the fact that, at that moment, the Gutmann family was already under threat. In its judgement, the Council determined that the sale was null and void and that the heirs of Fritz Gutmann should be considered the owners of the works of art that had been sold:

De Raad voor het Rechtsherstel, Afdeling Rechtspraak,

(...)

Doet ten behoeve van verzoekers sub 1 en 2 [de erven F.B.E. Gutmann, RC] herleven de rechtsbetrekking van eigendom van wijlen F.B.E. Gutmann tot de bij bovengenoemde drie overeenkomsten verkochte goederen, voor zover zich bevindende in het bezit van gerequesteerde [de SNK, RC];

Verklaart in zoverre die overeenkomsten en alle met deze herleving strijdige rechtsbetrekkingen nietig;

[The Council for the Restoration of Rights, Jurisdiction Department,

(...)

Revives the legal relationship of ownership of the late F.B.E. Gutmann to goods sold under the three aforementioned agreements in favour of the applicants sub 1 and 2 [the heirs of F.B.E. Gutmann, RC], in so far as these goods are in the possession of the respondent [the SNK, RC];

Declares all agreements and legal relationships invalid in so far as they are contrary to this revival;]

The Council also determined that, upon delivery of the objects, the heirs should pay the restoration of rights authorities the proceeds from the sale of the objects. Arguing that the selling price paid to Trustenad had disappeared during the war, as a result of which it had never accrued to them, the heirs attempted, without success, to contest this ruling.

7. During the post-war years, the heirs actually bought back a number of recovered works of art from the SNK. The remainder of works from Fritz Gutmann's collection that were returned to the Netherlands remained in the national collection. As a result of the introduction of a more relaxed restitutions policy in 2002 and after advice issued by the Restitutions Committee (RC 2.1), the State Secretary for Education, Culture and Science still restituted a large number of these objects (95) to the heirs of Fritz Gutmann at no cost. The six NK works that are the subject of this recommendation were not part of the claim or recommendation from 2002.

NK 605, NK 3147 a-b, NK 3214, NK 3216 and NK 3217

8. Based on the results of the investigation, the Committee has decided that five of the six currently claimed works (NK 605, NK 3147 a-b, NK 3214, NK 3216 and NK 3217) can be identified as the property of Fritz Gutmann and as part of the sale to Böhler and Haberstock in 1942. This can be concluded from documents found by the Origins Unknown Agency (hereafter also referred to as: 'the BHG') and the Committee in the SNK archive, the Federal Archive in Koblenz and the archive of the Netherlands Property Administration Institute.
The sixth work being claimed, the painting *Venus, Bacchus and Ceres with Sleeping Amor* by J. De Wit (NK 1960), was not part of the sale to Böhler and Haberstock. The Committee's judgement with regard to this work follows in considerations 11 to 15.



20. Prayer mat with Mihrab motif (NK 3216).



21. Italian maiolica Albarello with polychromed decor of four figures and a dragon (NK 605).

9. With regard to the five aforementioned objects, the current application for restitution should be examined in light of the judicial ruling from 1952 and the Committee will have to consider the question of whether the applicants' request can, with due regard for the applicable government policy, be deemed admissible. The basic premise of this restitutions policy is, after all, that the restoration of rights is not repeated, unless there are new facts or insights, summarised in the policy as 'nova'. Under policy, cases that are deemed to have been settled include cases *'in which the Council for the Restoration of Property Rights or another competent court has pronounced judgment'* (first recommendation of the Ekkart Committee from April 2001). The Committee is of the opinion that the judicial ruling concerning Gutmann from 1952 does not render the applicants' case inadmissible. The purport of this ruling is, after all, to restore the heirs' ownership of these works of art given that there is evidence of involuntary loss of possession. The circumstances surrounding the non-return of the five objects in question in 1952 has no bearing on this admissibility. The Committee also believes that there is no evidence to suggest that the heirs ever wished to waive their ownership rights, but that the requirement imposed upon the heirs to pay back the purchase price posed an obstacle at the time. In their letter of 27 November 2009, the applicants state, in this respect, that, *'It must be understood that B. and L.G. could not afford to pay for all the items'*.

In the Committee's opinion, both the purport of the ruling from 1952 and the rules governing current restitutions policy support its recommendation to grant the application for the restitution of the five aforementioned objects.

10. With regard to the proceeds from the sale of the five works to be returned, these were assigned to Trustenad during the war. As of 2010, it has been impossible to find out whether they ever actually accrued to the heirs of Fritz Gutmann, a fact that the applicants contest and the heirs already argued after the war. Based on this, the Committee is of the opinion that the transfer of the five objects under the applicable restitutions policy should not be subject to repayment. It refers for this to the Ekkart Committee's fourth and fifth recommendations concerning private art property (April 2001), which, with regard to the payment of purchase sums received during the war, states that an obligation to repay only exists if the former seller or their heirs actually obtained the free disposal of the said proceeds, and that if there is any dubiety as to whether these proceeds were actually enjoyed by the seller or their heirs, the rightful claimants be given the benefit of the doubt.

In light of the court ruling to the contrary in 1952, the Committee refers to 'nova' within the meaning of current restitutions policy, on the basis of which a previous ruling can be reconsidered. Based on the Ekkart Committee's second recommendation from April 2001, 'nova' are understood to mean *'differences compared to judgments pronounced by the Council for the Restoration of Property Rights (...) as well as the results of changed (historic) views of justice and the consequences of the policy conducted at the time'*.

NK 1960

11. With regard to the painting *Venus, Bacchus and Ceres with Sleeping Amor* by J. de Wit (NK 1960), Gutmann did not sell this work to Böhler or Haberstock, nor did it belong to the works transferred to Paris (see consideration 3). It is still unclear whether this work can be identified as the former property of Gutmann during the relevant period.
12. Research by the Origins Unknown Agency and the Committee has revealed that, in August 1940, the Amsterdam-based art dealers A.J. Spijjer & Zoon either gave the painting on consignment, or sold it, to the art dealership Jacques Goudstikker (Kunsthandel voorheen J. Goudstikker N.V.), which had been taken over by the German Alois Miedl. It is also known that Miedl then sold the painting to a Dr Ehrhardt in Munich. However, with regard to the period up to August 1940, the investigation failed to uncover any information regarding the painting's provenance. It is therefore not known from whom art dealership Spijjer & Zoon acquired this painting and whether this acquisition took place prior to or during the war.
13. The name Gutmann was, however, found in connection with NK 1960 several times during the Committee's investigation. The provenance of this painting is given on a so-called internal declaration form completed by the SNK in 1946 under serial number 11032 as '*Goudstikker-Miedl*', alongside which is indicated that the work was originally owned by '*Gutmann, Huize Boschbeek, Heemstede*'. The accompanying inventory card also states '*Gutmann, Heemstede*' as the owner. However, the latter has been crossed out and replaced with a reference to Miedl's art dealership, including an inventory number. Research into documentation from the Federal Archive in Koblenz has also revealed a link between the name Gutmann and the painting in question. On a list of works returned to the Netherlands, the provenance information for NK 1960 is listed as '*aus Slg. F. Gutmann an Kunsth. Goudstikker, Amsterdam (Inv.nr. 5768), von dort für hfl. 5.000,- an Dr. Ehrhardt, München Doc. File Holland Office Nr. 11032*' [from F. Gutmann collection to art dealers Goudstikker, Amsterdam (Inv. no. 5768), thence for NLG 5,000 to Dr Ehrhardt, Munich Doc. File Holland Office no. 11032]. The name Gutmann also appears on two inventory cards concerning the current NK 1960 from the archive in Koblenz. Given the fact that the Koblenz documents refer to the serial number 11032 on the aforementioned SNK internal declaration form, it is highly likely that the information in Koblenz was copied from the SNK.
14. The applicants claim that NK 1960 was part of Fritz Gutmann's art collection and that A.J. Spijjer & Zoon had the work on consignment when war broke out, before Spijjer gave it on consignment to Kunsthandel voorheen J. Goudstikker N.V. The applicants only referred to the documents mentioned in consideration 13. In their response, they refer to the fact that previously noted provenance information was corrected in two of the documents from the archive in Koblenz, with the name Gutmann having been added as owner. According to the applicants, this provenance should be deemed to be correct. The applicants have not provided any other sources from which it can be concluded that Fritz Gutmann was the owner of the current NK 1960 at any time before or during the war.
15. In contrast to the applicants, the Committee is of the opinion that it has not been proven with any degree of probability that Fritz Gutmann owned NK 1960 at any time after 10 May 1940. Even after extensive research, it remains unclear on what the mention of the name Gutmann in the aforementioned archival documents is based. With reference to the situation as described above (consideration 13), the Committee has to take into account the unnegligible chance that the SNK linked the name Gutmann to NK 1960 by mistake, and that this mistake was then carried over to other documents. This is consistent with the fact that there is no mention of the name Gutmann in the comprehensive records of Kunsthandel voorheen J. Goudstikker N.V.. In addition, it is also possible that the SNK mistook NK 1960 for another work by the artist J. de Wit, also depicting a mythological scene, which belonged to the Gutmann collection and which has since been returned to Gutmann's heirs.
16. Based on the above, the Committee deems the application for restitution to be admissible in so far as it regards the objects NK 605, NK 3147 a-b, NK 3214, NK 3216 and NK 3217, and inadmissible with regard to the painting NK 1960.

Conclusion

The Restitutions Committee advises the State Secretary for Education, Culture and Science to return the objects NK 605, NK 3147 a-b, NK 3214, NK 3216 and NK 3217 to the heirs of Friedrich Bernhard Eugen Gutmann.

The Restitutions Committee advises the State Secretary for Education, Culture and Science to reject the application for restitution of the painting NK 1960.

Adopted at the meeting of 29 June 2010 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)

8. Recommendation regarding Van Aldenburg Bentinck

(case number RC 1.102)

In a letter dated 29 October 2008, 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 1 November 2007 by I.A.O.-V.A.B., residing in D.S. (hereafter referred to as: 'the applicant'), for the restitution of the painting *Portrait of a married couple* by Pieter Codde. The applicant claims that the painting in question was a family heirloom that her father gave to a Jewish business contact during the Second World War in an attempt to prevent said contact from being deported by the occupying forces. This painting was returned to the Netherlands after the Second World War and is now part of the Dutch National Art Collection under inventory number NK 2550. The claimed work is currently housed in the Mauritshuis in The Hague.

The procedure

Following the request for advice by the Minister, the Committee conducted a fact-finding investigation, the results of which were recorded in a draft investigatory report of 9 November 2009. On 16 November 2009, the draft investigatory report was sent by letter to the applicant for comment and also to the Minister with a request for additional information. On

4 December 2009, the applicant commented on the draft investigatory report, and on

14 December 2009, the Minister informed the Committee that he had no further information to add. The Committee subsequently carried out a further investigation of Dutch and German archives. Furthermore, on 3 March 2010 a Committee delegation interviewed Mr H.N. in L., a report of which was made and sent to the applicant by letter on 2 April 2010, to which she responded on 20 April 2010. The draft investigatory report was amended to include the additional information received and sent to the applicant for perusal on 19 May 2010. The applicant informed the Committee by letter dated 26 May 2010 that she had nothing further to add to this draft report. On behalf of the applicant, Mr N.W.C., steward of castle M., sent the Committee a photograph and additional information concerning the applicant's father on

25 August 2010.

The investigatory report was adopted on 6 September 2010. For the facts of this case, the Committee refers to the investigatory report.

The painting (NK 2550) at issue in this recommendation is also part of a separate application for restitution, namely the case of the Katz art dealership in Dieren, currently also being handled by the Committee (RC file 1.90-B). The provenance overview of the Origins Unknown Agency cites both Van Aldenburg Bentinck and the Firma D. Katz in Dieren as former owners. As and when necessary, the Committee considers dual claims together. However, given the following considerations, this is not necessary for this recommendation.

Considerations:

1. The applicant has requested restitution of the painting *Portrait of a married couple* by Pieter Codde (NK 2550). The applicant is a daughter of and heir to Willem Frederik Charles Henry, Count Van Aldenburg Bentinck, who died in 1958 (hereafter referred to as: 'Bentinck'). Born in London on 22 June 1880, Bentinck married Lady Adrienne Vegelin van Claerbergen in 1923, a marriage that produced two daughters, one of whom is the applicant (born 1925). The family lived in castle M. in D.S., near Arnhem, but also spent a few months every year on the family estate in Germany. Bentinck had both Dutch and German nationality. Regarding this, the applicant states the following: *'Zijn Duitse nationaliteit was verbonden met de door zijn grootmoeder Waldeck Pyrmont ingebrachte bezitting G. waarmee het 'Standherrschaft' verbonden was en daarmee de Duitse nationaliteit die hij als een historisch gegeven beschouwde evenals zijn Nederlands staatsburgerschap, dit alles los van de tijdelijke politieke verwikkelingen.'* [His German nationality was linked to the G. estate, which was brought into the family by his grandmother Waldeck Pyrmont and which came with 'Standherrschaft' and therefore German nationality as well, which he deemed a historical given, just like his Dutch citizenship, and separate from any temporary political entanglements.]
2. The applicant states that NK 2550 had been owned by her family since her great-grandparents' time. She remembers that the painting hung in the forecourt building on the M. estate during or after 1936 and that, during the occupation, her father gave the painting to Jewish art dealer A.N. in L. to prevent said dealer and his family from being deported by the occupying forces: *Mijn ouders voelden zich in de oorlogsjaren zeer betrokken bij de kwetsbare positie waarin de familie A.N. zich bevond. Zij zagen het als hun plicht de grote druk te verlichten die van de zijde van de bezetter op de met hen bevriende heer N. werd gelegd. Deze druk bestond daaruit, dat hij verondersteld werd regelmatig interessante objecten te verwerven ten einde de dreigende deportatie van zijn gezin te voorkomen. Het was een onderwerp waarover bij ons thuis werd gesproken. In dit licht heeft mijn vader in 1944 één van de weinige waardevolle schilderijen uit zijn bezit ter beschikking gesteld, met het enkel doel deportatie te voorkomen. Het betreft het dubbelportret van een echtpaar van Pieter Codde uit 1634. (...) Helaas heeft deze aktie de deportatie van de familie N. niet kunnen voorkomen.'* [During the war years, my parents were very concerned about the A.N. family's vulnerable position. They considered it their duty to ease the pressure the occupying forces were putting their friend Mr N. under. This pressure consisted of his regularly being expected to acquire noteworthy objects to ensure

that the threatened deportation of his family was prevented. It was a subject we discussed at home. In light of this, my father made one of the few valuable paintings in his collection available in 1944 for the sole purpose of preventing deportation. This was the dual portrait of a married couple by Pieter Codde from 1634. (...) Unfortunately, this move did not prevent the deportation of the N. family.]

The applicant also states that her father did not tell her *'dat het voorwerp is verkocht noch dat er sprake was van een tegenprestatie* [that the object was sold or that any favour in return was expected.]

3. According to art-historical documentation, the claimed painting by Codde appears to have belonged to Bentinck in the pre-war years. Furthermore, it has been determined that in February or March 1944 the painting was bought by the German Dr E. Göpel for the collection of the Führermuseum being set up in Linz. However, when and under what circumstances Bentinck lost possession of the painting and who sold the painting to Göpel remains unclear. According to archival documentation from the Netherlands Art Property Foundation (hereafter referred to as: 'the SNK'), it appears that, after the war, A.N. submitted a claim regarding the sale of the claimed painting. The form bears the original entry '*Graaf Bentinck, M.*' as the painting's owner, but this entry was crossed out, probably by the SNK itself, and replaced with N.'s name. Furthermore, it is not only the names Bentinck and N. that appear in the source material in relation to the sale of the painting in question to Göpel, but the names of J.G. Wigman and the Katz art dealership in Dieren as well.
4. With regard to Codde's painting, the following is stated on a list of works of art returned to the Netherlands drafted by property recovery authorities: '*früher Graf Bentinck 22.2.1944 von dort über Kunsth. J.G. Wigman, den Haag für hfl. 60.000,- (zus.mit Linz 3495) an SL [Sonderauftrag Linz, RC]*' [previously



22. Portrait of a married couple by Pieter Codde (NK 2550).

Count Bentinck 22.2.1944 from there to SL [Special Project Linz, RC], via art dealer J. G. Wigman, The Hague for hfl. 60.000,- (together with Linz 3495)]. The NLG 60,000 amount cited is probably also related to another painting not relevant to this case. A receipt signed by Wigman indicates that Wigman received this payment. It is unclear, however, whether he acted on behalf of Bentinck or N. From the same list by the property recovery authorities, it also appears that a year earlier, in January 1943, Bentinck sold two watercolours by C. Troost from the family property to Göpel. N. was apparently also involved in one of these sales.

5. As part of the fact-finding investigation, the Committee spoke to H.N. in L. (born 1925), son of the aforementioned art dealer A.N.
H.N. recognised the Codde painting from a picture and confirmed that it originated from the collection of Bentinck, to whom his father was close. H.N. thinks he remembers the Codde being at his father's art dealership before 1942, when the family had to move to Amsterdam due to the circumstances of war. H.N. did not provide any additional details on the painting. In relation to the N. family's situation during the war, H.N. stated that, in 1941, his father and brother went into hiding for 6 weeks at J.G. Wigman, the caretaker of The Hague branch of the D. Katz art dealership in Dieren. In 1942, the N. family had to move to Amsterdam, and in the course of 1943 the family was interned in Westerbork concentration camp. H.N. stated that his father was regularly despatched from the camp and coerced to perform valuations for the occupying forces. In support of this, H.N. handed over to the Committee a post-war letter from his father A.N., in which his father writes the following: '(...) in 1943 heeft men mij voor de keus gesteld: Voor de Duitsers schilderijen te taxeren en te adviseren in aankopen, of met mijn gehele gezin naar Polen te worden doorgezonden' [(...) in 1943 I was given the choice: either value paintings for the Germans and advise on whether to buy them, or have my entire family sent to Poland].
6. The Committee has found documents in the archives of the occupying forces that confirm that, during the war, A.N. was coerced by the occupying forces to collaborate on acquiring artworks for *Sonderauftrag Linz*, in particular from the nobility. In return, H. and his family were temporarily exempted from deportation. In 1944, the occupying forces sent the family on to the Theresienstadt concentration camp.
7. The Committee is tasked with issuing a recommendation on the question of whether this is a case of involuntary loss of possession due to circumstances directly related to the Nazi regime. The Committee holds the opinion that in the event of sale by private individuals, like Bentinck, loss of possession is only involuntarily in case of a direct threat or coercion from the Nazi regime. In this context, the applicant stated that, out of concern for N., her father considered it his moral duty to help N.'s family by giving the painting to N. In this matter, the Committee deems that such a moral obligation cannot be equated to a situation in which Göpel were to have pressured Bentinck to sell the Codde painting. In addition, certain details relating to the loss of possession have not been clarified, such as the conditions under which and the time at which Bentinck gave the painting to N.

Based on the above, the Committee concludes that the grounds for restitution have not been met.

Conclusion

The Restitutions Committee advises that the State Secretary for Education, Culture and Science to reject the application for the restitution of the painting *Portrait of a married couple* by Pieter Codde (NK 2550).

Adopted at the meeting of 6 September 2010 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-chairman) and signed by the chair and the secretary.

(W.J.M. Davids, chair)

(E. Campfens, secretary)

9. Recommendation regarding Weijers II

(case number RC 4.118)

Introduction

In a letter dated 12 January 2010, 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 for restitution submitted by Mr J.A.C.M.V. on behalf of 'erven van wijlen H. Weijers uit Tilburg' [the heirs of the late H. Weijers of Tilburg] (hereafter referred to as: 'the Weijers heirs' or 'the applicants'). This application for restitution concerns nine paintings from the Netherlands Art Property Collection in the custody of the Dutch government (hereafter referred to as: 'the NK collection') with inventory numbers NK 1667, NK 1870, NK 2069, NK 2183, NK 2264, NK 2476, NK 2477, NK 2509 and NK

2774. The application referred to here was rejected by the Minister on 14 January 2009 in accordance with the recommendation issued by the Committee on 1 December 2008 (case number RC 1.68).

This request for a new recommendation is the result of a letter sent by the Weijers heirs to the Minister on 26 August 2009, in which objections were raised against the recommendation issued by the Committee in case RC 1.68 and in which the Minister was asked to reconsider his rejection of the application for restitution. In his letter of 12 January 2010, the Minister asked the Committee “*om een hernieuwd advies te vernemen op basis van hetgeen door de erven Weijers in voormelde brief is aangevoerd.*” [to issue a new recommendation on the basis of what the Weijers heirs adduce in the above-mentioned letter]. This request was dealt with under case number RC 4.118.

Following this request, the Committee looked into the objections raised by the Weijers heirs as well as additional sources and documentation. An account of this is laid down in a report, the final version of which was adopted on 6 September 2010. This report looks into whether there are

- (i) objections against the procedural aspects of the case, as a result of which fundamental interests were harmed, or
- (ii) new facts, which, had they been known at the time of the original recommendation, would have led to a different decision.

The procedure

Upon receipt of the request for a recommendation from the Minister on 12 January 2010, the Committee sent a letter to the applicants on 2 February 2010 outlining its procedure. As requested, the applicants responded in a letter dated 8 February 2010 confirming their standpoint as submitted to the Minister. They also confirmed their desire to be heard by the Committee. In letters dated 8 and 21 April 2010, they then provided additional information to substantiate their objections.

On 3 May 2010, a hearing took place in The Hague in the presence of Mrs E. and Mr V., the grandchildren of H.F.J. Weijers (hereafter referred to: ‘Weijers’), and their lawyer, Mr M.H. Stötzel of Marburg, Germany. At this hearing, the applicants explained their application verbally and answered questions posed by the Committee. They also took this opportunity to show several family documents, including two photograph albums. The applicants and the Committee corresponded about the report and the recommendation regarding RC 4.118 in letters dated 11 June and 2 July 2010, and 6 May, 29 June and 2 August 2010, respectively. During the hearing, the Committee informed the applicants that there is no fixed protocol for such a unique request from the Minister. A report was drawn up on 2 August 2010 which, firstly, succinctly presents the objections raised by the Weijers heirs and, secondly, provides an overview of additional source material. The applicants responded to the report in a letter dated 26 August 2010, as a result of which it was amended. The report was adopted on 6 September 2010.

During the procedure, it appeared that NK 1667 and NK 2264 are also part of another application for restitution regarding De Haan (RC 1.106). This information was relayed to the applicants during the hearing. In such cases, the Committee balances the dual claims against one another, if and in so far this is necessary. In the recommendation below, however, this was not required given the following considerations.

Special considerations

A. Procedural objections

1. As stated in the report regarding RC 4.118, section 2, the Weijers heirs raised objections with regard to how their application for restitution was handled by the Committee and against the recommendation regarding RC 1.68. The applicants claim that evidence was ignored. They also raised an objection against the fact that the Committee did not hear every applicant, in particular Mrs H.F.E.-W. They also claim that the Committee disregarded their reaction to the draft investigatory report regarding RC 1.68.
2. During the procedure, a draft investigatory report is drawn up. This report (only) contains facts that are relevant for the assessment of the application for restitution in the recommendation. For its investigation, the Committee makes use of information provided by the applicants, the Ministry and the Origins Unknown Agency (BHG), supplemented with internal independent research. The final assessment in a case is not made in the draft investigatory report but in the recommendation.
3. During the procedure regarding RC 1.68, the Weijers heirs were given the opportunity to provide the Committee with relevant information and clarify their application for restitution. Firstly, on 20 December 2007, the applicants were sent a questionnaire with the request to fill this in and to report or send any other information that they considered to be of importance. In the accompanying letter, the Committee asked the applicants for copies of specific documents as well as other more detailed information based on the various specific questions. The applicants responded in a letter with enclosures on 1 April 2008. A day later, on 2 April 2008, the Committee also received a ‘verklaring onder eed’ [sworn statement] by H.F.E.-W. Secondly, on 13 May 2008, the Committee sent the Weijers heirs its draft investigatory report. The applicants used the opportunity to respond by sending their reply in writing on 24 June 2008.

4. Contrary to what the applicants claim, the Committee did not “*volledig naast zich neergelegd*” [completely disregard] the sworn statement submitted by H.F.E.-W. on 2 April 2008. The recommendation regarding RC 1.68 contains three quotes from the above-mentioned statement (cons. 11) and the argumentation also pays attention to the statement (cons. 14). Neither, as the applicants claim, were the documents or sources provided by them ignored. The ‘Report regarding Weijers RC 1.68’ dated 6 October 2008 repeatedly quotes from these documents and sources. In so far as the applicants’ criticism pertains to the assessment of the facts in the recommendation and the related selection of relevant factual material, the Committee considers that this assessment is the responsibility of the Committee alone and that its opinions have not changed since 2008. The Committee is treating the case-related opinion written by Dr G. Aalders, a researcher at the Netherlands Institute for War Documentation (NIOD), which was drawn up at the request of the Weijers heirs and given to the Committee during the review procedure (report regarding RC 4.118, section 4), in a similar manner.
5. With regard to hearing the applicants, the Committee states the following. The Committee invites applicants to clarify their claim verbally if it deems this to be necessary. This was communicated to the applicants in the letter outlining the Committee’s procedure dated 14 May 2007. Hearings are rarely held in practice. During the procedure, the applicants indicated their willingness to clarify their application for restitution, but failed to comment on the necessity or desirability of a hearing (“*should you deem it proper to have a personal hearing of my clients, please do not hesitate to contact me*”, letter dated 1 April 2008). The Committee deemed a verbal explanation in addition to the written documents provided unnecessary for the assessment of the application for restitution.
6. The choice to include the applicants’ comments in the draft investigatory report in their entirety as an enclosure in the final report is usually made if the response provided by the applicants is substantial, if it constitutes an independent addition to the draft investigatory report, and/or if, due to the mention of a certain context, it is not or barely consistent with the report. In such cases – and so in this one – the enclosure is an integral part of the report sent to the Minister. This means that the substantive response can be conveyed in full but remains the view of the applicants. In addition, while the response provided by the Weijers heirs contained further details, for example with regard to the period in which Weijers acquired his paintings, these do not render the factual account in the investigatory report incorrect.
7. The way in which the Committee handled the response to the draft investigatory report by the applicants did not harm any of the applicants’ fundamental interests.

B. Objections concerning policy framework and contents

8. The applicants’ objections concerning the policy framework and the contents of the recommendation are presented in the report regarding RC 4.118, sections 3 and 4. The objections are essentially a further clarification of opinions already stated during the procedure regarding RC 1.68, supplemented with additional source material. This provides insufficient new facts relevant to the assessment criterion in the recommendation regarding RC 1.68. Accordingly, the conclusion, as stated in the recommendation regarding RC 1.68, remains unchanged.
9. The assessment of the contents of the investigatory report regarding RC 1.68 and the applicants’ response was part of the recommendation. A determinant fact was the criterion for loss of possession, for which several specific facts, or the lack thereof, prompted the final outcome. Efforts made by the Weijers heirs since then, namely sending additional sources and documents as stated in the report regarding RC 4.118, section 5, have not changed the assessment based on the criterion for loss of possession. Although the material provided by the applicants contributes to a more accurate picture of the Weijers family before, during and after the war, it leaves key questions regarding the art collection unanswered – particularly the moment at and circumstances in which the claimed works were acquired and then lost again. Even though this has created a more accurate picture of the Weijers family and their personal circumstances during the war, these additional sources and documents do not shed any more light on the facts with regard to the acquisition and loss of possession on which the recommendation regarding RC 1.68 is based.
10. The following is intended to provide further clarification. With reference to the criterion for involuntary loss of possession (cons. 5) formulated in the recommendation regarding RC 1.68, the Committee believes that Weijers did not belong to a social group persecuted by the Nazis and that, as a result, it is the duty of the applicants to prove that the sale of the claimed works of art during the war was involuntary as a the result of circumstances directly related to the Nazi regime. The applicants have provided a substantial amount of information concerning Weijers’ circumstances during the war, but the existence of a direct relationship between a specific threat or coercion by the Nazis and the sales of the claimed works of art (cons. 14) has nevertheless not been established.
11. For the Committee, it is indubitable that Weijers would have liked to have kept his art collection but that this proved to be impossible for him given the circumstances of war. In his case, this meant that he was considered an adversary by the Germans, which was part of the reason he had to surrender his house to the occupied forces in November 1940. It is also clear to the Committee that the Germans had an interest in art collections such as Weijers’ since the outbreak of the war and that they tried to get hold of these collections. Weijers was also faced with the threat of arrest in 1943/44. New statements about the Weijers

family provided to the Committee, including that given by Weijers' daughter in her diary and by Straeter, a neighbour at that time, confirm the image of a family drama that often befell people who were unwilling to cooperate with the Nazis during the war. But although the situation for Weijers and his family was difficult, Weijers was not persecuted, arrested or sent to a camp.

12. For the Committee, this important finding extends to other statements given by the applicants (report regarding RC 4.118, section 4). The applicants claim that "*Weijers zijn schilderijen noodgedwongen en onder grote druk heeft moeten afstaan*" [Weijers was forced to surrender his paintings under duress], due to "*the requisition of his house in Tilburg in November 1940 by the occupying forces, since Weijers refused to join the party (NSB); the use of threats by De Haan, Kieslinger, Sijperda and other art dealers in order to make him sell the paintings; the shabby smear campaign against Weijers as shown by the article in "De Opstand" the constant threat of imprisonment; the announced confiscation of the Jan Steen*".
13. Almost every aspect mentioned in the above quote is related to the general circumstances of war. With regard to the works of art sold by Weijers, there is a lack of concrete evidence to suggest that their confiscation was imminent (cons. 14 of the recommendation regarding RC 1.68). With regard to the work by Jan Steen (not claimed in case RC 1.68, but mentioned by the applicants nonetheless), it does appear as if there was a real threat at a certain moment, namely when the Germans demanded that Weijers provide a statement that he had not purchased the work from German Jews, a danger that Weijers subsequently averted. This, and other sales, including that involving the German Kieslinger at a certain moment, were always made on Weijers' own initiative.

C. Final consideration

14. With reference to the criterion mentioned in the third paragraph of the introduction above, the Committee concludes the following. In so far as the objections raised by the applicants are directed at the course of events during the handling of their application for restitution regarding RC 1.68, these have proven to be invalid. Moreover, no new facts have been found, which, had they been known at the time of the original recommendation, would have led to a different decision. All in all, this means the Committee will recommend that the Minister not reconsider his decision regarding RC 1.68.

Conclusion

The Restitutions Committee advises the State Secretary for Education, Culture and Science to uphold the rejection of the application submitted by the '*erven van wijlen H. Weijers uit Tilburg*' [the heirs of the late H. Weijers of Tilburg] for the restitution of the works of art with inventory numbers NK 1667, NK 1870, NK 2069, NK 2183, NK 2264, NK 2476, NK 2477, NK 2509 and NK 2774.

Adopted at the meeting of 6 September 2010 by W.J.M. Davids (chair), J.Th.M. Bank, P.J.N. van Os, D.H.M. Peeperkorn, 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)

10. Recommendation regarding Glaser

(case number RC 1.99)

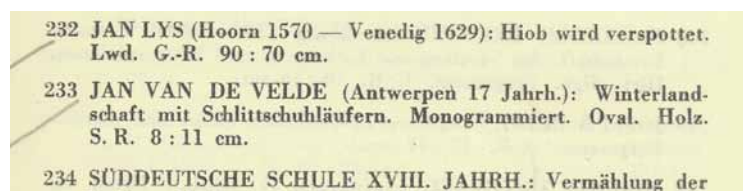
In a letter dated 17 October 2008, the Minister for Education, Culture and Science (hereafter referred to as: 'OCW') requested the Restitutions Committee (hereafter referred to as: 'the Committee') to issue a recommendation regarding the application for the restitution of the painting *Winter Landscape* by Jan van de Velde II, submitted on 29 August 2007 by G.M., E.A.P., R.B., C.S., P.L. and B.L. (hereafter referred to as: 'the applicants'). The claimed work has been part of the Dutch national art collection since it was donated in 1935 and is currently housed in the Rijksmuseum in Amsterdam.

The procedure

The reason for the application for restitution is a letter sent by the applicants to the Netherlands Institute for Art History (hereafter referred to as: 'the RKD') on 22 May 2007 concerning the painting *Winter Landscape* by Jan van de Velde II, which was sold by Curt Glaser in 1933, and the whereabouts of which the applicants were trying to establish. In response to this, the Rijksmuseum informed the applicants that it had recently been discovered that '*in the State-owned collection of the Rijksmuseum there is a painting by Jan van de Velde II, which originally formed part of the Glaser collection*'.

As a result of the application for restitution, the Committee instigated a fact-finding investigation, the results of which were included in a draft investigatory report dated 26 November 2009. The draft investigatory report

was sent to the Minister with a request for more factual information on 10 December 2009 and to the applicants for comment in a letter dated 11 December 2009. The applicants responded in a letter with enclosures dated 4 February 2010. In response to the draft investigatory report, the Ministry of OCW sent the Committee a letter by Mr W. Pijbes, general manager of the Rijksmuseum Amsterdam, dated 22 March 2010. This letter was sent to the applicants for comment on 6 April 2010. The applicants responded on 11 June 2010, providing additional information. The response by the Rijksmuseum and both responses by the applicants are included as appendices to the investigatory report, which was adopted by the Committee in its present form on 4 October 2010. Given that the painting was donated to the Rijksmuseum in Amsterdam in 1935, this work is now part of the Dutch national art collection (inventory number SK-A-3241). Although the painting is 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 war, 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. During the procedure, the applicants were represented by Rowland & Associates, a law firm based in New York, United States.



23. Catalogue of an auction at *Internationales Kunst und Auktions-Haus* (International Art and Auction House) held on 9 May 1933 in Berlin. The painting by Jan van de Velde II is listed under number 233.

Considerations:

1. The applicants, who claim to be the heirs of Curt Glaser (1879-1943), are requesting the restitution of the painting *Winter Landscape* by Jan van de Velde II. In this context, the Committee has taken cognisance of a number of legal inheritance documents, which have given the Committee no reason to question the applicants' status. The applicants claim that Curt Glaser lost possession of the painting in question involuntarily as a result of the Nazi regime in Germany.
2. The relevant facts are described in the investigatory report of 4 October 2010. The following is a summary. Curt Glaser was a German art historian of Jewish descent, who, from 1924, was director of the *Staatliche Kunstbibliothek* [State Art Library] in Berlin. At the time of the Weimar Republic, he was a prominent figure in the Berlin art world, which would later become despised by the Nazis, and his residence on the Prinz Albrechtstrasse was a meeting place for artists and intellectuals. Together with his first wife Elsa Kolker, Glaser built up an extensive art collection. After Kolker's death in 1932, Glaser married his second wife, Marie Milch (1901-1981), on 30 May 1933. Milch was also of Jewish descent.
3. Soon after the Nazis assumed power in Germany, Glaser was subject to anti-Jewish measures. On 4 April 1933, the authorities ordered Glaser to empty and vacate his home, after which the Gestapo established its headquarters there. In addition, the *Gesetz zur Wiederherstellung des Berufsbeamtentums* [The Law for the Restoration of the Professional Civil Service] was passed on 7 April 1933, which provided for the removal of Jews and political opponents from the civil service. This act meant that, from May 1933, Glaser was no longer allowed to fulfil his position as director of the *Staatliche Kunstbibliothek*.
4. After being evicted from his home by the Nazi authorities, Glaser sold his extensive art and book collection in two separate auctions, on 9 May 1933 at the Internationales Kunst- und Auktions- Haus GmbH and on 18-19 May 1933 at Max Perl auction house, both in Berlin. The applicants claim that Glaser 'knew that as a Nazi opponent and being of Jewish heritage, and given the flurry of new laws that empowered the ability of the Nazis to arrest him and place him into a concentration camp without formal charge, he had no choice

other than sell almost all of his belongings and immediately leave Germany'. In July 1933, Glaser fled Nazi Germany with his wife Marie Milch. The couple travelled to Switzerland, Italy and Cuba before eventually reaching the United States, where Curt Glaser died in 1943.

5. The investigation has shown that the currently claimed painting was included as object 233 in the catalogue for the auction of Glaser's collection at the Internationales Kunst- und Auktions- Haus GmbH on 9 May 1933. While it is likely that the painting was sold at this auction, the investigation has failed to provide any concrete evidence of this. Research carried out in the RKD and investigations conducted in German libraries by a German research agency on behalf of the Committee have both failed to find an annotated auction catalogue or other documentation that contains more information concerning the possible sale and selling price of the painting in question. However, documents in the Rijksmuseum show that, after 9 May 1933, the painting was in the possession of Abels art dealership in Cologne. It is also known that, in 1934, the painting was sold by Amsterdam-based art dealership P. de Boer to Estella Boas-Kogel, who donated it to the Rijksmuseum in 1935. Since then, it has been part of the Dutch national art collection.
6. Pursuant to current national policy in respect of the restitution of items of cultural value from the national collection, the Committee can only recommend restitution if ownership has been proved with a high degree of probability and if the original owner relinquished possession involuntarily as a consequence of circumstances directly related to the Nazi regime. The third recommendation of the Ekkart Committee of 26 April 2001, which states that sales by Jewish private owners in Germany from 1933 onwards are considered to be involuntary, unless expressly proven otherwise, also applies.
7. The Committee is of the opinion that there is sufficient evidence to suggest that the painting *Winter*



24. *Winter Landscape* by Jan van de Velde II.

Landscape by Jan van de Velde II was owned by Curt Glaser and was part of the first auction of Glaser's collection in 1933. In terms of the nature of the loss of possession, the Committee has considered the following. As explained in considerations 3 and 4 above, the painting in question was in all probability sold in Germany on 9 May 1933 by Curt Glaser, an art collector of Jewish origin who was subject to persecution by the Nazis at an early stage of their regime. The Committee is, therefore, of the opinion that this sale can be considered involuntary.

8. After the war, Glaser's widow and sister-in-law stated as part of an application for damages from the German authorities that Glaser's losses due to the auction of his collection easily exceeded 100,000 RM. In connection with this, Glaser's widow agreed by way of settlement with the *Entschädigungsamt Berlin* [Berlin Compensation Office] on 6 December 1963 that she would be awarded compensation to the total

amount of DM 7,100. Of this, 5,000 DM was compensation for the losses that Glaser incurred due to the auctioning of his collection. This settlement saw to it that ‘*alle Ansprüche auf Entschädigung endgültig erledigt, die der Antragsteller angemeldet hat und die ihm auf grund des Bundesgesetzes zur Entschädigung für Opfer der nationalsozialistischen Verfolgung [...] zustehen aus Schaden an Eigentum und Vermögen*’ [all claims to damages presented by the applicant and to which the applicant is entitled on the basis of the German law on the compensation for victims of Nazi persecution had been fully settled]. The Committee is of the opinion that this settlement does not constitute an impediment in terms of the admissibility of the applicants regarding a claim to a work of art in the Dutch national art collection, given that the settlement did not entail a waiver of the rights to the lost work of art and the State of the Netherlands was not a party to it. Nor did the investigation reveal that Glaser’s widow had had any contact with the Rijksmuseum or the Dutch restitutions authorities after the war about the currently claimed work. With reference to the first recommendation of the Ekkart Committee regarding private art property and its explanation, the Committee therefore concludes that this case cannot be considered to have been settled in the past.

9. Based on the above, the Committee deems the application for restitution of the claimed painting admissible. The Committee is of the opinion that no condition for repayment of the purchase price received at the time can be attached thereto. In this context, the Committee refers to the fourth and fifth recommendations of the Ekkart Committee of April 2001, which stipulates that an obligation for repayment applies only if the then seller obtained the free disposal of the proceeds. In case of doubt as to whether the proceeds were actually obtained, the benefit of doubt must be given to the claimants. The explanation of these recommendations also states that there are no grounds for repayment in cases where payment was received and, in all probability, used exclusively in an attempt, successful or not, to leave the country or go into hiding. The Committee deems it likely that Glaser was not able to freely dispose of the proceeds from the auctions, but that, as a result of the circumstances of war, he probably had to use them to fund his escape to the United States and to pay the exit taxes imposed by the Nazis. With regard to the compensation received by Glaser’s widow after the war for losses connected with the auctioning of several hundred works of art, the Committee considers the following. In so far as it could be determined what proportion of the 5,000 DM relates to the currently claimed painting, any possible repayment of this sum is a matter between Glaser’s heirs and the German State. Considering the above, the Committee is of the opinion that returning the painting without repayment does not constitute unjustified enrichment.

Conclusion

The Restitutions Committee advises the State Secretary for Education, Culture and Science to grant the application for the restitution of the painting *Winter Landscape* by Jan van de Velde II to Curt Glaser’s heirs.

Adopted at the meeting of 4 October 2010 by W.J.M. Davids (chairman), J.Th.M. Bank, P.J.N. van Os, D.H.M. Peeperkorn, 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)

11. Recommendation regarding Gutmann - A

(case number RC 1.114-A)

In letters dated 18 April 2007 and 16 August 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 applications submitted by S.G., N.G. and L.V.C.-G. (hereafter referred to as: ‘**applicants I**’) and N.P., F.F.G., M.M.F., C.E.G. and N.M.G. (hereafter referred to as: ‘**applicants II**’), respectively. Both applications for restitution concern (amongst other things) the art objects under inventory number NK 3223 a-e, which are part of the Dutch National Art Collection (hereafter referred to as: ‘NK collection’), namely:

NK 3223 a-e, Unknown, *Five-piece garniture, consisting of three jars and two vases*, first quarter of 18th century, porcelain, 46.5 cm x 15.2 cm

This set of five vases (hereafter referred to as: the garniture) is now part of the Rijksmuseum collection in Amsterdam.

The procedure

The Minister has also requested that the Committee issue a recommendation for a number of other art objects in the NK collection³¹ claimed by applicants I and II. The Committee has decided to issue its recommendations on the works claimed by applicants I and II in three separate procedures, recorded under case numbers RC 1.113, RC 1.114 and RC 1.115. Applicants I and II were advised of this in letters dated 22 June 2009 and 24 August 2009.

As regards the objects that are claimed solely by applicants I, the Committee issued a recommendation on 29 June 2010 (RC 1.113). The two art objects that are part of the claims by both applicants I and applicants II (NK 688 en NK 3223 a-e) are covered in file number RC 1.114, on which this first partial recommendation RC 1.114-A is being issued. Due to the ongoing investigation, the Committee will issue partial recommendation RC 1.114-B regarding the claim to NK 688, and recommendation RC 1.115 concerning art objects that are solely claimed by applicants II, at a later date.

Following the requests for advice regarding Gutmann, the Committee instigated a fact-finding investigation, the results of which were laid down in a draft investigatory report dated 3 July 2008. Applicants I and II responded to this in letters dated 8 and 11 December 2008, respectively, in which both applicants I and applicants II submitted new information. On 12 December 2008, in response to the draft report, the Minister advised that he had no additional information to bring to the Committee's attention.

As a result of the above redivision of the Gutmann files, the Committee prepared a new draft investigatory report concerning NK 688 and NK 3223 a-e (RC 1.114) on 4 August 2010.

This draft report was sent to applicants I and II for comment in letters dated 4 August 2010 and to the State Secretary for Education, Culture and Science (hereafter referred to as: the State Secretary) with a request for additional information on 5 August 2010.³² In response to this, the State Secretary responded on 15 September 2010 that he had no additional information to bring to the Committee's attention. Applicants I responded to the draft investigatory report in a letter with enclosures on 13 October 2010 and applicants II in a letter with enclosures on 12 November 2010.

New facts concerning NK 688 emerged after the draft investigatory report had been sent to the respective applicants and the State Secretary on 4 August 2010. These new facts prompted the Committee to pursue further investigations. In view of the fact that further investigations concerning the garniture (NK 3223 a-e) were not necessary, the Committee decided to divide file RC 1.114 into two separate partial recommendations. The current partial recommendation RC 1.114-A concerns NK 3223 a-e; partial recommendation RC 1.114-B concerns NK 688.

The draft investigatory report has been amended on certain points in response to the reactions from applicants I and II. The investigatory report for case RC 1.114-A was subsequently adopted on 6 December 2010. For the facts on which this case is based, the Committee refers to this report.

Applicants II were represented in this procedure by lawyer O. Ossmann of Winterthur (Switzerland).

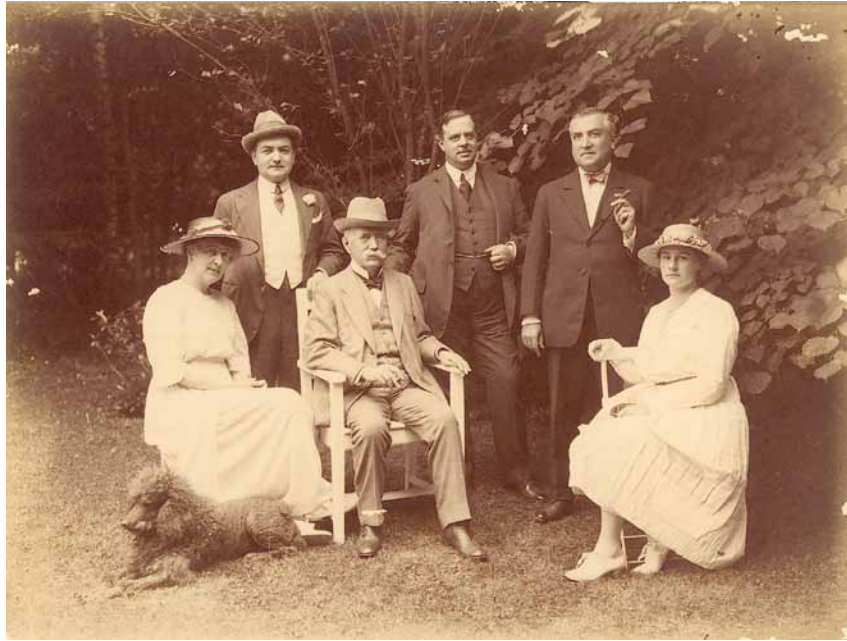
Considerations:

Applicants

1. Applicants I are the heirs of Friedrich Bernhard Eugen Gutmann (hereafter referred to as: 'Fritz Gutmann'), as evidenced by a certificate of inheritance executed on 18 March 2005 by Amsterdam-based public notary M.R. Meijer. Applicants I contended that the current garniture was the property of Fritz Gutmann and that he lost possession of it involuntarily as a result of circumstances directly related to the Nazi regime.
2. Applicants II claim to be heirs of Herbert Max Magnus Gutmann (hereafter referred to as: 'Herbert Gutmann'). To prove this, they submitted several legal inheritance documents, which have given the Committee no reason to doubt their status. Applicants II claim that the current garniture 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. Applicants II also claim that Fritz Gutmann merely administered the art collection, which was part of the inheritance referred to, on behalf of the six heirs.

³¹ The Minister's request for advice dated 18 April 2007 regarding the claim submitted by applicants I concerned the objects NK 596, NK 605, NK 688, NK 1960, NK 3147 A-B, NK 3214, NK 3215, NK 3216, NK 3217 and NK 3223 a-e. The Restitutions Committee initially recorded this application for restitution under file number RC 1.74. The Minister's request for advice dated 16 August 2007 regarding the claim made by applicants II initially concerned the abovementioned NK works, except for NK 688. This application for restitution was initially recorded by the Restitutions Committee under file number RC 1.94. On 22 April 2009, applicants II advised that they no longer requested restitution of the objects NK 605, NK 1960, NK 3147 A-B, NK 3214, NK 3215, NK 3216 and NK 3217. This was followed on 15 June 2009 by a request for advice from the Minister regarding the claim made by applicants II for NK 688, NK 2758, NK 2947, NK 2965, NK 2966 and NK 2967. These developments prompted the committee to divide the Gutmann files again, as stated in the current recommendation.

³² The State Secretary for Education, Culture and Science took over this restitution file from the Minister on 24 February 2010.



25. Gutmann family portrait, c. 1925.

The Gutmann family

3. 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). However, in the period after Eugen Gutmann's death, various changes had apparently taken place in the ownership and the composition of the collection. The N.V. Trust & Administratie Maatschappij (Trustenad) was established in Amsterdam on 4 July 1921 to look after the financial interests of Eugen Gutmann's children.
4. Herbert Gutmann, the testator of applicants II, 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. He 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 advisory bodies and found himself 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.
5. Fritz Gutmann, father and grandfather of applicants I, was born on 15 November 1886 as the youngest child of Eugen Gutmann. He married baroness Louise von Landau, with whom he had two children, namely Bernhard Gutmann (later: Bernard Goodman) (1914-1994) and Lili Gutmann (born 1919). Fritz Gutmann settled in the Netherlands in 1918 and was granted Dutch nationality in 1924. He lived with his family in 'Huize Bosbeek', a country house near Heemstede, where he, too, built a large art collection. He also administered art objects from his deceased father's collection, which, according to applicants I, he kept in a separate safe in Huize Bosbeek.
6. After the start of the occupation of the Netherlands in 1940, the Gutmann-Von Landaus made plans to escape from the country, part of which entailed selling as many of their works of art as possible. For instance, in three transactions, Fritz Gutmann sold a significant number of art objects to German art dealers Böhler and Haberstock. In one of these transactions on 24 March 1942, he sold several numbered works of art to Böhler and Haberstock, itemised on a list accompanying this agreement. An object that may relate to the current NK 3223 a-e is named on this list. For fear that they would be confiscated, Fritz Gutmann also gave many objects from Eugen Gutmann's collection to the said dealers Böhler and Haberstock for safekeeping. The Gutmann-Von Landaus' escape plan failed and they were arrested in 1943 and taken to Theresienstadt concentration camp, where Fritz Gutmann died in 1944. His wife died in Auschwitz that same year. The couple's two children survived the war abroad.

Assessment of the claim

7. Pursuant to current restitution policy, the first question to consider when assessing the current claim is whether the ownership rights of applicants I and/or II concerning the current NK 3223 a-e have been proven with a high degree of probability.
8. The current NK 3223 a-e was put up for auction at auction house Frederik Muller & Co. in Amsterdam on 6 May 1919. The auction catalogue in question says about the provenance of the garniture: '*provenant de la succession d'un membre de la famille Van Andringa de Kempenaer*' [originating from the inheritance of a member of the Van Andringa de Kempenaer family]. No documentation was found during the investigation suggesting who owned NK 3223 a-e after the auction on 6 May 1919.
In 1954, the provenance of the garniture was given in the inventory book of the Amsterdam Rijksmuseum, where it is at present, as: '*Afkomstig verzameling E. Gutmann*' [from the collection of E. Gutmann]. The same annotation appears on the museum's inventory card. It is not known on which sources these annotations are based. This information was then replicated in the catalogue '*Chinese ceramics in the Rijksmuseum*' dated 1997, which includes the following about the provenance of the garniture: '*Formerly in the collection of Andringa de Kempenaer. Acquired at sale Frederik Muller, Amsterdam, 6-5-1919, lot 91. Collection of E. Gutmann*'.
It appears from information in the archive of the Stichting Nederlands Kunstbezit (Netherlands Art Property Foundation), hereafter referred to as: 'SNK', and the Federal Archive in Koblenz that in 1944, NK 3223 a-e was sold to E. Göpel, a German buyer for the planned Führermuseum in Linz via art dealer N. Beets of Amsterdam. The garniture was returned to the Netherlands from Germany in 1951. Based on the annotations in the Rijksmuseum's inventory book and the inventory card, the Committee believes it highly likely that the garniture was at some point part of the collection of a member of the Gutmann family.



26. Five-piece porcelain garniture, consisting of three jars and two vases (NK 3223 a-e).

9. The following is important with regard to the question to which member of the Gutmann family the garniture belonged.
10. Applicants I claim that, in all likelihood, Fritz Gutmann purchased this garniture at auction house Frederik Muller & Co. in 1919, when he was furnishing his new house and his new office in Amsterdam. With regard to the provenance Eugen Gutmann, which they consider a mistake on the part of the Rijksmuseum, the heirs claim that Fritz Gutmann's collection was regularly referred to as the E. Gutmann collection because Eugen Gutmann's collection was of greater acclaim: '*This is one more instance where E. Gutmann was listed, in error, instead of F. Gutmann (E. Gutmann being the more famous collector)*'.
They also note that in 1919, Eugen Gutmann was no longer active as collector because he was ill and of such advanced age. Moreover, he did not collect Chinese vases and not he, but Fritz Gutmann was the owner of a '*widely acclaimed Chinese collection*'. To underpin the last statement, applicants I submitted copies of various catalogues in which reference is made to Chinese ceramic objects from Fritz Gutmann's collection. Applicants I also refer to two lists, the first an inventory list of Huize Bosbeek, which applicants I date '*5/10/1942*' and the second being the list accompanying the sales contract with Böhler and Haberstock of 24 March 1942, referred to in consideration 6. Objects that may be related to the current NK 3223 a-e occur on both lists, although this cannot be verified for certain because the objects are not described in detail on the lists. Applicants I claim that if the current garniture is believed to be on the list accompanying the sales contract of 24 March 1942, the assumption must then be that NK 3223 a-e was Fritz Gutmann's private property. They point out that during the war, Fritz Gutmann repeatedly refused to sell his father's art collection, which he administered, and that on the contrary, he sought to ensure that the collection was secured by entrusting it to the management of Böhler and Haberstock.

11. With regard to the provenance of the current NK 3223 a-e, applicants II claim that this garniture originated from Eugen Gutmann's estate, referring here to the provenance specification (*Vlg. Cat. Frederik Muller, Amsterdam 6 mei 1919. nr. 91; Eugen Gutmann (collection)*) [Cf Auct. Cat. Frederik Muller, Amsterdam 6 May 1919, no. 91; Eugen Gutmann (collection)] in the catalogue *'Chinese ceramics in the Rijksmuseum'* of 1997. Applicants II also claim that: *'Fritz was not the owner of the Eugen Gutmann collection but acted as a trustee for all heirs of Eugen Gutmann'*. Applicants II argue that Eugen Gutmann's collection remained intact and that their testator, Herbert Gutmann, was entitled to one-sixth of that inheritance. They submitted several documents including a letter dated 6 May 1945 in which Lili Gutmann states that *'(..) her father was the trustee of Eugen Gutmann collection'*.
12. As for the question who should be regarded as the former owner, Fritz Gutmann (position of applicants I) or the joint heirs of Eugen Gutmann (position of applicants II), the Committee considers the following. In its investigation, the Committee found insufficient basis for the argument of applicants II that NK 3223 a-e belonged to the undivided estate of Eugen Gutmann when ownership was lost during the war. Nor has it been made very plausible that the garniture was part of this collection at some point. In their underpinning of this statement, applicants II rely merely on the mention of the name *'E. Gutmann'* in the Rijksmuseum documentation and they were not able to submit further information to corroborate this provenance. On the basis of all information and its own investigation, the Committee considers it most plausible that Fritz Gutmann was the owner of NK 3223 a-e, for the following reasons:
 - The garniture is not featured in the descriptions of the Eugen Gutmann collection that are known to the Committee.
 - There is evidence suggesting that the garniture featured on lists of the Fritz Gutmann collection during the war. Number 28 on the Huize Bosbeek inventory list (*'28 / 1 Satz blauer chines. Väschen (5 Stck)*) [1 set of small blue Chinese porcelain vases (5 items)] shows strong similarities with the current NK 3223 a-e (a set of five blue Chinese porcelain vases). In addition, it appears that number 48 (*'1 Satz von blauen chinesischen Porzellanväschen'*) [1 set of small blue Chinese porcelain vases] on the inventory list accompanying a sales contract of 24 March 1942 also bears a great resemblance to the current garniture. The sales contract states that Fritz Gutmann is *'Eigentümer der Gegenstände'* [owner of the objects] and, according to the Committee, it can be assumed that this does not refer to objects from his father's collection, which Fritz Gutmann administered. After all, these objects had been given separately to Böhler and Haberstock for safekeeping.
 - The Fritz Gutmann collection was frequently confused with that of Eugen Gutmann because the latter was better known. In the Committee's opinion, the annotation *'E. Gutmann'* made in 1954 in documentation of the Rijksmuseum cannot, therefore, be considered decisive.
 - The Committee goes along with the assertion of applicants I that it is more likely that it was Fritz Gutmann – who was, at the time, resident in the Netherlands and engaged in furnishing his new house and offices in Amsterdam – who made the purchase, which presumably took place in 1919 or later in the Netherlands, and that it is less probable that this was a purchase made by Eugen Gutmann, who lived in Berlin.

Based on the considerations 7 to 12, the Committee concludes that sufficient proof has been provided that on 24 March 1942, the garniture NK 3223 a-e was the property of Fritz Gutmann and that it was not part of Eugen Gutmann's undivided estate.

Hence the basis of the claim of applicants II falls away, impelling the Committee to recommend rejecting that claim.

Below, the Committee will subject the claim of applicants I to further investigation.

13. On the basis of current restitution policy, the conditions for restitution have been met if the original owner involuntarily lost possession of the claimed object due to circumstances directly related to the Nazi regime. With regard to the nature of the loss of possession, the Committee has considered the following. The Committee recognises two situations in which Fritz Gutmann may have lost possession of the garniture, both of which imply involuntariness.
 1. If the current NK 3223 a-e was part of the sale to Böhler and Haberstock on 24 March 1942, involuntariness of the loss of possession was already established by the Jurisdiction Department of the Council for the Restoration of Rights (hereafter also referred to as: 'the council') in its ruling of 1 July 1952. The Council decided that the sales were influenced by unique war-related circumstances, given the fact that, at that moment, the Gutmann family was already under threat. For this reason, the sales had already been declared null and void. The said ruling is described in more detail under consideration 15.
 2. The list accompanying the 1942 sale features an annotation next to the number in question *'Gestrichen von der Liste'* [removed from the list], the exact significance of which is unclear. If this is to be understood to mean that the current NK 3223 a-e was originally part of the 1942 sale and then eventually not, it is not known how Eugen Gutmann lost possession of the garniture. The object may have been confiscated or stolen after the Gutmanns were deported but he may well have sold it. In these cases too, the Committee considers that this would constitute an involuntary loss as a direct consequence of the Nazi regime. The Committee refers to the third recommendation of the Ekkart Committee concerning private art property, which states that 'sales of works of art by Jewish private owners in the Netherlands from 10 May 1940 onwards be treated as forced sales, unless there is express evidence to the contrary.'

14. Next, the question to be answered is whether the current NK 3223 a-e concerns a case that has been settled in the past. Investigations have shown that after the war, Bernard Goodman and Lili Gutmann, Fritz Gutmann's two adult children, spent years trying to recover the lost family possessions. Various works of art, which were known to have been confiscated by the Nazis in France and which had never been sold, were returned to the heirs by the SNK in the years immediately after liberation. Eugen Gutmann's collection, which Fritz Gutmann administered, was also recovered from Germany, with the exception of various missing items, and returned to the rightful owners by the SNK in 1949.
15. The restitution of the works that had been sold to Böhler and Haberstock and then found after the war was more problematic. The SNK decided that these objects had been sold voluntarily and did not grant the application for restitution submitted by the heirs. Rather than accepting this judgement, the heirs submitted an application for the restoration of rights to the Jurisdiction Department of the Council for the Restoration of Rights. The Council dismissed the SNK's argument and, in its judgment of 1 July 1952, ruled that the sales transactions with Böhler and Haberstock qualified for the restoration of rights on the grounds of the restoration of rights regulation laid down in Royal Decree E 100. The Council decided that the sales were influenced by unique war-related circumstances, given the fact that at that moment, the Gutmann family was already under threat. In its judgement, the Council determined that the sale was null and void and that the heirs of Fritz Gutmann should be considered the owners of the works of art that had been sold:

De Raad voor het Rechtsherstel, Afdeling Rechtspraak, (...)

Doet ten behoeve van verzoekers sub 1 en 2 [de erven F.B.E. Gutmann, RC] herleven de rechtsbetrekking van eigendom van wijlen F.B.E. Gutmann tot de bij bovengenoemde drie overeenkomsten verkochte goederen, voor zover zich bevindende in het bezit van gerequesteerde [de SNK, RC];

Verklaart in zoverre die overeenkomsten en alle met deze herleving strijdige rechtsbetrekkingen nietig;

[The Council for the Restoration of Rights, Jurisdiction Department, (...)]

Revives the legal relationship of ownership of the late F.B.E. Gutmann to goods sold under the three aforementioned agreements in favour of the applicants under 1 and 2 (*the heirs of F.B.E. Gutmann, RC*), in so far as these goods are in the possession of the respondent (*the SNK, RC*);

Declares all agreements and legal relationships invalid in so far as they are contrary to this revival;]

The Council also determined that, upon delivery of the objects, the heirs should pay the restoration of rights authorities the proceeds from the sale of the objects. Arguing that the selling price paid to Trustenad had disappeared during the war, as a result of which it had never accrued to them, the heirs attempted, without success, to contest this ruling.

16. During the post-war years, the heirs of Fritz Gutmann actually bought back a number of recovered works of art from the SNK. The remainder of works from Fritz Gutmann's collection that were returned to the Netherlands remained in the national collection. As a result of the introduction of a more relaxed restitution policy in 2002 and following advice issued by the Restitutions Committee (RC 2.1), the State Secretary for Education, Culture and Science returned a large number of these objects to the heirs of Fritz Gutmann, without setting specific conditions. Following the Committee's recommendation of 29 June 2010 (RC 1.113), it was decided on 22 July 2010 to return a further five NK works to Fritz Gutmann's heirs.
17. The Committee is of the opinion that if the garniture was part of the sale to Böhler and Haberstock on 24 March 1942, the current application for restitution should be examined in light of the judicial ruling from 1952 discussed above. The Committee will have to consider the question of whether the applicants' request can, with due regard for the applicable government policy, be deemed admissible. The basic premise of this restitution policy is, after all, that the restoration of rights is not repeated, unless there are new facts or insights, summarised in the policy as 'new facts'. Under this policy, cases that are deemed to have been settled include cases 'in which the Council for the Restoration of Property Rights or another competent court has pronounced judgment' (first recommendation of the Ekkart Committee from April 2001). The Committee is of the opinion that the judicial ruling concerning Gutmann from 1952 does not render the applicants' case inadmissible. The purport of this ruling is, after all, to restore the heirs' ownership of these works of art given that there is evidence of involuntary loss of possession. The fact that the garniture was not returned in 1952 has no bearing on this admissibility. In its 1952 ruling, the Council wished to restore the Gutmann heirs' ownership of these works of art and there is no evidence to suggest that the Gutmann heirs ever waived their ownership rights to the remaining objects. Even if the current NK 3223 a-e was not part of the said sale to Böhler and Haberstock, there is still no question of a case that was already settled in the past since there is no evidence that the applicants applied for restitution of the garniture after the war, nor is there any evidence suggesting that the garniture was ever the subject of post-war negotiations about restitution. The applicants' request for restitution is, therefore, admissible on both counts.

18. The Committee considers that if the current NK 3223 a-e was part of the said sale to Böhler and Haberstock on 24 March 1942, the following can be said with regard to the proceeds from the sale of the object to be returned. The proceeds were assigned to Trutenad during the war. In the year 2010, it is impossible to ascertain whether these proceeds ever actually accrued to the heirs of Fritz Gutmann, a fact that the applicants contest and the heirs already argued after the war. Based on this, the Committee is of the opinion that the transfer of NK 3223 a-e under the applicable restitution policy should not be subject to a repayment obligation. It refers for this to the Ekkart Committee's fourth and fifth recommendations concerning private art property (April 2001), which, with regard to the payment of purchase sums received during the war, states that an obligation to repay only exists if the former seller or their heirs actually obtained the free disposal of the said proceeds, and that whenever it is uncertain whether the seller or their heirs actually enjoyed the proceeds, the rightful claimants be given the benefit of the doubt. In light of the court ruling to the contrary in 1952, the Committee invokes 'new facts' within the meaning of current restitution policy, on the basis of which a previous ruling can be reconsidered. Based on the Ekkart Committee's second recommendation from April 2001, 'new facts' are understood to mean *'differences compared to judgments pronounced by the Council for the Restoration of Property Rights (...) as well as the results of changed (historic) views of justice and the consequences of the policy conducted at the time'*. Furthermore, if the current NK 3223 a-e was not part of the said sale, the Committee considers the following. If Fritz Gutmann lost possession of the garniture in a way other than through a sale to Böhler and Haberstock, the requirement to pay back the sales proceeds as imposed by the Council in 1952 did not pertain to the current NK 3223 a-e. In that case, it suffices for the Committee to observe that as far as the current garniture is concerned no sales price is known and restitution can therefore take place without imposing an obligation to that effect on the applicants.

Conclusion

The Restitutions Committee advises the State Secretary for Education, Culture and Science to return the garniture NK 3223 a-e to the heirs of Friedrich Bernhard Eugen Gutmann.

The Restitutions Committee advises the State Secretary for Education, Culture and Science to reject the application of applicants II for restitution of the garniture NK 3223 a-e.

Adopted at the meeting of 6 December 2010 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)

Appendices

1. 'Decree establishing the Advisory Committee on the Assessment of Restitution Applications for Items of Cultural Value and the Second World War', 16 November 2001	61
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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.

<i>Date</i>	<i>Description</i>
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

Index recommendations Restitutions Committee by case number

RC case no.	Recommendation regarding:	Date recommendation
1.1	<i>Paschal Lamb</i> by J. Beuckelaer	25 March 2002
1.2	The Gutmann collection	25 March 2002
1.3	<i>Venus in Vulcan's Smithy</i> after F. Boucher	22 April 2002
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
1.5	<i>Portrait of a woman with a little dog</i> and <i>View of Binnen-Amstel and the Blauwbrug</i>	23 September 2002
1.6	The Koenigs collection	3 November 2003
1.7	<i>Portrait of Don Luis de Requessens y Zuñiga</i>	28 October 2002
1.8	<i>Still life with kippers, oysters and smokers' accessories</i> by Floris van Schooten	24 April 2003
1.9	<i>Still life with fish on trestle table</i> by Van Beyeren	18 September 2003
1.10	Art dealership J. Stodel	18 April 2005
1.11	<i>The Rhine near Coblenz</i> by Gerard Battem	18 September 2003
1.12	18th century Frankfurts cupboard	18 September 2003
1.13	Herri met de Bles	29 June 2005*
1.14	Three paintings by Troost and Van der Mijl owned abroad	7 February 2005
1.15	Goudstikker	19 December 2005
1.16	<i>Elegant company making music on a terrace</i> by Dirk Hals	15 December 2003
1.17	<i>Fisherman on horseback</i> by Jozef Israëls	22 March 2004
1.18	Four nineteenth-century landscapes	18 May 2004
1.19	Art dealership Vecht	30 March 2005
1.20	Three paintings by Troost and Van der Mijl owned abroad	7 February 2005
1.22	Family portrait by J.M. Quinckhard	6 March 2006
1.24	<i>Venus and Adonis with Amor</i> by J.A. Uytewael	7 September 2005
1.25	<i>Landscape with river and windmills</i> by J.M. Graadt van Roggen	27 June 2005
1.26	<i>Charles, Prince de Rohan Soubise</i> by J.F. Voet and four 18th-century Louis XV armchairs	3 July 2006
1.27	A saucer and the painting <i>Woman and child at a cradle</i> by J.S.H. Kever	12 March 2007
1.28	<i>Poultry</i> by M. d'Hondecoeter and <i>Saint Peter repentant</i> by G. Reni	24 April 2006
1.29	<i>Three men in a boat on turbulent water</i> by A.H. Lier and <i>Mountain landscape with castle</i> by T. le Feubure	12 June 2006
1.30	A ceremonial Kiddush cup	3 April 2006
1.31	<i>Wooded landscape with shepherd and cattle</i> by B.C. Koekkoek	3 July 2006
1.32	Drawing by Hendrick Goltzius on the back of a playing card	15 May 2006
1.33	<i>A girl in a pastoral dress holding a basket</i> by J. van Noordt	12 March 2007
1.34	<i>Still life with fruit and dead fowl</i> by J. Fyt	14 May 2007
1.36	<i>Portrait of a man</i> by N. de Largillière	31 July 2006
1.37	Art dealership Mozes Mogrobi	12 February 2007
1.38	Estate of Anne Frank	24 April 2006
1.39	Von Marx-May	25 June 2007
1.41	<i>Wooded landscape with herd near a pond</i> by J.S. van Ruysdael	27 November 2006
1.42	Hakker/Anholt	12 March 2007
1.43	<i>Couple in an Interior</i> after A. van Ostade	14 May 2007
1.44	The circumcision, anonymous, previously attributed to Meester van Kappenburg	18 December 2006
1.46	Kaufmann	18 December 2006
1.47	Four gilded silver chalices and a fifteenth-century silver crosier	14 May 2007
1.49	Art dealership Stodel (II)	7 April 2008
1.50	Marcus de Vries	3 December 2007
1.51	Art dealership Mossel	7 January 2008
1.52	An eighteenth-century commode in the style of Louis XVI	12 February 2007
1.53	Van Brabant	4 February 2008

* no substantive advice

RC case no.	Recommendation regarding:	Date recommendation
1.54	<i>Unloading the hay wagon</i> by Isaac van Ostade	1 October 2007
1.55	<i>Reclining Nude</i> by J.C.B. Sluijters	11 June 2007
1.56	A bamboo quiver and an oak three-door milk cupboard	12 March 2007
1.57	Van Messel	4 February 2008
1.58	An eighteenth-century Savonnerie carpet	16 April 2007
1.59	Letowski	6 August 2007
1.62	Art dealership Staal	7 April 2008
1.63	China 'Famille Rose' plate with flower vase decor	7 January 2008
1.64	Art dealership Rubens	6 May 2008
1.65	Nardus	6 April 2009
1.66	Lachmann	3 March 2008
1.67	Oppenheimer	4 February 2008
1.68	Weijers	1 December 2008
1.69	A tin Maccabee lamp	3 December 2007
1.70	Larsen	1 July 2009
1.71	Behrens	3 July 2008
1.72	Dotsch	3 July 2008
1.73	Von Podwinetz	2 June 2008
1.75	Semmel	1 July 2009
1.76	May	10 November 2008
1.77	Proehl	9 February 2009
1.78	Bachstitz	14 September 2009
1.79	Heppner	9 March 2009
1.80	Von Pannwitz	6 April 2009
1.81	Schönemann	12 October 2009
1.84	Cassirer	6 April 2009
1.86	Wassermann	1 December 2008
1.87	Art dealership Van Lier	6 April 2009
1.88	Bachstitz (II)	12 January 2009
1.89-A	Mautner	12 October 2009
1.90-A	Art dealership Katz	1 July 2009
1.91	Adelsberger	9 March 2009
1.96	Stern	3 May 2010
1.97	Hollander	12 October 2009
1.99	Glaser	4 October 2010
1.100	Zadick	3 May 2010
1.101	Wolf	9 November 2009
1.102	Van Aldenburg Bentinck	6 September 2010
1.104	A persian medallion carpet (Wolf/Van den Bergh)	29 March 2010
1.105	Rosenberg	3 May 2010
1.109	Joseph Stodel	7 June 2010
1.113	Gutmann (II)	29 June 2010
1.114-A	Gutmann (III)	6 December 2010
4.118	Weijers (II)	6 September 2010

RC case no.	Binding recommendation regarding:	Date binding recommendation
3.45	<i>A Prayer Before Supper</i> by Jan Toorop (Flersheim I)	7 April 2008
3.48	<i>Thames at London</i> by Jan Toorop (Flersheim II)	3 March 2008
3.93	<i>The Marriage of Tobias and Sarah</i> by Jan Steen (Von Saher/The Hague Municipal Council)	6 October 2008
3.95	<i>Road to Calvary</i> , Brunswijker monogrammist	3 May 2010

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